

MAGNUSPUB01343DOC  
16/04/2010

MAGNUS  
pp 01343-01412

PUBLIC  
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION MAGNUS

Reference: Operation E09/0560

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 16 APRIL, 2010

AT 9.30AM

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

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

ASSISTANT COMMISSIONER: Thank you, please be seated.

MS RONALDS: I call Ms Furneaux-Cook.

ASSISTANT COMMISSIONER: Yes, Ms Furneaux-Cook, you're still under the affirmation you took and the section 38 declaration still applies.

**<LESLEY MARIE FURNEAUX-COOK, on former affirmation[9.41am]**

10

MS RONALDS: We were exploring yesterday after the sequence of events around just prior to the publication in the Sydney Morning Herald articles? ---Yes.

You remember that. And were you ever interviewed by Ms McClymont from the Sydney Morning Herald?---She asked for comment but I gave no comment.

20 Right. And did you consult at some stage with the Council's media adviser about that course of conduct?---Yes, yes.

And was that what was proposed to you?---Yes, because I knew that, well, I knew that the allegations were with ICAC I felt that it would be inappropriate for me to give any comments because I didn't want to breach his confidentiality.

30 Right. And did you discuss the contact from Ms McClymont with Mr Romano prior to the newspaper articles coming out?---The first contact I had with the General Manager regarding the journalist was when the journalist left the message that they wanted to speak to me and I spoke to the General Manager about the management of that and asked for information as back up of the internal reporting policy et cetera. The next day I spoke with both the General Manger and the Council legal representatives and the media officer about the same thing but after I spoke to Kate I had no contact with the General Manager on the issue.

40 Right. And so when the newspaper articles, the first one was published on 4 April - - -?---Yes.

- - - you weren't pre-advised about the possible content of that article. Is that correct?---Well, I knew because I had taken the partial PD.

Yeah. But there were some matters that were not traversed in the PD? ---That's right, yes, there was, it was a fuller information than I had been given.

And so, so it would be correct, would it not that that's the first time you saw the extensive information?---Indeed.

And if the witness could be shown Exhibit 62.

While that's happening could I just ask you - - -?---Sure.

- - - you contacted Mr Baird to get some advice in relation to that during the week of the 30<sup>th</sup>?---Yes.

10

Had you previously had independent access to Mr Baird?---No, well, I hadn't had the need to have independent access.

And was that, was that contact organised through Mr Romano or did you just ring up Maddocks and speak to Mr Baird?---Well, he was actually in the building and I saw him and I said I'd like to speak to you please.

Right. And was that the first time you'd had a one on one with him?---I believe so.

20

Now, what I've handed you is a bundle of the newspaper articles?---Yes.

Now, the first one was the 4<sup>th</sup> which as I understand was a Saturday morning?---Yes.

And I think it was the front page as I recall?---Yes.

30

And so what did you do after you read this?---Well, I, after I read this I got calls from a number of Councillors and I said to them the matter is actually being referred to an external agency because at that time I was still waiting advice from the ICAC whether they would actually launch an investigation on the matter.

Right?---So I assured Councillors who were my first port of call that the matter was, was already in train, the allegations had already been referred to the appropriate agency and it would be better because of that that they made no comment to the press and that we would have an extraordinary meeting to deal with these, you know, the management of these issues.

40

And did you meet with Mr Baird that day, on the Saturday?---Not on the Saturday.

Were you aware that the General Manager was meeting with the Council's lawyers?---Only the, only the next day on the Sunday I received a phone call from the, Mr Baird and he had said to me that he had spoken to the General Manager and the General Manager's solicitor.

Right. And, but you didn't meet with them over the weekend?---No, I, I actually then said to Mr Baird that, that he needed to have contacted me to inform me if that was to happen and I didn't think that was appropriate.

Right. And you didn't speak to Mr Romano over the weekend?---Yes. Mr Romano called up and he, and he said that, that he was obviously very upset, he saw the, the article and he refuted the claims that were made in the article.

10 And he was quite vehement in his refuting of it?---Yes.

Right. And do you now understand that at least part of the article was correct?---Yes.

But at that stage you accepted his word?---I didn't accept or not accept his word. I, I thought that, that the best way is that there was an investigation going on. I said, okay, thank you for that but I didn't say well, I believe you or I don't believe you.

20 Right?---I don't think that was appropriate.

So you had an open mind at that stage?---Yes.

Now, I'll just show you a bundle of documents that have been put together for the purpose of this inquiry and - - -?---Thank you.

Now, on the following day, the 5<sup>th</sup>, Mr Romano put out the notice and you'll see that this is a notice, would you have seen this at the time?---No.

30 Okay. Well, I'll ask you then to turn to the next page. There was then an extraordinary general meeting on the Tuesday so on the Monday there was another article in the Herald. Do you recall that and that's page 3 of the - - -?---Yes, yes, there was, yes.

40 - - - first bundle. And then you had, you called, did you, a meeting?---Yes, I called, well, I, actually the General Manager, this is before, on the Friday before it had come out into the Herald, the General Manager wanted to have a extraordinary meeting where we discussed the operational issues to do with the restructure of the depot. I passed that by both our Maddocks and, at the time I was in Council with Craig Leggat, Senior Counsel, and we felt that that could be appropriate as long as we didn't breach the confidentiality but after the, the allegations were vented in the Sydney Morning Herald and I spoke to the Department of Local Government and we came of the opinion that it was no longer appropriate for that to happen and that in its stead we would, while waiting to see if ICAC took carriage of the matter we would set up our own conduct review.

Right. And how was it that you spoke to the Department of Local Government, was that your idea or did someone, did Mr Leggat suggest you do that or - - -?---No, no. The, the acting general, the Acting Director General at that time, which was Mr Ross Woodward, contacted me after the Herald article.

10 So he contacted you?---Yes, and he said, you know, this has been an article in the paper, what are you doing about it which was, it was a fair comment, and I, and I had told him that it had been referred to an external agency but we're waiting on information from that agency and in the meantime we've, this is what we're going to do. He had, in the discussions we said well, perhaps, you know, it may not be appropriate to talk about operational issues, I agreed. We didn't want to see Council being used as a platform for anyone either the person who had made the protected disclosure or those who were being accused and, and so we needed to set up a framework in lieu of, because we thought that ICAC may then flick it back to us as a code of conduct so we just wanted to have a structure already set up.

20 Right. And if I can ask you to turn through, just there's minutes there of the meeting. You'll see there's some handwritten, hand numbered pages down the, down the bottom. If you can turn to number page 6. Do you see that?--  
-Yes.

It says at line 5, the General Manager has indicated to me, that's you?  
---Yes.

That he will voluntarily step aside from any involvement in the management of issues to the allegations in The Sydney Morning Herald?---Yes.

30 And when you say he had indicated to you, you accepted that - - -?---Yes.  
- - - as what was going to happen?---Yes.

40 And did you discuss that with him privately?---Yes. There was a conversation with myself, council solicitors and the General Manager and his solicitor. And this was before the meeting, about the, the General Manager at the time wanted to, to make a statement. And it was decided it was inappropriate for him to make a statement in Council, that he would have to do it outside of Council. And we talked, we spoke about his, if there was any stand down triggers in the contract. But he said, no, he would voluntarily step aside from all issues related to the allegation. And I accepted that.

And what if anything did you, what barriers or procedures did you put in place at that stage to ensure that he had no ongoing involvement in dealing with the matters?---Well, I instructed Council solicitors and that was (not transcribable) I asked them firstly, this was on the 6<sup>th</sup>, this is actually before this, I asked them if, they felt that I had a conflict of any interest and I said,

no. I asked them could they give frank and fearless and advice. And they said, yes. And I asked them that there had to be an absolute demarcation between Council's interests and the General Manager's interests, even if there seemed a perception that those two overlapped, that there couldn't be. The other thing was that I was to do deal only with the Acting General Manager, Mr Ian Dencker on that, on those issues. And I was not to have any conversations or, or, I mean the understanding by the General Manager was he would step completely aside from anything associated with the depot and where we, we now knew the protected disclosure had come from.

10

And Mr Dencker was then nominated as the person to deal with it?---Yes.

In the ensuing months, what if anything did you do to make sure that that, that (not transcribable) was maintained and that Mr Romano acted consistently with his indication to you that he'd step aside?---I continually instructed the Acting General Manager, Mr Ian Dencker that every conversation that we had on the issue was in confidence. That he "could not tell Pat." And that it had to be a firewall, basically.

20

And you're aware are you not that a series of what are called section 22 notices were sent from this Commission to Council. You're aware of that occurring at the time, while you were still Mayor?---I, I understand that there was a request for bundles and bundles of information.

Yes. And the come under what are called section 22 notices?---Right.

Now did you understand that the position of voluntarily stepping aside from involvement in the management of the issues, included not having any involvement by Mr Romano in the management of this Commission's inquiries?---I would assume that to be the case.

30

Well, rather than assume, what did you do as the Mayor to, to put in place some procedures to ensure that didn't happen?---The Acting General Manager, who was Ian Dencker and Council solicitors liaised with ICAC. It wasn't the General Manager who liaised with ICAC.

Right. But do you now understand that in fact, when the first notice came through, it was immediately provided to Mr Romano?---I had, no, that is first information that I have on that.

40

So you weren't aware of that at the time?---No. No.

Because what seems to have happened is that he played an active role in being aware, for example, as soon as the notice arrived, about what the notice was for. Now, did you see any of the notices?---No.

Would you just take it from me that the notice specified information and if you look at it, you can gather what the direction of an inquiry will be because it - - -?---Mmm, mmm.

10 - - - specifies certain information, at a certain time, at certain periods of time. So that by looking at the notice you can see or make an assumption about what matters are of interest to this Commission at that time. Now are you saying that you were not aware that Mr Romano was involving himself in the section 22 notices when they were arriving?---I was not aware of that at all.

But there was no practice or procedure in place, put in place by the Council to prevent that happening?---There is, there is no policy for that, for that to happen, but my understanding would be that if an Acting General Manager is the Acting General Manager on the issues that are related to an ICAC investigation, then that is the person that that, who deals with that information, and no other.

20 Right. Because what, just so you understand what I'm trying to (not transcribable) to you?---Yes, no, I understand.

Is what appears to have happened is a complete overlap of Mr Romano's personal interests and he has used documentation from the Council to protect his personal interest. And promoted his personal interests in terms of dictating responses to this Commission. So this Commission is concerned about how that happened. How that was able to happen?---As am I.

30 So are you saying at the time you didn't know?---No.

And at the time Council didn't put, apart from this statement, which is all I've been able to find anywhere about it, that the General Manager has indicated to me that he'll voluntarily step aside et cetera?---Mmm.

40 There doesn't seem to be recorded anywhere else in the Council minutes about what process Council thought was in place after a further, more, further review of the process?---Well, we had continuous updates from, will all Council and I kept all Councillors abreast of the situation, from our legal representatives talking to ICAC, through I talking to ICAC, because I was also - - -

Yes. I know?---in constant communication as well. And that would be relayed to Council.

And when you say - - -?---But yes, we didn't have a policy.

Sorry, sorry, I didn't mean to (not transcribable). I don't necessarily mean a policy as such, I'm interested in a policy or a practice or a structure to make sure - - -?---Yeah, yeah. No, I understand that.

10 But it didn't happen?---No. But there was, as I said, if someone has voluntarily stood aside or has been caused to stand aside, and there's a person who's acting in that capacity for that matter, then to me it would be just natural that all those matters go that person and as I have said to the Acting General Manager and to Council solicitors, that there had to be a firewall, there had to be a strong demarcation between, and I believe that was in the General Manager's interest as well, between the General Manager and, and the allegations.

So you'd be surprised then that, that the Council solicitors were aware of the fact that the first section 22 notice went straight to Mr Romano?---That's new to me.

20 And that Mr Baird indeed had a discussion with Mr Romano on the day it arrived or the day, or the day after about its content?---I have no knowledge of that.

And I'm not sure if you were present when Mr Macklin gave evidence yesterday morning?---Yes, I was.

Where I think he described the stepping aside as mere as lip service?---Yes.

Was that the first time you knew one of the more senior members of staff didn't consider that - - -?---Yes.

30 - - - that this undertaking had been honoured?---Yes.

And a review of the emails that relates to various of the subject matters of this inquiry shows clearly that Mr Romano was sending emails to his private solicitor as well as to Maddocks, whereas in fact they were really obviously, where they appear to be internal staffing matters, for example. Were you aware that was happening?---No.

40 And what, as I said, what appears to have happened is a complete blurring of any distinction between his personal interests and his role as General Manager?---Mmm.

So you relied did you on Mr Romano's integrity in this matter?---I, no I had, I had the acting general manager, who I relied on. I had the Council solicitors, who I relied on. And, and I had ICAC who I relied on.

But in terms of managing it within Council obviously this Commission doesn't play any role - - -?---Yeah, I know that, yeah.



- - - in information flow within the Council, does it?---No.

It issues a request which has a statutory right to it and, a statutory basis to it which has to be responded to?---Yes, I, I understand the question, yeah.

Now, the Council is the legal employer of the General Manager?---Yes.

And the General Manager is then the legal employer of those who come behind him?---Yes, yes.

10

Now, as the legal employer when you were the Mayor what if any reviews did you have after the Sydney Morning Herald articles and subsequently about Mr Romano's performance as General Manager?---Unfortunately I had tried to put up a, a six monthly performance review on the General Manager. I, I saw that as just normal good practice but that was not supported by my fellow Councillors and it came, there was a resolution that the, there would only be the annual review. There was discussion a lot with Councillors about the, the contract but there was no, afterwards there was no other review partly, I have to say, because we knew that this, there was an investigation and we were waiting on information about the result of that. We had this framework already set up which was the code of conduct and with that we would vent any of the issues that had not taken, been taken by the ICAC.

20

And there was a point at which you were going to set up an investigation - - -?---Yes.

- - - curiously by me?---An independent review panel.

30

But all of those matters were put on hold at the request of this Commission? ---Yes, it was.

So I understand that part of the process, I'm really concerned about the internal sourcing of documents and flow of information?---Yes, no, I understand too, I'm concerned about that as well.

And it does appear that what happened was not consistent with that, with that - - -?---With that (not transcribable)

40

- - - indication which I would call an undertaking by the General Manager? ---Yes.

Yeah, would you agree that it now appears that that's what happened? ---Well, with the information you're giving me now it does appear so.

