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22/03/2010

MAGNUS
pp 00001-00040

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION MAGNUS

Reference: Operation E09/0560

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 22 MARCH, 2010

AT 10.00AM

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

ASSISTANT COMMISSIONER: Please be seated. This is a public inquiry being conducted by the Independent Commission Against Corruption to investigate various allegations of corrupt conduct in respect of the general manager of the Burwood Council and others. The general scope and purpose of this inquiry is to gather evidence in relation to those allegations. Ms Chris Ronalds has been appointed as counsel assisting and she will further outline the allegations in this matter in her opening statement.

Thank you, Ms Ronalds.

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MS RONALDS: Commissioner. Local government is an important tier of government within Australia as it is responsible for the provision of services fundamental to the health, safety and wellbeing of the community. In New South Wales there are a 152 local councils and Burwood Council is one of the smallest in the greater Sydney area, both geographically and in population. Burwood Council is situated in the inner western suburb of Sydney and is 7.26 square kilometres in size. It has a mixed residential and commercial area with a residential population of almost 32,000. There is a council with a mayor and deputy mayor and five other councillors.

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The last election was in September, 2008. Mr Pat Romano is the general manager of the Council. He was appointed to that position in September, 2002. He is the main, but not the sole focus of this inquiry.

There are seven umbrella allegations that have arisen during this investigation which will be explored throughout the course of the next two weeks. I'll outline each of these seven allegations. The first allegation is that Pat Romano and/or others caused investigation and security expenses secured for personal purposes to be paid for by the Burwood Council. To understand this allegation it is necessary to review the use that Mr Romano made of a company IPP Consulting Pty Limited. This company provides a number of corporate risk management services including a range of investigative services such as covert surveillance. IPP has provided a number of services to Burwood Council in recent years and has been paid over \$420,000 since 2006 to perform various tasks including surveillance activities.

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Mr Romano requested and authorised surveillance over a two month period from October to November, 2007, of an individual he named and identified to IPP.

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Operatives followed this individual for a number of days to determine his activities and his whereabouts from time to time and the people he met. Mr Romano had that particular individual in his focus as he was of the view that this person was involved with personal matters concerning his wife. The accuracy of Mr Romano's views on that topic is not relevant to this inquiry.

The relevant issue is this: the particular individual was followed, photographed and videoed by several IPP operatives and all this was paid

for by Burwood Council. The bill came for a total of \$44,341. The situation was that this person had no connection whatsoever with Burwood Council. He didn't live in the area, he was not a property owner, he was not proposing a development. There was simply no connection at all and there was never a shred of any information that he had any such connection. Simply put, Mr Romano made a decision to spend public moneys on his own private purposes. Mr Romano arranged for invoices from IPP to be paid and these were co-authorised by Mr Les Hullick, the director of Executive Services and a member of the Council's executive team.

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The invoices had no purchase orders attached. This was not consistent with the usual financial procedures. The extent of the knowledge or understanding that Mr Hullick had of the actual activities he was approving will be explored during the course of this inquiry.

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The IPP invoices that were sent to the Council had a false and misleading description of the services provided. Mr Richard Mailey was a senior operative at IPP who dealt with Mr Romano on a close and regular basis on many jobs. He was responsible for acceding to the requests of Mr Romano, the false descriptors such as authorised use of premises or placement of illegal posters be used. Mr Romano apparently claimed that this was a deliberate strategy to prevent the leak of any information from the accounts staff that may be detrimental to the surveillance activities. Actually it was designed to complete the cover-up so that it was not known within Council that the surveillance was a personal matter with no official or formal connection to the Council that was paying for it.

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In October 2007 Mr Romano asked Richard Mailey to inspect his home and advise him on the installation of a security system. He claimed that his family was being harassed. He made a variety of claims to at least five different people including members of the executive. He gave a different version again to Mr David Baird, Council's principal legal adviser. There were few common claims as they vary in degree and activities, apparently depending on who was told. At best the claims were an exaggeration and at worst a complete fabrication.

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Mr Baird was asked to advise on whether Council could pay for these home security systems. He provided a draft advice on 7 November, 2007 and then a final advice shortly afterwards. This advice relied on facts asserted by Mr Romano and recommended that Council could pay for the home security systems for both the general manager and the mayor. Later Mr Baird apparently gave oral advice that the general manager could authorise expenditure at the mayor's house and the mayor do the same for expenditure at the general manager's house. Mr Baird also advised that the full Council should be advised but it appears that this never occurred for reasons not explained in any documents.

