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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 14 APRIL, 2010

AT 9.50AM

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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 recall Mr Becerra.

ASSISTANT COMMISSIONER: Mr Becerra, you're still under oath and the section 38 declaration still applies. Thank you.

MS RONALDS: Now, you were a partner in Baker Kavanagh Architects weren't you?---That's correct.

And is it correct that your wife was employed there?---Yes, she was.

And then she wasn't employed there - - -?---That's correct.

10

- - - she was terminated. Is that correct?---No.

She wasn't terminated, sorry, the job was terminated?---Yeah, she, no, she actually decided to move on from the company.

So she chose to did she?---Yes, she did.

So, and she was unhappy there?---Yes. That's correct.

20

And did that contribute in part to a breakdown in the relationship between you and your partners?---To some degree, but there was other issues more - - -

Right?---Dealing with business rather than that.

So there were three of you. Is that correct?---There were three partners.

Mr Baker, Mr Kavanagh and you?---That's correct.

30

And when do you say the relationship, sorry, when did you start as a partner?---2002.

And when you say, sorry?---I was employed prior to that, I became a formal partner after that.

So you started in 2001. Is that correct?---2000.

40

2000. And then you became a partner. And then when do you say the relationship commenced to deteriorate?---When Baker Kavanagh started investing money as a group in an overseas venture in Dubai.

Right. And you didn't approve of that?---I didn't think it was the right thing to do and I wasn't happy with that approach to the company, no.

And when did that happen?---It started early 2006.

Right?---Um, around that time. And there was a lot of issues of flying out, investing money for little return.

Right?---And that was one of my concerns.

Now in terms of the work you were doing for Burwood Council when you were in the partnership, the other two partners weren't involved in that work were they?---Not at all.

So in effect it was your sole client? Not your only client but - - -?---No.

10 - - - you were the only person servicing the needs of Burwood?---That's correct.

And when did you start doing that work?---We were first commissioned to do a project at around 2003. It was a child care centre for Burwood Council.

Right?---And the Woodstock estate.

20 And how did you get that job?---We tendered for a job, not tendered, we actually submitted a fee proposal to do that job.

So it wasn't a tender?---No. It was - - -

Were you invited to apply?---Yes, I was.

30 And did Mr Romano play a role in that?---I can't recall whether he did. But I know that there was another gentleman um, Sarich, Mr Sarich who contacted Baker Kavanagh to get a fee proposal for a child care centre, as we were doing a fair few child care centres at the time.

Right. And you performed that work and did you disclose to anyone at that stage that you and Mr Romano were friends?---No, I did not.

And did you tell anyone that you had a business arrangement, which I think was in existence or had recently come to an end in terms of the other property in Edwin Street?---It was a while after that venture had terminated.

40 Right. So did you tell anyone at the Council that you had been in a business relationship?---No, I did not.

And then you became involved in the variously named library precinct project. When did you commence your involvement in that?---After the, the Burwood Child Care Centre, there was a formulation of a cross-functional team around that time. A cross-functional team didn't just involve Baker Kavanagh, architects involved they were architects, urban designers, transport consultants and the like. And the idea was to realise for Burwood a vision for the town centre that they had. And I was involved in providing architectural advice on that.

And apart from yourself at Baker Kavanagh, how many other at Baker Kavanagh worked on the project?---Several others.

And they were more junior architects were they?---There were junior architects, there were other associates of the company that assisted me in preparing documents and, yeah, it was, I can't, I can't put a direct number, but it was quite a few members of the staff under my direction.

10 And by the time the beginning of 2007 how developed was the project in terms of your involvement?---If you can just, the project went from one site, which we had prepared a development application for.

955so

MS RONALDS: And when did you do that?---Between this - - -

20 You see it helps with a bit of chronology as well?---Sorry, yeah, it was around 2005 we started preparing a development application for the civic, for the civic precinct project which in fact was the library. It started off (not transcribable) the library and as we went on the advice was that the library as a stand alone building could not be financially sustainable for the Council so we had to look at other money-making facilities in the building so we had to add an office component to it to generate an income for the project so it'd become self-sufficient and that was on the corner of Belmore Street and Conder which is now called site A. Through that cross functional group, there was also quantity surveyors, land surveyors and financial advice given that the project could not be sustainable in that so that moved to site X which is the current - - -

30

The current site?--- - - - proposal and I was getting involved, sorry?

Yes, and - - -?---And I was getting involved in the design phase of that and looking at the feasibility of that project again, because to make it financially viable was one of the directions, to make sure that it wasn't a burden to the ratepayers of Burwood so we had to come up with a design that didn't cost Council ultimately running costs or a burden in the future. So we relocated to that and I was involved in the master plan of that project through Baker Kavanagh until, yeah, until I decided to move on from Baker Kavanagh.

40

And when do you say you formed the decision to leave Baker Kavanagh? ---I'd say it was around mid-2006, I went on an overseas trip for a while for the World Cup. I come, upon returning we had discussions with John Baker.

We, being?---Myself and John Baker.

Right?---There was a couple of exchanges of emails because he was away in the country in Maitland and it was a point where I wasn't agreeing with the direction the company was going. I had concerns about that and also that it was around the tax time so we prepared, I went to see my accountant and there was a huge turnaround in one year of the finances at Baker Kavanagh which - - -

A non-propitious turnaround?---That's correct.

10 And so if there's a minute that records that in September 2006 it looked like you'd be leaving or Baker Kavanagh would no longer be available for work, that would be an accurate record that you'd flagged - - -?---Late August, early September, yes.

- - - you'd flagged it. So when do you say you had a first conversation with Mr Romano about leaving Baker Kavanagh?---It was later on in 2006.

20 Well, when?---Just prior to Christmas because I had engaged a law firm to advise me on my exit out of Baker Kavanagh.

Right?---NOT Lawyers, Nash O'Neill Tomko, to advise me about how I can terminate my - - -

How to break the partnership (not transcribable)?---Yes.

Right. So you and Mr Baker had had a conversation, a few exchanges in August, September 2006?---Correct.

30 You'd formed the view to go?---Yes.

You consulted some lawyers to get advice about how to get out of the partnership?---Yes.

How to value the partnership, those sort of matters?---That's correct.

And what was your intention at that stage in relation to your own arrangements?---To leave Baker Kavanagh and set up my own practice.

40 So you were going to set up your own practice?---Yes.

And you say you had a conversation, the first conversation with Mr Romano about it later in 2006?---Yes. The reason I recall that, and I've gone through some of my notes, is that the advice from the lawyers at the time said take Christmas off to think about it and let us know what your intentions are thereafter but prior to Christmas I well and truly had made up my mind to leave.

Right. And doing the best you can, what was the first conversation you had with Mr Romano about the matter, about leaving?---I'd said, prior to Christmas 2006?

Yes, what did you say?---I'm going to leave Baker Kavanagh Architects.

And did he say well, I'll organise it so you've got some work for, from the Council?---No, he - - -

10 Or words to that effect?---No. His concern was what would happen to the library project if I was leaving.

Right. So what did he say to you?---What would happen to it, to the project. If I was leaving what would happen, is there anybody else in the office that could take over or, and I would say no because I was the one that was going to the meetings, attending and directing the project.

20 And just to jump ahead, by the time you became an employee, in fact in reality there wasn't much difference in that it was you who was the primary provider of the work whether you were at Baker Kavanagh or became an employee of the Council. Is that correct?---That's correct.

30 And so did you talk to him about entering into some sort of contract?---No, what I did ask was a little bit later in that period of time, in early 2007 I asked if I could be included in the panel because Baker Kavanagh was included in 2005 on an architectural panel amongst other disciplines that were, and we had to have discussions with Mr Baird regarding that and Mr Baird's advice was that I could not be added to that panel because there was certain criteria that was done for the selection of that panel, you just can't just throw another firm in there.

Okay. Well, we'll get to those discussions in a moment. Now, you were setting up your own business so you were concerned about income flow, that's correct?---Yes.

You have a family to support?---Yes.

40 You're not independently wealthy and so you needed some income?
---Needed income but we were, my wife was working.

All right, but so that securing a regular income for yourself as an independent sole partnership was an important thing for you?---Yes, but in addition to that, senior counsel, I also during that period of time canvassed and discussed with several of the clients that I brought into Baker Kavanagh if they had projects or, and I at that time was also involved in a couple of development applications, the construction of a project, two projects that I was involved through Baker Kavanagh. I canvassed those clients and asked them if I was to leave the partnership would they engage me in either

completing the projects or engage me in further work and that resulted in part of the agreement that I had with Baker Kavanagh, was a mutual one, of the, I guess, dividing the client base that we had. And one of the clients was Burwood Council.

And there was never any suggestion, was there, that Burwood Council would remain with the other two partners?---No, there was not.

10 Because that, it wasn't their client in the sense of who did all the work for them?---No, we were in partnership and we discussed the project but there were certain clients who were allocated to each partner.

Yes?---Thus the division of the clients. There was clients that I did work for that are really Mr Baker's or Mr Kavanagh's clients that they established over a period of time so - - -

But at all times Burwood was yours?---Yes, it was.

20 And you'd agree that in January, February, March, you were having discussions about financing what became the Befaro venture?---Yes.

And so you'd agree that the Befaro adventure required, venture, not adventure, sorry, venture required money to be put in by the partners - - -? ---Yes.

- - - for the deposit?---Yes.

30 And then there was a substantial mortgage being taken out of over a \$1 million?---Yes.

And you had to enter into a commitment to be able to service that mortgage?---Yes, we had the facility through an account that my wife and I hold as well as superannuation that we had put aside to an investment so we had the resources but we didn't have the, the loan facility that you described, no, but we had the deposit and ability to make those repayments.

All right. And there were calls for funds later on when you had to put in extra sums?---Yes.

40 Was that all discussed and organised beforehand?---Yes, because one of the things when we did look at the project, as I said, stated before, the building was in a state of disrepair and some of the, it was circa 1962 and some of the internal amenity was circa 1962 but it was pretty amenity so one of the things that was discussed through Befaro was to upgrade the amenities, internal amenities of those units.

But that venture was going on at the same time as you were setting up your own business?---Yes.

And so what I'm suggesting to you is that an income stream for you was an important factor?---It was but my wife was also working at that time and she was able to sustain the loan, as you, you referred to.

Now, you had a meeting with Mr Baird and Mr Romano on 14 March, do you remember that?---Yes, it's in my diary, in my journal.

10 Sorry?---It's in my journals.

And it's your habit, is it not, to sit at meetings and take contemporaneous notes during the course of the meeting?---I don't know about contemporaneous but I do take notes that sometimes reflect what I discuss just as memory joggers.

20 And you do that while the meeting is on?---Sometimes, sometimes I do a reflection of what the meeting was on. Not all the time do I stop and take minutes of meetings during the meeting. I might do a reflection.

And you do that in a bound - - -?---Yes.

- - - Spirax book, don't you, that's your habit?---That's correct.

Now, I'll just show you this document. You see, that's an email from Ms Karpowicz who is the executive assistant to the General Manager? ---That's correct.

30 Confirming your meeting with Pat, I'm sorry, David Baird and Pat, meaning Mr Romano - - -?---Ah hmm.

- - - on Wednesday, 14/3 at 8.00 at Bar Cupola at 123 Pitt Street?---Yes.

Now, you received this email?---Yes, I did.

40 There's no suggestion, was it, that the meeting with Mr Baird was a casual, unexpected drop in that suddenly occurred on the day?---No, I expressed to Mr Romano, as I said to you before, that I was leaving and his concern was what would happen to the intellectual property documents and the progress of the work and he wanted Mr Baird to be in attendance to have that discussion and we did meet, yes, as it states there.

And this is set up on 6 March for a meeting on 14 March, so what I'm suggesting to you was it was a well organised planned meeting some week in advance, wasn't it?---Yeah, I got a message saying we'd like to have a discussion with you and they said those times.

Yes?---And I attended.

And you dutifully attended?---Yes.

And you took some notes?---Took some notes because some of the other notes were, notes of, like I said, reflection, not necessarily that I write - - -

All right, well, wait till we get there?---Yeah, sure.

10 If the witness could be shown Exhibit 114 please. Now, that's your handwriting, isn't it?---My scribble, yes, it is.

And this records the matters discussed at the meeting?---No, not N-O-T is NOT Lawyers.

Sorry?---NOT, the word "NOT" is NOT Lawyers. That's some of the discussions that I had with them as well.

20 With NOT Lawyers?---Yes, some of the information. I did, as it says, David Baird, Pat and (not transcribable) that's people that attended. I was, in that note I expressed what was happening at NOT Lawyers. One of the issues that I had, and that was brought up at the meeting with Mr Baird was if I was having a dispute with my partners, how would that impact on Burwood Council. He said if there was any issue impacting on Burwood Council I should advise them because I know it's a restriction of trade or may be referred to as restriction of trade but sometimes when partners break up there's a period of time or some times an inference that you're not allowed to work with certain clients or work with those clients for a period of time because the intellectual property that, that company has. That was not the case as far as I was concerned and that's not what was discussed
30 with NOT Lawyers. They were the people that were advising me and the idea was that I also didn't want to have restriction of trade of me starting up my own practice.

And so where you have, "right of private practice" to the best of your recollection, what does that recall?---So that nobody could stop me from opening up my own practice.

40 And that was a matter you discussed with Mr Baird and Mr Romano?---I did tell them that that was one of the things I was seeking to start my own practice with no restrictions.

And during the course of the meeting you were talking, were you not at least in part, about entering into some sort of arrangement with Burwood Council?---I did. As what I said before, I did ask if I could be included in the panel and Mr Baird iterated that he thought it wasn't the right thing to do. Of course, of what I said before, the panel was already established, had certain criteria and you just can't add another architectural firm to it.

Right, but - - - -?---And I - - -

Sorry. Was there a discussion then about entering into some other sort of arrangement so you could continue to provide services to Burwood Council?---Mr Baird showed some degree of concern saying that if I was not going to be involved through Baker Kavanagh on the project, would I be available to carry on the project.

10 So he suggested that, did he?---No, we both discussed it.

All right?---And he said, well, what, what, “What are you going to do” and I said, “I was hoping to get involved in finishing the Burwood library. I, if I can’t be on the panel, is there another way?” And he said that the only way was, if I was available to be employed by Council.

All right. And did you discuss a contract for services, so not being an employee - - -?---No.

20 - - - but a contract for services - - -?---No.