Right. In terms of the General Manager's terms and conditions, that's set by Council?---It was a standard contract.

Now, after, the day after the meeting, I'm not sure if you've still got the bundle of documents which have got the, yes, if you just look at the next page 7 you'll see Mr Macklin sends out a, an email to all staff?---Yes.

I understand Everyone BC is everyone at the Council and it's got attached to it a report by the General Manager?---Yes.

Did you see this at the time?---No.

10 Right. And have you seen it since apart from right now?---I've seen the, the report that, from the General Manager was the one that I believe he gave outside Council Chambers to, and he distributed to, to Councillors as well but that the email from Mr Macklin I have not seen.

And the report by the General Manager is, to use the word of the week, robust in his own defence?---Yes.

20 That is, that they are outrageous allegations and I will be showing them to be false so that my name is cleared as soon as possible?---Yes.

Et cetera. You'd now accept that some of these assertions are incorrect? ---From the information that's come forward, yes.

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

And when Mr Romano denied it to you you've said that you didn't form a view either way?---Yes.

30 And that continued to be your position during the course of the time - --? ---Yes.

- - - until the, well, and still now probably?---Yes.

40 Yeah. And you'll see then that at page 9 there's an email from Peter Macklin on 17 April setting out certain matters include, advising that the Mayor has advised that Council will fully support the investigation, that's this Commission's investigation by making resources available as appropriate in order to resolve this matter as quickly as possible on behalf of the community and that was your view at the time?---Yes.

And then it says the General Manager has voluntarily stepped aside in relation to these processes?---Yes.

His only involvement will be in providing information to the Commission, to ICAC. So that was the position at that stage. Did you see this before it went out?---No.

Have you, were you shown it at all?---No.

So you didn't, would it be common for statements to be put out expressing your view without you being consulted about what your view was?---That was just lifted from a, the press release.

Right?---Which I had signed off on.

10 Okay. And then if I could just ask you to turn, just ignore the next two pages. Then there's a meeting that, you see on page 12 there's an email about a meeting to be held on 11 May with the Department of Local Government?---Yes.

Can you tell the Commissioner how it was that that came about?---That was, Ross wanted an update.

Right, Ross being Ross - - -?---Woodward.

- - - Woodward?---Yes.

20 The head of the DLG?---Yes, wanted an update on how we were dealing with the matters and that's what was the meeting and it was with the two acting general, because, because there were now, you know, about three or four allegations not just the original one that I had taken there was also involved as, Les Hullick was also an acting GM as well and Ian Dencker and myself and David Baird attended.

Right. If I could ask you then to turn to the next page, there's a statement by Mr Romano dated 11 May. Do you see that?---Yes.

30 Now, this says in a handwritten note down the bottom, Pat Romano hand delivered this statement to Ross Woodward and Paul Chapman, 11/5 at a meeting with DLG. Now, that seems to suggest that Mr Romano is in attendance at the meeting?---Yes, yes, he, he attended, he made this statement and he left.

Right. So, and who invited him to the meeting?---Well, he wanted to go.

40 So he invited himself?---He invited himself but I checked with Mr Woodward, I checked with Council's solicitors. They said, and I agreed that, well, because it had been vented in the press and he felt like quote, unquote, "it was being hammered", that - - -

Was that the expression Mr Romano used about himself?---Well, no, that's my quote - - -

Right?--- - - - but that was the sense, that he was, he was being maligned in the press and had no redress - - -

Right?--- - - - that, and I said well, you can't use it as a platform, you can make a statement and leave, that was agreed. He, he made the statement, we said nothing and he left and then we continued with the meeting.

And again it's a robust defence of himself?---Yes.

And he sources the problem with his attempts to reform a culture within one small section of the Council, you understood that to be the depot?---Yes.

10 And he'd raised that with you, had he?---Only after it was raised by a union official with me, that was the first time that I knew about the depot reforms.

So you didn't have, Council wasn't being advised of the depot reforms at that stage?---Not at that stage, no.

And, because they were operational matters?---Indeed.

20 And it's correct, is it correct that the expenditure of funds on things like surveillance are not matters that would go before Council?---No, if, if that's within the budget they can be, that's operational again. They don't go before the Council.

And just to look at several different issues, you're now aware that Mr Romano authorised surveillance of certain candidates for the September 2008 election?---I'm aware of that now, yes.

You were not aware of that at this stage?---No.

30 And have you only become aware of that because of this inquiry?---Yes.

And you're now aware that Mr Romano authorised the surveillance of an individual person, of the following of an individual person?---I now know that now.

But at that stage you didn't know?---No.

And you'd agree both those issues have got nothing to do with the culture of the depot have they?---No.

40 They're decisions made by the General Manager?---Yes.

Were you aware that there was surveillance of the depot staff?---I was aware that there was CCTVs and this was, came from the union representative Wayne Moody and then I had a subsequent meeting with the General Manager that were, that there were fixed CCTVs on the, on the depot because there had been a report which showed theft in, in that area.

So that, is that what you understood to be the allegations against the staff, that there were thefts of property, Council property from - - -?---Yes, there, there was two, there was two, in our discussions with, my discussion with the general manager he - - -

And put a time on this, do you remember when this was?---Yes. This was before the allegations.

10 Okay, all right?---This was, I think I received it in mid March and the, there was what he would call a culture of intimidation and he was concerned with the safety of the workforce and also that there had been evidence of theft.

And when he said a culture of intimidation, was it correct that some people were named as bullies?---No. He didn't name anyone.

He didn't name anyone?---No.

But did you understand that's what was meant generally?---I believe so, yes.

20 And after that meeting with the DLG, did things within the Council calm down in terms of management of these issues?---Well, after the DLG meeting, what date was that?

The 11<sup>th</sup> or 13<sup>th</sup>, sorry. That was 11 May?---Well, I, look I believe that we were still getting some articles, some allegations through. So they were then passed to the, this independent review panel and we were still waiting, I think we had information around that time. I think it was 14 May or around that, sorry, the 14<sup>th</sup>, well that would've been April, that we were told that the ICAC would take carriage of all the matters.

30 And that's, that's, that was, yes, in April though?---In April, yes.

Yes. So it happened before you met?---Yes. But, but I was still dealing, all the time of my Mayoralty I was still dealing with the Acting General Manager, Mr Ian Dencker, and the Acting General Manager on the other issues, Mr Les Hullick on those issues, I wouldn't, but it didn't calm down. The bushfire seemed to have - - -

40 And what was Mr Hullick's other issues that he was general manager for? ---Well, there was a time when he was Acting General Manager, per se because Mr Romano had taken leave. So he came across all issues. But he looked at what was called the IT issue.

Right?---And what was later, the Robert Cummins issue.

Right. Now Mr Cummins lawyers sent a letter to the Council's lawyers. Do you recall that happening?---I didn't see that.

Right. I was going to say, my next question was did you see that letter at the time?---No.

Were you told about it?---No.

And so when do you say you became aware that there was a letter with some detailed allegations of, shall we call it impropriety made against the General Manager by Mr Cummins?---I was aware that there was a, in I think it was with Mr Hullick, he said that Mr Cummins had made some, a  
10 number of allegations in lieu of, of a two year payout.

But did you ask him what the allegations were?---No, I did not.

Why not?---Because I, I basically knew that everything was going to ICAC anyway. I thought that it was just, muddy the waters so much, I had no powers to investigate.

But surely you wanted information. You had a member of the executive making allegations. Did you understand the allegations were against the  
20 General Manager?---No, I did not.

So you didn't ask that?---No, I did not.

And you understood they were in the form of a letter?---No, I did not.

But you knew there were allegations, so it would be a reasonable assumption wouldn't it, that it was - - -?---No. Well this, the thing was that, that he was making, he was making certain assertions in, in lieu of, of a two  
30 year payment.

And you didn't at any stage inquire what those assertions were?---Well, I basically knew that, what they were and they were being vented in The Herald anyway.

What, someone told you they were the same ones as being vented in The Herald?---No. But I assumed that they were. But, no I did not ask. If you ask me again, I did not ask.

And you could've been completely wrong. There could've been allegations  
40 about all sorts of other things?---Yes, there could've.

And indeed they were in part?---Well, I'll find that out.

So you've still never seen the letter?---No.

Is it correct that after you became Mayor there was sort of power shift change in the Council and you became, you had less power and couldn't - -  
-?---I, I know that that was brought up, but I actually don't believe that in

one sense, because 98% of my Mayor Minutes went through unanimously. Some areas did not go through. We had an understanding amongst the parties for the sharing of the Mayoralty, but not on issues. I find that undemocratic actually, when, when there are, yeah, coalitions that the issues have to be debated. But there was I would suspect a, a more shift with the Labor and Liberals together.

10 And so when you say that you put up a six month review that was blocked, so that was one that you lost, a six months review of Mr Romano?---Well, it wasn't, I didn't put it up, I had made it an issue of conversation with Councillors.

Ah hmm?---And one Councillor brought that conversation to, as a, as a motion. And that Council not have a six month review of the General Manager and that it'd be a twelve monthly review.

And when there was a review did you participate in it?---There has not been a review.

20 Okay. And but before that what was the process of reviewing his, he'd been there for some years, what was the process? Did you know of reviewing his performance?---Yes. It was a twelve monthly review.

Conducted by the Council itself?---Conducted by an external agency with, with our review panel, who's voted on basically every year. I was on it for I think two years, in '99, 2003, 2004 and, no, 2002 and 2003, I believe. When I wasn't on Council.

30 Right?---And then we hadn't, we had conferred the new panel, which had a representative of each of the parties on it. And, but we had not met.

Right. And in terms of the library project - - -?---Yes.

- - - or the civic precinct project or whatever name one wants to give it, when you became Mayor what did you do about that project?---I put a halt to it for review.

40 Right. And do you say that halt was put in place?---On my very first meeting as a matter of urgency.

That would've been September?---Yes.

2008?---Yes.

Were you told that there was an architect employed at Council working on the project?---I was aware of that, yes.

And was there any discussion about what he would do during this halt?

---Well, the halt was, it was for the land sales.

Right?---He could still work on the library. And I also raised that with the General Manager and he said that there were, there was a number of projects that he could do. It wasn't, not going to be a long review. Anyway, in the end it was I think six, six or seven weeks. And there was 1-7 Elsie Street and was other, other projects that the architect could deal with. I, I asked that question to the General Manager.

10 Right. And he said there was other work that he could do?---Yes.

And there was a review and then it went ahead. Is that correct?---Yes.

Was it modified in any (not transcribable) after the review?---Yes. Yes.

How was it changed?---The size of the, the floor space was reduced. We also made a decision that we would only build to what, we had a number of land sales, and we would only build to what the, the money that we got from the land sales and there would be no borrowings.

20

Oh, right. And, I'm sorry, Commissioner, if I tender that bundle of documents. I was remiss, which is The Sydney Morning Herald responses, responses to The Sydney Morning Herald.

ASSISTANT COMMISSIONER: That will be Exhibit 197.

30 **#EXHIBIT 197 - NUMEROUS EMAILS RE SYDNEY MORNING  
HERALD ARTICLE TOGETHER WITH EXTRAORDINARY  
COUNCIL MEETING MINUTES OF 7 APRIL 2009**

MS RONALDS: Now, shortly after you became Mayor, that is on 30 September, 2008, you had a meeting with Mr Romano. Do you recall that? Which was about his employment?---I had a meeting with Mr Romano about his employment. I met with - - -

40

On 30 September, 2008?---No, I can't recall that. I mean, I, he welcomed me into Council and I had a meeting with him.

All right. Well, I'll show you a note and this is from his diary?---Yep.

And I assume it's therefore in his handwriting, where he set out his version of what happened?---Sure. Yep.

And if I could ask you just to have a look through it and see if that refreshes your recollection about what, you see the bit down the bottom? So there's a



matter, meeting with the Mayor. First one is status of my contract. Do you see that? And then there's a number of other things?---Yes.

And then there's a diary note - - -?---Yeah.

10 - - - "Raised issue of my employment, offered to mutually agree to separate using payout clause in my contract."?---I recall that, that, I don't, that, that second part I don't recall but I do recall that the General Manager said, Look, you know, if you want me to stand aside I will. And I said, Well look, I'm happy to work with you at the moment. And that's exactly what I said.

But you were not interested in making major changes in the short term. Then he says he reoffered suggestion to confirm her response?---Yeah.

And she advised that she was happy to work with me for the moment? ---Yes.

20 So is that a note that accords with your recollection of the conversation? ---Yes. No, I believe that is true.

And did you understand he was offering that - sorry, I withdraw that. Were you surprised by that conversation - - -?---No, not really.

That he appeared to be offering to resign? Is that not how you read it? ---Well, yes, I, well, whether he would've is - I don't know if he would've but he did make that, he did make that offer.

30 And were you surprised by that at the time?---No, not really.

Why not?---Because he knew that there was issues that he and I had divergent views on.

Right. And what were they?---The civic project.

You didn't want it, like it or - - -?---I was concerned about the cost of it and also the town centre LEP which was the development issue.

40 And as I understand it it's now been put on hold. Is that correct?---The LEP is with the Minister.

No, no, no, sorry, the library project?---The library project we're going to, to look at again to see if the information that we've received is appropriate.

If I could tender that diary note.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 198.

**#EXHIBIT 198 - DIARY NOTE OF MR ROMANO RE MTG WITH  
MAYOR 30 SEPT 08**

MS RONALDS: I have nothing else at this stage.

ASSISTANT COMMISSIONER: Thank you.

MS RONALDS: I think some of my friends will though.

10

ASSISTANT COMMISSIONER: Sorry?

MS RONALDS: I think others will. I don't know, they may not.

ASSISTANT COMMISSIONER: Does anybody wish to cross-examine Ms  
Furneaux-Cook?

MR NEIL: Ms Furneaux-Cook, I act for Mr Baird. Do you understand  
that?---(NO AUDIBLE REPLY)

20

The meeting of 30 March, I think it was that date, you say you met Mr Baird  
in the premises and asked him for, to talk to him. Is that right?---Yes.

And could we take it that the information you received about protected  
disclosure had caused a considerable amount of concern?---On the 30<sup>th</sup>,  
what date was that, was that the Monday?

30

The Monday I think is the 30<sup>th</sup>, some time before that you've been first  
involved in this protected disclosure matter?---Yes. But the conversation I  
had with Mr Baird at the time was he asked me had I received any  
information. This was I think on the 31<sup>st</sup> or the 30<sup>th</sup> and I said, Look, I was  
collecting more information but I hadn't heard from the press. And that was  
all I spoke to him about.

