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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 13 APRIL, 2010

AT 2.10PM

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

ASSISTANT COMMISSIONER: Thank you. Please be seated.

MS RONALDS: I just seek to tender, provide two copies of a set of tables on the front and then supporting documents in relation to Mr Romano's expenses. And I have for our friends a CD version of it.

ASSISTANT COMMISSIONER: That will be Exhibit 172.

10 **#EXHIBIT 172 - SETS OF TABLES RELATING TO EXPENSE
CLAIMS BY PAT ROMANO AND SUPPORTING DOCUMENTS**

ASSISTANT COMMISSIONER: Ms Ronald, now could I just mention in, in respect of timing we have the rest of this week and I'm hoping we can still finish at the end of this week. I think it would be a good idea if we could start a little earlier each day from now on, if nobody has any great objection. Tomorrow it can't be til 9.45 because we have another matter at 9.30. But then on Thursday and Friday I'd like to start at 9.30 just get a
20 a little bit of a jump on the day. So unless anybody objects strenuously to that, tomorrow it will be 9.45 and Thursday and Friday, 9.30.

MR BLAKE: Commissioner, can I just ask what time a decision will be made about any further time in this matter. I mean I have other commitments and it would help me to know as soon as possible.

ASSISTANT COMMISSIONER: Well, I'm hoping further time won't be needed after this week. I guess we will have to reassess at the end of tomorrow, Wednesday. We might have an idea then of how close we are to
30 finishing.

MR BLAKE: Okay.

ASSISTANT COMMISSIONER: So we will reassess at the end of tomorrow, Mr Blake.

MR BLAKE: Thank you.

ASSISTANT COMMISSIONER: Yes, Ms Ronalds.
40

MS RONALDS: Can the witness be shown Exhibit 170. You should have nothing there. Is that right?---(not transcribable)

You see that email's addressed to you? I'm sorry, copied to you, you're one of the people copied on it?---Yes.

10 Do you recall ever seeing this email in this format before?---No.

Do you recall ever receiving an email with a series of invoices attached, that is you see the attachments but not necessarily with the text below?---No.

Do you recall being, this is on something all together different. Do you recall being at an executive meeting on 31 October, 2007 and there was a discussion, just to put in context, there was a discussion about Mr Romano said he was being harassed? I don't want to put a word in his mouth, he was subjected to some conduct that he didn't like?---I recall Mr Romano telling
20 virtually everyone that he was being harassed in Council. It was, it was no secret.

Right?---And, and I remember myself and staff, we were, to the extent that myself and staff were very concerned for Mr Romano and his family.

And do you recall what he said was the harassment? Rather than just saying I'm being harassed and, to your recollection did he use the word harassed?
---I think it was threatening text messages on his mobile phone, I think.

30 And this is back in 2007?---Yes.

October, November, 2007?---Yeah.

Not later?---I'm pretty sure when, when Mr Romano said it started happening he was talking about text messages and, and emails.

MS RONALDS: And - - ?---And I don't think it was just to the executive, it might have been he was mentioning it to, to a lot of people including the executive.
40

Right. And it was subjected to, well, the subject was discussed at an executive meeting as I understand it on 31 October in terms of alarms for Mr Romano's house. Do you recall that?---It could have been, I can't recall the exact date but it could have come up, yes.

And in terms of the subsequent discussion about paying for the alarms, you understand that issue?---Yes, I understand that issue.

You've been present, haven't you, during some of the inquiry but not all of it?---Yes, yes, yeah, yeah, I understand.

Do you understand that's an issue?---Yes.

You didn't play any role in making any of the decisions about that matter, did you?---No.

10 Thank you. If the witness could be shown Exhibit 13. You see you're in that email?---Yes.

But you were only in it as a member of the executive, would that be correct, for a matter for information only not because you were playing any role in any of the decisions being made about the alarm and paying for the alarm? ---That's correct.

I have nothing further.

20 ASSISTANT COMMISSIONER: Yes, thank you, Ms Ronalds. Yes, is there any application to cross-examine Mr Dencker, Ms McDonald?

MS McDONALD: I've been, sorry, Commissioner, I just, one moment while I get myself organised.

Yes, now, Mr Dencker, back in 2003 Council established a cross-functional team to consider the civic precinct project. Is that correct?---I can't recall.

30 You can't recall. Were you a member of that cross-functional team in any sense? Did you attend any meetings of that team?---My recollection that when I arrived at Burwood Council there was a, a cross-functional team that dealt with the planning issues and the, and the Burwood town centre LEP and I was a member of that.

Right?---That's my recollection, I was on the planning side of it.

I see. And that may have been separate to the actual project itself?---Yeah. I, I've never been an integral part of the architectural development side of the library project.

40 Can you remember being at any meetings with Mr, at which Mr Becerra attended prior to his becoming employed at the Council?

MS RONALDS: Mr Dencker, just before you answer that, if I could object, I'm not sure that this is relevant to any issue and we're all concerned about the time.

MS McDONALD: Correct.

MS RONALDS: If it's relevant to a relevant issue perhaps we could confine it to that.

MS McDONALD: Yes.

MS RONALDS: If when he met is relevant to anything I'm not sure but can we just try and focus on what is a relevant issue.

MS McDONALD: Certainly.

10

MS RONALDS: In 2003 and a cross-functional team I don't think is a matter in dispute.

MS McDONALD: The relevance is this, do you remember being at any meeting prior to say 2007 at which Mr Becerra attended and declared that he had any relationship at all with Mr Romano?---No.

20 Can I show you a document, now that's an email from you, do you recall that email?---Is this, is this purported as being from Ian Dencker at service@email a friend, seek.com.au?

Yes?---No, no.

So you do not recall sending that email - - -?---No.

- - - to Mr Becerra, well, it's actually, it's actually addressed to A-P-J-A-C Becerra, APJAC Becerra, at ozemail.com.au?---No.

30 So did you ever log on or did you ever visit the Website Seek.com?---No. It's emails, no, never. I don't know what, what it is. That's a, that, that is nothing to do with me.

All right. Thank you very much. Now, you were part of the interview panel, we've heard evidence of that?---Sorry?

That's all right, can I, can I tender that document?

ASSISTANT COMMISSIONER: Well - - -

40 MS RONALDS: Well, I object - - -

ASSISTANT COMMISSIONER: Yes.

MS RONALDS: Because he said he had nothing to do with it. We don't know its providence and at this stage it doesn't seem relevant.

MS McDONALD: I'll seek, I will, I will ask for the tender again when I examine Mr Becerra.

ASSISTANT COMMISSIONER: I'll mark it for identification, if you like, as MFI 4.

**#MFI 4 - COPY OF AN EMAIL FROM MR DENCKER TO
APJACBECERRA@OZEMAIL.COM.AU DATED 2 APRIL 2007
SUBJECT: OPPORTUNITY OF INTEREST – PRINCIPAL
ARCHITECT – 12 MONTH CONTRACT - \$140K PACKAGE**

10

MS McDONALD: Thank you, Commissioner.

Now, you're a member of the interview panel that interviewed Mr Becerra?
---Yes.

Can I, can the witness please be shown Exhibit 169?---Thank you.

20 Can I ask you to turn to page, four pages in. You'll see that there's an email there dated 4 April sent from Les Hullick to Tanya Kapell and yourself?---I don't recall but I, I can see it's been sent to me.

So you'll see it says there that there's a couple of questions we can discuss at 2.00pm?---Yes, I can see that.

So you have no independent recollection of this email and seeing the questions set out there in that email?---I, I can't recall that email.

30 Would you accept that that appears to be an email relating from Mr Hullick regarding the upcoming interview for the position of principal architect?
---Can I just read it?

Ah hmm?---Yes, sorry, could I have the question again, please.

40 Yes. Do you accept that these are questions that were proposed in consideration of the interview that was about to occur in relation to the position of principal architect?---I will accept that they're draft questions (not transcribable) Hullick in his capacity has, has drafted to, to Tanya Kapell and myself in relation to the, to the confirmation (not transcribable) and that he wants to discuss it further at 2.00pm.

And do you recall at the interview at which Mr Becerra attended those issues being discussed, that is, the flexibility to undertake the role, the experience on civic projects and, and why the Council should appoint that proposed person?---I can't recall specifically these questions but they appear to be the type of questions that you would, you would ask but I, I think we had a few more questions on top of that but I can't recollect - - -

I see. I think you gave evidence before lunch - - - -?---Yes.

- - - that there was nothing discussed during the interview about the hours required for the job, was that your evidence before lunch?---That's correct, yes, yes.

Do you accept that - - -

ASSISTANT COMMISSIONER: Sorry, I think his evidence was that nothing was said about only eight hours being required in the office?

10 ---Yeah.

MS McDONALD: Yes, Commissioner. I'm indebted to you, Commissioner, that's correct, it was that there was nothing about only eight hours?

THE WITNESS: Yeah.