There was some doubt expressed by some members of the executive about these payments and some considered that Mr Baird's advice was a little thin. Suggestions made to Mr Romano about the best way to proceed to protect himself, such as the Council reviewing the position or an external agency were brushed aside by him and not acted upon. Instead he rebuffed these approaches in a (not transcribable) and dismissive manner. In the end Council paid \$30,000 to SNP Security Pty Limited for the installation of a home security system at Mr Romano's. The approval stamp is signed by Mr Romano and Mr Hullick. Council paid JT Alarms for \$20,000 for the
10 installation of a security system at Mr Faker's home. The approval stamp is signed by Mr Romano and Mr Hullick. Later there was a further \$2,000 paid for Mr Faker's house approved by Mr Romano with a request for immediate payment.

In January, 2010, Mr Faker repaid \$16,700. It appears that this happened after he was advised that this Commission was asking questions about this issue. All these expenses were for personal matters that should not have been paid for by the Council.

20 The second allegation is that Pat Romano and or others arranged for surveillance for improper purposes and caused the cost of the surveillance to be paid for by Burwood Council. This allegation falls into two main parts. The first part is that immediately prior to the Council election in 2008, Mr Romano authorised and directed IPP to conduct physical surveillance of five different persons, all of whom were running for election in the Council elections of September, 2008. The surveillance occurred in the first two weeks of September, prior to the election on 13 September.

30 This surveillance resulted in these people on several days each being followed while they went about their normal activities. Their homes were watched, they were followed when they went about some election activities such as handing out leaflets. They were followed to their usual places of employment and even their rubbish bins were searched.

The private investigators followed Councillors, Robert Balzola, Joe Alvaro and David Weiley. These three people were Councillors prior to the 2008 September election. The investigators also followed two candidates, John Sadowski and John Strik. The reason for this surveillance and the identity of the person who decided it should occur are unknown at this stage and will
40 be further explored during the public inquiry.

The professional functions of a General Manager do not and should not include any involvement in the election process. This is an exercise in democracy for the ratepayers of that electorate. The records show that Burwood Council paid IPP a total of \$15,400 for this surveillance and monitoring activities from an invoice dated 23 September, 2008. The invoice was signed by both Mr Romano and Mr Hullick. Questions again arise about how this payment could be made when the costs arise from an

activity apparently completely unconnected with the genuine work of Burwood Council. There is a further question of whether this surveillance was in the personal interests of the person who initiated or authorised it.

The second part of this allegation relates to the surveillance of workers employed at the Council depot which was conducted by IPP operatives in March and April, 2009. And I'll traverse that issue in more detail later.

10 The third allegation is that Pat Romano and others used Burwood Council staffing resources for the renovation of the driveway of Mr Romano's home in Janet Street, Russell Lea. The driveway at Mr Romano's private residence was constructed on Saturday, 17 September, 2007. During this inquiry, issues will be traversed that show that this construction occurred without the necessary approvals from Canada Bay Council in a deliberate ploy by Mr Romano, apparently to avoid completing the paperwork and paying the necessary fee.

20 There were two Council employees with whom Mr Romano was involved to varying degrees. Steve Child was the maintenance supervisor who had worked for the Council since 2003. Joe Giangrasso was a team leader in Mr Child's team and he'd worked for the Council since 1990. It appears that Mr Romano organised through two Council employees that three employees, Mr Child, Mr Giangrasso and Mr Ammer Issa and a Council contractor, Shane O'Brien would build him a new driveway at his home. They did as arranged and also deposited the waste material from the old driveway at the Council depot, saving Mr Romano an additional albeit small sum of money.

30 On Monday, 17 September, 2007, Mr Giangrasso returned to Mr Romano's property and removed the formwork and laid some topsoil that was taken from the Council's depot. This provided an additional benefit to Mr Romano's private property at the expense of Burwood Council.