- - - at that time or a consultancy?---No.

30 And so he said be an employee. And did you respond to that as an idea?---I said well find out, to let me know. That was all, the primary concern at that meeting, like I said, was Mr Baird asked what happened to the documents, what happened to all the documents that I had prepared, and they were in the care of Baker Kavanagh. And if I was to leave what would happen to all that information and what would happen to Burwood, the project I was working on.

The project you were working on at that stage was up to preliminary drawings wasn’t it?---It was preliminary (not transcribable) it was actually transferring the information from the original DA that had been prepared over the previous two years and trying to relocate that on to a new site, which is a little bit more difficult ‘cause it wasn’t a clean field, a clean site. It had existing buildings, Council Chambers and the like. And it was trying to translate that information and the same brief on to a new site.

40 And if you had been unable to continue it would’ve been possible for someone else to do it?---It would have to go back and revisit, like I said, a lot of the homework that I had done over the previous two years. Interviews with user groups, re-establish - - -

But that was all recorded wasn’t it?---It was recorded by Council, but there’s a certain of knowledge that I believe that I had on the project and I could translate that quickly on to that site.

But you weren’t irreplaceable were you?---Nobody’s irreplaceable.

No. So at that meeting, that first meeting was that the first time employment had been discussed?---Yes. It was just finding out whether I would be available to carry on the work that I was doing through Baker Kavanagh for Council.

And did you and Mr Romano discuss with Mr Baird your friendship? That is you and Mr Romano?---Not then, but previously yes, there was previous meetings when we started the cross-functional group.

10

Right?---Which, that was declared and I believe Mr Baird knew that I had a relationship and a friendship with Mr Romano, yes.

What about a business relationship?---I don't know. You'd have to ask - - -

No. I'm asking you whether at the meeting on 14 March, you and Mr Romano said to Mr Baird anything like, we're just setting up a company with our families and we're going to buy a property. Is that something we need to tell anyone about?---That wasn't the, the reason for the meeting, senior counsel. We didn't discuss that.

20

It may not have been the reason for the meeting, I'm asking you whether it was a matter that either of you raised?---No, it wasn't discussed. No, it wasn't discussed at that meeting.

Why not?---Because we were talking about the civic precinct project.

But wasn't, weren't you talking about changing the structure and nature of the relationship you had with Council?---It was one of the discussions that we had, yes. If I was available to carry on the work that I was doing at Baker Kavanagh.

30

And didn't you think that your and Mr Romano's business relationships outside of Council were a factor that the Council lawyer should know about?---I understood Mr Baird knew of that relationship.

Of the business relationship?---I understood that he knew about it, but it wasn't discussed.

40

How did you think he knew about it?---I believe that he knew, Mr Romano might've discussed it. I don't know. But I believe that he did know - - -

Well, how did you believe that he did know? What basis did you have to think that the Council's lawyer knew that you and Mr Romano and your families were in the process of purchasing a block of residential units? ---Because Mr Romano got some, some advice from Mr Baird about getting some finance.

And so what did Mr Romano tell you about that?---That Mr Baird had organised for him to see a bank manager.

Right. And did you make certain assumptions then that Mr Baird knew all about it?---Those I did, yes.

So that wasn't anything Mr Romano had said to you specifically?---No. No, no. He'd never said that I told David anything, no.

10 And you didn't ever raise it with Mr Baird?---No, I did not.

You understood that the meeting was with Mr Baird because he was Council's lawyer?---Yes.

It wasn't just a meeting, a cup of coffee with friends was it?---No.

20 To have a discussion about future plans?---No. He was the Council lawyer, and, like I said, he raised several issues with regard to how would my leaving Baker Kavanagh impact on the project and all the work that had been done prior to my decision to leave.

And it may have been in the coffee shop, but it was a formal meeting wasn't it?---(not transcribable) meeting?

Yes?---Yes. A meeting is a meeting, as far as I'm concerned, whether it's in a coffee shop or outside here. A meeting is a meeting.

30 Yes. And you acted on the advice that Mr Baird provided? That is you didn't apply to join the panel?---I didn't join the panel because Mr Baird thought that it was not the right thing to do because you could not add another architectural practice to the panel. That's all he advised me on.

Just, if you could just listen to the question?---Sure.

You accepted his advice didn't you and you didn't apply to join the panel? ---Yes. That's right.

40 Thank you. Now, there's a, I have difficulty in reading your writing, without being rude?---Of course. Sorry, yeah.

Well, you weren't writing it so that a hundred people would read it later, probably, but - - ?---You should see my diary.

Underwrite to private practice you've got allow, now is it subcontractors and then there's a few words in very small print on the side that defeats us all I'm afraid?---Yeah. It just says allow subcontractors and for example, BKA.

But what - - -?---The reason that I was discussing - - -

What's this little, see the - - -?---Yes.

What's that?---I can't even make it out myself, sorry. It says AB.

Oh, I see. The middle one's AB. So it's subcontractors?---Yeah. AB. The reason was that at the time - - -

10 That's you. What's the word underneath, sorry, so we just get a - - -?---I can't even make it out, senior counsel, sorry.

And then I BKA?---Yeah. The reason was that, in part of the discussion with (not transcribable) was Mr Baker offered that if I was going to leave that BKA would support me if it needed to finish some of the projects. Because at the time there was a couple of projects that were in the middle of being completed. And he, Mr Baker did say that if I needed any assistance to complete those projects, it was a school project at St Mary's and
20 apartments at Abbotsford and so on, and one up at Toronto, and if I needed assistance to complete those, and that was part of the agreement that I had with them, that if I was to leave, there'll be some assistance on their part. And that was one of the mutual agreements we had.

So the relationship had soured but it hadn't totally disintegrated?---When you say soured, we had differences of opinion about how the practice was going. Yes, I'm not denying that. But I've had contact with Mr Baker subsequently, we've discussed other projects. Sometimes, some time later, there's a project that we were both working on and we had discussions about it. And I've met Mr Baker a couple of occasions after that. We didn't
30 have a further business relationship, but I've known Mr Baker for over 30 years.

Right. So, and what's the next one?---Jackie was the Baker Kavanagh's secretary at the time and there was a mutual release, payout - - -

Oh, no, sorry, the one above. A partner to retain or something - - -
Appointment to retain - - -

40 Appoint to retain?---Yeah. That was (not transcribable) I said to retain Baker Kavanagh's services, like I said mutually, we had agreed that if I needed assistance I would not - - -

All right. Okay?---They would not, they would support me. They would not just let me go out and (not transcribable) support me in changing over to my own practice.

And then Jackie, is that- - -?---That's Baker Kavanagh's at that time.

Right?---Baker Kavanagh's secretary.

And legal - - -?---Status for BKA. And the reason was that I wanted to clarify that if I was leaving BKA that ASIC had a record of me leaving.

And was that a matter you discussed with Mr Baird?---No.

10 No. And settle exit, mutual releases, payouts, were these matters then you discussed with Mr Baird?---No. Those are things that I had as a note for myself.

Right?---What I had to do to get out of Baker Kavanagh. Payouts, it was just basically fixing up the, my contributions to the partnership and make sure that there wasn't, I was more concerned about the taxing (not transcribable) that was put on Baker Kavanagh over the past year. And the implication that would have on me.

20 When do you say that you set a date for exiting the partnership with the partnership?---In my mind, prior to Easter, 2007, I made up my mind well and truly that that was the time. It was Holy Thursday prior to Easter.

All right. But just listen to my question?---Sure.

30 When did you tell Baker Kavanagh the date?---John Baker knew for about two, three weeks prior. The rest of the staff did not. I asked him that I would like to make a clean cut. I didn't want the traditional lunch and farewell and so on. I didn't want to do that. And it was not mandatory, but it was something that was done when someone left. There was a lunch, blah, blah, blah. As a matter of habit, prior to Easter, I would buy hot cross buns for the office and we had a morning tea. And at that morning tea, I told the rest of the staff. But I'd asked Mr Baker and Mr Kavanagh not to say anything to the staff until I made my speech.

And do you recall what that date was?---It was Holy Thursday prior to that, probably around the 5th, the 5th.

It was after the interview, wasn't it?---After the interview with - - -

40 With, for the position at Burwood Council?---Yes.

It was after you knew you'd secured the position at Burwood Council?
---No, no, no, because it was, I'd had an interview but, prior to that but I'd left well and truly. Like I said, my decision was Mr Baker, I told Mr Baker some two weeks prior that I was leaving on Holy Thursday and that was my decision to do so and he accepted that but I asked him not to tell the rest of the staff.

If I could tender that email and behind it is the Outlook entry for, from Mr Romano's electronic diary as well.

ASSISTANT COMMISSIONER: Yes. That email about the 14 March meeting will be Exhibit 173.

10 **#EXHIBIT 173 - EMAIL DATED 6 MARCH 2007 TO MR BECERRA
SUBJECT: MEETING WITH DAVID BAIRD AND EMAIL DATED
14 MARCH 2007 TO MR ROMANO, SUBJECT: APPOINTMENT OF
A PRINCIPAL ARCHITECT FOR LIBRARY – DAVID BAIRD +LH**

MS RONALDS: You're aware that the job was created within Burwood Council. Did Mr Romano keep you up to date with what was happening on terms of progress?---No, Mr Romano did advise me that there was a job opportunity coming up for that principal architect's position and that I'd have to apply for it.

20 Right. But the assumption was you'd get it, wasn't it?---No, I'd have to apply for it. He said I had to go for an interview.

Yeah, but the assumption was you'd get it, wasn't it? You both assumed you'd get it?---No, I was, I was planning, senior counsel, to get other contract work as I did for my practice, I was starting my practice hail, rain or shine.

30 That may be so, Mr Becerra, we'll get there much quicker if you could just please listen to the question. There was an assumption when you and Mr Romano had the conversation, wasn't it, that you would win the position?---No, I don't believe so.

And you had a discussion, didn't you, about how, the fact that you knew the criteria in the sense that you were across the project and no one else would be?---I had a great knowledge of the project, yes, definitely. I'd worked on it for over two years.

40 Yeah. And you and Mr Romano discussed that, didn't you, when you were talking about the job?---No, well, I could just say to you I did say to Mr Romano I did have knowledge of the project for over two years, that was no secret but I didn't discuss with him the, that. What I did discuss was my knowledge of the project definitely.

And how did you find out that the job was on Seek?---I got an email sent to me, I can't recall the date, it was about 2 April or something like that, I got an email sent to me from Seek, not from Seek, from, it said Ian from Seek, a friend.

And the advertisement, so you saw the advertisement that was on Seek?
---Yes.

If the witness could be shown Exhibit 145. This was the advertisement you saw?---145 is the telephone records.

No, it's the last two pages?---Oh, sorry.

10 It's a bundle of documents that relates to your recruitment?---Oh, sorry, I beg your pardon, yes.

I'll be taking you through a number of pages and I'll tell you the page number, they're down the bottom, do you see that?---Yes.

Now you'll see it says down the, on page 26, which is the bottom half of the ad, you see it says work type, full-time?---Oh, yes, sorry, yes, yeah.

You've got the hard copy in front of you?---Yes.

20 If you don't worry about the screen, that screen's so others can see it. You've got the hard copy, okay?---Sure, yeah.

You see that, so when you applied for the job you knew that it was a full-time job?---Ah hmm.

Is that what you were planning on when you applied or - - -?---No.

- - - had you had some other discussions with somebody that it wouldn't be a full-time job?---No, I was, I was looking at not a full-time job, no.

30 Well, what did you do and why did you think it wasn't a full-time job if that's what it said on the job ad?---I was mainly concentrating on the fact that it was for the Burwood civic precinct project which is the one that I was involved with so I was keen to pursue that.

And what did you think the hours of work were going to be?---Well, as I see there full-time, yeah, I guess so because that's what it says, full-time.

40 It says \$140,000 a year full-time?---At the bottom of it, yes, minimum contract 12 months, yes.

And the amount of money was important, wasn't it?---It was a good salary but it's, a considerable salary, yes.

You needed to know how much was going to be in the pool so to speak?
---Like anybody looking for a project, a job, yes.

Now before the job was advertised had you had discussions with Mr Romano about working as a contractor?---Yes.

And did you have discussions with Mr Baird about that?---No.

So did you have discussion with anyone apart from Mr Romano?---No, not that I can recall.

10 Did you see any of, you've been present during the hearing, haven't you?
---Yes, I have, not, the majority of it, yes.

But did you see any of the advice from Maddocks about being a consultant as opposed to an employee?---Not until it was tabled here at the hearing.

Right. So you didn't see the advice, if the witness can be shown Exhibit 112, this advice addressed to Mr Romano about what had to happen and if you were going to be a consultant and a limit of \$100,000?---No, I didn't see any of those documents until, like I said, until you - - -

20 You didn't see this advice at the time, you've only seen it during the course of the inquiry?---That's correct.

But did you have a discussion with Mr Romano on or about 21 February about the fact that there was a limit on how much you could be paid if you became a consultant?---No, not a limit, no, it was mainly to do with getting employed as a contractor or onto the panel.

Or?---Onto the architectural panel.

30 Right. And the panel was gone, Mr Baird had said that?---Sometime later he said that I could not go onto the panel, yeah.

Yes. But earlier than that had you had conversations with Mr, before you met with Mr Baird had you had conversations with Mr Romano about becoming a consultant?---Yes.

And had he told you he'd got some legal advice from Maddocks about it?
---No, he just said he would seek legal advice.

40 So he didn't show you this document?---No.

And do you recall whether he discussed its contents with you?---No.

And talked about the \$100,000 limit, that is, you couldn't be a consultant at 100,000 and you said you needed more than that to work on the, to work on the project?---No, there was, what my, if I could be employed as a contractor, the money was not discussed.

All right. And what role if any did you have in setting the \$140,000 that was set on the job?---No role.

So you didn't have discussions with Mr Romano before the advertisement was saying my minimum is this, what I need is 140 because otherwise it's not worthwhile, I know how much work is involved?---No, I would say there's a lot more than \$140,000, the amount of work that I did.

10 If I could ask you to listen to the question - - -?---Sorry, no, I did not, sorry.

- - - and respond to it, please, Mr Becerra?---Sorry, I did not have anything to do with the setting of the \$140,000.

And prior to the job being advertised did you have a discussion with Mr Romano about the money?---No, I did not.

So do you say the first time that you knew that \$140,000 was on offer is when you saw the job?---The, the ad.