MS McDONALD: But would you accept that that question 1 - - -?---Yes.

20 - - - it says underneath it, "This person will be required to be on call for Council, be expected to attend regular meeting with the civil centre project group, probably weekly to report on progress. They'll need to manage themselves around Council being their top priority"?---Yes.

Would you accept that that suggests that the position was in fact no a full-time position?---I'd accept exactly the opposite. When, if I'm reading that question now, I, I, a person in this, similar to managers and directors you expect them to be on call so you expect them not just to work the average 35 hour week. You expect them to actually work more so from that question, if
30 I'm reading that now and if I was to re-interpret it again, I would say from my understanding that you would actually ask them to work more than 35 hours a week, not less.

I see. You don't think that they will need to manage themselves around Council being their top priority would be a given if it was a full-time job?
---I don't understand the question.

Wouldn't it be assumed that someone applying for a full-time job would give the job their top priority? There'd be no need to discuss that?---My
40 understanding of that question is that there would be meetings after normal hours and they may have to work on weekends so they might have to work seven days a week on this project for that amount of money.

I see. Can, perhaps if you can take that exhibit back and can the witness be shown Exhibit 145. If you could turn to page 11. Now these are the invoices that Mr Becerra subsequently rendered and I understand that this first one was something over which you had that was a project over which

you had some say and which was the Burwood Town Centre LEP. Is that correct?---That's correct.

And I think your evidence was that that, whilst it was interconnected to the project and that the LEP needs to be approved before the project can go ahead, is that right?---Yeah, it think that's, that's, I can't remember the exact words but yeah, there was an interconnection between the Burwood Town Centre LEP and, and the, the civic precinct project as I explained earlier.

10

Yes, and your evidence was though that they were entirely distinct issues though?---There was, there was - - -

Interconnected but they were distinct items of work?---My evidence was that there was the architectural arm of, of Mr Becerra which was civic precinct project.

Yes?---And then a separate, a separate part of that was the, but inter related.

20

Yes?---Inter related, they were interwoven, was the, was the provision of, of, of, of I guess architectural planning advice is probably the best way I can, relating to the, the Burwood Town Centre LEP and how it inter related with that.

I see. In terms of Council budgets, was there a different budget for the civic centre precinct project and the Burwood Town Centre LEP?---There, there could've been and there would've been most likely a strategic planning budget in relation to Burwood Town Centre LEP and there may have been a distinction between those two.

30

I see?---I'd have to check that but it is possible that that would be the case, there would be a different budget or different account number. There would, would have thousands of different accounts numbers to try and work out exactly where the money comes out of.

And you're aware that Mr Becerra's engagement was primarily to work on the civic precinct project?---I think that was, that was, that was his, his primary role was to assist with that, but my understanding was also, that he would also be council's principal architect and I had in my mind, as I explained earlier, that that would entail other - - -

40

Other jobs?--- - - - work on which I (not transcribable).

I see. Are you aware what budget Mr Becerra's retainer of \$145,000 was allocated to?---No.

Is it possible that it would've been allocated just to the civic precinct project?---I'm not sure.

Now, and it's, and I think your evidence was that you did not see and until this inquiry had never seen any of the contracts whereby Mr Becerra or his companies were engaged by Council, is that true?---I hadn't, I've never read in detail. I may have, 'cause I, over lunch time I've, and I said this in my earlier evidence, there was an attachment, a scanned attachment to an email which I sent to David Baird.

10 Yes?---And it's my understanding that there was some scanned documents.

Yes?---I can't recall seeing it, but it is possible that I may have glanced it, but I cannot recall me going through (not transcribable) started reading one line of that contract.

But it's true to say that when, in your earlier evidence I understand Mr Romano came and told you that he was concerned with the work that, the additional work that Mr Becerra was doing - - -?---Yes.

20 - - - and the impact it may have been having on the project?---Yes.

And that simply the invoices would be coming in relation to that work?---Yes. That's, that's correct.

And hence why you weren't surprised when you saw this invoice?---Yeah, yeah, not at all.

Now you, at that stage you had not seen Mr Becerra's contract of employment?---I cannot recall seeing it or reading it at that stage.

30 So you can't say whether you were aware of whether he had a contractual entitlement or not to charge additional?---That's right. I was relying on Mr Romano's, and I believed what he said what was correct.

And generally, as I understand your evidence, you thought the 44 hours claimed in this, this first invoice was if anything an underestimate?---That's correct.

40 And is it your understanding that this invoice covered periods since Mr, from the time Mr Becerra commenced at the Council, in April, 2007 until this date?---From what Mr Romano had told me, it was my understanding, yes, that that covered work on that Burwood town centre (not transcribable) up to the date of this, this invoice.

I see. And you agree that that, that 44 hours if anything was, was under (not transcribable)?---Oh, yes, absolutely.

And just finally, could the witness please be shown Exhibits 159, 165 and 167 and he can return Exhibit 145. And also 166, I'm sorry. Now perhaps if you can have a look at the document 159?---Sorry, document 159?

Yes?---That's 155, Exhibit 155 and - - -

Oh, sorry, 159, sorry, that's my poor pronunciation?---Thank you.

Okay. 159 is a letter dated 23 September?---Yes.

10

Have you ever seen that document before?---No.

Now you'll see that in paragraph 3, this is, I should say this is a letter addressed to Architects Becerra Pty Limited?---Sorry, I have seen this document, but as of yesterday. I should correct myself. But before that, no.

20

Thank you. Now in paragraph - - -?---Actually, sorry, no, I correct myself again. I think I saw it in late last week, but I think it was just (not transcribable) I'm not sure of the date, I'd have to probably check, but it was a document that looked very similar to this, but it was late last week I saw that in relation to another matter that's been raised already.

I see?---That's the first time I saw it, so - - -

I see. And what would that other matter be?---It was raised by senior counsel earlier in tendering information.

30

I see. And - - -?---It was, it was an April matter, yeah, in relation to the, the termination of Mr Becerra's contract.

Yes. Which is the matter that I'm coming to?---Okay. Yes. Yes.

So it's in relation to Mr Becerra's termination?---Yes.

So in this particular document it says that the term of engagement will commence on 23 April, 2009 and terminating on 23 April, 2010, subject to the rights of termination set out in the balance of the document?---Right.

40

You agree with that? You're just reading, and I understand.

ASSISTANT COMMISSIONER: Ms McDonald, I think this witness has made it very clear he knows absolutely nothing about employment law. I don't really think - - -

MS McDONALD: Well, it is relevant, Commissioner, because this witness has in fact signed the termination notice and refers to the documents that govern the contractual arrangement with Mr Becerra.

MS RONALDS: The termination notice, Commissioner, is not part of these proceedings. It was only, it was only tendered by me for a matter of completeness. It is not a matter that this inquiry is engaged in, and hence I see no relevance for the question.

ASSISTANT COMMISSIONER: Yes. I must say, the circumstances of the termination are really nothing to do with the issue we're inquiring into.

10 MS McDONALD: Well, the circumstances post, there's been, been a suggestion as I understand it through this, that my, that my client was being continually paid at a time when there was no operative document and that there was uncertainty and lack of clarity in relation to his position. And I guess that's, that's what I'm exploring and attempting to understand what's (not transcribable).

ASSISTANT COMMISSIONER: Well, I think this document speaks for itself. It's obviously attempts to engage him from 23 April to make up for the fact that there wasn't a written agreement and I mean, whether or not that was proper, I don't know that we're going to be particularly interested in that issue either.

MS RONALDS: It seems these are matters for submission, if at all.

ASSISTANT COMMISSIONER: Yes.

MS RONALDS: As he said, he's not seen the document before.

MS McDONALD: Could I just ask one - - -

30 MS RONALDS: (not transcribable) you end up wasting more time, but really it's unfair to this witness and it's not a relevant matter.

MS McDONALD: Can I just cut to one last question in relation to that issue then?

ASSISTANT COMMISSIONER: Yes.

MS McDONALD: Can you have a look at Exhibit 167, which you should have in front of you?---I don't have, sorry, yep. Yes, I do, sorry.

40 Sorry?---Thank you. Yes.

And I keep, Commissioner, and my learned friend has said, I just want to wish to ask one question. Could you first refer to Exhibit 165. That's another letter addressed to Architects Becerra Pty Limited dated 10 December, 2009. Is that, have you seen that document before?---Not until the 9 April matter, I dealt with the 9 April matter.

I see. And why did you write the letter of 9 April?

MS RONALDS: It's not a relevant matter. We're trying to move this inquiry along and if I object it takes longer, but I've already indicated the letter of 9 April is not a subject of this inquiry.

MS McDONALD: My, my learned friend actually asked the same letter, or an equivalent question of Mr Hullick as to why that termination letter was sent. It was in fact sent by Mr Dencker. So I think it's an appropriate
10 question for me to ask of Mr Dencker.

ASSISTANT COMMISSIONER: I don't know that he was asked why it was sent was he?