But up to, before that you had been involved in some activity, you'd been at  
home I think making inquiries?---Yes.

40

And when was the conversation you had with Mr Baird about getting a  
second opinion?---That was either on the 1<sup>st</sup> of the 2<sup>nd</sup> which was the  
Wednesday or the Thursday.

Right. Had you asked to see Mr Baird?---I don't believe so, no, he  
contacted me.

All right. Now, at this stage however you were treating the matter very  
seriously?---Yes.

Had you by the time you spoke to Mr Baird made any contact with this Commission, the ICAC?---I contacted them on the Monday.

And was that to, as part of your inquiries of different organisations or persons to help you work out what you should do about the matter?---Yes, to give me a road map.

Yes. Now, when you spoke to Mr Baird did you tell him that you'd been in touch with the ICAC?---No.

10

Thank you. Now, in discussions with Mr Baird was the topic of a possible protected disclosure inquiry by you or the Council discussed?---Could you say that one again?

Was the topic of a protected disclosure inquiry by possibly yourself or the Council discussed?---That was discussed on the Friday before I had, no, on the Friday just after I'd spoken to Kate McClymont.

20

Did you discuss that possibility with Mr Baird?---Yes, I, I asked him what are my responsibilities as the Mayor with protected disclosures.

Because it might've been that the disclosure was being made to you or the Council and the Council might conduct a possible inquiry into the matter? ---I, I was after information about my responsibilities, responsibilities and duty as Mayor and how we would manage if someone wanted to - because at that time Kate had said that they didn't want to make it on site in Council offices so I had spoken to David and he said, Well, what about if we had it at Maddocks off site. And, and to put that to the person making the protected disclosure.

30

Yes. But what I'm seeking to ask is this. One of the options that was being considered was that it might be that you or the Council would have to conduct an inquiry into the subject matter of this protected disclosure?---Once, once we knew, yeah.

Yes?---Yeah.

Now, another possibility that - - -?---But we didn't discuss it.

40

- - - you discussed did you not with Mr Baird was the possibility that the Council might conduct what's called a Code of Conduct inquiry?---That was after the allegation had been, I sent it to ICAC.

All right. About when did you discuss that possibility with Mr Baird? ---That was around towards the end of the week of the 3<sup>rd</sup> of 4<sup>th</sup>, around that time we started to say because we hadn't heard from the ICAC we said well, we, we know that the media may do something so we really need to have a framework.

Right. At this stage there was, you didn't have much information to go on. Is that right?---No.

And you to the extent you spoke to Mr Baird but trying to work out what was the best and most appropriate way to respond to the situation that had arisen. Is that right?---Yes.

10 Now, can we take it that at the time that you spoke to Mr Baird that when he mentioned seeking a second opinion that was about 1 April was it?---Would be about the 1<sup>st</sup> or 2<sup>nd</sup> of April, yes.

Thank you. And where did that conversation take place?---I believe that was over phone and I was in my Mayoral office.

And which is the conversation you mentioned that had some robust discussion?---That was on the 1<sup>st</sup>.

20 Right. But you think that was on the telephone?---I believe it was.

All right?---It could've been.

Now, did Mr Baird say to you things along the lines that he thought that you understood that he had a close relationship with the General Manager?--- Could you say that one again?

30 Did he say something along the lines that he thought that you understood that he had a close relationship with the General Manager?---Yes, I put that to him on the 6<sup>th</sup>.

But did he say to you that he was, his role was to give the Council the best advice that he could?---Yes, he did.

Because he was a solicitor acting for the Council as such. Is that so?---Yes, he was.

With his firm Maddocks?---Yes.

40 And not a personal solicitor of either you or Mr Romano?---(not transcribable).

However he had, can I take it as you understood it in terms of doing work for the Council had access to you and the General Manager?---Yes.

And had no doubt taken instructions from you on matters previously?---Not from me directly, no.

All right. But you knew you could give him instructions did you not?

---Yes.

And did you anticipate that he must've taken some instruction on various matters probably over a number of years from Mr Romano?---Yes.

Now, did he say to you that he thought that if there was to be an inquiry in relation to a protected disclosure it was his view that the person involved ought to be informed of the matter, that is, that the person about who the complaint was made should know about it?---That was his belief, yes.

10

Did he express - and this is at what meeting?---That was I believe the 1<sup>st</sup>.

Right. Is that on 30 March or is it 1 April?---1 April.

Thank you. Did he express the view to you that he thought that if there was to be a protected disclosure inquiry the person who was the subject of the inquiry ought to know what the nature of the allegation was?---Yes. That was his belief.

20

Thank you. Let me ask you this. If the Council had conducted a protected disclosure inquiry if the Council were to conduct it or you would expect at some stage the person the subject of the complaint would have to be told what was alleged then wouldn't they?---Yes. Yes, at some stage.

And if a code of conduct inquiry was to be conducted by the Council you'd expect that at least at some stage the person the subject of the complaint would have to know what it was about, wouldn't they?---At some stage, yes.

30

Now, but when if at all did, did you ever tell Mr Baird that the ICAC was involved? I understand you didn't tell him initially. Did you ever tell him at some later time?---Eventually I did when I, I asked the ICAC whether I could say that they were the agency.

Right. Now, that was after you had these discussions with Mr Baird on 30 March or 1 or 2 April?---Yes, yes.

Thank you. Now, did Mr Baird say to you that as part of his duties in acting for the Council if you have any concerns about what he was advising it would be helpful to obtain a second opinion?---Yes, he did.

40

And did he through his firm Maddocks, as far as you knew, brief eminent learned Senior Counsel Mr Leggat?---Yes.

And did Mr Baird say to you that he was, he would be prepared not to attend the conference?---He did not attend.

But did he say he would not attend?---Yes.

Did he say that in order to, did he say anything that, that he felt that if you wanted more comfort he would not attend the conference?---That's right.

And that you could see Mr Leggat either by yourself or with somebody else?---Yes, he did.

Thank you. Now, thereafter did you at some stages, as you understood it, you or the Council obtain advices from Mr Leggat?---Yeah.

10 I don't have to go into details of them?---Yes.

And as things were developing did at some stage, did the Council, I withdraw that. Did you have discussions with Mr Baird about the possibility of a code of conduct inquiry being conducted?---Yes.

Did Mr Baird make plain that neither he nor his firm could be part of the - - -?---Yes.

20 - - - panel that was involved in that?---Yes.

Yes. And at some stage was there discussion about an independent inquiry being conducted by a senior counsel?---Yes.

And as I think we know, that Mr Baird through Maddocks briefed learned and eminent Counsel Ms Ronalds to conduct the inquiry?---Yes.

Correct?---Yes.

30 And did you know of that?---Yes.

And was that as part of a process of trying to be as transparent and open about the matter as possible?---Definitely.

And can you recall approximately when it was that Ms Ronalds was briefed?---No, I can't, it would have been in mid April - - -

All right?--- - - - I would think.

40 And I think around about 8 May her, she advised, this appears in Exhibit 191, Commissioner, according to a letter there or a quote from a letter she advised Harmers on 8 May that her investigation had been suspended? ---Yes.

Does that accord with your recollection?---Yes.

Now, had it been proposed that that inquiry, I withdraw that. Was that potential inquiry of Ms Ronalds suspended on account of the ICAC indicating it would take up the matter?---Yes.

Now, did you ever attend any conferences with Ms Ronalds?---No, I, I requested to but it was felt that it was not appropriate.

All right. Did, were you ever aware of any advice given to Council through Maddocks by Ms Ronalds regarding any correspondence received from Harmers, the solicitors for Mr Cummins?---No.

All right?---Could you say that one again, please?

10

Were you ever made aware of any advice, I don't ask for the contents - - -? ---Yeah.

- - - given by Ms Ronalds to Council through Maddocks relating to any correspondence that had been received from Harmers, the solicitors for Cummins?---No.

20

All right, thank you. Now, did you obtain the assistance of Mr Baird to draft some of the resolutions which related to cooperating with ICAC? Did Mr Baird assist you with that?---The resolutions as in the resolution to, as in the press release or the resolution in, of I think 14 May that were put up - - -

Well, the (not transcribable) press releases?---Yes, yes. I, we always cleared them by, by Maddocks.

Did Mr Baird make plain to you that the fullest cooperation should be given with all authorities including this Commission?---Yes.

30

And I suppose at the very early part of the matter in, in 30 June and early in April the, did you know at that stage the subject matter of the complaint, who the person was?---Sorry, what date was that?

When you first - - -?---I have only found out through this inquiry now.

I see, you didn't even know at that time who the person was alleged to be the subject of the complaint by the protected disclosure?---That's right.

I see. Did it occur to you that it might have been the General Manger? ---The subject of the complaint?

40

Yes?---The subject of the complaint I knew was to be the General Manger.

Right?---But the person who made the protected disclosure I did not know the identity.

I see. So at that stage you had, did you not, a difficult situation, you've got a protected disclosure that you understood was about the General Manager, correct?---Yes.

You, can I take it you didn't tell Mr Baird that it was the General Manager who was the subject of the matter at the early discussions?---That's correct.

All right, thank you. Now, and did Mr Baird continue to act for you in respect of dealings with public presentations of the Council's position, press releases and the like?---Yes. He worked in Council's interests, yes.

10 And did he, he continued as Council's solicitor I think with Maddocks through to about June or July of 2009. Is that so?---Yes.

And did you consult him on matters relevant to ongoing inquiries?---This issue, yes.

And did he provide you with what you understood to be competent professional advice?---Yes.

20 And did he, was he still the solicitor of the Council when he went across to HWL Ebsworth in, in the middle of 2009?---Yes. He became part of the, he had to re-tender but he took only the matters that he had been dealing with from Maddocks.

Thank you. And did you have dealings with him thereafter in terms of legal matters or not?---Well, no, after that time I haven't had contact with him.

30 All right. Now, at the time of the issue of a section 22 notice did you know whether or not Mr Dencker, although acting General Manager, was actually available to deal with the matter of the section 22 notice when it came in? ---In, in what sense available?

Was he, was he present at the Council or was he on leave, was he available to attend to that matter?---Well, I believe he would have been, he was the Acting General Manager.

Did you have any understanding as to whether Mr Hullick assisted him in that regard?---Well, by that time there was two Acting General Mangers and I assume he would have, on the matters that if they were pertaining to allegations that were within Les' scope.

40 And who were the two?---Well, there was allegations regarding election impropriety, there were allegations regarding the, a cabinet, there was allegations regarding the Audi and there was the original driveway and the, from the depot. So there were a number of allegations which, which crossed over different service areas of Council.

Were the two Acting General Managers Mr Dencker and Mr Romano or Mr Dencker and Mr Hullick?---No, the two Acting General Managers were Mr Ian Dencker and Mr Les Hullick.



Thank you. Do you know when Mr Hullick became in fact an Acting General Manager?---I think it was, it would have been in early April.

Thank you. Yes, thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you.

MR HANLEY: Counsel assisting, might I have leave to appear again for Mr Child and might I ask a question?

10

ASSISTANT COMMISSIONER: Yes, certainly.

MR HANLEY: Ms Furneaux-Cook, when you received the protected disclosure on the telephone, the first time, you weren't told the identity of the person making the disclosure were you?---No.

But you were told the nature of the disclosure?---Yes.

20 And to such an extent that you could identify that it must've been a worker who worked for the Council?---Yes, that it was from the depot. Yes.

From the depot?---Yes.

That was clear to you from the information provided?---Yes.

And you understood that the, the nature of the protected disclosure was in effect to protect the person making it?---Yes.

30 And you, the disclosure was being made to you to facilitate that person who was making it?---Well, the full disclosure was not made to me. It was a part disclosure. I then tried to set up a meeting with Maddocks, that didn't happen. And then with the ICAC. And then it was decided that it was better that the full disclosure be made to the ICAC. So I had a part disclosure, not the full disclosure.

Okay. You had a part disclosure?---Yes.

40 But you understood the person who was making the disclosure had concerns and wasn't giving you his identity?---That's correct.

And when you suggested Maddocks be involved - - -?---Yes.

- - - the person making the disclosure to you, I want to suggest said that they were concerned about that particular firm of solicitors being involved?  
---Yes.

Did they, were you told why they were concerned about that firm being involved?---I, they said that they believed they were too close to the General

Manager and that the information, the, that confidentiality would be breached.

Were you aware at the time that there was a panel of solicitors that the Council could go to to seek advice from?---Yes.

10 In view of the concern that the person making the disclosure to you had about Maddocks, did you consider seeking advice from a firm other than Maddocks?---Well, that's why I did not tell Maddocks. I did not tell Mr Baird. I didn't use Council solicitors at that time and I only spoke to the ICAC.

But did you seek advice from another firm on the panel that Council used? ---No, I did not.

So when Mr Baird rang you on 1/4/09 and spoke to you about Pat Romano being concerned?---Yes.

20 You hadn't disclosed to Mr Baird in any way the nature of the complaint made by the person?---No, not from the conversation on the Saturday, no.

Nor that Mr Romano was in any way implicated?---No, that's right.

So did you ask Mr Baird why he was saying that Pat Romano was very concerned?---Mr Baird was aware that there had been, as was the General Manager, was aware that there was a complaint going to be made to me because the journalist had contacted the office.

30 But you hadn't discussed the nature or extent of it with Mr Baird at all? ---On the Friday before, after I took the complaint from, after I took Kate McClymont's number and I spoke to her before I made the complaint, before I heard the complaint, I spoke to David in confidence and in private. And I said that there had been, there was going to be a complaint made to me and it was about a, a senior officer in Council.

Well after you'd received the telephone call from Mr Baird on the 1<sup>st</sup> of the 4<sup>th</sup>, you received an email on the same day from Mr Romano?---Yes.

40 Raising the same problems or concerns about natural justice in relation to Mr - - -?---It wasn't an email. He - - -

He rang did he?---He rang.

My apologies?---Or I rang him.

Okay. In view of those calls and the concerns that you've said the person making the partial disclosure to you about Maddocks, did you at that stage

think it appropriate to brief another firm of solicitors on the panel?---No, not at that stage. I was waiting on the information from the ICAC.

But did you have a meeting with Mr Baird about this matter prior to seeking advice from Mr Leggat, as counsel?---No, not on the matter.

You understood though that the meeting you attended with Mr Leggat on 3 April, 2009, was by way him being briefed by Maddocks?---Well, I briefed Mr Leggat.