All of this is alleged to have occurred not only with the full knowledge and consent of Mr Romano but with his explicit authorisation and encouragement. As a gesture of appreciation he took the four men to lunch on 19 October, 2007 at Il Buco Restaurant at Enfield. This was the only form of payment made to them. They received no wages for the day and all Mr Romano paid for was the raw materials such as the concrete.

40 After media investigation about this work, which appeared in the Sydney Morning Herald on 4 and 6 April, 2009, Canada Bay Council wrote to Mr Romano about his illegal driveway works. Belatedly Mr Roman applied for approval after the Council pursued him. By letter dated 16 May, 2009, Mr Romano provided certain advice to Canada Bay Council which appears to be inconsistent with the information made available during this investigation. His assertions as to the identity of a contractor and the provision of a certificate of insurance and a certificate of workers

compensation currency will be further explored, particularly the source of those certificates.

In summary, I anticipate that the evidence will show that three Council staff and one Council contractor worked on a Saturday to build a driveway at the private home of the general manager of the Council. They all say they received no money for their work but did it because the general manager asked them to do so.

- 10 Mr Romano's denials to the Sydney Morning Herald that he was not aware of any Council staff working on his driveway will also be explored as they seem contrary to the way that they unfolded and his presence during a substantial part of the day.

The fourth allegation is that Pat Romano, Albert Becerra and/or others used Burwood Council staff and resources for the renovation of units owned by Befaro Pty Limited at 187 Edwin Street, Croydon. Mr Romano has a beneficial interest through his wife as a shareholder in Befaro Pty Limited along with Albert Becerra and Tony Fasanella also through their wives.

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It is apparent that while the wives are named as the owners, possibly to reduce taxation liability, it is the three men who conduct the affairs of Befaro. In June, 2007, Befaro purchased a block of six units at 187 Edwin Street, Croydon, which is not within the Burwood Council area but is close by. In late 2007 and early 2008, two units were significantly renovated. Initially, private contractors were used. By December, 2007, the pace was slow and the expenses were mounting. No tenant could be put into those two units until the renovations were completed. This had an impact on the flow of rental income to meet the mortgage commitments.

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In January, 2008, Mr Romano asked Mr Giangrosso to help a friend renovate some units. He did not disclose his beneficial ownership or his active role in the project. Mr Giangrosso initially went to the units with Mr Becerra and then did some work on them along with Mr John Vidala. While both were Council officers they did this initial work at weekends.

- 40 In May and June, 2008, Mr Romano asked Steve Child to be the project manager for the second raft of renovations to a different unit. After that the number of Council staff working on the units increased. Importantly, they worked on the units during the usual working day while being paid by the Council. On occasion Council equipment was used.

I anticipate that the evidence will show that Mr Romano was fully conversant with the identity of the workers and their activities during the period when they were working on the units and being paid by the Council. One component of the use of Council resources is the use of Council time. The email trail for the work done on the Edwin Street units shows that repeatedly Mr Romano was making decisions and arranging others to work

on the units or communicating with his fellow owners during the course of the business day. There's a large amount of time so expended which was not being devoted to the interests of the ratepayers of Burwood who were entitled to expect that their general manager would focus on the Council's activities and not his own for lengthy periods each day. He communicated with Mr Becerra and Mr Child during the day when they should also have been working for the Council, using at all time the Council email system.

10 Both Mr Romano and Mr Becerra received a personal benefit from the work performed on the units to the detriment of the Council. Depot staff who should have been performing duties for the benefit of the Council and the ratepayers of Burwood were working on the units and hence not available for the performance of their paid duties.

20 Timesheets were submitted which were false as they did not reflect the time away from their work but represented a full day's work for the Council. The workers involved in these activities include Steve Child, Joe Giangrasso and Barry Webb. Other Council staff worked on the property outside Council working hours included John Vidala, Ammer Issa, Youssef Saad and Helen Cet.

The fifth allegation is that Pat Romano and/or John Faker arranged for personal expenses to be met by the Burwood Council. Mr Romano has a contractual entitlement to be reimbursed for legitimate expenses incurred on Council business. He was provided with a Council credit card and also regularly lodged petty cash claims. He lodged claims and these were paid after formal approval only from himself. No other approval mechanism was called upon in regard to his work expense claims.