MS McDONALD: Yes, he was and he answered it was because of this inquiry.

MS RONALDS: No. I put to him, that was the question and he agreed (not transcribable) the inquiry.
20

MS McDONALD: Well, I would like to just explore that with the person who wrote the letter.

ASSISTANT COMMISSIONER: Yes. Briefly?---In the week leading up to this letter being sent, I met with the third civic project steering committee, which is chaired by Ernie Page and also by resolution of Council had Azer (not transcribable) on to it. It was a unanimous decision of that steering committee that the civic precinct project be put on hold. On the basis of that information I had discussions with Council's workplace law expert, Brian
30 Belling, who advised me that Council, in terms of the contract - - -

Excuse me, I don't think it's appropriate to go into the terms of what he was advised.

You took legal advice?---I took legal advice.

Just say that?---Yeah, and it was based on, on the fact that there was, at this point in time I, I, as acting General Manger I could see no work at this point in time for Mr Becerra and I'm not about to waste ratepayers' money on a
40 contractor when there's no work happening at the moment. The work that I had for Mr Becerra in my capacity as director of planning and environment to work on the Burwood town centre LEP is complete and the steering committee has advised me that they're going to put the project on hold and hence as such I can see no need for the contractor at this point in time. This is also in line with decisions I made as acting General Manager across the board where I'm seeking to save money on, on consultants and legal expenses in line with what is necessary.

MS McDONALD: Thank you very much, Mr Dencker. I have no further questions.

ASSISTANT COMMISSIONER: Thank you. Does anyone else seek to cross-examine?

MR NEIL: Commissioner, may I reserve my right to cross-examine him at a later stage?

10 MR BLAKE: I would seek to ask some questions.

ASSISTANT COMMISSIONER: Yes, Mr Blake.

MR BLAKE: Mr Dencker, you've been with the Council since 2003, I think. Is that correct?---That's correct.

And you exercise in your responsibilities you have taken care in the work that you've undertaken?---Yes.

20 And where you've signed a document you've taken care to read it?---Yes, as far as possible.

Yes. And you don't rubber-stamp documents, do you?---I, I, I try not to engage in that practice ever.

Can Mr Dencker be shown Exhibit 145. Please go to page 24, Mr Dencker. That briefing memorandum contains your signature?---That's correct.

30 And prior to signing it did you read this briefing memorandum?---Yes. Well, I would have read it, I read all briefing notes that come before me carefully.

And you wouldn't have signed it unless you agreed with its contents, would you?---That's correct.

And there under recommendation you'll see a shaded bar with the word recommendation at the bottom of the page?---Yes.

40 You'll see it says that Albert Becerra be offered the role of principal architect for the civic precinct. You saw that?---That's right.

And you understood when you read that that Mr Becerra was to be exclusively involved on the civic precinct work, didn't you?---No, that's not correct at all.

You understood at the time you signed this that Mr Becerra would have a wider responsibility. Is that correct?---I understood in - - -

Well, can you just answer my question?---Yeah, I'm answering it, I understood that Mr Becerra was employed as Council's principal architect and that his primary duty was, was the delivery of a civic precinct project but that also he in his role as principal architect, I could avail myself or any other staff of his services as needed by Council from time to time.

10 You didn't ask for any amendment of this briefing memorandum to say that he'd be offered the role of principal architect for the Council mainly for the civic precinct, did you?---There was no need for that in my view. It was, it was quite plain to me that as being part of the interview process and having looked at the advertisement that this was a principal architect and that, and the duties that in my mind would encompass not only that but also other interrelated duties and the duties that I assigned Mr Becerra were interrelated to the civic precinct project and I would be able to demonstrate that in most instances.

20 I put to you that your understanding of the briefing memorandum is inconsistent with its clear terms. Do you agree with that?---Can you explain it, sorry, I don't understand the question, sorry.

Your understanding of the nature of the contract is inconsistent with the recommendation. Do you agree with that or not?---My understanding of the nature of the, what contract are we talking about?

30 Mr Dencker, you've just described the nature, your understanding of the contract that was to be offered to Mr Becerra and I'm putting to you that your understanding is inconsistent with the terms of the recommendation. Do you agree with that or not?---So you're, I'm just, I'm just trying to understand the question because I still don't understand, you're saying that the recommendation that says that Albert Becerra be offered the role of principal architect for the civic precinct and I understand civic precinct to not just include the architectural arm but all interrelated services, you're saying that my understanding is exactly what the recommendation says, that Mr Becerra be offered the role of principal architect, as I understood the role to be, for the civic precinct and not just architectural services but all architectural service and interrelated matters and that the term of the contract be for 12 months with a remuneration package of \$140,000, that's what I understand.

40 I'll try and ask the question again, Mr, I'm putting to you that your understanding as you first described is inconsistent with the terms of the recommendation. Do you agree with that or not?---My understanding, I still don't, I'm sorry, I, I genuinely don't understand your question. Can it placed in another way possibly for me?

Well, I will move on, Commissioner.

ASSISTANT COMMISSIONER: Yes.

MR BLAKE: Mr Hullick, I'm sorry, I beg your pardon, Mr Dencker, you gave some evidence about the interview. Do you recall that?---(NO AUDIBLE REPLY)

The interview on 4 April, 2007?---Like today or - - -

10 Yes, you gave some evidence today about the - - -?---Yeah, I was trying to work out whether you were talking about today or the evidence I've given earlier to the ICAC.

Well, I don't know you've given any evidence earlier, I thought it was today you gave your evidence?---I've given evidence both as part of my initial interview process with the ICAC and I also answered questions this morning. I'm just trying to clarify - - -

Well, just let me ask you about this day. You said you didn't have a good recollection of the meeting. Is that correct or parts of it?

20 MS RONALDS: Well, I object (not transcribable).

MR BLAKE: I withdraw that. Did you take any notes at the meeting?---Is that, which meeting?

30 Of 4 April, 2007 at which Mr Becerra and then Mr Rice were interviewed. Did you take any notes at that meeting?---I think I would have made notes as part of the papers that were handed out but I can't recall. Normally my practice is when I'm on interview panels I would make some squiggles on the paperwork that's in front of me and normally the senior manager HR would do it, he would provide that and my recollection of this interview process that it was standard in terms of what Mr Macklin, the senior manager HR would do and there would have been some paperwork provided and I would probably make little notations on it which was, I would do, so I guess I, yes, I would have taken notes in line with my normal practice of taking notes.

40 Did you keep the notes?---If, if I had taken notes they would normally be returned to either to go back on the file but I wouldn't have kept any notes on myself, I would have given them back to the senior manager of HR to go in the personnel file if I had made some notes.

In giving evidence today about that meeting did you refresh your memory from any notes?---In giving the evidence today, no, no, I haven't looked at any notes from, from that interview. I haven't looked at the personnel file or any matters that pertain to the actual interview process. I haven't looked at that, I haven't refreshed myself with that.

So your evidence today is based on your memory, do you agree with that?

---Yes, that's correct.

Yes. At the interview did Mr Hullick, Mr Macklin and yourself take steps to identify what the nature of the role was?---Well, how do you mean?

Can you, Mr Dencker, at Exhibit 145 at page 25 please?---Yes, I've got 25.

10 And you'll see in the advertisement, did you have the advertisement at the interview?---I can't recall but I do recall seeing the advertisement and what I do recall is the 140,000, that, that seems to stick in my mind, yes.

But would - - -?---I've a vague recollection of seeing that at the interview would be my best correct answer.

And under the heading "Your Role" those four dot points accurately described the nature of the role for which you conducted interviews for an architect, you agree with that?---Can I just, can I just read that please?

20 Yes?---The advertisement seems to be in line with what, what I consider normal advertisement, that someone like Recruitment Edge would, wouldn't favour.

And you'd agree the four dot points relate exclusively to the civic precinct project, wouldn't you?---Can I just read them again? Not necessarily. Like, if you go to the second dot point, preparation and management of expert consultants who will prepare detailed documentation for development approval, that may involve an inter relationship with a future LEP or a DCP that would feed into that because the, the LEP and DCP for the Burwood town centre were, was interlinked to that so I'd say the second dot point
30 doesn't exclusively relate to just the architectural services but the third dot point, manage and co-ordinate cross-functional professional teams, Mr Becerra I know was sitting on teams which involved strategic planners and also you have assessment officers so he did not just sit on a, teams which just involved architects, just doing committees. So I disagree in this, the third dot point and on the, on the, the last dot point, document and prepare (not transcribable) if I read that I'd take that to, not to be exclusively related just to architectural matters of the civic precinct project. And that's the way I applied my instructions, on the basis of this and my understanding that's how, that's why I, I engaged Mr Becerra on a, on a, on, on these inter-
40 related matters which was happy to help with.