20 The ad I mean. Is that the first time?---Yes.

And that says full-time?---It does say full-time.

But it was your understanding that that was not what was going to apply to you. Is that correct?---I was trying to find out what that meant so I was interested in going to the interview and finding out what that meant.

30 All right. And so, if the witness can return 112 to you but hang on to 145. So you put in an application?---Yes, I did.

So first of all you contacted Tina Kapell. Do you recall that?---Yes, I did.

And she was at Recruitment Edge?---That's correct.

And you had a discussion, I'm sorry, I withdraw it. Did she contact you or did you contact her?---No, I contacted her.

Right. So someone sent you the ad?---Yes.

40 And you contacted her then you put in your formal written application? ---That's right, no, I sent it as part of the response to that ad, I sent my CV.

Right, and you were then interviewed?---Yes, by, by her firstly.

By her firstly?---Yes.

Right. And what happened during the course of that interview?---She asked me why I was applying for the job and I explained to her that I had great

knowledge of the project, that I'd been working on it for two years and then this is the second phase of relocating, as I said to you before, to the new site and I was interested in carrying on that project.

And then you were interviewed by Les Hullick, Ian Dencker and Peter Macklin?---Yes.

10 You knew all of them from before?---I did know all of them because I had been working with them, not Mr Macklin so much because I'd only seen him around but I had occasion to know Mr Dencker through other projects, not necessarily the civic precinct project but other projects when I submitted stuff to Burwood Council and Mr Hullick because he was involved in a little bit prior to my leaving Baker Kavanagh but more extensively I guess with Mr Dencker because he was in some of the cross-functional teams and I had to do some planning issues with him.

And during the course of that interview, you didn't raise, did you, and advise the interview committee, that you and Mr Romano were friends?
---No, I did not.

20

And you didn't advise the interview committee that you had a business relationship with Mr Romano through your families and you were in the throes of buying a residential property?---No, I did not.

Why not?---Wasn't asked. I didn't offer that, didn't offer that advice.

No, you said that. I'm asking you why you didn't?---I didn't think of doing it. I was more concentrating on getting the job. I wasn't going, didn't declare that information, no.

30

Did you take any advice from anyone before you went to the interview about whether that was a proper matter to disclose?---No, because prior to that, when we were put onto the panel of the architectural panel in 2005 I did make a declaration that I had a previous, not current, but previous relationship with, business relation with Mr Romano and I had known Mr Romano for some time. That was declared in, when we got onto the architectural panel in 2005. When that was established it was one of the criteria that had to be answered was is there relationship with any, well, conflict of interest I think it was, the, the, the form that was requested to be
40 filled in was a conflict of interest form as part of the criteria and I, we filled that in and I filled that part of it in and submitted it as part of our, our tender for being on the panel.

So you knew it was a matter of concern then?---Yes, it was, but I had previously advised them and I would've thought that the three people who interviewed me already, already knew.

Well, did you ask, did you ask the three people whether they'd previously seen your application to go on the panel?---Sorry, the - - -

Did you ask the interview committee whether they had, before the interview, perused the application from Baker Kavanagh to go on the - - -?
---No.

- - - architectural panel?---No, I did not ask them that question.

10 So you made an assumption, did you, that they would've read it?---Yes, because there was the information that we submitted to be on the panel and those three gentlemen were, had access to that information through 2005 when we made that submission to the Burwood Council to be on the panel. So when we put it in I filled out conflict of interest back in 2005.

What I'm trying to explore with you, having known it was something you had to flag in 2005, why you failed to do so during the course of an interview in April, 2007?---I wasn't asked, senior counsel, and I didn't - - -

20 I know it wasn't asked - - -?--- - - - and I did not offer that information, no.

I know you didn't offer it. I'm trying to find out from you why and you say because you'd done it 2005 and you didn't think you had to do it again?
---That's basically correct.

Was there any discussion during the course of the interview about your working hours?---Yes there was. There was, I just tried to find out what the scope was for the project and one of the, there were several questions they asked me. Besides experience there was one of the issues how much time I had to devote to the project and that I had to attend all Council meetings. And that it was originally discussed it'd be about two or three days at Council and the rest of the time I had to be on call for anything that the Council wanted me to work on for the civic precinct project.

30

And there was no discussion, was there, about being on site for eight hours a week?---Not at that, at that interview, no.

No, and there was no discussion, was there, about being free to have a right to private practice?---There was a question that I raised if I would be able to do other work other than the civic precinct project.

40

And the answer was?---My recollection was that they would look at it and that's what I can remember and I asked if that was an issue for me doing other work other than and the reason I say that is because at that time I was still involved in projects with Baker Kavanagh, as I explained to you, and I was seeking to get other contracted work for other clients I had.

And it was your understanding, wasn't it, that the work that you would be doing wouldn't be only involving the civic precinct project?---No, I disagree with you, senior counsel. It was purely for the library project or civic precinct project. That was the project that I was engaged to work on.

And you say, do you, at the interview, as far as you were concerned, that was the only work?---That was the only work that they were asking me to do.

10 See, what I suggest to you is this. It was intended that you'd be the in-house principal architect with no such restriction, would you agree?---No, I'd agree with you, senior counsel.

And there was nothing in writing ever put to you, was there, that said the only project you would be working on was the library project or the civic precinct project?---When I read the contract that I received, it was to do work on the civic precinct project and that's what I understood - - -

20 Well, we'll come to that in a moment?---Sorry, yep, that's what I understood it to be, civic precinct project.

Only?---Only.

All right. And what I'm suggesting to you is that the eight hours a week on site was not discussed and you've agreed with that?---That's right.

That the right to private practice was not an agreed and settled factor in the interview, was it?---No, but I did raise it.

30 Yes?---Yes.

But it wasn't agreed and settled in the interview?---No.

No. Now, you had a discussion with Mr Romano after the interview, didn't you?---No, I, the discussions with Mr Romano were not after, it was way after the interview when I got the letter of engagement.

40 So do you say you had no discussion with him about what you wanted as the terms and conditions of the contract?---No.

After the interview but before the letter was drafted. -No, it was very clear by Mr Romano. He said to me he wanted to be at arm/'s length away from any process that involved me in the interview.

So if it was correct that he had inserted several terms and conditions that were favourable to you, do you say you had nothing to do with their development?---No, I did not.

Can the witness be shown Exhibit 118. Now, before you received a copy of this, did you ever see a draft contract?---Yes, I did. It was sent to me by the recruitment agency.

And, all right, well, we'll have to go back a step. Was it a draft contract from Maddocks or could you not tell when you looked at it?---No. It didn't have any symbols, logos or letterheads.

10 Right?---It was similar to this but it was in a Word document sent to me via Recruitment Edge.

Well, your counsel's kindly provided me with this document so I'll just show you this one. And you say this is an email you received with an attachment and the attachment was the draft contract, is that correct?---Yes, it was - - -

And in particular, if I could ask you to turn to what is the third page of the contract, you'll see the hours of work there?---Yes.

20 Under Hours of Work?---Yes.

Where it says, "Up to a weekly maximum 38 hours, minimum 8 hours per week to be worked." Was that a matter you then raised with Mr Kapell? ---No, I, I said that the terms were fine and I think I said that in an email. I asked her what that meant and she said, well, that's what the Council require you to do. She said to please read it and respond to that.

30 And you read it, you read it carefully, didn't you?---I, I read it. I then read it - - -

And you read it carefully, didn't you, because it was important to you what the terms would be?---Yes, and the spelling of my name which I corrected and they answered back as well which is incorrect and it's several other things that are incorrect.

40 But in terms of that, what I'm trying to explore is, the one you signed has different hours to work than this one and I'm just trying to explore with you whether it was changed at your suggestion?---No. When I got this document that's what I agreed as the terms of the contract to go in there, to take on the project.

And do you say you only discussed it with Ms Kapell?---As discussed with Ms Kapell because she was asking me if I was happy with the conditions of the contract and to give her a response because the Council were pretty keen to get a response one way or another on my decision.

So you didn't discuss it with Mr Macklin at any stage?

---No. Mr Macklin sent the information to Ms Kappell and she forwarded it on to me.

And did you have any discussion about the terms of the contract with Mr Romano?---No, not that I can recall. No. I was told that I had to go in there if I agreed to these terms to sign the formal document. And to start preparing for the beginning of the project.

10 And you'd agree with me that the one at the top of page 3 is different to the one that you've signed?---Yes, it is.

And did you notice that at the time you signed it?---No, I did not.

20 Right. And are you unable to assist the Commissioner on who made that change?---No, I'm sorry, no. Subsequently after reading this and going through this, I noticed it was changed at that time. I scanned through this document which I signed and, yes, I did correct my surname, which has been pronounced a million ways at this Commission. And I did correct that. And I saw that it had a letterhead and it had the same, what looked to be the same contract, so I signed it.

And you'd agree that there's nothing in it, and I'm sorry, you'll see that under position and commencement it says your duties in this proposition will primarily involve, see on page 1?---Yes.

Primarily involve the management of Council's civic centre library project?---Yes.

30 So it didn't say only did it?---No, it doesn't say only, no.

It says primarily?---Yes, it does.

And you'll see under duties and responsibilities down the bottom, your duties and responsibilities will be explained to you by Les Hullick and me, that's Mr Romano, not me, at another time and may be varied from time to time by Council. Do you see that down the bottom of the page?---Yes, yes, it does say that.

40 So I'd suggest to you that it was clear from reading that, that the work you were doing was not to be only the civic project. Would you agree?---Maybe it was my misunderstanding, but, no, I'm sorry, senior counsel, I, I know what you're saying there, when I read that. But my primary project was to deliver the civic precinct project and I know what it says there.

If you could please just listen to the question and answer it?---Yes.

There's nothing in the contract is there that says only work on the civic project?---No, it does not, senior counsel.

It says primarily in one spot and says it may be varied from time to time?
---That's correct.

And you read it carefully didn't you?---I should've read it more carefully.

You read it carefully at the time didn't you?---I read the (not transcribable) document.

10 Did you get any independent legal advice about it?---No. The only advice I got was I gave this to my accountant.

Your accountant?---Yes, I did.

Right?---Because I was discussing some things with him.

Ah hmm?---And I showed him that this was what I was being offered. So I did, yeah, I did not seek any advice from like lawyers at that time. I did advise him that I had a contract because at that time we were still
20 negotiation terms and agreements of my departure and I did explain to them that this was an offer. And I didn't get them to read it, I just explained the offer to them.

Right?---But I did not seek formal legal advice.

Now you'll see that over the page under remuneration on both drafts, both the draft and the final, there's a sum of \$140,000?---Yes.

30 Now there's nothing about being paid \$200 an hour for additional work in this contract is there?---No, there is not.

And Mr Romano signed this and you signed it?---Yes.

You signed it on 16 April. Do you see that on the last page?---Yes. That's where I made the correction the front page, yes.

And that's when you changed, that change of the spelling of the name is your handwriting isn't it?---Yes, it is. And that's my signature.

40 And 16 April, the 23rd to the 16th on page 1 is changed in your hand?---Yes, it is 'cause that was the date that they said could I come in and commence work.

And on page 2, 1 August is changed to 15 August. That's your hand?---No, it's not.

That's not you?---No, sorry, senior counsel, it's not.

So do you say that you didn't agree to that change? That's a change by someone else?---That was changed by someone else. The changes that I made has my signature right next to it.

That's not your signature next to it?---No, I'm sorry, it's not.

And you'll see there it sets out that Council would be your predominant client?---That's right. And that's, yeah, my understanding it was not the only, but my predominant client. And I would be on call, was one of the terms that was used.

But it was a clear employment contract wasn't it?---Yes, it is an employment contract.

You had no doubt in your mind that it made you an employee of Council? ---That's correct.

And you didn't have any doubt from the time you signed it did you?---No.

20 You didn't think you were a consultant?---No. I was an architect working for Council as an employee.

As an employee. And you understood didn't you that therefore policies that applied to employees applied to you?---I believe so and I got them some time later, yes.

Right?---I wasn't part of this package.

30 So were you subjected to a formal, not subjected but were you given a formal induction process?---No, I was not. I was, really that induction process started in the second year.

Right?---And in the second year, I got my reviewed contract with a lot of documents, which explained several other things such as the disclosures, everything that went along with it. But originally, the only document I got was this.

40 And so the disclosure wasn't made until the following year was it?---No. Some time during that year in discussions with Mr Romano. He said, have you filled in (not transcribable) interest form? I had not seen one of those before. I did fill it in.

Right?---It was about middle of the year.

And Mr Hullick was nominated as your supervisor?---Yes, he was.

And he was the person you were to report to in terms of hours of work? ---Yes.

And you understood that that, that was the relationship wasn't it?---Yes, it was.

After you commenced working for the Council as an employee and executed this contract, did you say to Mr Hullick, as your supervisor, did you know Mr Romano and I are friends?---No.

10 Did you say to him did you know Mr Romano and I are in a business arrangement with our families buying a block of units?---No, I did not.

Why not?---I didn't think of raising it with Mr Hullick.

Why not?---I didn't think of raising it with Mr Hullick. It was not an issue. I was discussing work with Mr Hullick.

Now Mr Dencker gave you some other duties to perform didn't he?---Yes, he did.

20 And you performed those willingly?---At the time it started off as a little bit of advice, which grew into major involvement over a period of time. It's a failure of, a failure of mine, but if people ask me a question I answer it and give them advice. Some of it was very minor at the beginning, which regarded to the LEP that he was working on. And then (not transcribable) reports, contributing to testing sites for the master plan and, yes, I kept doing the work for him, yes.

30 You didn't say to him at any stage did you, this is outside the terms of my employment you're going to have to pay me?---Not to Mr Dencker, no.

Why not?---It was one, he was one of the directors of Burwood Council. He asked me to perform a duty, I was performing that duty. Some time later in 2007, when I was asked to find out what that time was for, and where I was spending some of that time, then I said that I was spending it on the LEP.

Well, who asked you that?---Mr Romano said, what, what was I doing in different projects. I had compiled a folder of all the projects I had been working for the period of nearly a year.

40 Just slow down a bit. Who raised the subject first, you or Mr Romano?
---Mr Romano asked me what projects I was working on besides the civic precinct project. He also asked me, Mr Romano asked me to work on other projects as well.

Mr Romano had asked you to work on other projects?---Yes. There was a café on Dean Street, a refurbishment of a café for the Council property, Council owned it, I did some (not transcribable) designs and had a person draft it for me. That was under the direction of Mr Romano.