30 Between November 2006 and November 2009 Mr Romano claimed expenses of almost \$34,000. One example of his approach is an area loosely called legal related expenses. He made claims for parking and meals for \$7,800 from January 2007 until October 2009 including claims when he was visiting his personal lawyer. His claims included taking the Council's lawyer, Mr David Baird, to lunch at the Pier Restaurant at Rose Bay which describes itself as being internationally renowned and awarded as Australia's finest seafood restaurant. They went in 2007 for the cost of \$347 and again in 2008 for \$202. Another outing with Mr Baird was to
40 Otto Restaurant which describes itself as having amazing service and some of Sydney's best modern Italian cuisine at a cost of \$153.

It's perhaps a reflection of Mr Romano's cavalier and possibly reckless attitude as an entrusted custodian of public funds in his position as general manger and his role within the Council and community that he'd make regular claims for minor expenses such as coffees. He claimed over \$3,500 from one local café alone.

While this Commission is not interested in descending into minor issues of small costs, the claiming of small expenses may be indicative of a broader course of conduct and an attitude of entitlement which is not consistent with the proper and expected expenditure of ratepayers' money. Mr Romano claimed lunch and coffee expenses when he met with Albert Becerra and Steve Child when they were doubtless discussing the Edwin Street units and not work at Burwood Council. He had no legitimate basis to claim anything from any time spent with either of them.

- 10 A recent document produced by Mr Romano has drawn attention to some incorrect claims that he has recently repaid. The circumstances of these alterations and the reasons for the alleged errors will be further explored. The expenditure of Council funds for personal use is a misuse of power and position and is the illegitimate use of money to fund a lifestyle that should not occur in a public-funded position.

20 One blurring of the lines between the personal and the professional is the amount of time Mr Romano spent with his own lawyer preparing statements sent to this Commission in April and May 2009 which were defending his reputation and stating his own position in response to certain allegations. It is difficult to see how this time could be envisaged as being spent in the interests of the Council itself or properly arising from his role as general manager. While some of the allegations stem from actions he had taken as the general manager, their entire tenor and his response was about his personal motivation and his personal actions. There has been no apparent consideration that the line should be more carefully drawn and that his interests and Council's interests may not always be in symmetry.

30 Where there is a conflict it appears that Mr Romano has ensured that his own interests are protected and promoted over those of the Council. To do this he has harnessed the resources of the Council including the Council's lawyers. The basis of regular meetings between Council lawyers and Mr Romano's personal lawyer is difficult to understand if one accepts that any assertion as to symmetry of interests cannot be sustained with an objective view as to the conduct of Mr Romano since at least October 2007.

40 In relation to Mr Faker, during his time as mayor he was paid \$12,000 per annum and as a councillor he received \$8,000 per annum. Obviously this is a modest stipend and not sufficient for a person to work fulltime as a mayor. This reflects the small size of Council when compared with some other Sydney councils.

Mr Faker was entitled to claim reasonable childcare expenses when he needed to attend Council commitments. From October 2007 to January 2008 Mr Faker claimed \$6,000 for reimbursement of childcare expenses. This covered 115 days of childcare. Six of those the child was not in attendance at the centre. For others there was no proper documentation of the activities with which he was involved for the Council that could

properly have permitted the reimbursement of such expenses. A general claim of working from home was not sufficient explanation and possibly should not have been accepted. Essentially he claimed two days a week apparently regardless of his activity. Recently Mr Faker repaid \$1,700 of those childcare costs. The reason for doing so and the basis of this decision for 2007 and 2008 expenditures will be further explored.

10 The issue of expenses and the use of discretionary funds is a representation of attitudes and action in relation to the use of public funds for private benefit and I anticipate that the evidence will show that this was occurring on a regular basis with Mr Romano's use of Council funds.

20 The sixth allegation is that Pat Romano, Albert Becerra and others acted improperly in relation to the recruitment of Albert Becerra to the position of principal architect to the Burwood Council. Mr Albert Becerra was originally engaged with Council work when he was a partner in a firm of architects. When relationships in the partnership soured he left to set up his own firm. His transition to the sole or main architect in his own firm was greatly assisted by his employment as the principal architect of Burwood Council. He commenced his employment in April 2007 with generous terms and conditions which were not the ones originally set for the position. His contractual terms for the first year did not allow for any extra payments over his salary of \$140,000 yet Mr Romano authorised additional payments of \$41,400 for him during his first year. The only legal foundation was as an ex gratia payment and the basis for such payments will be further explored.