So your understanding was that Mr Becerra's contract extended to matters that were inter related to the civic precinct project?---My understanding was Mr Becerra was employed as a in-house principal architect, that he was a resource that all staff could use on matters which would, to my, my mind said this is great. We've got a principal architect in-house. This is great. We can save money. I don't have to go out and get (not transcribable) and

architect plans. So my understanding was that his contract was for a principal architect that was available for staff to use on a needs basis.

Do you agree with me that - - -?---And not just inter related matters. Mr Becerra also provided advice on other matters that were not inter-related. So in, in (not transcribable) a wider basis and I know that Mr Becerra assisted in other areas of Council and provided value and - - -

10 Do you agree with me that the four dot points under the heading, “Your Role” in the advertisement relate to the civic precinct project in some way?
---Yeah, yeah, partially relate, absolutely, and, and, and I, and I (not transcribable) yes, that’s correct.

Well, you say partially, so you disagree, do you?---No, I, I agree that it, I was just going to say his primary role was to do with the civic precinct project so yes the dot points do partially relate to that but also partially relate to the inter related services which I described earlier.

20 Yes, but they don’t extend beyond inter related services, do you agree with that?---I don’t think that’s clear from the dot points, to be honest.

Now, Mr Dencker, you said you had no knowledge of any conflict of interest with, between Mr Romano and Mr Becerra up to and including June of 2009, is that correct?---That’s, that’s correct.

30 Is it correct that each year that one of the things that the executive team did was to peruse pecuniary declaration forms and that they went to the Council, were tabled at Council?---I’ve never perused as part of the executive team any pecuniary interest form by any staff member. I’ve only provided my own copy to, to, to the staff who look after that.

Well, I suggest you’re incorrect about, about that and that once a year in the fourth quarter of the year the executive team peruse pecuniary interest form?---That’s incorrect.

Thank you. And is it correct in 2009 that you were asked by Mr Romano to take responsibility for the investigation involving the discrimination claim by Mr Saad?---What, what date is it?

40 In February, 2009 or thereabouts?---Discrimination claim, February 2009, is that correct?

Mr Saad made some allegations in February, 2009, do you recall that?
---There was no discrimination claim in - - -

Well, I withdraw the word discrimination. He made some complaints against other Council staff members in February, 2009, didn’t he?---Yeah, that’s, that’s correct, yes. It’s correct that I received email instruction and,

from Mr Romano in relation to Mr Saad, yes. Well, not, at that stage Mr Saad's name was not mentioned, I have to stress that.

And you became aware it was Mr Saad, didn't you?---I think that came out late in the process, probably leading up to the, the time that the Sydney Morning Herald, I can't remember if it was before or after but that, there seemed to be rumours and I can't remember or I was advised and it could've been by Peter Macklin after the process.

10 Well, I suggest to you that when you took over this matter, Mr Romano told you he couldn't do it because he had a conflict of interest?---Mr Romano in an email to me said that he was removing himself from that, from that process and that he had delegated for me to be dealing with the matters in, as Acting General Manager. He was removing himself as General Manager in relation to this matter, that's correct.

Yes, and he told you he had a conflict of interest because of his relationship with Mr Becerra?---No, he did not say that whatsoever.

20 I suggest you're incorrect about that?---No, not at all. I, I can not, he did not say that, made no mention of that.

You were asked some questions by counsel assisting about the decision to, by an executive meeting in about October, 2007 or November, when the issue of security, a security system for Mr Romano's home was discussed. Do you recall that?---I recall the question from, from the senior counsel assisting, yes.

30 And you recall that there was some legal advice coming from Maddocks from Mr Baird?---Yes, I recall that.

And Mr Romano, I suggest, told the executive team at the end of the meeting, a meeting on 31 October, that he'd received some anonymous and harassing telephone calls?---I can't remember phone calls. It was, it was text messages and, and emails, no, I can't recall if, if it was at the executive meeting but it was around that time. It could've been, it could've been outside and as I said he was telling this to a lot of staff so I can't recall whether it was at an executive and I can only recall emails and texts, not phone calls.

40 He said his home had been egged as well?---I can't recall that at that time. I think that has come up later and I guess my memory's blurred because I've heard, but I, if I think hard I cannot recall any egging being mentioned at that time but certainly he was very distressed about the texts and the, and the emails.

And when you, so you can't recall about egging. You have said that it might've been said and you simply can't recall. Is that the case?

---I think that's a possibility, yes.

Yes?---Because I just can't remember exactly.

And I suggest you're mistaken about texts and emails being mentioned?---
No, not at all. I can remember that specifically because Mr Romano said at
the time, you know, somebody has, somebody has even sent emails to my
friends from me. And he's like, I said, I didn't realise that such a, a world
existed where somebody could go in and put Pat Romano and send it to my
10 friends and send harassing text messages (not transcribable) to my friends.
So I remember that distinctly that he said that. And with that, I remember,
and just to clarify that I'm a little bit distinctive about the, the SMS, I recall
that he had forwarded to, I think to Peter Macklin, who then showed me on
his phone a text that was purportedly harassing.

So this was at the same time, Mr Macklin showed you a copy of the text did
he?---I recall at that timeframe that there was, that Mr Macklin had shown
me a text. I can't remember if it was exactly that time, but there was a text
that I believe Mr Macklin showed me that had been, that had been on-
20 forwarded to him.

Right. And what was said on the text?---I can't recall.

You can't recall. Now Mr Dencker, can you please look at Exhibit 145,
please, page 11. I think you said that the Burwood Town Centre LEP was
related to the civic precinct project. Go to page 12?---Page 12.

Were the properties at Conder Street, Belmore Street and Wynne Avenue,
were they in the civic precinct project?---Could be, it'd be related, yes.
30

And page 13 is the Woodstock Child Care Centre, is not related to the civic
precinct project is it?---No.

On page 14 the (not transcribable) and Burwood Public School, that's not
related to the civic precinct project is it?---Oh, no, that could've been related
because that's right next to it. And that was inter-related to the (not
transcribable) was (not transcribable) and Burwood school is right next to it.
It's adjacent, it's across the road, so, yes, I would say in my mind it would
be related.
40

And the next page 15, the Burwood Council Works Deport Master Plan,
that's not related to the civic precinct project is it?---No.

And the next page, 33 Russell Street, is that related?---(not transcribable)
and my memory might be correct, if it relates to relocation of a (not
transcribable) crew that was in, that would have to be removed as part of
(not transcribable) it would be interrelated.

Right?---If, because I think there was talk and I'll have to check, but I think there was discussions that perhaps this, this property could be used to house a welfare agency that I guess, residing within the civic precinct and as a result of (not transcribable) they may have to move. I might be incorrect, but I believe that that is the property, a Council property to which they could (not transcribable) I would say this is related indirectly to the civic precinct project.

10 On page 17, the Elsie Street car park, is that related to the civic precinct project?---No.

And the next page, the (not transcribable) Street Café, is that related?---No.

And the Enfield, page 19, the Enfield full winter entry and change rooms, is that related to the civic precinct project?---No.

I have nothing further.

20 ASSISTANT COMMISSIONER: Thank you, Mr Blake. If there are no other questions at this stage - - -

MR LEGGAT: Commissioner, there is. This is Leggat speaking.

ASSISTANT COMMISSIONER: Yes, Mr Leggat.

30 MR LEGGAT: Mr Dencker, Mr Cummins has provided a statement to the Commission in which he recalls just prior to the installation of the security system at Mr Romano's home and before an executive meeting, Mr Romano stated to the executive that "I've been told its wrong, but I'm going to do it anyway." Have you got a recollection of Mr Romano saying words to that effect at that time or at any time?---No. I mean, I've known Mr Romano since 2003, that's not language that Mr Romano, I've never heard him use and he certainly did not say it on that occasion.

40 How about words to that effect?---I think Mr Romano was, was very concerned for the safety of his family and he was very (not transcribable) sure that he was adequately protected in his role as General Manager. And he was very, there was I think, I recall, I recall that there was a, he wanted to get legal advice as to how that could be best facilitated. But he was certainly anxious to get the, the security to protect his family. But he did not say those words.

Thank you.

ASSISTANT COMMISSIONER: Thank you. Yes, Mr Eurell.

MR EURELL: Thank you, Commissioner. You described Mr Romano as being distressed about text messages and emails a few minutes ago?---Yes.

Given that Mr Romano has now told this Commission that he in fact had been responsible for, if not all of, at least some of those texts and emails - - -

MR BLAKE: I object to that. That's not - - -

10 ASSISTANT COMMISSIONER: I think his evidence has been, he made up the emails and there hasn't been evidence about texts previously except for an unrelated incident.

MR EURELL: I'll withdraw the aspect of the texts. But he had been responsible for the emails. Do you accept that in fact he was feigning the distress in your mind?---The evidence on day one - - -

Yes?---in my mind it certainly appears that way, yes.

20 And given that Mr Romano has said to this Commission that he had been quite open with his executive, do you accept that or do you reject that?---I completely, I completely reject that.

Do you feel that you have been deceived throughout the period that Mr Roman had been responsible for directing various security expenses related to IPP in the first instance?---Absolutely betrayed and deceived.