And what else did he get you to do?---Road widening options for street upgrades and things like that. To have a look at the urban design of the - - -

Oh (not transcribable) - - -?---Sorry, not traffic engineer, just looking at the urban design and impact of the, of that on the proposed LEP. So we were looking at street designs, public domain was one of the issues that was raised. And I was, he asked me to do some of those things.

10 And who else apart from Mr Dencker and Mr Romano asked you to perform other tasks outside what you would of considered to be the library or civic project?---There was, under the, under the I guess supervision of Mr Dencker, there was strategic planners that asked me, within Council that asked me to do other things. Read reports, contribute (not transcribable) modelling and testing. There was Mr Teo, there was a Greg, that Council obtained to do some work to Enfield pool. Mr Teo, manager of, under Mr Hullick, asked me to come up with a design and options for what's called the winter change rooms, but basically as an attachment to the covered pool, Enfield pool. There was work - - -

20

Was Mr Hullick aware of that request?---Yes, he was. I believe he was. Yes, it was under his, his, I guess, management.

Right?---There was other projects, I can't recall all of them but there was, as they're referred to, kiss and ride, I know it's an ambiguity but it was a kiss and ride was an issue that we had to provide Burwood Public School with an alternative kiss and ride for safety issues so I prepared some documents for that, prepared some documents for the DCP, the development control plan that was being done at the time by Burwood Council.

30

And at no stage did you say to anyone I don't think I should be doing this work, this is outside what I consider the terms of my employment?---Not at that time, until I was quizzed towards the end of my, it was coming up to the end of my anniversary of my commission and I, and I was asked what projects I was working on and I gave them a list of them. Now, the primary reason for that was that otherwise they would be, those projects would be billed or invoiced to the civic precinct project and it wasn't, it was clear that those projects were not part of the civic precinct project, they had to be allocated to other budgets within the Council. It was not a civic precinct project so that, the money that or the invoicing was for other projects not, but the grants, it was a grant that was given, that wasn't part of the civic precinct project so it should have been allocated to another budget and I was asked to put that so they could be allocated to the correct budgets.

40

And who asked you to do that?---Mr Romano.

And who quizzed you?---Mr Romano quizzed me at first but then I had meetings with Mr Hullick about the work that I had done, I produced a

folder with all the projects and I went through it with Mr Hullick but he did say to me, and as he stated yesterday, he'd have to check some of those projects against the other people that were nominated on the invoicing.

Just go back a step. Who initiated the conversation that led to the invoices?
---Mr Romano asked me what I had been working on for the last year.

Right. And did you say to him I think I've been exploited or words to that effect?---No (not transcribable).

10

I've been doing a lot of unpaid work and I don't think it's fair?---I didn't say exploited, I said I'd done a fair bit of extra work above and beyond that which is the civic precinct project which was my understanding was the project that I was to be working on only and I did say to him that it was work sometimes outside the 9.00 to 5.00 times, it was way outside that time. I spent a lot of time reading reports and preparing documents outside of that time.

And who proposed that you should bill for the work, you or Mr Romano?

20

---No, Mr Romano said put a series of invoices down for us to have a look at how much you have done.

And where did the \$200 an hour come from?---Something that he discussed with me and he said based on averages, based on averages of some of the panel architects that's about the right fee and it is about the right fee for - - -

No, no, no. Just, just who proposed the \$200, you or Mr Romano?---No, Mr Romano and I had discussions and I can't remember if it was him or I but I did, he did go through the figures and said I think that \$200 - - -

30

Well, doing the best you can - - -?---Yes.

- - - can you recall who proposed \$200 an hour, you or Mr Romano?---I think it was Mr Romano. It was, part of the discussion said that based on averages I think he should, that \$200 for extra work is what you're entitled to.

Entitled to, is that what he said?---Well, not entitled to, that's the fee that he thought an hourly rate for someone of my experience would be worth.

40

And you must have an hourly rate you charge in your business normally?
---Yes, it's, it was a little bit below that and now it's way above that.

All right. And so you were prepared to accept \$200 an hour?---That was a fair and reasonable fee for hourly, at that time.

And that was agreed between the two of you in the, just in the one conversation was it?---No, there was several conversations because he asked

me to prepare the invoices in the draft form, he said send it to him to have a look at the hours that I spent - - -

Right?--- - - - and how much money I was invoicing so I put the \$200 because that was the figure that he had mentioned.

And have you still got Exhibit 145 in front of you?---Yes, I do.

You'll see, if you go to page 11?---Yes.

10

That's the start of the invoices?---Yes.

Now, you say, do you that you put those in, I'm sorry, Commissioner, if I could tender the documents provided by Ms McDonald on behalf of Mr Becerra which is the contract.

ASSISTANT COMMISSIONER: Yes. The version sent by Recruitment Edge will be Exhibit 174.

20

#EXHIBIT 174 - EMAIL FROM TANIA KAPELL DATED 13 APRIL 2007 SUBJECT: ALBERT BECERRA – LETTER OF OFFER FOR TEMPORARY POSITION WITH COPY OF LETTER ATTACHED

MS RONALDS: Now, you compiled these invoices?---Yes, I did.

30

And you'd agree if you just look at the first one, behind it there's no record sustaining the claim for 44 hours, is there?---No, there isn't. What I did do in order to account for those times was to go through my electronic diary, my diary notes and minutes of meetings that I had done and compiled that from the times, from all those compiled these hours.

And you didn't compile it into a schedule and attach it to the document so that anyone reading it would know the basis of the 44 hours?---No, I did not, no.

40

Why not?---I based it on, like I said, the electronic information I had on the, my diary notes and minutes of meetings.

But don't you usually if you're billing someone, a client, set out the dates you've been at meetings, the times and how you arrive at the total hours? ---I don't, no.

You don't?---No, no, I just base it on, like I said, the information on the electronic - - -

I understand what you're saying you base it on?---Yeah.

I'm just exploring with you why there isn't some further detail so that someone reading it could come to an understanding about how you'd arrived at that figure?---No, I did not attach those.

10 And you'd agree there's no date span so you don't know when the work started and when the work finished?---I would agree with you but, as I said previously it was coming up to the end of my first year so it was over the period of that year so I spent some time going back through my diaries and my electronic diaries checking all the times I had spent over that period of time up to the end of the first year.

You may have done, Mr Becerra, but would you agree that none of that is clear on the face of the document?---That's correct.

You don't know how you arrived at the 44 hours or the basis of it?---That's right, if you say that, yes.

20 Well, there's not something that you attached to it that there's no longer with it is there?---I didn't attach any, no, no, I didn't attach anything, no.

This is the complete document for invoice 1?---Yes, it is, yes.

You're not suggesting there was some other document?---No.

And you went through the same process for each of them?---Yes, I did.

And if you go to number 3 you see that there's no hours?---Yeah, yeah.

30 And you haven't - - -?---That was a mistake in typing, yes, and I was doing all those, I made a mistake in typing that time out, yes.

And if you go through to number 7, you see on page 17?---Yes.

You'll see that that's wrongly done?---It's wrongly done, it was the wrong number of hours or, like you said the other day, I dudded myself but I didn't, I believe that that was the - - -

40 Well, I don't know whether you dudded yourself or not but it appeared you did. You think the hours are wrong rather than the total wrong?---That's right.

So, but it would have been not 38 hours but the lesser number of hours that you've actually claimed for?---That's right.

So that the quantum's right?---Yes.

Now you submitted these, you say Mr Romano told you to send them to him in draft form. Is that right?---Yes, but I didn't, I just put these together and sent it to him.

And you emailed them to him?---I can't remember if I, I sometimes would have done both, email and handed the original, I can't recall if I emailed it to him but I would have emailed and probably sent him a hard copy as well.

10 Can the witness be shown Exhibit 170. Now, this is an email that's been produced by Mr Romano. Have you seen this email before?---No, no, I, it's got my name on it but I, I can't recall receiving this.

You see down the bottom it starts with an email from you at your private email address saying invoice Burwood times Mr Romano on 12 March, 2008?---Yes.

And the invoices are dated 11 March, 2008?---Yes.

20 So that's the finals. Do you, do you recall sending him the emails, them as a draft earlier than the final date?---No, no, I sent them on, on the date, 11 March, I dispatched them and send it but I remember sending him a hard copy as well. I tabled, probably to his PA, I gave her a set of hard copies as well but - - -

Do you remember whether you sent them by email at all?---I would have sent them by email and also given him a hard copy, yes but - - -

30 So it is possible that the bottom half of the email is correct, if you see what I mean?---Sure.

But the one that says Albert, et cetera, I won't read it all out - - -?---Yes.

- - - to the best of your recollection you've not seen that email before, is that correct?---No.

Thank you. If that can be returned?---It's just, on the, the, down the bottom of the page it says that on 12 March 12.34am which I would've sent it at that time, yeah, but - - -

40 That's (not transcribable)?---Yep.

So you're often at work at that hour?---Yes, I am.

So that's likely you would've sent it then?---Yes.

And then the reply by someone who obviously doesn't keep your hours, was as at 9.28am allegedly?---That's right. No, I haven't seen that, sorry.

That's, no, don't apologise. That can be returned. So the invoices went in and you'll see, if you go to page 10 of the bundle, now, this is a document that's been produced by the Commission staff. Do you see that?---Yes.

10 And that's a compilation of what is said to be 233 hours and payment 41,400. Now, before you submitted the invoices, did you return to your contract to see whether you had any contractual entitlement to extra payments from Burwood Council?---Not at that time, no. I read the contract way before and I, like I said, I understood it to be for the civic precinct project only. I might've got over involved in some of these things like accepting some of the direction from different people in Council and got over involved and then I was quizzed of why I was working on those projects. So - - -

You've told us all that?--- - - - I didn't, I didn't.

Mr Becerra, would you please just listen to the question?---Yeah.

20 Did you go back and look at your contract, the answer's no?---Not the second contract, yeah, not this one, no.

So how did you think you had a basis to put in for invoices at \$200 an hour?---Something like I said to you prior, that when I discussed with Mr Romano the extra work that I had been doing - - -

He said to you \$200 an hour?---He said, he said, based on an average of other architectural firms that - - -

30 I understand all that. I'm just exploring the basis that you thought you had to put in a claim of \$41,400 to Council additional to the 140,000 you'd been paid for the 12 months?---Because a lot of these projects are not attributed to the civic precinct project. There was other budgets for these projects. There was other funds for these projects that didn't, it shouldn't come out of the civic precinct project.

I understand all that?---That's what I was commissioned to - - -

40 But that would've been, that could've been a book transfer, couldn't it?
---(Not transcribable) yep.

You see, it could've been, your time could've been claimed against the civic precinct project and in effect transferred as an internal accounting exercise without you receiving any extra payments. That would've achieved that outcome, wouldn't it?---No, because the work that I was doing was not related to the civic precinct project.

Yes, I understand that. What I'm saying to you is, that concern of yours, that is, the time you've spent within the pool of money, could've been done

by an accounting exercise without you receiving any extra funds, would you agree?---No. No, because they had to be attributed to the projects.

Yeah?---So the time that I spent - - -

Yeah?--- - - - was for giving advice, architectural advice - - -

Yeah?--- - - - on those projects were not part of the civic precinct project.

10

No, I understand that. And they could've, in effect, repaid the civic precinct project for the time used as a book entry and that would've - - -?---No, because that was not, that was not my duties. I wasn't, my duties were not to design the Enfield (not transcribable), the Dean Street Café. That wasn't the duties that I was commissioned to do.

Whether I'm being opaque or - - -

20

ASSISTANT COMMISSIONER: I mean, Ms Ronalds is suggesting that your, the salary you've been paid could have simply been divided up amongst the work you were actually doing - - -?---No, because it was - - -

- - - retrospectively, you know what I, yes, but do you understand what she's putting to you? That if you were, if the concern was that, you know, funds were wrongly being attributed to the civic centre project and they'd actually been spent on the pool, then the money you'd already been paid could've been divided up amongst the projects you were actually working on?---No, because then that would take me away from the civic precinct project (not transcribable).

30

It would take you away from anything. You'd already done the work. It's just a bookkeeping exercise to say - - -?---It wouldn't work - - -

- - - you know, ten per cent of the 140,000 you were paid for the year really should've been charged to the pool project, not to the civic centre, because you weren't working on that. Do you understand the proposition?---Yeah, I understand the proposition but I just, I don't believe that's correct.

40

MS RONALDS: What I suggest to you is you had no entitlement to receive payments totalling \$41,400 from the basis of the contract you'd entered into?---Not on the basis of the contract, I agree with you.

Thank you. You then entered into a second contract?---Yes.

What, if any, role did you play in the development of the terms of that contract?---Not, not at all. There was just presented to me for review.

By whom?---It was, I had to pick up an envelope from the General Manager's personal assistant, review it, make comment and return it if I agreed to the terms.

10 And had you had discussions with Mr Romano before the production of the second contract about changing the terms?---He did mention that as a result of my invoicing there would be an amendment made for any work that was outside the civic precinct project, that I was to record any of those times that I worked and that it'd be a number similar to this one, \$200 per hour was discussed and he said that it would be included in the contract for work outside.

So you say you received a draft contract?---Yes, and again it didn't have the letterhead and so on of Burwood Council.

20 If the witness could be shown Exhibit 199. Now, if you look through that, if I could ask you to turn to page 2 and you see under "Remuneration" there's a numbered paragraph 4. Was that as it was in the draft that you received from Mr Romano?---I can't recall (not transcribable).

And it imposed a requirement, did it not, that there be an agreement, although it doesn't say with whom, about what, but an agreement prior to commencement of works?---Yes, it's, yep, that's (not transcribable).

So that was a different requirement, wasn't it?---Yes, it was.

30 And is that what happened?---Yes. some of the projects went through to the next phase of, like, the LEPs and so on. Some of that time was, go over past this date and I got instructed by the managers or directors to carry on extra work.

But you didn't bill as much in the second period, did you?---No, because the LEP which is a major one was well and truly on its way and there was less involvement on, by me on that, hardly any.

Now, if I could ask you to turn to page 3, up the top, you'll see that this hours of work has in essence reverted to the first draft you had in 2007 and isn't the draft you signed in, isn't the final you signed in 2007?---Yes.

40 Did you have any discussions with anyone about that?---No, I - - -

Do you have any explanation to the Commissioner about how that could've happened?---No, I don't know, but it's totally, yeah, it's different.