10

You briefed him?---Well, I told, I understood that, that Maddocks was the, the channel for me to see Mr Leggat, but it was my information that I was giving to Mr Leggat.

I understand that?---Yeah.

But you understand that Mr Leggat was a barrister and he was being briefed by a firm of solicitor being Maddocks about the matters you wished to discuss?---Yes.

20

And consequent upon Maddocks role in that, Monica Kelly from that firm was present at the time - - -?---Yes.

- - - with Mr Leggat and she took notes?---Yes. But they were in confidence.

You told Mr Leggat did you the nature of the partial disclosure?---I did not.

30

So you didn't tell him it was about work being done property - - -?---No.

What did you tell him then?---I, the question was, was there a trigger for Mr Romano's natural justice. It was a question about the interpretation of the trigger or whether I should reveal the allegation. I did not reveal the allegation or who it was about or the nature of the allegation even to Mr Leggat, because I felt that I was still bound by the confidentiality of that, that person. It was more the interpretation of, of the trigger.

So you didn't tell Mr Leggat the details of the partial disclosure or where you believed it may have come from?---That's right.

40

Okay. Thank you.

ASSISTANT COMMISSIONER: Yes, anything else.

MR GELBERT: Commissioner, look I act for Mr Giangrasso. I just want to just ask you about one particular incident. I want you to turn your mind back to 25 April, 2009?---Yes.

That was Anzac Day?---Yes.

Do you recall being approached by an individual on that day?---Yes, I was.  
Yes.

Can you tell the Commissioner what happened on Anzac Day?---I was  
approached by, I had a function for Anzac Day, I was approached by who I  
now know is Giangrasso. I didn't know who he was before. And he said  
that he felt that ,that he was being intimidated by Council. He said that he'd  
10 made a disclosure to the ICAC.

Okay. I'll just to you stop there. So he didn't identify himself as, by  
name?---No.

But he identified himself as somebody who had made a protective  
disclosure?---Yes. Yes, I believe so.

Okay. Sorry, continue?---Yes, and so it was a very brief conversation and I,  
and I said, well, look I'm going to report this back to the ICAC.  
20

Did he express to you concerns about being (not transcribable) any sort of  
intimidation or harassment?---Yes, he did.

As a result of his protective disclosure?---Yes. That was his, that was what  
I felt he was saying to me.

Okay. And so you indicated to him that you would report it to the ICAC?  
---Yes.

30 And did you do that?---Yes.

And was there any other communication between the person you now know  
as Mr Giangrasso after that date, the 25<sup>th</sup>?---I don't know if it was him, I  
actually, as I said, I, this is what always made it very difficult. I had no  
information about actually who the people were who made the protected  
disclosure. And this made my job in protecting them incredibly difficult  
because I, I actually didn't know who I'm supposed to protect. But I had  
another anonymous phone call from a gentleman, I don't know if it was now  
Mr Child or Mr Grasso, saying that they had received a letter and, and I then  
40 contacted the ICAC. I also contacted, spoke to my Acting General  
Managers and made it clear that they, there could be no intimidation of  
anyone in the depot. And their response was, we don't even know who the  
person who's made the protected disclosure.

Okay. So when Mr Giangrasso approached you on 25 April, you  
understood that he was coming to you for, in effect, protection?---Yes.

Okay. And your response in relation to him seeking protection was solely almost to reflect this to the ICAC. Is that - - -?---No. Yeah, well, I had a discussion with the ICAC on that day, on the 28<sup>th</sup> actually because the - - -

What did they say to you?---Sorry.

10 Did they give you some suggestions on how to respond to that?---Yes. Well I put two questions to them. I said, well, how, what are my duties as a Mayor, how do I protect if I don't know who I'm protecting? I also put to them, how do we, because there had been these allegations of theft in the workplace, how do I protect the, the ratepayers from theft if the, if that is, how do I protect criminality plus the person who's made the protective disclosure? Do those, those issues overlap. Now I was told at that time, and that was on the 28<sup>th</sup>, that there was nothing more that I could do. That, to keep diary notes, which I did. And that they were aware of this and that - - -

20 That the ICAC was aware of this?---Yes, and if I received any further complaints that I would just channel them straight to the ICAC and that's exactly what I had done.

Thank you?---Thank you.

ASSISTANT COMMISSIONER: Yes. Mr Eurell?

MR EURELL: Thank you, Commissioner.

Just following on from that point, when did you first go to the ICAC?---I didn't go to them, I contacted them on the Monday, the 30<sup>th</sup>.

30 Of?---Of March.

Did anybody from the Commission or the Department of Local Government ever suggest to you that it might be a good idea to appoint an independent lawyer to assist managing the investigating being conducted by the Commission?---No. Well, we had, we had a senior counsel that we had as an independent - - -

Yes?--- - - - who would have meetings with the ICAC.

40 Were you ever offered assistance by either the Independent Commission Against Corruption or the Department of Local Government about managing this inquiry internally?---My conversations with them helped me in my decisions for management but there's no physical assistance.

You said that, I think the date you said you went to the meeting with the Department of Local Government was 11 May?---I had two meetings with them.

Yes, what were the dates?---I can't recall. One was around, was around May and the other one was in early April.

And Mr Hullick wasn't at that meeting?---The first one it was only myself and the Deputy Mayor at that time, it was Mr Henson Liang.

You, was it you who asked Mr Hullick to look at the IT issue as General Manager?---As Acting General Manager.

10 As Acting General Manager, yes?---I can't recall if I, if it came from me.

During the time that Mr Hullick was acting as General Manager or in fact Mr Dencker was acting as General Manager, because I think there was an overlap - - -?---Yes.

- - - did anybody from the Commission ever raise concerns with you that the Council was not complying with requests made to produce documents or cooperating with the inquiry generally?---No, not at all.

20 At that point in time the Commission was certainly aware that you were prepared to accept advice from them about managing the investigation?  
---My main thing was for us to cooperate as fully as possible.

As at April 2009 you didn't know who had made the protected disclosure. Is that the evidence you gave a bit earlier?---Yes.

You now understand it was Mr Cummins?---That made - - -

30 You now understand that Mr Cummins made a protected disclosure?---Yes, I do understand that now.

Prior to April 2009 had Mr Cummins ever come to you with allegations or make any indication to you that he wished to make a protected disclosure to you?---No.

How would you characterise your relationship with him both throughout 2007 and then during the period in which you were Mayor from September 2008?---I, I had no contact with him. In 2007 I wasn't on Council - - -

40 Right?--- - - - and I started on Council basically October, November. I think I had very little contact with, with Mr Cummins. He was there with out, we had our corporate workshops which I think was in December and then no further contact.

You had certainly never had any problem with Mr Cummins?---No.

Never had any disagreement with him?---No.

Would you be surprised to learn that he would not have been comfortable to come to you and make a protected disclosure?---Yes.

And you understand that when Mr Hullick was Acting General Manager and the issues, the complaints raised about discrimination and bullying by Mr Cummins were made he went to learned senior counsel now assisting this Commission, Chris Ronalds, for advice?---Yes.

10 And - - -?---No, could you say that one again, that - - -

Learned senior counsel for - - -?---No, no, the beginning of the a question.

The question I'm asking is you is do you understand that senior counsel assisting this Commission, Chris Ronalds, provided advice to Burwood Council about the matters contained in the letter from Harmers relating to bullying of Mr Cummins?---No, I have no, I did not have any information.

20 Do you understand that Mr Hullick went and had a meeting with Ms Ronalds regarding those matters, had a conference?---Well, I know that, that there was a conference with senior counsel and also Mr Baird and Mr Hullick and Mr Dencker.

Yes. Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you.

MS RONALDS: Now I have to ask something because now we're all confused except my friend.

30 MR EURELL: Well, maybe I'm confused.

MS RONALDS: When you earlier said you'd now understood, you now knew the identity of the person you'd spoken to who'd made the protected, the partial protected disclosure to you on the Saturday, did you understand that to be Mr Child?---I now know that to be Mr Child.

40 It's just been put to you that it was a protected disclosure from Mr Cummins, that's not your understanding?---No, no, no, no. I never received one from Mr Cummins.

It was from Mr Child?---Yes, no, no.

(not transcribable) everyone else in the room except Mr Eurell is on the same page and you now understand that it was Mr Child who spoke to you? ---Yes, yes, I do now.

Thank you.

ASSISTANT COMMISSIONER: Thank you, all right. Well, if there's nothing else, Mr Blake.

MR BLAKE: Ms Furneaux-Cook, Mr Romano I think you said offered to resign when he spoke to you after the election in 2008. Do you recall that?  
---(NO AUDIBLE REPLY)

10 And you and he had disagreements both about the Burwood Town Centre LEP and the civic precinct project?---Well, not disagreements, we had different views.

Different views, yes. And you at least had reservations or were opposed to the matter proceeding and Mr Romano was an enthusiastic supporter, would that be accurate?---It was his baby, yes.

Yes. And when did, when were you installed as Mayor, if that is the right word?---I don't what, installed, perhaps the 30<sup>th</sup> of, it was right at the end of September, 30 September, 2008.

20 And the practice of meetings between yourself as Mayor and Mr Romano did that commence at that time or some time later?---I requested that I'd like weekly meetings with Mr Romano and they started I think quite soon after and there was also agreement that they would be, he would then give me a report from those meetings and we'd updated, that took a little longer to eventuate but that would be updated and then those meetings went to fortnightly meetings.

30 And when did they become fortnightly?---I think probably around maybe February, I, I, around that time.

And the report that Mr Romano provided after those meeting was in writing?---Yes.

And was the nature of the report to summarise what had been discussed and answer any, give any further information?---Yes, and to update, to any, obviously I wanted to know what were the current issues in Council and to update me and, and then, so they wouldn't be, those actions wouldn't fall off the page so we could keep a running tally of, of the issues.

40 And at least up until April 2009 the differences of opinion regarding the civic precinct project and the Burwood Town Centre LEP continued with Mr Romano didn't they?---Well, the, the Town Centre LEP was really, that was a difference of opinion. It was not a, in either of our control anymore because we had a panel so there, there was no influence either of us could, could, could bring to each other because it wasn't our call anyway.



Yes, I understand that but the, at least about the Burwood Town Centre LEP, the difference of opinion was maintained over that six months even though neither of you could influence - - -?---Do anything about it.

Do anything about it?---Well, yes, he wanted tall buildings I didn't.

10 And the differences of opinion also about the civic precinct project continued, didn't they?---I, actually that's not quite true. I still, I wanted evidence that we could bear the cost, I wanted to know the risks involved and that we, and that we had set up a probity panel and I wanted information from them. So I, it was based on evidence, I, I, I still have reservations about it but, but I think that it's a needed project, we need a library in Burwood, I think that's a no-brainer.

Sorry. You certainly had a more cautious approach to the civic precinct project?---A more conservative approach, yes.

20 Yes. Than Mr Romano. And that was discussed from time to time in your weekly and fortnightly meetings wasn't it?---The update of the civic, yes.

Yeah. And would it be fair to say that your meetings with Mr Romano were not always easy were they?---I, we never had the arguments that appears to have happened in other quarters but they were coolly polite.

Yes. And I suggest that Mr Romano was concerned that, and he expressed this in some meetings to you that things that had been discussed between you found their way into local newspapers?---I have, I don't recall him doing that and I would never do that.

30 And you said you received an email. Can Ms Furneaux-Cook be shown Exhibit 196 please. That was an email that you had received from your personal assistant as Mayor?---Yes.

And how long after that email did you have the telephone call with Mr Romano?---Not long after.

So the same day?---Same day.

40 Same day. And you, did you ring Mr Romano or did he ring you?---I rang him.

Right. And you asked him why he goes to the meeting?---I expressed my disappointment.

Yes?---Yes.

And he said to you that he no longer had trust in communicating information to you?---He didn't trust me and he believes that I should tell him who the allegation was about.

And I suggest that he said he didn't trust you because issues that he had talked to you about in meetings had found their way into local papers?---No, he did not say that to me.

10 And he said he found this distressing and that he thought that you had breached his trust?---No, he did not say that to me. I don't recall him saying that to me.

And I suggest that you said to him that he was being unfair?---I can't recall saying that to him. I've got my notes and they don't record that at all.

And you said you thought you had a good working relationship that should continue?---Yes, I said that.

20 And Mr Romano said he didn't think it was workable any longer?---Yeah, he probably said that.

And you said as Mayor you wanted to be briefed?---Yes.

And Mr Romano said he was happy to provide you with the usual fortnightly reports in writing?---I haven't got that in my notes but they didn't then come forthcoming anyway.

30 No, but I suggest he offered to provide written reports to you?---He may have but I had not that, record that in my notes.

And you expressed some concern about that because you wanted to ask questions?---As I said I haven't recorded that in my notes.

And he said he'd be happy to answer the questions if you wrote them down?---He possibly did. As I said I can't recall that it wasn't in my notes.

40 And you said you weren't really happy with that approach that he was suggesting?---As I said, it's the same line, that could've happened but it was not recorded in my notes and I can't recall that.

And Mr Romano said that he wouldn't change his mind and that what had been communicated to you about cancelling the fortnightly meetings would be his position?---As I said it was not recorded in my notes.

Yes. Nothing further, Commissioner.

ASSISTANT COMMISSIONER: Thank you, Mr Blake. Yes, Ms Berglund.

MS BERGLUND: After you received the phone call which you understood to be (not transcribable) protected disclosure how did you see your role in relation to the person that contacted you?---Well, for me my role was to - and this is set-out in, in legislation is defined - to collect the information as much as possible and to find the right channel. So it could be - based on the information it could be the DLG the Department of Local Government or could be the ombudsman or it could be ICAC or it could be our own Code of Conduct. So I had to assess the information but I was the channel in a sense for the information.

10

Did you understand that you had any powers other than being a channel as Mayor?---No, no (not transcribable).

You were shown - I don't think there's any need to show you the documents again but you were shown a bundle of documents which included amongst other things some emails from Peter Macklin to the entire staff?---Yes.

And you gave evidence that you hadn't seen those before today?---That's correct.

20

Would you ordinarily seen emails - - -?---No.

- - - which were sent from the director to the staff?---No.

And would you ordinarily either as Mayor or just as a regular councillor see documents that came into Council such as letters from lawyers addressed to the Council?---No. No.