You've also given evidence about just a few minutes ago, the relationship between LEP and the civic centre?---Yes.

30 Now as I understand it, your role within Council is one that only relates to the approval side of town planning?---That's right. The (not transcribable) planning end, development approval.

Do you say you have a role in the, the planning of what is going to be done by Council within the Council precinct or as opposed to just approving what is contemplated?---My earlier evidence, I don't have a role in the, in the designing, I'm not the - - -?

40 Yes?---I'm the, I'm the approval.

Yes?---The (not transcribable) so I have to be separated.

Right. And you in fact never had any approval role in the civic centre project per se, did you?---What do you mean?

It never got that far?---There had been a number of DA's relating to the civic precinct project including a master plan approval.

Yes. Right?---My role was to engage an independent planner who reported that matter to Council. So, but I didn't, I didn't approve the final concept, I didn't have any role in the, in terms of the formulation of the DA. That was done by the, I guess, the steering committee, that, that deals that. My, my role was at the, at the DA assessment side and we engage an independent planner to do that and report to Council.

10 Thank you. So do you accept that insofar as Mr Becerra's work in the first stage of that process is concerned, that is the planning of what was to be carried out by Council, you really are not in a position to express an opinion about whether or not there is a relationship between the civic centre and these other invoices that form part of Exhibit 145 except some subjective assessment after the fact?---Oh no, I think, I think it's, I think it's well known that the, if you look at the civic precinct as a whole there's no doubt in my mind that the Burwood town centre interrelates and it is interrelated. That, that is, that is a fact and you cannot say otherwise.

20 But by that rationale everything that Council does is interrelated and I'm asking you whether or not there is an overlap insofar as your role as the approver of work to be carried out by Council between the work carried out by Mr Becerra and the LEP?---I don't quite understand the question, sorry.

Let me put it, let me break it down. Mr Becerra's work that is subject of the invoices in Exhibit 145 - - -?---Yes.

- - - deals with the planning of what Council anticipated doing?---Yeah, it relates to the Burwood Council LEP that's correct, yes.

30 Well, that's, is that different from the LEP?---(NO AUDIBLE REPLY)

Do you understand them to be two distinct stages?---I still don't understand the question, sorry.

Well, you described it as related indirectly. What did you mean by related indirectly?---I presume you're meaning that - - -

The LEP in the civic centre?---The Burwood town centre LEP - - -

40 Yeah.---?- - - and the civic precinct, there's an, they are interrelated and that - - -

How?---Well, and I explained this earlier, I can repeat the evidence I gave earlier, the, and it'll be exactly what I said earlier and that is that the Burwood town centre LEP was required to upzone the land, not just for this site but for the Burwood town centre but on which this civic precinct project was, was located. Now, the civic precinct project relies on the upzoning which counts as part of that project to enable adequate funding to fund the library and associated civic aspects of that project. Without the LEP

proceeding there can be no civic precinct project in the way it's currently formulated so yes, the, they, they are interrelated however there's two arms to that. There's the planning architectural arm and there's the planning, there's an architectural arm which basically looks at the design and, and purely architectural aspects of that.

10 And do you accept that those two things are distinct, the architectural planning side, that is what was envisaged here and the other arm, the LEP which was designed to fund what was envisaged?---Well, it related but they are separate processes.

Yes, that's what I'm asking, so they are separate processes - - -?---Yeah, they are separate.

- - - but the relationship here is simply that the LEP had to be, was required in order to fund what had been envisaged by Council in the civic precinct? ---Yeah, I think, I think that it was, well, I agree with, with senior counsel assisting the Commission, I think it was put and I agreed with that.

20 Okay. You were also asked some questions about the advertisements for the principal architect?---Yes.

30 Did you have any contact with either Recruitment Edge or Drakes?---I didn't, I can't recall speaking to Recruitment Edge other than when, sorry, the, when the interviews were drawing close there was, I can't remember, I think we might have had a meeting with Recruitment Edge, I remember a lady from Recruitment Edge, I can't remember her name but I do remember a meeting with a lady from a company which I believe to be Recruitment Edge but I'll have to double-check that but I certainly remember meeting with a lady from Recruitment Edge.

And do you agree that, well, is it your recollection that neither the Recruitment Edge or the Drake's advertisement contained information about conditions of work?---Just by looking at the ad that I looked at before I think, I would read it on face value.

Yeah?---Principal architect, 140 grand per annum, that's how I, in my mind, envisaged the role.

40 To use the industry lingo, what is contained in those ads is really only teaser information, would you agree? It's a very small amount of information just to see whether or not someone's interested in getting more information? ---Oh, I'm not an expert, I can't comment on that. I'm not a - - -

Well, have a look at the ad?---Yeah, I remember the ad.

ASSISTANT COMMISSIONER: I don't think this witness is in a position to comment on teaser ads?---I don't know - - -

He's not an expert in ads or architecture?---It looked like a similar, typical ad that you'd put in.

Yes?---I don't know if it's a teaser ad, I don't know, I hadn't heard that term before.

10 MR EURELL: Were you ever involved in any conversations with Mr Hullick, Mr Macklin or Mr Romano in which it was discussed how much information would go into the Drake's ad or the Recruitment Edge ad?---No.

Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you, Mr Eurell. All right, if there's nobody else, this witness can be stood down.

MS RONALDS: Yes, he can.

20

THE WITNESS STOOD DOWN

[3.16pm]

MS RONALDS: I call Peter Macklin.

ASSISTANT COMMISSIONER: Yes, Mr Macklin, take a seat. Mr Macklin, you're aware that you can seek a section 38 declaration. Do you wish to do so?

30 MR MACKLIN: Yes, I do.

MS McGLINCHEY: Yes, Commissioner, I seek leave to appear for Mr Macklin (not transcribable).

40 ASSISTANT COMMISSIONER: Yes, Ms McGlinchey. Pursuant to section 38 of the Independent Commission Against Corruption Act I declare that all answers given by this witness and all documents and things produced by him during the course of this hearing are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced. Mr Macklin, you're required to take an oath on the bible or make an affirmation?

MR MACKLIN: The bible thanks.

ASSISTANT COMMISSIONER: Yes, could the witness be sworn please.

MS RONALDS: Can you tell the Commission your full name?---Peter Macklin.

Your business address?---1-17 Elsie Street, Burwood.

And your occupation?---Human resources manager.

10

At Burwood Council?---Yes, I'm sorry, at Burwood Council, yes.

And how long have you worked there? How long have you had that position?---I've been there since September 2002 in that current role.

And in terms of your academic training, are you, what training do you have in relation to human resources?---I have diploma qualifications from TAFE in human resources management.

20

And can you outline your main functions at the Council?---To manage all of the human resources activities in the organisation which include recruitment selection, occupational health and safety, workers compensation, human resources planning, et cetera.

And you're not a member of the executive team. Is that correct?---I'm not, I'm not considered a director but I have, I'm included, I'm considered to be on the extended executive which means - - -

30

On the extended executive?---The extended executive.

Sorry, you just have to keep your voice up a bit?---Sorry. Myself and the chief financial officer are included in directors meetings as and when required and that, that's fairly regular but no, I'm not, I'm not part of the executive team but I'm - - -

And would it be correct to say that you do, however, have direct contact on a regular basis with Mr Romano as the General Manager?---Yes, I do.

40

And who is your supervisor?---At the moment Mr Les Hullick.

Well, sorry, go back to 2007, 2008?---Sorry, 2007 it was Mr Romano.

So you reported directly to him?---Yes.

And were you subjected to an annual performance review?---Yes.

And who conducted that?---Mr Romano.

And setting, did you have some form of KPIs, whatever they may have been called?---Yes.

And who set those?---Mr Romano and myself.

And yourself?---Yes.

10 And during the course of 2007 and 2008, how would you describe your relationship with Mr Romano?---It was a good working relationship.

Were you friends outside work?---No.

You just, you didn't socialise outside work?---No.

So where there's receipts for meals or coffees with you and Mr Romano, where he's claimed for that, that would be a work related expense, would it?---Yes, there wouldn't be too many but that would, yes, that's right.

20 There's a couple, not many but there's a couple?---Yep.

So most of your work, was it, was conducted in the office?---Yes.

And so you weren't in the habit of going to have coffees with him or meals with him?---Not very often.

30 And in terms of obtaining direction from Mr Romano, can you describe the nature of your relationship in terms of co-operative arrangements or was it more you would provide advice and he would make the decision?---Was a combination I think, Mr Ronalds. I, I would, he would often seek advice from me. He would often give me directions and instructions.

And if there was a conflict in views between yours and his, how would you resolve that?---I would discuss them with him. He was quite, he was often, he would want, he would give me an instruction or a direction that I didn't think was the right thing to do or was, was, or needed, it wasn't right in my, in my mind and so I would discuss it with him.