And did you notice at the time you signed it that it was different from the one you'd signed in 2007?---No, I did not but I have since a lot of time to look at it and I realised there was a major change to that, yes.

You didn't sit down in April, 2008 with the 2007 contract and go through them to see whether they'd changed or not?---No, I should've but I didn't.

So you didn't, and you didn't take any independent legal advice about this contract?---No.

You just signed it?---No, I looked at it briefly, scanned it, looked at it, I missed a few things and so on.

10 What do you say you missed?---I missed the, the, like you said, that just by looking at it just the fact that there's additional information there on the working hours, but the essence of it I believed to be the same that I had to report to Mr Hullick and carry on the work on the civic precinct, civic precinct project.

All right. So you just, you thought it was the same sort of terms and conditions and you didn't trouble yourself about it?---No.

20 So it didn't arise then from any conversations you'd had specifically with Mr Romano, is that correct?---No.

Well, you were concerned about it's terms because if, have you still got 145 there, which is the bundle?---Ah hmm.

If you turn to page 9. You see that's an email that you sent - - -?---Yes.

- - - to Ms Karpowicz for some reason and then copied to Romano and Macklin. Do you see that?---Yes. There was, she - - -

30 Oh, she's sending it to you, sorry?---Yeah.

And she says she'll check with Peter. You would understand that to be Mr Macklin?---That's correct.

And it talks about pay, but secondly, meaning of disclosed personal information, this means information such as, and it sets out - - -?---Mmm.

40 And then she says, I'll make the changes so when you drop by I'll give you your copy?---That's right.

So it does appear that you did seek some further clarification. You didn't just accept the draft as given?---No, no, no. That's right. And because at the time it said monthly on the contract, but I was getting paid fortnightly. So I just made that correction. The other thing was, there was a series of attached scope of works and I made the changes. And then there was a thing that I noticed, I didn't notice at first, disclose personal information, I didn't pick that up in the first contract. I just asked what was that about. And that's all I, I didn't go to any further - - -

Look, the reason I'm confused is, have you still got the contract there? If you go back, you see that, you seem to have signed it on 23 April, 2008, but this email telling you to pick up the changed one is dated 1 May, 2008?
---That's right.

I signed this and then I left it with her and she said, have a read of it and get back to me. And then I subsequently read it and I asked her to make those corrections.

10

So they were changed after you signed it?---I don't know, I never received the, the changes I pointed out, that there was things that were wrong on the document I'd signed and I, I wanted to see if they could be changed.

Well, she says, I'll make the above changes so when you drop by I'll give you your copy?---Yeah, but it was a copy, it was not a signed copy. Just a contract that said these are the things that we changed.

But you've signed it on 23 April?---Yes.

20

That's the correct date to the best of your recollection?---Yes, I signed it, I signed it and returned it on the same day. And then I went through it and looked at the changes and asked if they could be made.

Right. Now, I'll just show you this document. You in fact formally notified the Council on 11 April, 2007, about the change in your status. Do you recall that?---Yes.

30

Now who, how was it that this letter came into being?---I was going through NOT Lawyers at the time and they advised me to inform Burwood Council that I was not longer part of Baker Kavanagh Architects and to make that formal. But we were still going the process of clearing up the ASCIS papers and the settlement and agreements, 'cause that finished effectively in June, 2007. But I wanted to inform them, formally inform them that I was no longer part of Baker Kavanagh Architects.

And so that was on the advice of NOT Lawyers?---Yes. They said that I should really (not transcribable) up as a, as a note and inform them of the situation.

40

Ah hmm. And, if I could tender that letter.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 175.

**#EXHIBIT 175 - LETTER TO BURWOOD COUNCIL FROM
ALBERT BECERRA DATED 11 APRIL 2007 – RESIGNATION
NOTIFICATION**

MS RONALDS: If the witness could be shown Exhibit 168. Now this is a letter Mr Kavanagh wrote and basically you told him what he, what you needed in the document and asked him to write it. Is that correct?---Yes, I did discuss it with John Kavanagh and said that as part of the agreement that we had come to with Baker Kavanagh Architects that they wanted to assist me, like I said, in not being a burden to my involvement with Burwood Council and we agreed to, this is the terms. That was something that was advised by my legal advice, NOT Lawyers. And yes, I did send something to that affect and he made some changes and returned it. Yes.

Yes. So you in effect dictated, I mean I don't mean actually read it out, but you told him what he needed to put in the letter and he did that because he wasn't interested in the Burwood Council work?---No. Obviously we had agreed that Burwood Council was not a client of Baker Kavanagh as it stood without me. It was going to be a client of Baker Kavanagh.

This letter is not, is dated 4 June, 2007, so it's some two months almost after you'd become and employee?---Yes.

Can you explain why there was such a gap?---We were still negotiating with Baker Kavanagh and myself, the terms of the agreement for me to exit Baker Kavanagh. The terms were I think signed around July, 2007. I've got a copy of that. So it was some time after that and we were just, if you want to call it, tidying up loose ends. There was also some, a list of clients that I had to agree not to approach.

Right?---So all this was part of the process of cleaning up our partnership.

Right. And then in 2009 you entered, well, there is a series of documents that the status of which seems a bit unclear. But you signed another employment contract in, in 2009. Do you remember that?---Yes.

Did you have any discussion with anyone about its terms before you signed it?---Yeah, I had, I had discussions with Mr Hullick because it was way past the, the expiry date of my second contract.

Ah hmm?---It was way past that and I wanted clarification of what my involvement and what times, et cetera at Council because there was a gap, April to mid year of, I had no contract effectively. And I had discussions with Mr Hullick regarding that.

Well, there seems to have been an employment contract that you signed, can the witness be shown Exhibit 157. If you just look, just ignore the first two pages for the moment and turn to the third page. You'll see that it's a letter to you dated 12 June, 2009?---Ah hmm.

Do you remember receiving this?---Yes.

And you, if you go through a few pages to 5 of 5, you signed it on 12 June, but it's not been signed by Mr Romano at that point?---That's right.

So when you received it, it was unsigned. Is that correct?---That's correct.

10 Do you remember how it was that you, it came about? What caused the document to be (not transcribable)?---It's like I said to you previously, there was a period of time between April til then.

Ah hmm?---There was no, well if they terminated my contract, it terminated on 23 April, 2009 and there was nothing formal.

20 And you were worried about that?---Well, I was getting paid by Burwood Council with no contract, yes. Yeah, so I, I raised it and they, there was an issue about preparing a document and I received this and it looked perusing it similar to the previous one. And the terms that I agreed, so I signed it, but it was not signed by Mr Romano and it was returned to his secretary.

To his secretary?---PA, sorry.

And can the witness be shown Exhibit 159. Now, can you explain to the Commissioner what, how it is that this document appeared in September, that is, you've signed an employment contract for 12 months in June backdated to April and then suddenly there in September, dated 23 September, there's an offer of engagement for consultancy services. What had happened to cause it to change?---I, I don't know. I don't know.

30 Well, had you asked for a change to your status?---No, no.

Had anyone discussed it with you?---No. There was just, like I said, there was discussion - - -

And what, out of the blue this arrived?---Yeah. The discussion was that for a period of time there was no contract in place from terminating in April to the middle of the year.

40 Well, we've done the June one?---Yeah, and then, yeah, I got this, about Architect Becerra Pty Limited well, that's why I question it because that's not the company, Architects Becerra Pty Limited.

But, no, just listen to my question, please, Mr Becerra?---Sure.

Did this arise from you making a request to anyone that you change your status?---No.

And had anyone said to you we've had a look at it and we don't think you should be an employee any more, you should go onto a consultancy services - - -?---Around this time there was a discussion about me not being an employee of Burwood Council, yes.

Okay. Who initiated that conversation?---I can't recall but it was - - -

10 Was it you or someone from the Council?---Someone from the Council, I can't recall whether it was Mr Macklin or, or Mr Hullick, I can't recall, it was someone from the Council.

And did they give you any reason why?---No, I did question them, I said, Well, what's the issue and it said that it's best that I became a consultant rather than an employee.

But you don't recall who said that?---No. There was further discussions with Mr Macklin some time afterwards but it was mainly to do with him preparing an alternative contract.

20 So this was given to you for comment?---Mmm.

And this is signed by Mr Hullick?---Yes.

Did you discuss it with anyone?---I did discuss it with Mr Hullick and there was - - -

You appear not to have executed this one, is that right?---No, that's right, I can't recall signing it, I can't recall signing it, no.

30 And did you reject it?---No, I questioned where we were going - - -

Right?--- - - - with this and it became a matter for HR and that's where I was, it was a HR manager, matter, a human resources matter.

Did you get any advice about it?---No.

Take it to your accountant?---No, I didn't discuss it with my accountant. I did not discuss it with my accountant, senior counsel.

40 Or a lawyer?---No, NOTs Lawyer were - - -

Long gone?---In my views they had their job, well, that I engaged them to do, this had nothing to do with this.

Can the witness be shown Exhibit 165 please and 166. So you don't recall why you didn't sign it in September 2009?---I remember receiving it as I said to you and they said it was to tidy up a few loose ends.

Did anyone tell you what the loose ends were or why they needed to be tidied up?---No, they did not, senior counsel.

And then, then there's another one and this seems a complete mystery to me but I'm sure someone knows why, that comes in 10 December, 2009 signed by Mr Hullick and this one's signed by you?---Yes.

10 With the services attached, which the services will be and there's an email at the back, you'll see that dated the 29th and it's asking you to sign it?
---Yes, it is.

Sorry, you sent it back on 29 December, it was sent to you on 15 December?
---Mmm.

And the 15th appears to be the date you signed the contract, the contract for consultancy services?---The start, yes.

20 Was there, did anyone have any discussion with you on or about 10 December to tell you why another one was being sent or what was the reason or - - -?---I recall Mr Macklin approaching me and saying to me that the terms of my contract from, as an employee will be terminated and they would advise that in order for me to continue with the project that I resign that position and then they would offer me a, or my company, Architects Becerra, a contract as it states here (not transcribable).

And that's why that Exhibit 166 is unsigned but, and - - -?---That's right, sorry, yes, that's right.

30 That was at Mr Macklin's request, was it?---Yes, I addressed it to Mr Macklin because he - - -

And that's why it's addressed to Mr Macklin?---Yes, it is.

So he asked you to resign as an employee and then you put in place this consultancy service contract?---That's right. You can see that that is, that is what had been offered to me.

40 Was there any discussion about the fact the limit for contracts had gone up from 100 to 150,000 in terms of tender processes required under the Local Government Act and so they could now offer you a consultancy for that amount without going through those processes?---It wasn't discussed no, I'm sorry.

Was there a discussion with you at all about tenders and that they were going to tender for the project and you could apply?---No, there was not.

Or that there were going to be expressions of interest and you were invited to apply, anything like that?---No. They said that - - -

There was no competitive process as far as you knew?---No, there wasn't. It was to extend my engagement through Council but under a different agreement to consult and it was stated there that as the person from Architects Becerra had to be myself.

And you'd been an employee then for over two years?---Yes.

10 Were you familiar with the purchasing manual requirements, sorry, can't get the words out?---Sorry, purchasing - - -

Manual requirements?---No, not the manual requirements, no. I was often given invoices to review as the receiving officer for things that happened but usually I relied on Robert Teo and Harry Webey to prepare purchase orders.

Can the witness be shown Exhibit 41. Sorry, perhaps if you can just stop there, perhaps this would be a convenient time to take a break.

20 ASSISTANT COMMISSIONER: Yes.

MS RONALDS: I've just got to get the right version of the document.

ASSISTANT COMMISSIONER: All right. We'll adjourn for 15 minutes.

SHORT ADJOURNMENT

[11.27am]

30 MS RONALDS: Now, you knew that there was a purchasing tendering procedure in the Council?---I was made aware of it.

And was it, were you saying, just so I understood the evidence before the break, you on occasion had to sign off on other things that people, other people were doing, is that right?---No, it was things that related to the civic precinct project such as consultants, agreements and the like.

40 And when you received this, I'm not sure, I think you've still got the December or the September firstly document which talked about 145,000 et cetera, did you turn your mind to the purchasing and tendering procedure for the Council?---Sorry? I'm just awfully sorry - - -

When you received that document, being aware that there was a purchasing tendering procedure, did you turn your mind to the fact that this contract might or could fall within that procedure?---Well, I - - -

Did anyone discuss it with you as a possibility?---No.

All right. Well, I'll show you this document?---About, you said, sorry - - -

Sorry, are you right?---No, no, you were saying in respect of, sorry, I'm just getting my voice back.

10 What I'm suggesting to you is this, that when you received that one in September and finally executed one in December, it should, I suggest to you, have complied with the terms of the policy and if I could ask you to turn particularly to page 4. Are you familiar with this document?---I've seen this document.

This was the one that was in operation, as far as I can tell, in September and November, 2009, and it starts its life on 12 August, 2008. And if you go to page 4 you'll see there purchases from 100 to 150,000. Now, it was clear on the face of your document that the quantum was 145,000, wasn't it?
---Yes, it was.

And you'd agree that that's between 100 and 150?---Yes, it is, per thousand.

20 And what I'm suggesting to you is that this is the process that should've been followed but to the best of your knowledge it wasn't, was it?---No, it was not.

You didn't have to put in a formal quote?---No, I didn't.

There was no advertising?---Not that I was aware of, no.

30 You didn't discuss it with the General Manager and he told you you had to call for quotes?---No, he did not.

There was no specification or consultants brief as far as you knew?---No, I was just given this document.

And none of the others happened? You didn't put in a tender and there were, into a tender box?---Definitely not.

Nothing?---Definitely not.

40 You just were just given that document in September - - -?---I was given - - -

- - - and for some reason it's delayed and you executed in December?
---Yeah, I, I didn't sign this, there was the delay and then it came through as a separate document, the December document, yes, that you refer to.

If I could tender that.

ASSISTANT COMMISSIONER: Yes, that will be Exhibit 176.

#EXHIBIT 176 - BURWOOD COUNCIL 'PURCHASING TENDERING PROCEDURE' DOCUMENT (ADOPTED BY THE EXECUTIVE AND GENERAL MANAGER 12 AUGUST 2008)

MS RONALDS: I show you this document. I'm sorry, you'll have to share. For some reason we decided we (not transcribable). You see that email? It starts, I think it's repeated, so it starts on 3 April, 2008 at 7.00am?---Yes, yes.