30 The contract for Mr Becerra was amended in the second year to enable payments of \$200 per hour on top of his annual salary of \$145,000. He then received a further \$45,600 in 2008 and \$13,000 in 2009. Also architect Becerra received a further amount of \$30,000 for the period 30 December, 2009 to 25 February, 2010 after Mr Becerra went onto a contract arrangement and charged by the hour.

40 At no time until December 2009 did Mr Romano ever declare a conflict of interest in relation to Mr Becerra to his colleagues within Council yet there was a clear conflict operating at all time. They had known each other for many years. No member of the Council executive appears to have had any knowledge of the extent and depth of the personal relationship between the two men.

As I've mentioned, on 1 June 2007 Befaro purchased the block of flats. The units took longer to renovate than originally planned and the expenses were higher. By approving these extra payments Mr Romano was providing a financial advantage to Mr Becerra which enabled him to meet the call for further contributions amongst the partners of the units. Mr Romano had a specific and important responsibility to make sure that he avoided any pecuniary conflict of interest by ensuring that he was not involved with the

Ceting of contractual terms or the authorising of any payments above the approved salary as he also had a private business arrangement with Mr Becerra. Mr Romano did make all of those decisions in a way that excluded others who would usually have been involved in the decision-making process from having any participation or indeed knowledge of the full transactions. He failed to act ethically. He did not put an appropriate level of distance between himself and the employment status and conditions of Mr Becerra.

- 10 The seventh and final allegation is that the staff of Burwood Council took administrative and other action against persons who complained to this Commission and others in reprisal for making a complaint or the potential to make a complaint.

20 One of the facts that has emerged during this investigation and will provide some focus during this inquiry is the nature and degree of friendships and personal relationships that Mr Romano developed with workers from the Council depot. In usual circumstances it's not common for a general manager to develop a friendship with such workers, not for any elitist reasons but merely because they have no reason to come across each other to any significant degree during the working week. Mr Romano developed certain friendships and in particular with Mr Child and Mr Giangrosso. He gave them work directions which were outside the usual hierarchy and caused confusion and concern about his approach and his overriding of decisions made about the directions and format of projects.

30 These friendships then led to the work being done at his home and on his units which were for his personal benefit and to the detriment of the Council by the improper use of resources. These friendships disintegrated and a hostile environment arose between them. The reasons for that will be examined. This negativity was dramatically increased with the media coverage of some of the allegations. In early February, 2009, one of the Council employees who was engaged in work on the units disclosed this to one of his supervisors.

40 An initial inquiry was commenced and efforts were made to keep this from Mr Romano because of the obvious conflict of interest and his senior role in the organisation. However, Mr Romano did find out and he took control of the inquiry into his own conduct. He reallocated the responsibility for the management of this inquiry. As a consequence, the inquiry went nowhere. Mr Romano then took steps to ensure that any other allegations in relation to his own conduct were immediately brought to this attention.

The Commission will be examining the manner in which Burwood Council management responded to this disclosure and the action Mr Romano took in relation to this disclosure and its management. Correspondence about developments in the Council's management of the employee complaints and the ICAC investigations was passed on to Mr Romano and he duly passed it

on to his own lawyers for his own personal purposes. He was kept apprised of efforts to keep complaining employees out of the workplace. He routinely convened meetings of the Council executive, Council's lawyers and his own legal representatives to discuss the management of complainants and the Council's action in relation to the ICAC investigation. His undertaking to step aside from any involvement in the management of the issues appears to have been conveniently overlooked by both Mr Romano and those around him.

10 In late March or early April 2009 information about Council employees working on the Romano driveway and units was passed to a journalist. This journalist contacted Mr Romano and sought responses to these allegations. Knowing that his responses would most likely be passed onto the public at large, including Burwood councillors and the Council executive who would need to make decisions as to the Council's management of this issue, and of Mr Romano himself, Mr Romano gave responses that were robust and contained blanket denials. It now appears that these responses were false and misleading.