40 And if he continued in his view and you continued in yours, what would be the outcome?---Sometimes I was able to convince him to, to seek things my way and sometimes I wasn't.

So in that instance you would have to do as he directed - - -?---Yes.

- - - rather than what you thought might be the better avenue to pursue?
---Yes.

Now, in relation to the alarms, do you recall being present at a conversation between, with yourself, Matthew Walker and Mr Romano?--- Yes.

You've been here not through all the inquiry as I understand but on some periods, is that correct?---I've been here, yeah, not all of it but some of it.

And you understand that there were a series of emails in which you were included about the alarm and you expressed a certain view about it?---Yes.

And I can it to you if necessary. I'm just trying to save time?---Yep.

10 And Mr Walker expressed certain views about the funding of the alarm, do you remember that?---That's right, I do.

And do you recall being present in a conversation with Mr Romano and Matthew Walker about that email, those emails and the cost of the alarms? ---Yes, I can recall being in a conversation with him, yes.

And do you recall that Mr Walker was explaining his position to Mr Romano?---Yes.

20 That is, why he held the views expressed in his email?---Yes.

And do you recall that Mr Romano said to Mr Walker, "You're still on probation and it isn't your place to express opinions on decisions" that he, that is Mr Romano, had made?---I can't recall those exact words but I can recall that Mr Romano wasn't happy with, with what Matthew was telling him. I can't recall those exact words, I'm sorry.

But it may have been that that's what happened?---Could've been, yes.

30 And it's just that you don't recall but you do recall the conversation and it was heated, was it?---Yes, you could describe it that way.

And Mr Romano was unhappy with in effect being challenged by someone he saw as quite junior?---Yes, yes.

And he did tell him, didn't he, that his employment wasn't secure, that is, he was still on probation?---Well, I, as I said before, I can't recall those exact words but I know that the, the, the conversation was heated.

40 All right?---And, and, and I know Matthew has since said to me that's what was said but I can't recall him saying that.

All right, but you don't doubt that if Mr Walker recalled it it would've been a matter that was important to him, his probation?---Yes, of course.

And it would be likely therefore, you'd accept, that his recollection was clear?---Yes.

Now, I want to ask you about another matter before we turn to the matter that, of Mr Becerra's appointment. All right. And this is a matter in relation to, that occurred in September 2009 where you gave some instructions to Maddocks in relation to the possible surveillance of Steve Child, do you recall that happening?---September 2009?

Yes?---Surveillance of Steve Child?

10 Yes. Do you remember having discussions with Ms Erin Wilson?---Yes, yes, I have had discussions with Erin Wilson about that.

In relation to Lyonswood Investigators and a Warren Mallard?---Yes.

And are you able to tell the Commission what was the start of that process? Why did you have discussions, what had happened within Council that led you to have some discussions with Ms Wilson about placing Mr Child under surveillance?---I've got to think back now. It was, I think it was about Mr Child possibly working while suspended from duty.

20 All right, and you'd had some information, had you?---Yes.

And you considered it an appropriate level of expenditure of Council funds to put him under surveillance?---Yes, after discussing it with, with I think it was Mr Hullick and I'd have, we thought it was, was, was worthwhile, yes.

And do you recall discussing it with Mr Romano?---I, yes, I do recall discussing it with Mr Romano.

30 And did it start with Mr Romano come to you or did it start with you and go to Mr Romano, do you understand what I mean?---Yes, I know what you're saying. I was told by Steve Ellul, the works manager, that he suspected Steve Child was working for another employer while on, while suspended from duty. I'm sorry, now I, I just lost track of what your question was again.

40 I'm just trying to work out where it originated from and how, who made the decision to expend funds on surveillance?---The decision was partly myself, mine, and also if I can recall, as I said discussing it with Les Hullick and mentioning it to Mr Romano but in answer to your question I guess the decision was mine.

And in discussion with Mr Hullick and/or Mr Romano, was it decided to get some legal advice about this matter?---Yes.

And you obtained some legal advice?---Yes, from Maddocks.

From Erin Wilson?---Yes.

And Mr Child was then placed under surveillance?---I believe so for a couple of days.

And Ms Wilson then, on 21 September 2009, reported to you on the results of that surveillance, do you recall that?---I do recall that, yes.

And what was the report that she gave you?---That it was inconclusive I think, words to that effect.

10 And did you then direct that the surveillance continued?---No, I don't think I did. I, I think I took advice from Ms Wilson that it wasn't worth pursuing.

And so is it your recollection that there was just several days of surveillance in it?---Yes.

And in this instance it wasn't IPP but Lyonswood Investigations?---That's right.

20 And was that your choice or Ms Wilson's suggestion?---I think it was Ms Wilson's suggestion.

And you, you had, didn't have, did you, any direct dealings yourself with Warren Mallard of Lyonswood Investigators?---No, no.

You didn't have any meetings with him?---No.

Did you receive any written reports from him?---I don't recall receiving any, no.

30 Well, do you remember discussing with Ms Wilson on 28 September, 2009 some written reports that she received?---Yes, I do.

And did she email those to you or forward them to you in some manner?---I can't recall whether she send, sent me an email with the report attached, no, I can't, no.

And do you recall whether you've seen any reports at all from Mr Mallard or from Lyonswood Investigations?---No, I can't recall seeing any.

40 And would it be correct that Lyonswood then sent their fee note or fee memo to, straight to Maddocks and Maddocks would've billed you or that separately?---That would be correct.

But that as the Council you didn't do any of that engagement directly?---No, I didn't, no.

And in terms of reporting results at any stage, you didn't have at the end of the day any meetings with Mr Mallard or anyone from Lyonswood reporting on the surveillance of Mr Child?---No.

Just excuse me for one moment. Now turning to the matter you were probably expecting, in relation to the employment of Mr Becerra, you played some roles in that matter. Would you agree?---Yes.

10 And in summary form, is it possible to, no, I withdraw that. For the setting of the terms and conditions of employment, what role if any did you play in that?---In setting of the terms and condition of employment for the principal architect, to the best of my recollection, I would've assisted in preparing a job description which would've been, which, which in normal circumstances, and I can't particularly recall it providing it to Recruitment Edge, but I would the provide that document to the agency to assist in recruiting for the position.

20 Right. Now you're aware are you not that there was some engagement with Maddocks in February, 2007 about the possibility of engaging Mr Becerra as a consultant?---February, I'm not aware of that.

You didn't know that, about that at the time?---No, I can't recall.

All right. Well, I'll show you a document in a moment. But did Mr Romano, there's a process that goes February, March, April, 2007?---Yes.

30 First of all it's about the engagement of Mr Becerra as a consultant and then it becomes as an employee. During the course of that time, February, March, April, 2007, did you have any discussion with Mr Romano about a possible conflict of interest between him and Mr Becerra and his appointment?---No.

And did you know at that time, I know it's hard because of what you know now, but at that time, did you know that Mr Becerra and Mr Romano were friends?---No.

And did you know they had a, had had earlier, in 2000 and for several years after that a business relationship?---No.

40 And did you know in February, March, April, 2007 that they were formulating a business approach they themselves with another family?---No, I did not.

And did you know around that time, that is in June or around that time, 2007, that they had jointly purchased the block of units?---No.

And, so do you say that Mr Romano at no time told you that they'd been friends?---No.

And they'd been long term friends?---I did not know that, no.

And when do you say you discovered, assuming you now have, that they were long term friend?---I found out that there was a relationship not long before the Herald articles appeared.

10 So when you say not long before, do you mean a day or two before?---No. Mr Cummins advised me, talked to me about the, the contract issue. He said to me that there's a, there was a relationship between those two. I didn't know. It was a couple of days after that that Mr Romano said to me that I'm, I'm in a business relationship with Mr Becerra.

So that was in 2009?---Yes.

And that was the first time you say you knew?---Yes.

20 Can the witness be shown Exhibit 110 and 112, please. Sorry, 110, 111 and 112. Now you see the first one, well, assuming you've got them in the correct order. There's an email to Mr Hullick about Baker Kavanagh dated 21 February, 2007. Have you seen, did you see that on or about 21 February, 2007?---No.

All right. Now if, that's Exhibit 110, for the record. If I could ask you to look at Exhibit 111. You'll see that's a letter to Mr Romano?---Yes.

That sets out a series of questions?---Yes, I can see that.

30 And it goes over the page. Now that's dated 21 February. On or about 21 February, 2007, did you see this letter?---No.

I'll just ask you to look down at the numbered paragraphs. Have you had occasion to read this letter in recent times?---I've seen it produced as evidence. I haven't had a chance to read all of it, no.

40 Well, just look down quickly if you would and see, and what I'm going to suggest to you is that in the normal course of events as HR manager, these are matters that you would be addressing. Would you agree? So just have a look at the numbered paragraphs?---Yeah, I would be involved to some extent, yes.