Where you say you've received 21,400 (not transcribable) do you remember what that was about?---It was the combined invoice - - -

The 41 that we've been looking at?---Yep.

Was that taxed at source, was it?---Yes.

20 All right?---Yeah, so that's the, the money that was received.

And why are you telling Mr Romano about that?---He made an inquiry, was, had I been paid for the invoices.

Right?---I didn't respond to him until I got the money.

30 Okay, and then he sends you one back saying okay, that's good?---That, yes, because he did inquire if I had been paid for the extra work and I, that's what the email was about.

And you recall this email?---I recall saying, I can't remember if I recall the, I recall saying to him that I had received the money.

Well, this has come off the Council email system?---Sure.

So - - -?---Yeah.

If I could tender that email.

40 ASSISTANT COMMISSIONER: Yes, why is it headed Burwood Times, do you know?---That was what I put as a package for all the - - -

Burwood times, all right, yep?---It's , it's my - - -

I'm thinking it was some newspaper, the Burwood Times?---There is a, no, there isn't a Burwood Times but it would seem they're not Burwood times, um, no, what I, that's what I titled the, the batch of invoices.

Yes, well, that will be Exhibit 177.

**#EXHIBIT 177 - EMAIL FROM MR BECERRA TO MR ROMANO
DATED 3 APRIL 2008 – SUBJECT: BURWOOD TIMES**

10 MS RONALDS: All right. I just want you to turn to, are you, in terms of policies, were you aware of a policy in relation to contact between staff and Councillors and the Mayor?---And the Mayor? There was a direction that staff couldn't talk to the elected members without the Director or a General Manager being present.

And do you recall that in June, 2008 you wanted Councillor Sidoti's contact details?---2008, I can't recall that.

All right. I'll show you this email. It's an email string?---Yeah.

20 Just take a moment to read those. It seems to be Mr Romano, you asked Mr Romano for, it's spelt incorrectly, but it gets corrected as we go up the line, for Mr Sidoti's details?---Yes.

He asks Ms Viney and then you sent, and then it goes through?---Yeah.

Do you recall why you wanted Councillor Sidoti's, to contact Councillor Sidoti in June, 2008?---Because I was asked by Pat Romano that Mr Sidoti had an inquiry about a property at Burwood that he wanted to find out what could be done with it. So I contacted - - -

30 Be done with it, sorry, what do you mean by that?---Oh, what could be, sorry, the development, a process that could be done for it, what DA potential it had. And I wanted to contact Mr Sidoti and say something that was not written in the contract, but I was advised by others that I shouldn't be doing any work in the LGA for anybody other than, sorry, Burwood local government area other than for Burwood Council.

Right?---And he made some inquiries and I said I couldn't help him. But I wanted to contact him and tell him that I couldn't help him.

40 So did Mr Romano ask you to help him first up?---No. It was, no, Mr Sidoti contacted Mr Romano to find out if the architect could help him with something.

Right?---And I just wanted to make Mr Sidoti understand that I did not or could not, although again it's not written in the contract, but I was advised not to do any work in the local government area.

And that was your understanding in your employment contract when it was written?---It was not written, but it was my understanding that I shouldn't be doing any submissions to Burwood Council whilst I was employed there. It'd be pretty ironic for me to give my own submission, yeah, put in a submission with the Council I was working for.

We might come up with another work rather than ironic, but, yes. But, so and you then spoke to him?---Yes, I did.

10 And you understood you did say with Mr Romano's permission?---Well, I wouldn't say permission, but he did give, you know, I sought his details so I could contact him and tell him that I could not do any work in the Burwood local area.

If I could tender that.

ASSISTANT COMMISSIONER: That will be Exhibit 178.

20 **#EXHIBIT 178 - STRING OF EMAILS COMMENCING MR
BECERRA'S EMAIL TO MR ROMANO DATED 23 JUNE 2008,
SUBJECT: SIDOTI'S DETAILS**

MS RONALDS: Now do you recall that in, on 3 March, 2009 you received a text message that was anonymous?---Yeah, I tried to follow that text message that I think you're referring to.

30 Right. And it said, well, on the version I've got, your corruption is about to be exposed very soon with your mate?---Yeah, that sounds like the right one. I've got it in one of my phones. Yes, I kept that.

And did you get it in your, you got it in your work phone. Is that correct?---Yeah. Yes, that's right. Yeah.

Would you agree that it was, well, you received it on 3 March, 2009 at 14.33?---Ah hmm.

40 And it was from a number which is 0-4-1-5-7-5-5-6-2-1. That's what's recorded as it being?---Yeah. I did do a detail search through the phone to find out where the phone, the number came from. It was a, yeah, a number I didn't recognise. Yes.

It wasn't a number you had in your phone?---No.

And it wasn't signed by anyone?---No.

And that's the only one you received?---That's the only one I received.

And what did you do when you received it?---Firstly, I had a few thoughts that, you know, who the hell is sending this to me, one. Shortly after that I did approach Mr Romano and I said, I've received this on my phone, and I showed him. Later on that week we had a project control group meeting and I showed Mr Baird the text - - -

You showed it to Mr Baird?---Baird, I showed it to a couple of people, yeah, that I received that text.

10

You didn't go to the police?---No, I didn't go to the police. I've received, no, I didn't go to the police. Not over that.

And is that the only one of its ilk, that is is that the only one of a similar nature that you've received?---That's the only one I received, yeah.

And when it said your corruption is about to be exposed very soon with your mate, you understood that was referring to Mr Romano didn't you?---I presumed that, so yes.

20

Even though this was before The Sydney Morning Herald articles?---Yes. It pre-dated The Sydney Morning - - -

But you presumed that it was referring to Mr Romano?---That's what I presumed (not transcribable) from that text, yes.

And you didn't, did you ring the number?---I didn't, no. I didn't use my phone to ring the number. I tried to find out where the number was, I tried to search for that number using the computer and using, you know, whatever resources I had, but I didn't ring the number.

30

And you didn't ever come up with an owner to the number?---No.

Now in a statement that Mr Romano's given, he says that this appears to be linked to another number and gives another number?---Yeah, there was, sorry. There was two numbers on the detail, on the, when you get to the phone details, there was one number and then another mobile number underneath that.

40 0-4-1-5-0-1-1-5-0-1. And you say that was part of the message as well was it?---No, no.

It was in the details of the - - -?---Yeah. When you go to the detail of a - - -

Yep?---I got my 15 year old to help me with this. When you go to the, the details, it says the time, the date it was sent, from where it came from and it had another mobile number underneath that.

Right. And you provided both those numbers - - -?---Yes.

- - - to Mr, just wait for me to finish the question, to Mr Romano?---Yes, I did.

And did you give them to anyone else?---Not that I can recall. No.

And did you pursue both of those numbers?---No, I didn't.

10 When you say you searched for - - -?---No. I looked at the first one because apparently that's the originator of the text.

Right?---I don't know why the second number came up, but apparently that's, the originator of the text is the first number that appears on the details.

And you failed to find any, I'm not being critical, but you failed to find any source of it?---That's right.

20 And you might guess at who it was, but you don't know who it was?---I can make a lot of guesses, but I'm not going to - - -

But you have no knowledge?---No, I have no knowledge.

Do you recall the time in early February, 2005, 2009, sorry, when Mr Joe Saad made certain disclosures to some of the managers at the Council?
---No. I didn't know that Joe Saad made the disclosures to the Council. No.

30 Well, Mr Romano rang you at some stage didn't he in early February, 10 or 11 February and told you that somebody had said they'd been working on the units?---Yeah, he did say that someone in Council had said that - - -

Doing the best you can, can you recall when that conversation was?---That, that (not transcribable) about, yeah, about February, March, around that time. Early 2009, yes.

And is it correct that the first information you received was from Mr Romano?---Yes, it was.

40 And doing the best you can, can you tell the Commission what he said to you as he said it?---Oh, that someone's being, one of the guys in the depot said that they were working on the units.

And he was upset about this?---He was upset, yeah.

And he was swearing?---I can't recall him swearing, no. Normally, he wouldn't swear. Usually he was angry and he used choice words, but I wouldn't say he was swearing.

But he was upset or angry on this day?---Yes.

And you knew that from the way he was speaking?---From his mannerisms and the way he was speaking, yes.

And he was concerned about it wasn't he?---Yeah, well he, like I said, he was angry.

10 And what did he say to you?---That he's going to find out what, what was happening. And he left it at that.

Well weren't you concerned about it?---I was because I asked him who was it and he said that he couldn't tell me.

He couldn't tell you?---No. He said, I couldn't tell you.

20 Did he tell you why he couldn't tell you?---No, he didn't. He said, I just can't tell you. And followed by, words to the effect, you concentrate on what you're doing, which was the civic precinct project.

And what, he'd sort it out?---Well, he said he couldn't do, he'd look after it or something to that effect. I can't remember the exact words. But he said that someone had made an allegation and he'd look after it.

And did anyone from Council, did you ever receive a formal letter saying there was an investigation into the allegations of it being made by anyone? ---No.

30 Had you, were you ever contacted by any management and asked to, called in for a formal interview to discuss allegations that had been made about Council people working on the units?---No.

Was there any follow-up apart from that conversation you had with Mr Romano?---No. I, like know that I know who he is, the gentleman that you say it is, just, Mr Romano just said that he'd look after it and that's it. Nobody approached me from Council to discuss or debate it.

40 MS RONALDS: Do you recall that you were in the Council Chambers on 11 February and Mr Romano and Mr Child were having a conversation and you joined them and they were talking about the units and who worked on the units?---Yeah, I, I roughly have a recollection I was going from the upper level of what is called the war room, which is where I was working downstairs to do some printing and they were up in the chamber, or the stairs of the chamber, discussing a few things. I joined them for a brief moment and I walked away. I had other things to do, I just walked away.

But they were discussing, weren't they, who had worked on the units and Mr Child was saying something like Joe Saad only worked on the units in his own time?---There was a discussion about the units and, yes, Steve was mentioning a few names about the people that had worked on the units but I can't remember exactly the, the people he did mention but there was a discussion about the units, yes.

10 And do you remember Mr Romano saying text me tomorrow so we can get together, meaning him and Mr Child not you?---I can't recall - - -

Or making some arrangements to meet?---I can't recall being part of that conversation, no.

And do you remember Mr Romano saying can you let John Vadala, Ammer and Joe know what's going on and to keep quiet?---No, I wasn't part of that conversation, I'm sorry.

20 But you remember some part of the conversation and it was certainly about who'd worked on the units?---Yes, there was discussion about names that were bandied around of the people in the depot that worked on the units.

But as far as you knew Mr Romano's instructions were not to worry about it, that he would deal with the matter?---He said he would be looking after that matter.

I have nothing further.

30 ASSISTANT COMMISSIONER: Yes. Does anyone seek to cross-examine? Mr Blake.

MR BLAKE: Just some brief questions. Could Mr Becerra be shown Exhibit 114 please. You were asked some questions about your note earlier today, Mr Becerra?---Yes.

Under the capitals NOT, that's Nash O'Neill Tomko abbreviation?---Yes.

40 The five dashes, just so I can understand it, adjacent and below NOT does that record advice summarise advice that you'd received from Nash O'Neill Tomko?---That's what I was trying to say before, yes, it is. It's some of the advice that they gave me and the things I should be looking out for when exiting Baker Kavanagh Architects.

And then you mentioned on the left-hand side a little bit below halfway down the page, I think it's the word Jacqui?---Yes.

And there's four dashes adjacent to Jacqui and below?---Yes.

And does that summarise matters that you would need to take up with Baker Kavanagh to finalise the severance of the relationship between yourself and that firm?---Yes, it is. As I said before, Jacqui was the office secretary. She had a lot of the records and that's what I was going to get from her to prepare some documents for the exit of Baker Kavanagh. A lot of that stuff I had previous but it was the finer details as to payouts, subcontract work, things like that.

10 And those four dashes summarise matters that needed to be finalised in the future to complete the severance of the relationship?---Absolutely and it took, like as I said before, till about July that year to complete.

Yes, thank you. That exhibit can be returned. Can I show you this series of emails?---Thank you.

Have you seen those emails before, Mr Becerra?---No, I've seen some of it but I, no.

20 There's the one, 7 March, you recall that, the Burwood times?---The Burwood times, yes, that's 7 March, it's Burwood times, yeah.

And the following emails - - -?---Yeah.

- - - are you able to recall a request from Mr Romano to advise the hourly rate?---That's what it says here, yeah.

Yes. And then the one above it - - -?---Yeah, it says that I responded to it.

30 - - - you said As discussed with you normally \$200 an hour, note this is our office charge-out rate?---Yes, that's what it says there but I had discussions with Mr Romano prior to that.

Yes, but those discussions were confirmed in email correspondence?---You mean this one?

Yes?---Yeah, but I did have discussions with Mr Romano prior to that.

40 Sure, sure. But that was an email that you sent on 10 March confirming earlier discussions, is that correct?---That's what he said, yeah, that that's, he said if that was the normal charge-out rate and I said yes, it is the normal charge-out rate that we would charge but it is the rate that he said was an average of some of the other architects in the panel.

Yes, that's fine, I understand that. And then there was an email on 11 March which you sent to, sorry, I beg your pardon, that came from Mr Romano asking you to provide some invoices?---Yes.

And I think the top one is from Mr Romano asking you whether you attached the invoices?---Yes, and as I said, I prepared them later on that day
- - -

Yes?---But I had been working on it over the weekend.

Yes, and think you sent them at 12.00, well, half past 12.00 the next day, AM, 12.30am the next day that you sent that email?---That's right.

10 I tender this string of emails, Commissioner.

ASSISTANT COMMISSIONER: Mr Becerra, do you recall receiving these emails?---I can't say that I do but it's got my name on it.

Yes, unfortunately in these proceedings that doesn't always seem to mean what it should?---Like I said, I did discuss it with Mr Romano, the hourly rate before I started preparing the invoices.

20 All right. Well, look I'll receive it as an exhibit at this stage, Exhibit 179.

#EXHIBIT 179 - STRING OF EMAILS COMMENCING MR BECERRA'S EMAIL TO MR ROMANO DATED 7 MARCH 2008, SUBJECT: BURWOOD TIMES

MS RONALDS: Just so it's clear it's (not transcribable)?---It's, yeah, I

30 ASSISTANT COMMISSIONER: Yes, that's it's - - -

MS RONALDS: It's provenance is unknown to us and it's certainly not on the system that we've got (not transcribable).