30

Or notices to produce or documents about (not transcribable)?---No. I, I was aware that Council had been asked to produce information and I said that we have to fully comply but I didn't see the actual email.

And it doesn't surprise that you hadn't seen the notice or the email?---No, it doesn't surprise me because that was the daily operations and, and there was little I could do, they were, the Acting General Manager's would be collecting the information.

40

And finally again, I don't think there's any need to produce the document but you were shown a Mayoral minute which I think for the record became Exhibit 195 which you introduced in January 2009?---Yes.

What is your understand of the current status of that Mayoral minute?--- Well, that's a resolution of Council so it is just waiting in the wings and it's my understanding that, that it will be triggered as soon as this investigation is complete.

And when you say triggered can you just elaborate on what your understanding - - -?---We, we have three, two, two independents and they

can't have worked in Council for the last two years to look at a structural review and an internal audit function and a risk and reporting mechanism of functions and also to, to, to do what is called the Health Check which is from the Promoting Better Practices which is the Department of Local Government best practice guidelines.

I have nothing further.

ASSISTANT COMMISSIONER: Thank you.

10

MR LEGGAT: Ms Furneaux-Cook, the Council's internal reporting policy, I want to get some comments from you as to how it operated practically?  
---Yes.

If there's anything we can learn from that. Exhibit 121 is where it's found. Perhaps if it's possible to either put that exhibit in the hands of the witness or to have clause 7.5 on the screen please.

Ms Furneaux-Cook, the policy is about 15 pages from the end of Exhibit  
20 121?---Thank you. This is the policy?

Yes. You'll find it about 15 pages from the end?---Okay. Yes. I have it.

(not transcribable) reporting policy protected disclosures act 1994?---Yes.

Can I ask you turn to page 10, please?---Yes.

Thank you. You'll see there 7.5 which is headed The Mayor. The Mayor  
30 may receive internal disclosures from any member of staff of Burwood  
Council or any Councillor concerning the General Manager or a Councillor.  
The Mayor will, and then there's a(i) partially assess whether the disclosure  
appears to be a protected disclosure within the meaning of the act. Now,  
can I invite you to keep that provision open and have a look at clause 5.2,  
which tells you as the Mayor about protected disclosure?---What page is  
that on?

That's on, it starts on page 6 and goes over to page 7?---Yes.

Now you'll see 5.2 on page 6 it says what disclosures are not protected?  
40 ---Yes.

Disclosures not protected under the act in certain circumstances and one of  
those circumstances on page 7, where the disclosure is made solely or  
substantially with the motive of avoiding dismal or other disciplinary  
action?---Mmm.

Now, did it create any practical problems for you given that there was a suggestion that the, at least from Mr Romano, that the disclosure was triggered by disgruntled employees - - -?---Yes.

- - - at the depot trying to avoid disciplinary action and therefore there may not even have been a protected disclosure?---Yes.

10 Was that an issue that was raised?---Well, that was an issue in my mind, but when I, and I put this (not transcribable) to the ombudsman and to, and in my mind, and to the ICAC and basically it was decided to err on the side of caution and, and consider it as a protected disclosure.

Back on 7.5, the next step that you have to do is set out in (ii) of clause 7.5(a), you had to impartially assess the disclosure about the General Manager to determine the appropriate course of action to be taken in relation to the disclosure. Now it says there in consultation with the General Manager, if appropriate?---Yeah, well, that wasn't - - -

20 (not transcribable), yes. Now but the third dot point, one of the potential courses of action available to you was to be without a preliminary or informal investigation. Do you see that?---Yes. Yes.

And it's your understanding that by retaining the services of, of learned senior counsel assisting, Ms Ronalds, that the Council and you took that step is it?---Yes. As I said, we had two avenue and which we, we had in train both.

30 Yes?---Allegations, we were waiting on information whether, what allegations would take, would be taken by the ICAC and any other allegations would be taken by our independent review.

Okay. And you'll see the last dot point option on page 10 is to refer the matter to the ICAC?---Yes.

(not transcribable) corrupt conduct. So my understanding is that as Mayor, you had those options amongst others available to you and you chose to, to do both?---Yes. Go to the top.

40 Yes. All right. Thank you. Clause 9 deals with the rights of persons who are subject of disclosure. And you'll see on the top of page 12, paragraph number 3, responsible (not transcribable) who receive disclosures in accordance with this policy are obligated to and then there's a Roman C, act fairly towards any person who is the subject of disclosure?---Mmm.

Now it seemed to me, and correct me if I'm wrong, that the existence of that provision placed you at a bit of a quandary?---Yes.

Can you talk about how that impacted on you from a practical point of view?---Well, it, it, I mean, always in the wings we knew that there was the media as well, which made, made it much more difficult because if the, if the (not transcribable) had been made to me then, then it wouldn't, members of the staff would not have known about it. And I could've done this and the investigation, you know, would've gone on its merry way. So there was that issue that had, that, that if the media had it, then those who had had the allegations made against them, their natural justice would not be met, because it would be aired outside and they had no regress. They didn't even  
10 know that it was about them. They only kind of knew about them because they had the media ringing them up. So that was the dilemma, but I was of the view that if I disclosed the nature of the allegation or who the allegation was about, it would breach the PD.

And can draw your attention to clause 6, which is a little bit further down on page 12. A person who is the subject of disclosures, (not transcribable) protected disclosure under the act or otherwise which are investigated by or on behalf of Burwood Council has the right to (a) be informed as to the substance of the allegations?---Mmm.

20

It would seem that that also created a difficulty for you?---Well, the question is - - -

(not transcribable)?---It's a subject of what, from now my extensive experiences, it's a subjective decision. At what point does that, what is the trigger? At what point does natural justice, at what point does a person need to know, basically. And that's why there were differences of opinion on when you need to know.

30 Yes?---And that was the dilemma, because it doesn't specify at what point, because every, every case is different, I assume.

With the, a benefit of hindsight, is there anything that you think as Mayor you might have done differently or you might do differently if the situation arose again concerning the General Manager?---Well, I think, I think the, well, I think the angst to the Mayor has been brought up as an issue. And I think for, and again, I mean obviously for freedom of information, it's great to have the media involved, but I did think that it could gravely have compromised the investigation and the protected disclosure. And it was  
40 disappointing that the persons felt that they had to go to the journalist. And that was because of the lack of access they could have to the Mayor. So obviously I think that the first thing would be that that, I mean the Mayor's mobile phone is available on the website, but I think that should now be given to all members of, of staff, if they have any questions. And I think we need to explore the policy of, of this standing aside. And I think that's a, in the contract, really, the standing aside provisions. So, and that's without prejudice of the person who has the allegation made against them. But to create that firewall. I think that, that's something that, that we need to

investigate. Whether that's a local government issue generally, and I believe, my various discussions after this was, is an issue for local government about the stand aside clause for General Manager's.

10 Would it have assisted you as Mayor in dealing with the issue that arose if you'd been given some formal training about the way in which the internal reporting policy works and the way in which natural justice rights also?--- Well, I think I, I think I followed it, as I said, pretty much to, to the letter. I suppose the only thing that I would say to be trained in is at what, you know, your powers to investigate with the issue that you don't know who the person who has made the protected disclosure, how do you protect them and I think that is a real issue and your powers as a Council to protect them when you can't deal with the day to day operations of Council. I think that, that seems to be a problem.

And that problem you've identified seems to stem in part from the relationship between the, the relationship established in the Local Government Act - - -?---Yes, yes, that's right.

20 - - - between the Council and - - -?---What is operational and then what, what is the Councillor's or the Mayor's role within that but those are the areas that, you know, for forward thinking rather than hindsight I don't think that helps. It's like, what do we do now?

Yes?---I think we have to look at the areas of, of how does the Councillors or the Mayor get involved when, if it is about the General Manager and how do you protect when you have no powers to protect basically.

30 Have you formed a view as to how that might be addressed for the future? ---Well, I, as I said I think that the firewalls need to be stronger and I think if, if there is an, if it is a PD and the question is if the external agency, be it be the Ombudsman or whoever, can identify the person so you can actually protect them. I mean, that's the only way there's 40-odd, 50-odd people in the depot, how do you protect those individuals who've made the protected disclosure if you don't know who they are.

40 ASSISTANT COMMISSIONER: But I must say, Ms Furneaux-Cook, it seems to me even if you'd known who the people were as the Mayor what really could you have done to protect them?---I could only say to the Acting General Managers that anything we do cannot be intimidation and their response was, We don't know who the people are but as, as Mayor I have no - - -

Well, but I mean, even if you'd know the names and in fact could have spoken to the Acting General Manager, it being an operation matter you would have had no power to direct them not to - - -?---No, (not transcribable)

- - - discipline somebody or not to move somebody to another job, would you?---No.

No.

MR LEGGAT: And Ms Furneaux-Cook, it's probably the case, isn't it, that if you had sought to involve yourself in operational matters that would in fact have been - - -?---I'd have a code of conduct against me.

10 - - - it'd be, it would have been a breach of Council's own policy, wouldn't it?---Yes.

Yes. Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you.

MS RONALDS: Just following on from that, after the articles were published in the Sydney Morning Herald did you have any discussions with Mr Romano as to identity of the source of the story, so not the protected  
20 disclosure but the identity of the source of the story?---The identity of the source, i.e. the depot?

Yes, but the individuals in the depot?---No.

Because knowing what we know now it's clear, it's abundantly clear if you knew various facts at the time at least one of the people involved because it had text messages in it that had been exchanged so I would presume - - -?  
---I had no evidence of that.

30 But it was no mystery to Mr Romano about who it was. Did you have any discussions with him?---I did not speak to him from that time about the depot issue.

No, I'm taking about the Sydney, sorry, the Sydney Morning Herald articles about the units and the driveway, that's not a depot issue, that's about the units and the driveway?---He did, in this he did, you know, we put out a please explain and he did that with his letter but apart from that I didn't speak to him about those matters.

40 At all?---Well, I spoke to him, you know, he, he made protests of innocence in conversations I had with him and it was my opinion that I, and, and I said this all along, that I couldn't condemn nor praise the allegations were made in, in the media, I knew of allegations that I had passed onto the ICAC and I wasn't going to discuss them.

In terms of following on from the questions Mr Leggat's asked you about matters that you would reflect on in the future - - -?---Mmm.



- - - the abrupt cancellation of fortnightly meetings by the General Manager and a refusal in fact to deal with the Mayor in what would consider an appropriate and proper manner, is that a matter that you think needs to be further addressed in some formal way, that is, that the General Manager shouldn't have the power to just in fact declare the Mayor dysfunctional in a sense?---Yes. Well, I think, I think within, in a contract, as I said, I think that there should be, you know, mandatory six monthly reviews and so you don't leave that up to, to Councillors to make that decision, I think that just should be that's a DLG thing, it should just be in there and also you can set out when you, when you have a General Manager your expectations and you're their employee so that's what they should do. That should be, and I think that because there is a problem, and I do actually feel for General Managers, they have different Mayors come through who've all got different styles, different expectations so there needs to be some sort of standard form otherwise they really don't know if they're Arthur or Martha. You know, some, some Mayors wouldn't want to see them at all but some Mayors would be following, shadowing them all the time.

10  
20 Well, you couldn't be an effective Mayor and not see them at all?---I'm not going to make that comment.

But in terms of, to enable the Mayor to do her role - - -?---Yes.

- - - fortnightly meetings seem to me to be a minimum requirement?---Yes.

And that should be - - -?---As I said they were first weekly.

And you're suggesting that should be established as a format in a contract so that the General Manager can't dictate the terms of the relationship in the manner in which Mr Romano did in terms of the relationship between you and he?---Yes.

30

That is, that the General Manager doesn't have the power to sever the relationship?---That's right.

And thereby in effect - - -?---It's not by mutual consent basically, no.

Yeah. In effect, he reduces the capacity of the Mayor to effectively do her job by refusing to brief her?---Well, that was part of the things that I wanted to do in the reporting mechanisms, that was part of the report, the Mayoral minute because I wanted to have more information bubble up to the Councillors so we could make good decisions. I mean, that's our job, to make good decisions based on the information that we had so it's important that we get good information.

40

Just bear with me one second. Sorry, we've just got a confusion down our end of the bar table which happens from time to time. When you first spoke

to the General Manager about the contact by Kate McClymont, who did he indicate was the source?---Robert Cummins.

So he didn't say then it was the depot, disaffected depot employees?---No.

And did you ask him why you thought it was Robert Cummins?---He said, well, he volunteered, he said I, it's about a pay, a pay dispute.

10 And so it was later on that he sourced the grievances to the unhappy depot workers?---Well - - -

That is once the articles were published?---Well, yes, and as I said, that was not through me, yeah.

Because there's no doubt that Mr Cummins may be many things but he wasn't a depot worker?---Indeed.

And you knew that?---Yes.

20 Thank you. I have nothing further.

ASSISTANT COMMISSIONER: Thank you, all right. This might be an appropriate time to have the morning tea adjournment.

**THE WITNESS EXCUSED** [11.29am]

30 **SHORT ADJOURNMENT** [11.29am]

ASSISTANT COMMISSIONER: Mr Child. Yes. Mr Child, you remain under oath and the section 38 declaration still applies.

MS RONALDS: Mr Child, just so that there's no confusion on anyone's part you and I discussed previously it was you who called the Mayor on Saturday, 28 March, 2009 wasn't it?---That's correct.

And you've previously given that evidence?---That's correct.

10 And you made to her a partial disclosure about certain matters?---I didn't see it as a partial disclosure.

You saw it as a full disclosure did you?---As a full disclosure.

Right. And why do you say you made that call?---To the Mayor?

Ah hmm?---Well, what had happened, I wanted to go to the Mayor previously several months, I think it was in November, October, November the previous year but I was disciplined, I was sent a disciplinary letter, I was  
20 sent a letter saying that I would be disciplined if - - -

Right. Threatened with disciplinary action if you went to the Mayor isn't that the - - -?---Yes.

And that was the email from Peter Macklin that we looked at before?---Yes.

I don't know the exhibit number but yes?---Yes, that's correct.

30 But it's correct isn't it that in relation to that email that was about Mr Risteski not about more general issues?---No, that's not correct. It was about Mr Risteski and what I thought was a fraudulent claim.

Yes?---And it was also about saying about other issues.

Right. Because on the face of the email it just looks like it's about the one issue. You'd agree?---No.