And so does it surprise you to see that that sort of letter with those queries was going from Maddocks to Mr Romano and you were unaware of it at the time?---It's, yes, it's probably surprising. But it's, it's more so referring to engaging Mr Becerra as a contractor, I'm assuming and, by looking at it and

Well, look at the top bit, it says re, engagement, Albert Becerra to perform architectural services?---Okay. Okay.

It's not a mystery letter is it?---No.

It's a very clearly focused letter?---Yeah. Yes, I should've been included, yeah.

10 And, but do you say you were not involved at all in any discussion in February, late February, 2007 about engaging Mr Becerra as, possibly engaging him as a consultant?---No.

And so when do you say you first became aware of the proposal to engage Mr Becerra on any basis?---When I was asked by Mr Romano to commence the recruitment process for a principal architect.

20 Now in terms of creating a new position within Council and a position in this instance of \$140,000, what's, is there a usual process for a position - - - ?---There is, yes.

I don't want to use the word senior, because I know that has a particular blush on it?---Yeah.

But, so a position of that ilk - - - ?---Yes.

30 - - - how does it normally go about that it's created?---Well, it's, the position description is prepared. It's, it's usually debated and discussed by the, the executive or in particular the supervisor of that position. The position would be referred to a consultative committee in those circumstances, the staff consultative committee. And then if approved, advertised.

Now, none of those steps occurred in relation to the principal architect position was it? It wasn't referred to the staff consultation committee?---I can't recall if it was or not. There was some, there was unfortunately some that weren't. I can't recall if this was or not.

All right?---I'd have to check the minutes.

40 Okay. Now if I could ask you then to look at Exhibit 112. Do you have that?---No.

You see this is a letter from Mr Baird to Mr Romano dated 21 February. Now do you say that on or about 21 February, 2007, you didn't see this draft letter?---No.

And if I could ask you to look in particular at paragraph 5 and the last sentence at paragraph 5 on page 2. Do you see that? Given the scale of the

project, Council, as a matter of probity, should invite expressions of interest for architectural services. Was there any discussion that you recall around February, 2007 about having (not transcribable) for the architectural services?---I can't recall being involved in any discussions.

And if I could ask you to turn to paragraph 17, which is on page 5. Now you'll see that says, we note that the General Manager has declared a conflict of interest in relation to this matter previously. You say you weren't aware of that?---No, I wasn't.

10

And when you see that there does that enable you to recall that you hadn't seen this advice at that time because if you had you would have noticed that, wouldn't you?---Yes, yes.

And that would have been a matter that caused you to be concerned?---Yes.

And you would think, wouldn't you, as the human resources manager that was an issue you'd need to turn your mind to very promptly?---Yes.

20 And to make sure there was a process that was set up that didn't involve any conflict of interest?---That's right.

But you say that you knew nothing about that at the time?---No.

Thank you?---No, I did not.

30 Thank you. If those can be returned. So in terms of initiation of the issue, do you say that it was Mr Romano who approached you and said to you that he wanted you to start the recruitment process for an in-house architect or words to that effect?---I can't recall the exact time or meeting or well, I can't picture the meeting but I, I can recall instruction to commence the recruitment process for a principal architect and that instruction came from the General Manager.

And what steps did you take?---Bearing in mind that I'm involved in a lot of recruitment processes I'm trying my best to recall.

40 Yes, I know and it was some time ago, I appreciate that?---But I have, I, I can't particular recall preparing the job description but I, but I would have had an involvement in preparing that, in that document and also I cannot recall sending the draft document or the position description to the General Manager or to Les to review but I would have done that as the normal process. I can recall discussing the position with Tanya Kapell from Recruitment Edge.

And it's correct, is it not, that you'd used Recruitment Edge before?---We have used Recruitment Edge, I can't recall whether we've used them before

This one?--- - - - this one, I can't recall.

And you had discussions with Drake?---I didn't personally. Les Hullick contacted Drake as well, he advised me he'd contacted Drake to see if they could assist in sourcing a suitable applicant but they were unsuccessful and he advised me of that.

10 Right. And there was an advertisement from Recruitment Edge on Seek?
---Yeah.

Did you have any hand in developing that job description?---The advertisement you mean?

Yeah, I mean the advertisement, sorry?---Yeah. Once again, I can't actually recall scanning the advertisement but the normal process for me would be to look at the advertisement and then send it on to the General Manager and/or the supervisor for their, for their sign-off.

20 Sorry, just excuse me for a minute?---Sure.

If the witness could be shown Exhibit 145. Now, Mr Macklin, if I could ask you to take, go to the last two pages, 25 and 26, that's the advertisement?
---Yeah, yes, I've got it.

You see that. Now, that sets out four matters there. You agree that it doesn't cover the issues that were looked at in relation to a subsequent email of yours - - -?---That's right.

30 - - - in relation to the terms and conditions?---That's right.

So I want to just go through those matters one by one?---Okay.

First of all 140,000, did you set that sum?---No.

Do you know who did?---To the best of my recollection the General Manager.

40 Right. And did he just tell you that's how much - - -?---Yes.
- - - it'd be paid?---Yeah.

Sorry, you've just got to wait for me to finish the question otherwise the transcript gets muddled up?---Sorry.

It doesn't help get through any quicker. So he said to you I want Mr, I want the job to be paid at \$140,000 a year?---To the best of my recollection, yes.

Now, you'll know there's an issue about eight hours - - -?---Yes, I do.

- - - and be on site?---Yes, I do.

Now, you'd agree when you read the Recruitment Edge ad there's nothing there that says anything about only required to work eight hours in house is there?---No, there's not.

10 You'd agree that's a very favourable terms and condition of work?---It is unusual.

And it's a benefit to the person, isn't it?---Yes, I would think it is, yeah.

Because then they could juggle other priorities?---Yeah, mmm.

And have you ever recruited anyone else to Burwood Council with that working condition?---No.

20 And why wasn't, when do you say that that term and condition became part of the job?---My recollection is it was after Albert Becerra was a preferred candidate.

Right. So it wasn't a matter, was it, that was discussed at the interview? ---No.

And it wasn't a matter that was put to the recruitment agent so they knew about it as part of the recruitment process?---To the best of my recollection, no.

30 So it was after Mr Becerra was selected?---Yes.

It then became an issue and how was it that that became a term and condition of work? Who, who sourced that? Who was the source of that? ---To the best, once again, I'm sorry for using the same words all the time, to the best of my recollection I had a meeting with the General Manager and he set those terms of conditions out to me which I then immediately went down and emailed to Recruitment Edge.

40 So that's the email that we temporarily can't find. That's the email that we were looking at earlier that had the things, the things set out in it which - - -? ---The email that I sent - - -

Yes?--- - - - setting out the dot points, eight hours a day and other things, yeah.

And that's an email, this is a different version of it, but that's an email dated 11 April?---I think so. I think it is.

And I'll show this version, Exhibit 156, Commissioner and I'm indebted to Mr Blake for his efficiency that's escaped my side of the bar table. That's, so do you say in the course of events that after Mr Becerra was the preferred candidate you saw the General Manager, you had a meeting with him and then you came back and sent that email to Ms - - -?---Kapell.

- - - Kapell, sorry, just went completely blank?---To the best of my recollection that was the instructions that the General Manager gave me.

10 Okay. And you'd agree that when you interviewed the minimum of eight hours per week time to be (not transcribable) on site that means eight hours a week on site, didn't it?---Yeah.

You didn't include that but that was your understanding of the direction?
---Mmm.

12 months, payment on a monthly basis, \$140,000 retainer and a form of words clearly setting out that Albert is free to perform work for other clients but Council will be the main client?---Yes.

20

Now, you'd agree in relation to paragraph 5 that that's, that's a favourable term and condition of employment for Mr Becerra, isn't it?---Yes, it is.

You'd agree that there's a secondary employment policy in operation at Council - - -?---Yes, there is.

- - - and people have to apply for secondary employment, set out what they want to do and show it won't be a conflict and meet the terms and conditions of the policy?---Yes, they write it.

30

And they write it to the General Manager and then you approve it. That's the process, isn't it?---That's right.

And in this instance did you see any document produced by Mr Becerra seeking a secondary employment approval?---Not then, no.

And ever?---There has, there is a secondary employment declaration on Mr Becerra's personal file.

40 And do you recall - - -?---I don't know, I don't recall the date but it was - - -

Right. But this is in effect, isn't it, a grant of secondary employment - - -?
---Yeah, it is.

- - - approval without Mr Becerra asking for it?---It is, it is.

And that's not the Council policy?---It's not normal, no.

So, and that was not a matter that was discussed in the interview, was it?---
No.

So that - - -?---To the best of my recollection, no, no.

But that would be an important thing for a potential applicant to know
about, wouldn't it?---It would be, it would be.

10 That they would have an assured entitlement to a right to private practice?
---Yes.

Would be a critical factor in terms of looking at whether you'd apply for the
job or not?---That's right.

And similarly, eight hours on site would be something a potential applicant
would like to know because that would affect their capacity to perform the
work?---That's right.