40 ASSISTANT COMMISSIONER: Yes?---Like I already said, this has got my (not transcribable) I can't recall that but it was, but anyway I did discuss with Mr Romano the hour, the \$200 an hour rate before I started doing the invoices but the times is just, with this it doesn't give me much time because I spent a whole weekend working on preparing the invoices. I might have sent it later on but it's not something that was done the day before.

MR BLAKE: That can be returned. Can Mr Becerra be shown Exhibit 171 please and also, just to save some time, Exhibit 119. Firstly, Mr Becerra, could you look at Exhibit 171 and you'll see it's headed "Briefing Memorandum" and if you go to the next page you'll see a letter addressed to you dated 2 April with the heading, "Offer of Fixed Term Temporary Employment". If you go over then to page 6, there is a signature and a date - - -?---Ah hmm.

- - - 3-0-0-8?---Ah hmm.

Is the signature yours?---Yes, it is my signature.

And is the handwriting adjacent to the printed Word date yours?---Yes, it is.

Are you able to decipher whether the question mark between the signature and the date is your handwriting or - - -?---No, I can't recall that. That's my signature and that's my handwriting for the date, definitely.

10

And if you just go over to page 5, that's the preceding page, you'll see some handwriting, "copy attached". Is that your handwriting?---No, it's not.

No, it's not. Now, you just might close that for a moment. I'd like to come back to it in a minute but if you can go to Exhibit 119, I think on page 5 there's a signature which is yours, is that correct?---Yes, yes, it is.

And a date, 23 April, 2008?---That's the one.

20

Yes. Are you able to explain how it is that you sign either the same or a very similar contract on 3 April 2008 and dated it and then came to sign Exhibit 119 which was dated 15 April 2008 but signed by you and dated 23 April 2008?---Yep. The first one is a draft that was given to me as a draft. I signed it or returned it. It has a post, it looks like a Post It Note here. It doesn't have any of the Council letterheads or anything and then I was given this one as the amended one to sign.

30

All right, so what, you signed the first one to indicate that you were happy with the, the terms in that document, is that correct and then - - -?---That's correct and there was changes to a few things that I made, for example, what, I did discuss with them the starting date and so on that had to be corrected.

All right, thank you for clearing that up. Noting further, Commissioner.

ASSISTANT COMMISSIONER: Thank you.

MR BLAKE: I'll (not transcribable)

40

ASSISTANT COMMISSIONER: Yes, Mr Blake. Does anybody else wish to examine Mr Becerra?

MR EURELL: I seek leave, Commissioner.

ASSISTANT COMMISSIONER: Mr Eurell, yes.

MR EURELL: Thank you.

Mr, is it Becerra?---Becerra, yes.

Sorry?---Becerra.

Becerra, thank you. You gave some evidence that, perhaps if you could be given Exhibit 174. This is the draft contract that you received on or about 13 April 2007?---Yes.

10 And I'm going to ask you some questions about that in a moment but firstly can I ask you this. Would you agree that generally speaking there was some confusion from, as early as your involvement with Burwood Council in 2007, to as late as the contract engaging Becerra Architects Pty Limited, about the nature of the relationship you had with Council, that is, whether it was an employment contract or a contract for services?---There was a degree of confusion, I'm not denying that, but I was employed by Burwood Council as the civic precinct project architect.

That's, that was what you had in your mind?---Yes, it is.

20 And do you make room for the possibility that during the course of your association with Burwood Council, that other officers, that is Executive Directors specifically, could have had a different understanding about whether you were a contractor or an employee?---I guess it could be drawn, I, I don't know, you'd have to ask them but I can understand where you're coming from, yes.

This was the first time, that is, when you started with Burwood Council, this was the first time you had been employed, if we can use that term, with a government entity, is that correct?---That's correct.

30 And in your previous life you had been involved largely in private enterprise?---That's correct.

So you'd have had a significant exposure, would you not, to contracts with clients, for example?---The contract (not transcribable) the architect contract agreements that we had, yes, I'm aware of those very simple compared to this.

40 Now, if you can turn to page 2 of the contract that you've got there. that's in Exhibit 174, and you understood, you say, that this was an employment relationship?---That's correct.

Do you agree with me that, and I'm reading here from, "It is agreed that during your employment you are free to be employed or engaged in a business related or advisory capacity with any person or other business on the basis that", do you see there?---Yes, I do.

And there's two dot points following that?---That's correct.

And the first is, that Council is your predominant client?---That's correct.

Do you agree with me, having regard to the contracts you've been involved in before your employment with Burwood Council, that the use of the word "client" there is more consistent with a relationship of contact for services as opposed to contract of employment?---I understand where you're coming from and I understand client architect contracts as just one on one, yes, as a client.

10

Certainly Council was not your client in this case, was it?---No, it was an employer, I beg your pardon.

It was your employer, on your understanding?---Mmm.

And so that particular term, do you agree, could have created confusion in the minds of other directors who may have had some involvement in engaging your services but not had, but had not been entirely across everything that had gone on between yourself, Mr Romano and the lawyers at Maddocks?

20

MS RONALDS: Objection. I don't think this witness (not transcribable) as to what, what was in the mind of anyone else (not transcribable)./

ASSISTANT COMMISSIONER: Yes, it may be difficult for him to express a view on that.

MR EURELL: You have said that you understood this contract to be about the civic precinct, your engagement with Burwood Council?---Civic precinct project, yes.

30

And you made the concession in your evidence under examination by learned senior counsel assisting that this contract did not specifically say that you were engaged only for that purpose and (not transcribable) to the word "primarily involve" on the first page so that you could have been used for other services. Do you remember saying that?---(Not transcribable).

And where I'm, I'm asking you to turn your mind in a moment to the invoices you provides to Mr Hullick. Now, if you turn over to page 2 of that contract, I'm sorry, page 3 under Hours of Work, you see the first line there says, "Your ordinary working hours will be the hours reasonable required to effectively and efficiently manage the project"?---Yes, and the project is referred to on page 1 as the civic precinct project.

40

As the civic precinct project, isn't it?---Yes, sorry.

And so what I'm asking you is, would you like to revisit the evidence you gave under examination by special counsel assisting regarding whether or

not, on your understanding, you, this contract related to the civic precinct alone or to projects undertaken by Council entirely?---Yes. There was a contract, my understanding there was to carry out architectural services with the civic precinct project.

And on the draft form you were required to do 38, a maximum, up to a maximum of 38 hours on that project?---Or averaged over the term.

I beg your pardon?---Or averaged over the term.

10

Yes. And eight hours in the office on that?---And then it says eight hours per week work in the Council offices.

MS McDONALD: Objection. This is actually a draft and no the - - -

THE WITNESS: They're not the - - -

20

ASSISTANT COMMISSIONER: Yes, I, I don't know that there's much point in asking him about this as it didn't turn up in the agreement that he actually signed so I don't see how it could've factored into his understanding, if he'd read the contract he signed. The 38 hours wasn't mentioned in the - - -

MR EURELL: Not in the one he signed, Commissioner, but he did give evidence under examination that he read this contract before the one that he signed.

ASSISTANT COMMISSIONER: Yes, and I presume he read the one he signed so - - -

30

MR EURELL: But the evidence he did give under examination regarding the contract he signed was that as I understood it that he assumed effectively it was the same as the draft one he'd received.

ASSISTANT COMMISSIONER: Well, I don't know if he went that far and I think, I mean the point is, I don't think there's any dispute that it was Mr Becerra's evidence that what the contract said he understood that he was to work only on the, that was his understanding and all he conceded was that that's probably not what the contract says because the contract says primarily.

40

MR EURELL: Yes.

ASSISTANT COMMISSIONER: So I think he really agrees with you.

MR EURELL: I am asking him to agree with me.

ASSISTANT COMMISSIONER: Well, I think he's already agreed with the proposition you're putting which is that whatever the contract said in his mind he was hired only to work only to work on the civic project.

MR EURELL: In which I can move to Exhibit 145 and that exhibit can be returned.

10 Before 2007 you had been involved with doing architectural work for Burwood Council through Baker Kavanagh, hadn't you?---That's correct.

And so you had, would you agree that you had a, an understanding of the work that was being carried out by Burwood Council?---I'd been working on the project for over two years - - -

Yes?--- - - - so I had a, I believe I had a fairly good understanding what Council's brief and requirements were.

20 Yes. Now, can you go to the invoices in Exhibit 145. At the time you submitted those invoices, well, sorry, the first invoice, what do you say that relates to?---The first invoice relates to work that I was carrying out with the, I guess the planning department, various members of the strategic planning department to work on the LEP.

That wasn't, that was the current LEP, was it?---It was the current, it was two versions. There was part of the 2007 LEP which I had involvement in.

Yeah?---It didn't go anywhere, it didn't get signed by the Minister.

30 It's still waiting, is that right?---No, we've, subsequently Council has put in another LEP with further amendments which I was involved in.

40 And was there one before 2007? I think you referred to it earlier as the master plan?---There was the master plan. That, that's separate, it's not an LEP. The master plan was for the civic precinct project. It was deemed to be a master plan because what the, the Council brief was had to be tested against the current code, which is I think circa 1970, the BPSO which is the Burwood Scheme Ordinance so I was working on the master plan of that. Then the Council was preparing a separate document called the LEP at that time, 2007 that - - -

That work to be carried out on the civic precinct, do you understand that that had already formed part of the earlier LEP? It wasn't a part of this LEP that you're referring to in this invoice, was it?---No, the LEP 2007, that's what this refers to.

Ah hmm?---Yes, because - - -

I understand that now what I'm asking you is the works on the civic precinct was not part of the LEP, was it?---No, it was - - -

Part of an earlier LEP?---No, there was not even an LEP for that was, we were doing a design, a master plan - - -

Yes?--- - - - to test it against the current codes which is the BPSO, the Burwood Scheme Ordinance.

10 Right?---It was not part of the LEP. What we were doing is testing the design to whether it would fit into the new LEP and the reason is there's no use doing a design of a building that is then, fails on the fact that the new LEP preparing, it's not very smart so part of the job was to test that against the LEP.

ASSISTANT COMMISSIONER: Testing the design of the civic centre precinct?---Testing the, yes, the civic precinct building.

20 Yes?---And we called it a master plan because it involved just not the building but its surrounds and put that into the context of the LEP, that was one of the tasks - - -

So to that extent it was related to the civic centre?---That part of it?

Yes?---I would say yes.

MR EURELL: When you say that part, which part are you talking about?
---The work that I was doing with relation to the building, to the civic precinct building.

30 Yes, was part of which plan though?---(NO AUDIBLE REPLY)

This one?---No.

40 That's what I'm asking you, I'm asking you for agreement that it had nothing to do with the plan which you were invoicing for here?---No, this, no, this was because the LEP, town centre LEP was not just about the civic precinct building, it encompassed a larger area of the town centre. It related to other sites that Council owned, it had a perimeter to it which is called a town centre and I was reading documents, advising on site testing for other sites, again to make sure that the LEP when it went out did not become a document that had, that was challenged. It can always be challenged but the idea is that the LEP had been tested, there was some notion that whatever we were putting out to the public could be built.

So I don't think we're at cross-purposes. I'm asking you, where I'm going is did you see any conflict in submitting this invoice for work you'd done having regard to the fact that you had a contract relating just to the civic

precinct?---No, because I, I believe that this is outside that which I was commissioned to do.

And do you know whether or not Mr Hullick shared that view?---I just discussed with Mr Hullick some of the things I'd done and we went through that detail but he was aware that I was working on jobs that were not related to the civic precinct project.

10 And the invoices you submitted in Exhibit 45, do you say the same is true of all of them, that they did not relate to the civic precinct which formed a part of the contract I was asking you about earlier and it was a separate scope of works?---That's correct and I'd just like to clarify some of the information that was given yesterday. Not all of it was for Mr Hullick, some of it was for other people in Council, there was other managers and, and directors who commissioned the or asked me to do work that was not related to the civic precinct project.

20 And they went on different budgets, didn't they?---That was my understanding, that was one of the things that had to be clarified, that's why I was questioned was the time that I was spending on this coming out of the civic precinct project and that's why I put the invoice in because it related to other projects, it related to other departments and other managers within the Council, it didn't relate to the civic precinct project.

Thank you?---And I know that some people thought that everything I was doing was on the civic precinct project, that's not the case.

30 Now, you have seen the statement that's been tendered in the proceedings from Mr Kavanagh?---Yes, I have.

Would you agree with the proposition that you had more to contribute to Burwood Council as a professional than your mere architectural skills alone?---I believe so because, like I said - - -

40 You had been involved with Council for longer than just a few weeks, you had been, you had institutional knowledge going back several years, didn't you?---At least three years, like I said, in different versions. We, at Baker Kavanagh I was involved in putting the original DA on what's now called site A so that took some period of time and I was on cross, cross-functional teams so I had a fairly good understanding of the brief and, like I said before, one of the stumbling blocks for why it took so long and of course we were testing this project to become financially viable.

And, and it didn't stop there, though, did it? You also had understanding of the way that Council was structured and the relationships within, within which these approvals operated?---Yeah, I understood that there was different departments that do different scopes of work.

And you understood Council's vision for the works that they might have you look at designing?---Yes, that was, when you say vision I was also involved in more than I guess architectural, I was also advising on how we could market and promote the idea of the Burwood town centre so I was involved on things other than just architectural and that was prior to me being engaged with Burwood Council.

10 And would you agree that all that, all those other things you brought to this relationship with Burwood Council allowed you to carry out the work they needed more efficiently?---I believe so because, like I said, I'd had two, three years of working with different members of Burwood Council.

Did that allow you to provide the services with greater cost-effectiveness?
---I believe so.

20 And would you agree that the taxpayers of Burwood derived a financial benefit from the fact that you were able to provide those skills at a cheaper rate?---I think you'd take Mr Dencker's testament yesterday that he thought that the invoicing for this was, he said cheap or, I can't remember the words but it was reasonable but I believe that it was fair.

Now, you were asked about the contract that ended on 24 April, 2009?
---Yes.