40 Right. But your understanding was the thing you wanted to talk about to the Mayor initially when Mr Macklin told you not to were broader than just the fraudulent claims?---Yeah, definitely. And it was stated that in the, the man that, from StateCover Insurance he, he, he even states that in his email that I wanted to discuss other matters with the, with the Mayor but yeah, I was sent a disciplinary (not transcribable).

But, so you didn't do it then but then you did do it in March. Now, what I'm trying to explore with you what was your motivation to do it in March? ---Well, what happened was Mr Saad had made some allegations and the word corruption come out in them allegations. Now, - - -

He was alleging you were corrupt?---Yes.

Is that as you understood it?---Yes.

10 He was alleging essentially wasn't he that you were a bully, that you'd said certain thing to him in a bullying and harassing manner. That was how you understood the complaint?---Well, it wasn't that I said anything to him personally, yeah, but I, I didn't see it as that, it was just that it was told to me, okay, that I'd acted possibly corruptly in helping the General Manager do some of his work on the units and that was the trigger.

So the trigger for you was that Mr Saad had made a disclosure or said certain things about you and the General Manager. Who did you understand he'd said it to?---Well, he said it to Mr Azer the director and Mr Macklin the HR, well, I think he was the director of HR 'cause he, he certainly walked around as he was one of the (not transcribable).

20 All right. Just don't worry about the commentary. Just, if you can just answer the question. Okay. And how do you say you found out about what Mr Saad had said about you and the General Manager?---I received a telephone call from the General Manager.

And that's the one in the evening is it?---In the evening, yes.

Right. And he said certain things to you?---Yes.

30 What did he say?---He said he just got off the phone from, from Azer. He said he just had a huge argument with him and that they'd, he'd withheld certain information that somebody had made a protected disclosure against the General Manager himself.

But he told you more than that didn't he, didn't he? He used some language, shall we say?---Oh, he used very colourful language.

And did he name Mr Macklin as well - - -?---Ye.

- - - as someone who had kept it from him?---Yes.

40 And so he indicated that Mr Macklin and Mr Azer, though he used another word for them as I understand it?---Yes.

Had not told him about the disclosure?---Yes.

And did he tell you what was going to happen or what should happen?---He told me - - -

And you can use the words, we're all grown up. We won't faint. Well, I can't speak about Mr Blake, but the rest of us won't?---He, he wanted to, he wanted to work away, work out a system to get rid of Mr Saad.

Well, just tell us exactly what he said?---He said them, he said them c's.

Right. Okay?---Mr Azer and Mr Macklin have kept this from me for four days and we need to make sure that everybody's kept quiet about this. And that, he just wanted to, for me to work it out, how to get rid of Mr Saad.

10 Yeah, it was just - - -

Get rid of him as working for the Council?---As work, working for the Council, yeah.

Not dispose of him?---Well, get him out of Council, yeah.

Right. And that was what you understood was what Mr Romano wanted in this conversation?---Yeah.

20 And do you remember when this conversation was to the best of your recollection?---It was on 9 February.

And what time?---Between 9.30 and 10 o'clock.

And did it come in, what number was used? Was it your mobile?---It come in on my work mobile, but it wasn't on his mobile.

Right. And where were you at the time?---I was in bed.

30 And your wife was present?---Yes. She was in bed too.

And she heard some of the conversation or at least your end of the conversation?---Yes, she did.

And the conversation at your end was in a loud voice was it?---Yeah, it was very heated.

And you were upset with Mr Romano at that stage weren't you, because he'd not been returning your calls?---That's correct.

40

You'd been trying for some time to contact him?---That's correct.

And sent him some text messages?---And emails.

Just, I'll do the questions, you do the answers. Right. Had you sent him some text messages?---Possibly.

And some emails?---Yes.

And he'd not answered them?---That's correct.

And you'd left him messages on his phone?---Possibly.

And you were upset because you thought he'd dropped you, in essence?---I was, well, we distanced himself.

Yes?---He did, he did, he distanced himself.

10

And you were upset about that?---I wasn't upset about that.

You weren't upset about that?---Not really, no.

Well, why were you worried when he didn't call you back and - - -?---Oh, well, we'd always kept in pretty well contact.

And then you weren't?---And then we weren't.

20 And what I'm suggesting - - -?---But there was a reason why he wasn't keeping in contact.

And did you understand that reason at the time? Did you know what it was?---Yes.

What was it?---The reason, because we wouldn't do any more work on his units.

30 So do you say the fact that he hadn't contacted you didn't have anything to do, from your understanding, with the proposal to introduce some reforms at the depot?---No.

And what was seen to be your obstruction or opposition to reforms at the depot?---I was, I didn't have any opposition.

No, no, that's not what I asked you. I asked you whether, did you see one of the reasons Mr Romano was distancing himself from you was that he thought you were opposing reforms at the depot?---No.

40 That's now what you understood at the time?---(not transcribable), no.

But you were upset that he called you about Saad, when he'd not been returning your calls?---That's correct.

And you told him that?---Yeah, definitely.

You told him that in fairly unequivocal terms didn't you?---That's right.

And was there a proposal that you meet the next day?---Yes.

And whose idea was that?---Mr Romano's.

And did you?---Yes.

And where did you meet?---We met in the stairwell at the Council Chambers.

10 All right. And you had a conversation?---Yes.

And do you recall what that was, what was in that conversation?---The conversation was about the allegations.

Ah hmm?---That, it was mainly about, the allegations were mainly brought up about Albert Becerra. Mr Romano wanted to know about Joe Saad and his involvement and I told him that Joe Saad never worked on the units at all in Council time. And which he never did.

20 And you told him that in the conversation in the stairwell not on the phone the night before?---Both.

Both. Right. And, so you told him that and - - -?---I told him that. Albert Becerra then appeared and we had a, we kept on with the conversation. I reassured him that he definitely never worked in Council time. And then he told me, don't worry about it, Mr Dencker's going to cover it up. That's the way I took it.

30 Well, what did he say? Don't give me your conclusion, tell me the words that Mr Romano used, doing the best you can?---He said, everything's going to be all right. Mr Dencker's looking after it.

And did he give you any instruction to pass on to the others?---Yeah. He told me to get in contact with them, make sure they keep quiet about it.

And who did you, did you understand them to be? Or did he tell you who to speak to?---Yeah.

Who was that?---Mr Vadala.

40 Right?---Which I did speak to him, I let him know. Mr Grasso and Mr Issa.

And you told each of them did you that you'd spoken to the General Manager and he'd asked you to be quiet about the work they'd done on the units?---Yes.

And why did that give you a motive to go to The Sydney Morning, to ring the Mayor on 28 May?---Well, it was - - -

March, sorry, 28 March, 2009?---Well, I was, I was concerned about our own welfare.

Why?---Why? Because, well the word corruption come up and I didn't have a very good understanding about the word corruption. We also didn't, we didn't trust anybody else at Council to speak to, you know, there was, just that Joe Saad had made a disclosure and this disclosure had got out. We were concerned about that. We didn't know who to speak to or what to do  
10 and that's why we took some advice from other people and even my own personal solicitor.

But in terms of the work on the units, you were concerned were you that it would be discovered that you'd put in timesheets that weren't correct, because you'd been working on the units on some days?---No, I never even thought about the timesheets.

You weren't worried about that?---I never thought about the timesheets.

Right. Well what were you worried about then?---Well, I was, well, I was  
20 concerned about we could've possibly acted corruptly, you know. And that sort of triggered us to, to start to think about what was actually going on.

Were you worried that you'd wasted the resources of the ratepayers of Burwood?---No.

That was, you weren't worried about that were you?---No. That didn't, we did use some resources.

But that wasn't, I'm trying to explore with your motivation for ringing the  
30 Mayor on 28 March?---Well, the motivation was that, it was triggered that the word possible corruption, you know. And as I said, I didn't have a great understanding what corruption was at that time. To me corruption was taking money from people, you know. And, and that wasn't the case from myself. But, yeah, we'd possibly done something wrong.

So you were concerned about that?---Oh, definitely.

So you were concerned that you might be exposed as having done  
40 something wrong?---Yeah, definitely.

And that's why you thought that you should speak to the Mayor?---Yes.

Right. And then you had a conversation and then you had a second  
conversation several days later?---I had a few conversations with the Mayor.

And did you at some stage advise the Mayor, she suggested you meet offsite somewhere? She advised, she suggested you meet at Maddocks, did that happen?---That was, I was concerned with Maddocks, the word Maddocks.



Why were you concerned about that?---Because I knew the relationship between Mr Romano and Maddocks and I strictly told her that, do not go to Maddocks.

So you've been here while she gave that evidence this morning?---Yes.

That's a correct - - -?---That's correct, that was, I said, Do not go to Maddocks.

10

Right. Because you didn't trust them. Is that right?---Definitely, definitely.

And that's, well, you told her you didn't trust them?---Yes.

Because you thought the relationship with Mr Romano was too close, is that right?---Definitely. The only person that I thought we could trust was Ms Furneaux-Cook.

20

Right?---No other Councillor or no other person at, at the, at Burwood Council.

Okay. And then she told you she'd spoken to this Commission?---Yes.

And then matters flowed that we've explored before?---Yeah, she gave me a contact and I contacted this person and we gave a protected disclosure.

30

Yeah. And then you spoke to Ms McClymont and we've been through that chronology previously?---Well, that was part of it but we took, we took advice from, as I said, from my, my personal solicitor, from what we call anti-corruption people and - - -

And that's Danny Lim and - - -?--- - - - she was also, she was also introduced to us.

Right. Now, just to turn to a few other matters, there was some evidence before about you being away in January 2009. Do you recall that?  
---January 2009 or 2008?

40

Sorry, 2008, sorry, years and months are obviously going to be my undoing today. I show you this document. Is this a printout of the dates you were away?---That's correct.

So you left on 19 January, 2008?---Yes.

Well, you embarked on the 19<sup>th</sup> and you disembarked on 2 February, 2008?  
---That's correct.

And so that you couldn't have had any meetings with Mr Romano during that period, could you?---No.

And it's correct, is it not, that while you were on this trip your work phone was given to Mr Giangrasso?---Yes, Mr Giangrasso, because I was overseas, if I wasn't, if I didn't go overseas I would normally keep my phone and still take phone calls but because I was going overseas and I was also the 24-hour callout person for Burwood Council, I was the contact and somebody needed to supervise my phone and take messages and that's why,  
10 he was acting in my position.

And you weren't going to be much use floating off the - - -?---No.

So the calls recorded to and from your phone during this period would have been taken by or made by Mr Giangrasso?---Yeah.

And you understand there's phone records that we've been looking at that - - -?---Yeah.

20 Now, in relation to the reform of the depot, I'm just trying to, sorry, I tender that document.

ASSISTANT COMMISSIONER: Exhibit 199.

**#EXHIBIT 199 - TRAVEL ITINERARY FOR STEVE CHILD FOR PERIOD FROM 19 JANUARY 2008 AND 2 FEBRUARY 2008**

30 MS RONALDS: You were told, weren't you, in, you were told on 21 January, 2009 that in light of the report that had been done by Morrison Low that your position would change but only slightly?---That's correct.

And we've looked at that before but then you were told in April that that was not correct and it was to change, it was to change fundamentally?  
---That's correct.

Now, what did you understand had happened or what did anyone tell you had happened between January and April?---No one had told, told me  
40 anything different between that period there.

No one had told you anything?---Anything different that, I was given my new position or new name change.

Right?---It went to coordinator and yeah, no one really spoke about - - -

I'll show you a bundle of documents and I just want to work through them so this is a set that's been put together for the proceedings and you'll see

there's some page numbers down the bottom. Now the first one is the meeting, sorry, minutes of a meeting on February 2009. Do you see that?  
---That's correct.

Are you familiar with this document?---Yes.

Right. And you see about halfway down the page it's got that PR being, so this is a meeting you, Mr Dardano and Mr Child and you expressed some views that are reflected here that you didn't consider you'd been properly  
10 consulted about the appointment of Mr Dardano?---What - - -

Do you see that's reflected in the first dot?---Yes.

Now, Mr Dardano was put in over you, wasn't he?---Yes.

And would it be correct to say that you and he didn't exactly strike it off?  
---Definitely not.

And he was imposing certain requirements on you of the way to perform  
20 your job that you didn't agree with?---No, that's, that's not true completely, that's not true completely. They, they had a, the Morrison Low report and he, he was obviously putting the Morrison Low report to, into, into, into function I suppose and, yeah, no, look, there was some, some issues that we had, that, yeah, we had and I didn't have a problem.

Well, it says here that you were concerned that you'd lost authority?---Yeah, it was taken away from me.

Yeah, and that was one of your concerns, wasn't it?---For sure.  
30

That you thought that your power within the depot was diminished?  
---Definitely.

And that you were unhappy about that?---Oh, yeah, I was unhappy about that, for sure.

And that was one of the things that was happening as around January, February 2009, that is that the changes were being put in place and you weren't happy about them?---Well, the Morrison Low report didn't  
40 recommend that I lost, I lost all my powers.

Mr Child, Mr Child, I'll just ask you to listen to the question and answer it, try not to editorialise. Do you understand what I'm saying?---(NO AUDIBLE REPLY)

The changes were being put in place in January, February 2009 and you were unhappy about some of those changes, weren't you?---Yes.

Thank you. And if you look down you'll see that, on the sixth down it says PR advised that he is under instruction from the Mayor, Council to cut costs. Do you remember the discussion about that?---Yes.

There's a 1.5 mil shortfall in the budget?---Yes.

And he says he advised it was under his instruction that all overtime was to cease - - -?---Yes.

10 - - - and this instruction was not being followed and was being resisted. Now, you recall Mr Romano raising that?---Yes.

And that was directed at you, wasn't it, that is, that it was your, you who allocated and indeed took some of the overtime?---(NO AUDIBLE REPLY)

That's correct, isn't it?---To a point.

20 And that there had previously been an instruction that there would be no overtime but people were still working overtime. That's what's happened, hadn't it?---There's some issues that that had happened, you know, in day and day and, yeah, sometimes you need to, it is required overtime.

Yes, but just again listen to the question. What had happened was there was a direction no overtime but you continued to work overtime and your team had continued to work overtime on occasions?---We had permission to work, we had to gain permission to work overtime and we did gain that permission to work overtime.

30 Yes. Just listen to the question. You'd agree there was an instruction no overtime but on occasion your team and yourself still worked overtime? ---The instruction was we had to get permission to do overtime and we got, sought the approval of overtime and, yes.