20 And the reason, I'd suggest to you, that you had to put this in an email to
Ms Kapell was because they were not matters that you'd discussed with her
previously?---That's right.

And that following that meeting, that's what happened, you sent it to her
and then you forwarded it on to Lindy Richardson, you know who she is?
---Yes, I do.

30 Now, I'm sorry, you've got a different version. If the witness can be shown
156. Now Lindy Richardson's in Darren Gardner's employment team at
Maddocks?---That's right.

And when you've sent that on to her that was in terms of drafting up a
contract?---Yes.

All right?---Letter of offer.

We'll get back to that so we've skipped ahead a bit and tried to sort it out
but in terms of the process, you'd agree that the position as you understood
it was principally to work on the library project?---Yes.

40 And not only?---No.

And that other duties were able to be undertaken because it was a position
within Council to assist the Council generally?---I thought it was an
employee, position as an employee.

And that while the focus, primary focus might've been on the library, that
was not the sole focus of the position?---That's right, that's to my
understanding.

And during the course of 2007 did you become aware that Mr Dencker had asked Mr Becerra to do other tasks?---Not at the time, no.

But had you know that that wouldn't have concerned you, would it?---No.

You would've have considered that that was, it went with the job, that it was critical?---Mmm, mmm.

10 And during the course of the interview process, there was no discussion about being paid \$200 an hour for extra work, was there?---No.

That was never envisaged during the recruitment process, was it?---In the recruitment process, no.

And indeed it wasn't envisaged in the budgetary process, was it?---I don't know.

All right. Now, have you still got Exhibit 125 there?---Yes.

20

If I could ask you to turn to page 24, so you've had an interview with Mr Becerra and someone else and then Mr Hullick drafts this memorandum, do you see that?---Yes.

And you see under Budget Implications, the contract will be for 140,000 per annum which has been included in the '07/'08 budget. You'd agree with me there's nothing there about and some other sum, unspecified sum or a maximum of 20,000 or 50,000 - - -?---Yes.

30 - - - \$200 an hour extra work or - - -?---Yes.

- - - or anything like that, was there?---No, there's nothing.

And you'd agree that if that had been an agreed position at that time, it would've had to be included in the document, wouldn't it?---Yes.

It would've needed to be set out as part of that, that there was an extra considered term and condition because that had budgetary implications? ---Yes.

40

And expending 10, 20, \$30,000 of Council money is an important matter, isn't it?---Yes, of course it is.

And it has to be recorded properly?---Yes.

And it has to be subject to a proper budget allocation?---Yes.

And so the only money allocated in the '07/'08 budget is the 140,000?---
Yes, as far as I'm aware, yes.

And when does the budget, what's the budget year?---Financial year?

Yeah? It's just a straight financial year, isn't it?---Yes it is.

1 July to 30 June?---Yes.

10 And that's your signature down in the middle, isn't it?---That's right.

So Mr Hullick prepares the memo, you read it when you get it, it sets out your understanding of what's happened?---Ah hmm, yes.

And is it correct to say that you then walk this in to Mr Romano, so to speak? Is that how you had, how come you had the discussion that led to the email of the 11th?---I can't recall whether the discussion that I had was at that time but I normally do walk recruitment documentation to the General Manager's office so that, so that there's no delay in the process.

20

All right, because there's a bit of , this is signed on the 5th and your email's is the 11th and - - -?---Yeah.

- - - and as I understand your earlier evidence, you sent the email on the 11th immediately after that meeting?---That's right.

So is it possible you had more than one meeting?---I, I, I'm not too sure. I can't recall.

30 And you weren't party to before the recruitment process, were you, with any meetings with Mr Baird about the engagement of Mr or the engagement of an architect . -No.

- - - or the engagement of - - -?---No, I wasn't.

All right. Now, in terms of the actual contract, now can the witness be shown Exhibit 117. There was some discussion about the content of the contract. Would it be correct that in your position as HR manager, you would be the person in Council who would have the greatest expertise in relation to employment matters?---Yes.

40

Or at least that's what you're paid to?---Yes.

And therefore the content of contracts would, employment contracts would normally be a matter, would it not, that would fall to you?---Yes.

Now, you see this has attached to it a contract, a draft contract, do you see that?---Yes, I can see that.

And you're aware that there was eventually a contract entered into?---That's right.

And what role if any did you have in turning this version into the one that became the one that was signed?---I can recall receiving the document from Maddocks in the format that looks similar to, let's say this format, this document.

10 All right. And then did you, and just to assist you, if you look half way through the bundle, I'm sorry they're not numbered. There's a note, see there's a sort of darker coloured page?---Yes.

You see that. That is a note that Ms Richardson spoke to you on 12 April and there's some matters there. You see, does that help you recall discussion you had with her about the draft contract?---I can't recall having discussions with her about that in particular but I, I would've, I would've, yeah. I talked to Lindy regularly about these sorts of things.

20 Yes, and you'd accept if she's made a note about it that - - -?---Yes.

- - - that likely to accurately record the conversation?---Yes.

And then there is an actual contract. Could the witness be shown Exhibit 118. Now, there's some changes that are made between the draft sent by Maddocks and this one?---Yes.

Did you make those changes?---No.

30 Do you know how they were made?---I think they were made by Albert or, Albert Becerra or Vera, the General Manager's executive assistant, I think. I don't, I didn't make those. Can I just double check? I don't recall making any changes to this document.

Well, you'll see that it's signed by Mr Romano?---Yes.

And would that be normal?---Yes.

40 Or would you normally sign the,?---No, Mr Romano would sign them.

And just so I understand the process. Wouldn't you normally produce the document on letterhead for him to sign, send it up- - -?---Yes.

- - - and he'd sign it?---I'm sorry, I should've explained that, yes.

That's what normally happened?---Yes, I would. I would produce the document, the, the letter, the draft I would've received from Maddocks I would've removed, insert the employee, the employee's name and, and

anything else and then produced it with a letterhead and a copy and sent it to the General Manager for signature.

And there's some, there's a, I think if you look at page 1, you see, I'd suggest the changes weren't made by Mr Becerra except by hand, because he probably knows how to spell his own name?---That's right.

So - - -?---I think that was, I think that was Albert's correct.

10 Yes. And then it's changed from the 23rd to the 16th?---That's right.

Do you that under the term of employment?---That's right.

But the other changes that were made in relation to the contents of the document from the, from the draft from Maddocks?---Yes.

Did you make those and in particular can I take you to the hours of work which in the Maddocks draft is at the bottom of page 2 of the first draft?
---Right.

20

And on the signed contract it's at the top of page 3. I'm sorry, you've got to flick between the documents. You right?---Got that.

You'll see that the Maddocks draft has up to a maximum, weekly maximum of 30 hours, 38, plus reasonable blah, blah?---Yes.

30

And the contract as signed has your ordinary working hours will be the hours reasonably required to effectively manage (not transcribable) with a minimum of eight hours to be worked at the office. Now, that's quite different isn't it?---It is.

Are you able to tell the Commission where that change came from?---No, I'm not. I don't know how that occurred.

And you didn't make that change?---No, I didn't.

40

So when it left you, so to speak, you're clear, would you agree that it left in the Maddocks draft form and therefore, sorry, would you agree it left in the Maddocks draft form, the 38 hours, et cetera?---Yes. To the best of my knowledge, yes. And I had no reason to change it.

And it could only have been changed couldn't it in the General Manager's office?---Possibly, yes. I don't - - -

Well, it doesn't go anywhere else does it?---No, it doesn't. There's an electronic copy kept on Council's records. But the, that's the only place it goes to, yes.

Yes. Realistically, the only person who could've authorised that change is the General Manager isn't it?---Yes.

And you'd agree it is quite different to the one that left your care?---Yes.

And if you could turn back a page. You see the, the remuneration package?---Yes.

10 It's set out, and that was your understanding at that stage of the arrangement?---Yes.

And you would agree that there's simply nothing in there is there about payment for \$200 per hour for any additional work?---No, there's nothing there.

And there was no contractual entitlement, I'd suggest to you in the course of 2007 was there for a payment of \$200 an hour for extra work?---No.

20 I think we've gone as far as we can. I'm sorry.

ASSISTANT COMMISSIONER: Yes. Well, that's (not transcribable)

MS RONALDS: I'm sorry for everybody. I'm kicking myself.

ASSISTANT COMMISSIONER: We will resume tomorrow at 9.45.

MS RONALDS: Well, I understand Mr Macklin can't attend tomorrow and so he'll have to be stood down until Wednesday.

30 ASSISTANT COMMISSIONER: All right. Well, we'll stand him down? ---Thursday.

MS RONALDS: Thursday, sorry. I can't remember what day of the week it is.

ASSISTANT COMMISSIONER: All right. Well, you're stood down until Thursday and we'll resume with someone else at 9.45am. Thank you.

40 **THE WITNESS STOOD DOWN** **[4.03pm]**

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