30 It was not your understanding was it that when that written contract expired that you did not have any contractual arrangement with Burwood, that is, that you were just going to provide your services for free?---No, and that's the reason I said that it was a period that my contract had expired and I did question - - -

But surely you had a - do you have a recollection of a conversation with Mr Romano, for example, in which it was agreed that you would continue to provide the services under the same terms that had been drafted in the 2008 contract?---At that time when I raised the second contract, when I terminated my second (not transcribable) at Burwood and there was no forthcoming contract set.

Written contract?---Written contract I beg your pardon.

40 When you were saying in your evidence that there was no contract you're talking about a written contract aren't you?---Correct. Correct.

There was certainly an agreement that you would provide services and be paid?---Yes, it was basically just to not to stop the work I was doing just to carry on the work that I was doing.

And you have a recollection that the terms of that oral agreement were the same as had been in the 2008 contract or not?---It was my understanding that the contract would be extended, yes.

I think you've already said in your evidence but just for clarity's sake you never told Mr Hullick of your interest in Befaro - - -?---No, I didn't.

- - - at the interview or any other time?---No, I did not.

10 You agree Mr Hullick never told you at any time your job at Burwood Council was guaranteed - - -?---No.

- - - (not transcribable) Baker Kavanagh?---No. No, he didn't ever speak to me that the job was guaranteed, no.

It wasn't clear from your earlier evidence but is there an entity incorporated as Becerra Architects Pty Limited?---No, it's Architects Becerra Pty Limited not Albert Becerra.

20 Okay?---It's Architects Becerra.

Is that, are you a director of that company?---Yes, I am.

Do you know when it was incorporated?---February, February 13, 2007.

February 13, 2007. So shortly after you left Baker Kavanagh?---It was advice amongst NOT lawyers that if I was going to leave that I should - - -

30 Start your own company?---Start my own company and bring in the procedures which I got my accountant to do.

And had you originally envisaged providing your services to Council through that company?---I approached - as I said before I did approach Council and say if I could be put on the panel 'cause I thought that that was an avenue for which I can extend working with Burwood Council. As I said before it wasn't an option that was agreed.

40 You told the Commissioner that you received, when you received the text message saying that - and I'm paraphrasing here to the effect that you and your mate, you know, be exposed for corruption that you understood that to be referring - your mate, your mate part of that text message to be referring to Mr Romano?---Yes, I did.

The corruption part of that text message did you understand that only to relate to the work on the property owned by Befaro?---Firstly I questioned the word corruption (not transcribable) but then I thought what is it referring to. When I said mate I assumed it was for the work that was done at the units. The word corruption was the one that I have an issue with.

Yes. But I'm not so much focussed on the corruption, what I'm trying to understand is in your mind it only relate to the work at the units it didn't relate to the submission in invoices in Exhibit 145 did it?---No.

10 Just one final question. Forgive me if I asked it at the beginning. Do you agree that from the time that you left Baker Kavanagh through to the time that, to the point in time that you were provided with the agreement to provide services through Architects Becerra Pty Limited that the question of whether you would be an employee or a contractor was a matter of constant
10 confusion or agitation across the Council?---It could be perceived as that but my understanding is I was employed to work on the Civic Precinct project.

Thank you, sir. Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you, Mr Eurell. Does anyone else seek to question this witness? Yes, Mr Neill.

MR NEIL: Thank you, Commissioner. Mr Becerra - could the witness be shown Exhibit 114 please. If you look about two-thirds of the way down
20 this page there seem to be some headings in your handwriting?---Yes.

There was one word at the left of the page can you tell us what that is? Looks like it starts with a J?---Jackie.

Jackie. Meaning?---She's the Baker Kavanagh architect's secretary at that time.

Thank you. And what are the words immediately opposite that?---Bigger status for BKA.
30

And below is it settle exit?---Yes.

Is that to do with the, your leaving Baker Kavanagh and possibly going to the Council?---No, it was to make sure that there was no relationship between them in any work that I did in the future as an exit claim.

And what's mutual releases?---That was a term that was referred to by lawyers that whatever work I had or clients that I had and that they had they would be split, there would be no chasing of each other's works or clients
40 more correctly.

And what's the next item?---Payouts.

And the last one please?---(not transcribable).

And the last one?---Subcontract work because as I said Mr John Baker said that if I needed to use Baker Kavanagh in the interim because there was some projects that I was still involved with that if I was to need their

services they would support me in the transition. There was a few projects that were mid construction and a couple in DA submission.

Now I think you said earlier there was some discussion of what, I think your term restriction of trade?---Yes.

10 Was the phrase restraint of trade used can you recall?---I can't recall that but it's basically that when some partners leave companies again there's a period of time that you're not allowed to use the resources or communicate with a client base that that company has. I know of occasions of architects leaving then not being able to do work on their expertise for over a year.

Did Mr Baird express any concern about a possible exposure of the Council to some action if you had, if you went to the Council?---If he had, his concerns were from my recollection that he said that he didn't want Burwood Council to have any problems with the Civic Precinct project and if I was leaving there that there'd be no problems that arose from me leaving the Burwood, the Baker Kavanagh partnership.

20 Did you understand him to be saying he didn't want the Council to have any legal problems?---Yes.

Now, did he say to you that you'd have to rely on your own lawyers, he couldn't act for you?---Absolutely. I distinctly remember him saying to me, You better get some legal advice.

Yes. And - - ?---Which I, sorry.

30 Yes?---I was already in the process of doing that, I didn't discuss that with Mr Baird at the time but like I said I had met with NOT Lawyers around September, October of the previous year.

Now, you understood that Mr Baird according to your evidence knew of a business relationship or business interest between you and Mr Romano before this meeting. Is that right?---No, I presumed that he knew of something because he, he had given Mr Romano details of a bank manager but I assumed that he knew. I didn't know that he, that he didn't. I assumed that because he had given Mr Romano some details of a bank manager that he must've known something about the - - -

40 You made that assumption did you?---I did make that assumption.

Did he say anything to you along the lines of there might be a conflict of interest?---No, I assumed that he, he knew about it but he didn't give me that he has a conflict of interest.

All right. Thank you.

ASSISTANT COMMISSIONER: Thank you. All right. If there's nobody else. Ms McDonald?

MS McDONALD: (not transcribable) like to ask some questions. Can we start, I'd like to start by looking at the issue of declarations that you may have made to the Council at any time or any Council person at any time during this matter. As I understand it the Baker Kavanagh involvement (not transcribable) 2003?---Was one of the smaller projects that we were involved in then and then more involved in 2005 till I left.

10

And can you recall at all any declarations being made at around that time of a cross-functional panel being established about the relationship between yourself and Mr Romano?---Yes, there was. There was a declaration, I think it was Andrew Marsden was the probity officer who attended some of these meetings. And there was discussion about declarations, Mr Romano made a declaration that he knew me and as I did.

Could the witness please be shown Exhibit 107. Now this is a letter that I'm assuming, have not seen. Is that right?---No, I haven't seen that.

20

Could you just to page 2 of that and have a look at paragraph 2.2. You'll see there it refers to a declaration dated 14 April, 2005, which has been forwarded by yourself declaring that you've known Pat Romano for some years and have had business dealings with him prior to the appointment of General Manager. Do you know what that's referring to?---Yes, because at that time we were tendering to be on the Burwood Council's architectural panel. One of the returned forms was conflicts of interest. And that's what I declared on the conflict of interest form, that, that I had known Mr Romano.

30

I see. Can the witness also be shown that, that Exhibit can be returned and can the witness be shown Exhibit 83. Now these are, well, if could explain it to the Commission what they are, they've been tendered previously?---They're pecuniary interest forms that were handed to me at Burwood Council.

And the first one of those that's in evidence is dated 22 May, 2007?---Yes.

So that would've been done shortly after your engagement by the Council?

40

---That's correct.

And can you turn to page 3, that has a discretion under discretionary disclosures?---Yes.

Now in there, it effectively discloses your connection with Mr Romano and your involvement in a company with him. Is that right?---Yes, it does.

And if you continue to, I'm sorry, and there's also, I mislead you, that's the second discretionary declaration?---No, that's the first.

That's the first. No, I think it actually belongs to the second one which is dated 17th of the 9th, and the first is on the very first page, the discretionary declaration over on the left. Is that - - -?---Yes.

10 Now can I show you another document. Can you identify that document for the Commission?---Yeah. It's an another pecuniary interest declaration.

And what's the date of that one?---25th of the 9th, '09.

So this was a third of these such documents that you provided and again, you go to the last page and again you've made a discretionary disclosure there?---Yes, I have.

20 Can you, do you recall the gist of that disclosure?---Yes. It was informing Council that my wife, Poppy was a director of the company Architects Becerra with myself and that she was a director of Befaro Property Unit Trusts and that, that Befaro was, had a relationship with Mrs Carmela Romano and Maria Fasanella.

Thank you. Can I tender that document.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 180.

30 **#EXHIBIT 180 - A COPY OF A 'DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS RETURN' FORM COMPLETED BY MR BECERRA DATED 25/09/09**

ASSISTANT COMMISSIONER: Mr Becerra, did you have any knowledge about who in Council would see these declarations?---The declarations, I believe the governance officer, because he was a person that was being returned the information to.

40 So, and apart from that officer did you think anybody else in Council would see it?---I guess it's a public document, so I guess anybody in Council could see it. But my understanding that it was, that sort of information was given to the governance officer as Pina Viney is a person I always returned the, my declaration - - -

So you returned it to the governance officer?---Yes.

ASSISTANT COMMISSIONER: Thank you?---Because she was the one issuing it.

MS McDONALD: And was it your assumption then that as you filled in these forms, that you didn't need to make regular disclosures about the information contained in them?---No, as a document there was, I believe, a public document declaring my pecuniary interests as it happens, when you go to Council meetings and there's people that declare pecuniary interest.

10 So there would be meeting, for instance, of the people involved in the project. Did you assume that because of these disclosures that that was sufficient and you didn't need to announce it at each meeting?---This and other disclosures were made earlier when I was involved at Burwood Council so it was, I believe that document plus the other statements that we made when we were contractors at Baker Kavanagh Architects were clearly showing that I had a relationship with Mr Romano.

ASSISTANT COMMISSIONER: But Mr Becerra, there was no declaration prior to your being taken on as the architect of your then existing business relationship with Mr Romano. You've referred to the previous declaration. That was declaring that there'd been a prior business relationship before he was General Manager, wasn't it?---Yes, and that I had a friendship with
20 Mr Romano, yes.

And these were made after you were hired?---Yes, those declarations, yes, definitely.

So but prior to your being hired, nobody in Council, to your knowledge, would've known about the existing business relationship except Mr Romano?---Mr Romano and I would say the people receiving those documents. It was a public document, yep.

30 That's after you were - - -?---No, and also, no, the panel, when we submitted the panel submission there was a conflict of interest return form which was filled in and I, we put that in and I filled it in.

Well, that was the one that declared your prior business dealings?---Yes, and - - -

Not your existing?---Not, not the Befaro one, if that's what you're referring to.

40 No?---No.

That's what I'm referring to?---No, they did not.

So the only person in Council, to your knowledge, who would've known about that prior to your being hired as Mr Romano, is that correct?---That's correct.

MS McDONALD: And just remind me, Mr Becerra, when did Befaro purchase the units?---It was settle mid '07 or we were looking at those units around, I can't remember, early 2007 on.

So was it prior to your application for a job?---Yes.

Now, you've given evidence that you started thinking of leaving Baker Kavanagh in around or after you went to the World Cup so in about August or so 2006?---That's right.

10

And I think in your evidence yesterday you said that you thought that you may have first told Mr Romano about that possibility before Christmas?--- Definitely.

20

Was it possible that you mentioned it to him upon your return from the World Cup?---No, because at that point in time we were just still debating with John Baker some issues so, like I said, we exchanged emails, Mr Baker and myself in late August and September, 2006 and at that point in time I had made up my mind but until I was sure that, what I had to do, I didn't tell too many people. Well, I did tell Pat Romano prior to Christmas, yes, I told several other people as well.

And at that point in time how much knowledge about the civil precinct project did Mr Kavanagh have?---None whatsoever.

30

Now, I think you became aware from - - -?---Sorry, he was a director. We did have directors meetings. He knew that the project was on but he didn't have a hands on meeting. We did discuss the project but he didn't have any hands on relationship with the project.

So do you think he would be at all qualified to give an opinion how, what, what someone would be required to do to, to do the job of managing the project from an architectural perspective?---He'd have to start it over again for a fair bit.

So do you think though that Mr Kavanagh would know what was involved in that?---Like I said, we had directors meetings but the intricacies of the briefs and documents, some of the documents we prepared, no.

40

Now, during the course of the, you've been here listening to the evidence so far as it affects you largely. I think you've become aware through that that Maddocks Lawyers were engaged from as early as February 2007 to provide advice about the possible engagement of an in-house architect?---That's correct.

Either by way of a consultancy arrangement or employment arrangement. Were you aware that this work was being done?---No.

Did you have any discussions with Mr Romano prior to applying for the job about the prospect of doing work?---The only one, I said before, was to apply to the architects panel see if I could get onto the architects panel as Architects Becerra.

So you never made any specific request to be employed by Burwood Council?---No, no.

10 And did Mr Romano ever indicate to you that he would make arrangements to ensure that you were put on the panel?---No, because as I said before one of the discussions, I think Mr Baird said that the panel had been established, had a life to run and you just can't simply just add any architectural firm to the panel and Mr Romano agreed with it.

And did Mr Romano make any representation to you that he would get you a contract to be just a consultant on an ad hoc or basis other than the panel?--No, no, the, no.

20 No. Or that you would, he would make arrangements to ensure you were employed in house?---No.

Now, you've given some evidence just earlier that Architects Becerra Pty. Limited was registered on 13 February '07?---Yes, that's correct.

And that was to set up your new business that you proposed after leaving Baker Kavanagh?---That's right.

30 Did you have any other clients shortly after or at any time after the integration of that company?---As I said before, there were still projects that I was involved with that had other, has been submitted as development applications or in the process of being constructed. I did discuss with those clients the possibility of me leaving if they would still remain my clients. And I was formulating that for two reasons. One is to ensure myself there was ongoing work and secondly as to make sure that we had the list of clients that we were to split between Baker Kavanagh and myself.

40 So you had some clients that were previously clients of Baker Kavanagh that ultimate came over to Architects Becerra?---No, a lot of them that I fostered through the years of my working at Baker Kavanagh.

And I see the time.

ASSISTANT COMMISSIONER: Yes. We will adjourn at this stage until 2 o'clock.

LUNCH ADJOURNMENT

[1.03pm]