Well, Mr Romano is observing there that the instruction was not being followed or was being resisted. Was that an accurate assessment on his part of what was happening about the no overtime instruction as at January, February 2009?---No, that's not correct.

40 You say no?---No.

All right. And you were recorded as saying, That's fine. See that?---Yes.

And then it records that all casual staff are to be terminated. See that? ---That's correct.

With three of seven to go this week?---That's correct.

And Mr Romano advised there will be an impact on service levels as a result?---That's correct.

So he was saying he knew that an impact on service levels but that that had to happen?---Yes.

Now, in terms of the conversation you'd had about Mr Saad that had been some days earlier than this hadn't it?---Yes.

10 And Mr Saad was a casual?---Yes.

And you understood that Mr Romano wanted to get rid of him?---Yes.

From that conversation you'd had earlier?---Definitely.

Now, during the course of this discussion about terminating casual staff because this is only a minute so it's a short version of the meeting was there any discussion specifically about Mr Saad?---He was one of the people to go, yeah.

20

And was that because you understood that all the casuals were being removed?---Yes.

And when it says three out of seven to go this week, three of seven to go did you understand Mr Saad was one of those?---No.

So he wasn't going that week others - - -?---Well, I wasn't sure because it wasn't my position to give - - -

30 Right. But Mr Romano is recorded as telling you because you're one of the people at the meeting - - -?---Yeah, that's right.

So you just took that as information did you?---Yes.

All right?---It wasn't my position to get rid of them.

All right. And the next one is that PR advised that SC must follow all instructions and respect the integrity of hierarchy. Now Mr Romano was being critical of your performance wasn't he?---Yes.

40

What else, what did he say to you?---He was, he was very critical of me.

At this meeting?---Yes.

And about the fact that you were seen to be resisting the depot changes? ---That was partly it.

And what else was he critical of?---He was just, because I was speaking out and - - -

No, Mr Child, please I'm asking you not to editorialise. Do you understand what I mean? Don't make a commentary. What we want to know is what Mr Romano said to you not what you think he was thinking, okay? What did he say to you about your performance?---I'm not sure.

10 Well, doing the best you can. So you say it was only partly about resisting the depot changes, what else was it about?---Well, he wanted me to fall in line behind him.

It was about your conduct wasn't it? He said to you there'd been complaints that you were a bully?---That's not correct.

So that didn't come up at this meeting on 17 February?---No.

20 You were aware that on other occasions people have said to you there had been complaints about you being a bully?---Any complaint about - - -

Mr Child, please listen to the question. On other occasions managers have said to you there have been complaints about you being a bully haven't they?---I can't answer that yes or no.

What, you don't remember?---I, I remember, I remember that there had been two complaints and two complaints had been dealt with and they've been unsubstantiated.

30 So the answer's yes is it that on other occasions managers had raised complaints about you being a bully?---Yes.

Are you saying that on this occasion that's not a complaint Mr Romano raised with you?---Yeah, that's correct.

What he's saying to you is that you wouldn't follow instructions or, and you didn't appear to respect the integrity of the hierarchy. Are they the words he used?---Possibly.

40 You don't remember?---No.

And he advised that people can object to instructions however must ultimately still get on with the job. So what he was telling you was that Mr Dardano was your supervisor - - -?---Yes.

- - - and when he told you to do something you had to do it?---Yes, that's correct.

And you responded that you did that or he does this?---Definitely.

And that was your view was it?---Yes.

That you followed instruction?---Yes.

May not have been the view of others but that was your view?---Definitely.

Mr Romano then advised you that you were at management level. Did you consider yourself at management level?---No.

10

And therefore should not be signing petitions against management. What was that about?---There was a petition about the depot cameras. They were installing cameras at the depot and I supported my workers, they didn't want the, the cameras there because they thought it was intrusive of their personal space. And we had, previously had a bad experience myself with Mr Romano and the cameras, yeah, and trying to take action against us.

20

That was the Liberal Party property if I could call it that?---Yeah, and there was another incident where a couple of my staff members were seen sitting down having a Coca-Cola or something on the seat when they're working on the roads, yeah.

And that had been through the use of CCTV you understood?---Yes, definitely.

And did you understand that the basis of putting in CCTVs in the depot was because there were allegations of theft by members of staff of Council property?---Yes.

30

You knew that that was the reason?---Well, that was - - -

Or at least one of the reasons?---Yeah, that was possible.

That was one of the reasons wasn't it?---Yeah.

And that also equipment et cetera was being used privately by depot staff not just for the Council's uses. Did you understand that was part of it?---That was, that was his, that was just rumours.

40

That was rumours?---Yes.

So you didn't understand that was one of the reasons why the CCTV was put there?---Well, yeah, you know, that was thrown around about, you know, is what they're trying to say.

But it was opposed but it was eventually put in wasn't it?---Yeah. I didn't have any, personally didn't have any worries about the cameras my personal

view other than he'd, he'd spied on us in that café and things like that. That was, that was what our concern was.

That Mr Romano would misuse it - - -?---Definitely.

- - - by keeping an eye on you in a way you considered inappropriate. Is that your version?---And he did, he did misuse it, he misused it against us in that meeting and with my other staff.

10 The day they were having the Coke instead of working?---Yeah.

And it was your view or their view was it that the only way he could've got that information was by looking at the CCTV or did someone say that?---I was told that by Mr Inglese.

By?---John Inglese the Assets Manager.

Right. Sorry, your voice just dropped off?---Sorry. He was with us at the time.

20

So he told you did he that Mr Romano had looked at the CCTV footage?  
---Yes.

Mr Romano had or someone else?---Mr Romano had.

And he'd observe some of your team drinking Coke and not working?---  
Yes. But there's also other incidents where, you know, we'd been working  
night shift and whoever was looking at the cameras has rang up one of the  
blokes and said, Hey, what are youse doin'? You know, and they were on  
the cameras so - - -

30

Who did that?---Who did that?

Who rang up?---The person's name is Anthony, I'm not sure what his, he's  
one of the law enforcement people, I'm not sure of his last name.

So he'd rang a member of your team - - -?---Yes.

- - - and said, What are you doing?---Yeah. He, he was watching us on the  
CCTV camera.

40

And did he have some sort of safety concern?---No, it was just, it was just in  
conversation, just general keeping an eye on us.

So you thought - they were the CCTVs that were put in for safety in  
Railway Parade. Is that correct?---That's correct.



And so you say they were used to monitor staff work?---I'm not saying they were used to monitor staff but yeah, we had a couple of incidents where we thought it was, you know, was against, you know, what, what was supposed to, the cameras were supposed to be for.

10 And prior to the introduction of those you'd all been given formal notice as required hadn't you that they were being installed and since that was the workplace for some of you the obligations under the Workplace Surveillance Act were being met?---Well, they never showed us the Workplace Surveillance Act as far as I was concerned.

And if you just turn over the page to page 2 you see the third dot at the top, "SC advised he was supposed to be included in review of depot restructure but was not consulted."?---That's correct.

Is that correct, is that your view that you were not consulted about the restructure of the depot?---Yes. Not fully, not fully.

20 Well, why did you think you needed to be consulted?---Well, they were restructuring the civil maintenance side of it which plays a big part in the, in the depot. I probably look after nearly half the staff, they come under me.

Your views had been taken into account in the Morrison Low Report?---(not transcribable) five minutes interview, if you call that enough views, I, I, I didn't believe that was enough time. They, they, most of my team was on night shift at the time and the Morrison Low person he interviewed Mr Grasso and myself for five minutes and that was it and he's come to some sort of conclusion.

30 But what you're saying is, as this is recorded here and tell me if it's wrong, if he had that is, you're saying if you had been consulted further Mr Romano would have received acceptance from the union on the most recent report including CCTVs. So you're trying to do a trade off aren't you, you're saying if I'd been consulted then I could have got the boys to agree with the, with the CCTVs?---No, no, not at all.

40 Well, just have a look at what that says, the third one down, just read that and I'd suggest to you it's clear on the face of it that that's what you're saying?---It was not, to go against the CCTV cameras was not me personally, this was a unanimous, a unanimous union meeting, they made the choice.

I'll just stop you there, Mr Child. Please if you could listen to the question, we'll get through this much faster. What I'm saying to you is that when one reads those two sentences it seems to me, as a reader who wasn't present, that what you're saying was if you had been more involved in the reforms you could have brought the boys along with you to agree with the CCTVs.

Is that what you said?---They could have had a better understanding, the boys could have had a better understanding but they weren't consulted at all.

Right?---They were on nightshift.

Okay. Now, there were a series of depot reform meetings but you weren't involved with those, were you, there's a series of minutes there. If I could ask you then to turn to page 7, so there was a depot reform committee and you weren't part of that. That's correct, isn't it, a cross functional team?

10 ---That's correct.

And did you think you should be part of that?---Not necessarily.

Now you see at page 7, using the numbers down the bottom, there's a briefing note by Mr Ellul, so Mr Dardano's gone by April 22 and Mr Ellul comes in, had you seen this at the relevant time?---(NO AUDIBLE REPLY)

Were you shown this memo on or about 22 April?---No.

20 And then you are given some advice, aren't you, and if I could ask you to turn to page 10, I'm sorry, we have to look at two bundles at once. If the witness could be shown Exhibit 150, sorry, the brilliant bundle system is lacking some brilliance in this one.

If I could ask you firstly just to go back a step, if I could ask you to turn to page 6 and this is what we were looking, talking about earlier, 21 January, this is a letter that tells you the impact on your position et cetera. Do you see that?---Yes.

30 And you got that, didn't you?---That's correct.

So that, you were proceeding from 21 January that that was the position?  
---That's correct.

There had been some changes but that was substantially it?---Yes.

And then if I could ask you to turn over to page 8. You'll see there's a letter, that's in the bundle you've just been handed, you see there's a letter to you dated 20 April on page 8 of the bundle you've just been handed, have you got that, meeting - - -?---Sorry, I was looking.

40

You were looking, sorry, I know it's confusing, it would have been really helpful if they were in one bundle but they decided to make it difficult?  
---Yes.

You see that, that's a letter which sets out to confirm a meeting that was held with you and Mr Macklin and Mr Ellul. Do you remember that?---Yes.

And it sets out certain things to you?---Yes.

And told you that the, and over the page I explained to you that the proposed position description is currently in draft form and you have the opportunity to provide feedback by 23 April?---Yes.

You see up the top of that letter?---Yes.

10 And then what happens is this letter from the union is written on your behalf?---That's right.

So you went to the union and you sought their assistance?---Yes.

So you decided not to answer the letter yourself. Is that correct?---That's correct.

And so you send this letter, sorry, you instructed the union, and that's at page 10 of the other bundle, sorry?---Yes.

20 So that was, you spoke to the union and they drafted this letter and you approved its contents, didn't you?---Yes.

And that reflected the position you want the union to put on your behalf? ---That's correct.

And you were asking that they consider, that the Council consider certain matters?---That's correct.

30 And then if I could ask you to in the bundle with the union letter, just to go to page 14 and there's a letter dated 29 April, 2009 - - -?---Yes.

- - - where, is a response to the union's letter and that's a detailed response setting out certain matters and you saw that letter at the time?---Yes.

Because then if you go back to the other bundle and go to page 10 you'll see there's a letter dated 30 April which was sent to you attaching a copy of the union's letter?---That's correct.

40 And on or about that time you went, you were on leave?---I was on leave I think from the 21<sup>st</sup>, straight after that meeting.

Just as soon as, that's what I'm trying to work out, the chronology?---Yeah, I went on leave.

You went on sick leave. Is that correct?---Yes.

On 21 April after the meeting and after you'd been told that you were going to, the position was going to be changed - - -?---That's correct.

- - - and restructured and et cetera and you were unhappy about that?  
---About my restructure?

Yeah?---Yeah, was devastated.

And why were you devastated?---Because I, I perceived this to be a reprisal against what I done.

10 A reprisal against what?---Against making the protected disclosure against the General Manager.

A reprisal against the Sydney Morning Herald articles?---No, against Pat Romano.

Right. So you didn't think it was, you thought it was just a, I don't mean just in a negative sense but you thought it was a reprisal against making a protected disclosure to this Commission about the General Manager?  
---That's correct.

20

And what facts did you have to form that view, what led you to that conclusion?---Well, I was 20 days later after I'd made the protected disclosure, I was, I was sort of ushered into a meeting with no offer of a support person or anything, they just, they just hammered me in this meeting and - - -

Well, how do you say they'd hammered you?---They just, they just dump a proposal saying that you're going to have to, we're going to restructure your job, Steve Ellul and Peter Macklin and you're going to have to reapply for your position.  
30

And you thought that was unfair?---Definitely.

Why?---Why? Because I'd, I'd worked for Burwood Council and given 150 per cent every day for Burwood Council.

But you knew that the Council wanted to reform the depot?---Yes.

And you knew you couldn't control that process, you didn't have the power to control that process of reform, did you?---No.  
40

And that others were more senior than you who were making decisions?  
---Yes.

And they were looking at a much broader picture than just your job?  
---Possibly.

And they may, they took into account considerations that you may not have been aware about, that's possible, isn't it?---Anything's possible at Burwood.

And it may be that the restructure in fact had nothing to do with the protected disclosure, that's a possibility, isn't it?---Not to me it wasn't.

10 No. And would it be correct to say that it was the timing that led you to conclude that the restructure of your position was linked to the PD?---I, I would say, I would say that's partly right.

So because it was a relatively short period after the protected disclosure that you were told there'd been a complete turnaround from January?---Yeah, yeah, it was, I'd already been given my position in January and, and that was made clear to me, the position, the position changes, yeah, and I, and - - -

20 Are you aware that employers are able to restructure jobs at any time?---I am now.

And are able to direct employees to do other duties than the ones they were employed for?---Yes.

And did you think about that at the time?---No.

And did you consult a lawyer and, to see whether you had any capacity to stop the changes being implemented?---To the?

30 To your position?---I, I sought the union.

So you went to the union?---I went to the union, yeah.

Right. And they acted on your behalf?---Yes.

But you've said that was partly, so the time was, the timing was part of why you think it was reprisal action?---Oh, yeah.

40 And what else, what else lead you to conclude that it was a reprisal action? ---Oh, well, I was, Mr Ellul, the new depot manager, I've only ever spoken to him twice, since I was even at, at the depot.

Yes?---And I think, I was only ever there four or five days when he was there. You know, he made nothing, no approach to me to talk about my job, about anything, really.

But that's, you see it could've been a structural change that actually had nothing to do with the person in the job. That's a possibility isn't it? So he didn't need to talk to you, because there was a serious restructure occurring

that was a management decision. That's a possibility isn't it?---The restructure had already happened.

Right?---My job was already been restructured, so I, I couldn't see, I couldn't see anything else but a reprisal.

Okay. That's what I, I understand that?---(not transcribable)

10 I'm just putting propositions to you that it could've been a restructure that was, that wasn't personal about you. It could've been just a management decision. That's a possibility isn't it? And that your view about it was influenced by the timing, that is that it was some two weeks after you'd made a protected disclosure to this Commission about the General Manager?---That's correct.

And the General Manager hadn't rung you had he after the protected disclosure and said he was going to get you or anything like that?---No.

20 You haven't spoken to the General Manager have you since the, I don't know if you have in the last few weeks, but since The Sydney Morning Herald articles were published, for example, sorry at that time? You didn't speak to him around that time did you?---No.

He's never made any direct threat to your job has he around that time, that is in early April, 2009?---Not that I'm aware of.

Well not to you?---Not that I'm aware of, no.

30 Well, you'd be aware if he'd said it to you wouldn't you?---No. I haven't spoken to the General Manager.

No. No. So he's not said, when you were giving evidence about he said, we have to get rid of that, Mr Saad?---Yes.

But he never said to you, I'm going to get you?---No.

40 He didn't ring you up and say it's obvious you spoke to The Sydney Morning Herald and I'm going to get you for that?---I haven't spoken to him.

No. And Mr Macklin didn't say, the General Manager has said that we have to get rid of you?---Mr Macklin said it, no.

Mr Ellul never said to you, I've been directed to get rid of you?---No.

So I'm restructuring the job to make it impossible for you to apply for it? ---No.

So it's correct is it that your view about it being a reprisal action is just that, it's your view?---My firm, it's my firm belief.

Yes, I understand it's your firm belief. And apart - - -?---It's not just a view to me, it's a firm belief.

10 All right. And apart from the timing, that that's fair that, and the factors we've discussed, that is you thought the restructure was complete and it turned out not to be, is there anything else that you took into account informing your firm belief that it was a reprisal action?---Mr Romano tried to make allegations with the, the Councillor. I had a meeting with John Faker. He said, do you, you know, do you want to get a meeting together and I refused. So there was, to me there was a, an approach from Mr John Faker, okay, to suggest that Mr Romano possibly wanted to speak to me. And I completely refused to do that. So, so - - -

Is that the meeting you gave evidence about before?---Sorry?

20 Is that the meeting with Mr Faker that you gave evidence about before?  
---Yes. Yeah.  
You didn't tell us about that part of the conversation last time when you gave evidence about that conversation with Mr Faker did you?---It's in my diary.

Right. But do you remember whether you gave that evidence last time? Do you recall you recounted the meeting you had with Mr Faker?---I'm not sure what I actually said to the Commission.

30 But you're saying now that during that meeting Mr Faker invited you - - -?  
---Oh, yes.

- - -that he'd be a conduit would he, to set up a meeting with Mr Romano?  
---Yes. And I refused.

But that could've been an olive branch couldn't it?---Not really.

Why not?---That's not how I seen it.

40 Well, it could've been Mr Romano trying to make up your friendship?---I don't think we had a friendship then.

So by then the friendship was well and truly over?---Definitely.

And do you say that the friendship was well and truly over by the time you came to this Commission and made a protected disclosure?---I'd say so.

And you've never returned to work, you went on leave on 21 April?  
---That's correct.

And you were subsequently suspended and we'll get to that in a minute. So it's correct is it not that you've not been back to work since 21 April, 2009?  
---That's correct. I did try to.

Yes. No, I'm aware of that. We'll get to that in a minute. But, and so in terms of reprisal action, the restructure of the depot was a substantial one that occurred then?---Yes.

10 But in terms of your actual position are you aware if that restructure was put through?---No. They, they advertised my job twice, as far as I know.

Did you apply for it?---No.

Why not?---I was, I was off on sick leave and, yeah, I just didn't apply for it.

Did you take advice on that - - -?---I took advice.

20 - - - from the union before making that decision?---Yes.

Sorry, go on?---As far as I was aware the ICAC asked Council not to advertise my job, because I took that as a reprisal too.

Right. Commissioner, if I could tender the bundle that on the front page has, it starts with the minutes of the meeting of 17 February.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 200.

30

**#EXHIBIT 200 - COPY OF BURWOOD COUNCIL MINUTES OF MEETING HELD ON 17 FEBRUARY 2009 AND VARIOUS ATTACHMENTS**

MS RONALDS: Now, you've got two bundles. One's 150 and one's 200. If you could go to the bundle that starts off, which is 150, you see it's got some writing up the top and it's a letter to you about appointment for the position. Go to that bundle. I'm sorry it's so confusing. I apologise. And  
40 go to the last page. You see this, do you remember receiving this letter? See it's dated 14 May? Are you on page 11? It looks like you're not, that's why I'm - - -?---Yes.

Do you remember receiving this letter?---Yes.

Now just looking at the first paragraph, do you say that is a correct rendition, that's a correct account of your activities?---Definitely not.



Okay. What do you say happened on or about 14 May?---I think I was on my way to, to a doctors appointment made by StateCover.

Right?---I'd parked my vehicle close to Burwood station, probably thirty to fifty metres. I'd had previous arrangements with StateCover, Steve Wiltrey, the manager there and I'd asked him if I could possibly catch a taxi from Burwood and they would pay for it to Edgecliff, 'cause I've never been to Edgecliff before, so I was unsure where it was. And he sent me an email, he gave me permission to do that. I'd, I think that's around this time. I'd  
10 probably walked about forty yards, took some money out of an ATM. One of my people, John Vadala pulled up. He was, I pressed the button to walk across the road at the intersection and I just said hello to him, just a brief hello. And I walked across and caught a cab. And then I just, I just come back from, from seeing the doctor and I received a phone call, making all these allegations, like - - -

And what were the allegations put to you at that time? Who was on the phone?---I think it was - - -

20 Was it Mr Macklin?---No, it wasn't Mr Macklin. Mr Macklin, well, if that's the time, I'm not sure, it was one time about there I'd spoken to, I think it was somebody from the ICAC saying, What are you doing in Burwood rah, rah, rah, you know. I said, I'm just coming back from a doctors appointment, you know, that I was instructed to go to. And, yeah, all of a sudden there was all these allegations.

But there were many ways to get to Edgecliff?---I, I, I live 120 kilometres away, okay.

30 So why were you at Burwood?---Why?

Yes?---Well, I, I, I'd come up with my wife, okay, I drop my wife at work and then I just parked the vehicle at Burwood. That's, and I, I caught a cab from Burwood.

So you would say would you that you hadn't gone to Burwood in a deliberate attempt to seek out some members of your team and speak to them?---Definitely not.

40 And you didn't go so you could tell them things like well, find out what was going on?---No. Look, it was just a quick hello and, and off I went.

And so you say do you that you didn't attend several Council worksites?  
---Definitely not.

And you didn't issue instructions to staff on various work related - - -?  
---Definitely not.

And if that had been reported by others that that had happened that would be false would it?---Definitely.

And do you see this as part of a reprisal action?---Definitely.

You see this letter is what, an act of harassment against you?---Definitely.

By Peter Macklin?---Yes.

10 And do you say that Mr Romano to your knowledge had any hand in this letter?---Definitely.

And how do you say that?---I'd say Peter Macklin was under instructions from Pat Romano.

But that's a guess on your part?---I wouldn't say it's a guess, I'd say it's the truth.

20 Well, have you spoken to Mr Macklin?---No.

Have you asked him?---No.

Has he told you?---No.

Have you spoken to Mr Romano?---No.

Have you asked him?---No.

30 So it's a guess?---Yes.

So once you received the letter what did you do?---I'm not sure what I done.

All right?---There were several incidents of things that I thought was a reprisal action and yeah, I think - - -

I'm just trying to explore - - -?---I'm not sure what I done this particular day it was a year ago so - - -

40 Just I've not seen a response to that letter. Is it possible you spoke to Mr Macklin about it?---Yes, possibly. I did speak to Mr Macklin one time.

You rang him up and said what, he was being unfair, he should leave you alone?---Yes.

And what did he say?---He, he just insisted that I was on a worksite and I told him it was totally untrue.

Can the witness be shown Exhibit 15. And those exhibits can be returned. Now, this is a bundle of documents about the payment of overtime in cash, you know, the matter I refer to. You don't deny that you paid some of your team some cash?---No.

And had you done it before?---Yes.

And did your managers know you'd done it before?---No.

10 And why do you think it was appropriate for you to be paying the wages yourself personally of members of your team?---Well, it was just over the incident, I was, I was being harassed by Mr John Dardano about one hours overtime.

You thought he was being unfair to you?---Definitely.

You thought he was picking on you?---Yep.

20 Now, this is March, it happened a bit earlier than that but it was in February 2009, that was before you'd made any protected disclosures to this Commission?---That's correct.

So this incident wasn't a reprisal action was it?---No.

No. And you don't - I'm just trying to clarify whether you - - -?---No, no, well, well, I hadn't made a protected disclosure, no. You know, it might've been a reprisal action for paying the blokes, you know, some overtime.

30 Yes. But it's not - - -?---It's not a reprisal under the protected disclosure.

I mean as I understand it you say certain things happened to you as a reprisal for making a protected disclosure. That's your position isn't it? ---Yes.

And they were either decisions made by Mr Romano or made at the direction of Mr Romano. That's what you say isn't it?---Yes.

40 What I'm putting to you is that this incident was following up on the payment of overtime in cash to the team or some team members was not a reprisal action because it happened prior to you making any protected disclosure?---That's right.

So it couldn't be could it?---No.

No. It could be could it not that Mr Dardano was genuinely concerned about it and thought it was inappropriate?---It's possible.

And it could be could it not that Mr Dardano was trying to bring in a different level of ethics within the workplace at the depot?---No.

You don't think so?---(not transcribable).

Do you agree that it was inappropriate for you to pay members of your team cash as overtime payments?---Yes.

10 And do you agree that it was appropriate that it be followed up by management once they became aware of it?---Possibly.

And so the initiation of a process of review was not inappropriate was it?---No.

But you thought it was an overreaction?---Definitely.

20 You thought what, you could've just been spoken to informally and told not to do it again?---Well, due to the situation, you know, you've got to take the whole thing into, into account. Yes, definitely.

You thought that that's all it warranted?---Definitely.

All your years of service, hard work, one step up, could've just had an informal slap on the wrist and it should've just been forgotten. That was your view wasn't it?---Definitely.

And you thought this was a vast overreaction to what had happened?---Definitely.

30 And it reflected in your view did it not that you and Mr Dardano didn't get on?---To a point, yes.

And you thought he was using this to persecute you or victimise you?---Yes.

Because he'd made it clear to you that he didn't think that you were a suitable person in the position?---Definitely.

And he didn't like the way you did the job?---Possibly.

40 And you he made that clear to you didn't he?---We had some robust discussions, yes.

To adopt the word of the week. And he said to you hadn't he, I mean he'd made it clear that he thought that you were no good at forward planning. You'd had discussions about that hadn't you?---Well, well, I don't agree to that, no, about forward planning but, yeah.

No. Just listen to the question, Mr Child, please just listen - - -?---Well, they're saying that, yes.

He had had discussions with you hadn't he about your lack of forward planning and your failure to do certain actions that complied with his requirement for forward planning?---Yes.

And that had been subject of some of the robust discussions you've had?  
---Yes.

10

And you had a different view?---Yeah.

And you weren't going to change your ways for Mr Dardano were you?  
---That's not true at all.

So you were going to engage in some forward planning were you?---Yeah.  
Yes. And I did.

20

And if Mr Dardano reported you as being resistant to any suggested change would you say that that was an exaggeration of your position?---Definitely.

And that you were prepared to adopt some management principles when asked by those more senior than you?---Definitely.

But what I'd suggest to you was that's not correct is it, you were in fact resisting any change and you said you knew how to do your job best and no one was going to change it?---That's not (not transcribable).

30

And Mr Dardano was concerned about this issue as he thought it was highly inappropriate and he conveyed that to you didn't he?---Well, he didn't actually convey it to me about paying overtime it was the HR.

So you say he never discussed the matter with you?---About paying blokes overtime?

Mmm?---He was in the discussion with HR, my director and himself, yeah.

40

Right. Just go to page 3 of the bundle that I've handed you. And you see there it's about a disciplinary meeting so was elevated to an issue of discipline and you were upset about that weren't you?---I didn't agree with it, no.

And you didn't think it warranted being disciplined?---No.

And you went to a meeting on 18 March and Wayne Moody from the union was with you as your support person?---Bad mistake, yes.

Was he with you as a support person?---Yes.

Thank you. And then you were sent this letter dated 19 March? You received this letter didn't you?---Yes.

Yes. And it set-out the decision and Mr Azer who was the director responsible for your area. That's correct isn't it?---Yes.

10 And Mr Azer records that he was concerned with the image of envelopes of money given to staff by you represents a poor image of Council?---That's what he said.

And did he say that to you orally at some stage or that's what's reflected there but - - -?---(not transcribable).

And he was worried about legal issues. Did he tell you what they were? ---No.

20 In relation to staff receiving private payment. And then a copy of this letter will be placed on your personnel file. You were upset about that?---Yes.

Because you thought again that was an overreaction to the whole issue? ---Definitely.

Having received that letter you then wrote to Mr Romano and I could ask you to turn to the next page. Do you see numbered page 5 of Exhibit 151? You've got that?---(NO AUDIBLE REPLY)

30 Now why is it that you thought you could write to Mr Romano on 23 March about a letter from your director Mr Azer?---I've had plenty of contact with Mr Romano personally. As I said we'd been in contact with each other, yeah. I didn't think there was a problem.

Well, you've been, in effect, subjected to a disciplinary outcome by your director and what you were trying to do weren't you was to second-plead it, that is, you were trying to get Mr Romano to intervene on your behalf? ---No, I was, I was trying to make my point about what, what was actually going on and why I had to pay, why I felt I had to pay these people and I put it in an email.

40 Well, just have a look at the email because - just take a moment to read it. Sorry, I've just noticed the time. Perhaps over the luncheon adjournment I'll ask you to read this one and then Mr Romano's response and we'll return to those after lunch.

LUNCH ADJOURNMENT

[1.02pm]