20 After the publication of these allegations and Mr Romano's responses on 4 April, 2009, the then mayor of Burwood Council announced, "The general manager has indicated to me that he will voluntarily step aside from any involvement in the management of the issues relating to the allegations in the Sydney Morning Herald articles. This was the correct approach to take. There were serious conflicts of interest associated with any involvement by Mr Romano in the Council's management of these issues. However, this did not happen. Mr Romano remained intrinsically involved in the Council's management of inquiries into his conduct and the management of those employees who had made complaints against him, including Mr Child and Mr Giangrasso.

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This Inquiry will examine what appears to be a consistent course of negative actions taken against any employee or contractor who makes a complaint against the general manager. Any person considered to be involved in the provision of the information to the Sydney Morning Herald or any person who is perceived in any way to threaten Mr Romano's position within the Burwood Council. These actions including further surveillance appear to have taken place in an effort to discredit the complainants, undermine their circumstances and remove and alienate them from the workplace.

40 The current employment status of Mr Child and Mr Giangrasso will be examined in that context as will that of Mr Robert Cummins who joined the Council in 2005 and was made the director of governance and corporate services in 2007. For various reasons he has not attended work since February, 2009.

In a statement to the Department of Local Government on 11 May, 2009, Mr Romano complained about those who went to the newspaper and I

quote, “prior to going to the proper authorities and/or raising any problems they might have with the appropriate bodies”. This comment needs to be considered in context. In November, 2008, when depot worker Steve Child wanted to meet with the mayor to discuss some matters, he was advised by Peter Macklin, the manager of human resources and a member of the executive, that he would be, quote, “subjected to disciplinary action because, as you’re aware, there are strict obligations in relation to staff interaction with councillors and these obligations are clearly set out in the Council’s code of conduct.” This was in direct conflict with the terms of the Council’s internal reporting policy which specifically nominates the mayor as a person to whom a disclosure can be made if it involves the general manager or a councillor.

I spoke earlier about the disclosure made by depot worker in early February, 2009. Clearly, making a disclosure to a supervisor that related to the general manager had little prospect of culminating in any meaningful response. An environment had been created in Burwood Council where the only avenue left was for the complainants to go to the media.

20 Mr Romano regularly sought legal advice to sustain and support his decisions in relation to individual employees and also on strategic matters as well as responding to the public airing of allegations against himself. Council has paid over \$5.2 million to one law firm since 2003 for legal advice on a range of matters. After Mr Baird left that firm and joined another firm, Council has paid a further \$930,000 to that second firm since June, 2009. This expenditure seems excessive for the size of the Council and the litigation in which it was involved.

30 The Commission will examine Mr Romano’s role in the Council’s response to the publication of complaints and Council’s management of those who made complaints with a view to determining whether this may have amounted to unwarranted or unfair reprisal action against these employees.

40 Turning now to the surveillance issues generally and the second part of the surveillance allegation referred to earlier. I note that the significant use of surveillance as a tool to manage disaffected employees. One area of surveillance was of Council staff working at the Council depot situated in Kingsbury Street, Enfield. The depot is the focus for all civil maintenance work conducted by Council, including road works, civil infrastructure works, park and community site maintenance, waste collection and street sweeping. Maintenance teams of Council employed labourers work from that depot. All equipment is retained and maintained at the depot. Stores are purchased by the depot and accessed by Council staff through the depot.

IPP were engaged by Mr Romano to conduct some surveillance of Council staff. The Workplace Surveillance Act imposes limitations on the capacity to record surveillance of employees. A consent authorisation from the appropriate court is required and then it is only granted in certain defined

terms and for a limited period of a few weeks. On or around 2 March, 2009, Mr Romano engaged the services of IPP Consulting to conduct a depot investigation. This consisted of the gathering of evidence by way of physical and electronic surveillance. One depot worker was followed from home to a medical appointment and then back home. The homes of others were put under surveillance. The home of one employee, Steve Child, was kept under surveillance for many hours on 8, 9 and 14 April, 2009, and it appears a photograph was taken of his house. These dates are important for two reasons.

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As referred to earlier, there was an initial article in the Sydney Morning Herald with certain allegations about the general manager on 4 April, 2009, and then several more articles in the following week.

Given the subject matter of those articles, Mr Child was an obvious person to have provided some of the published information to the journalist and it could've been viewed as damaging to the personal reputation of the General Manager.

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Perhaps of more critical importance is that Mr Romano had some discussion with his lawyers on 13 March, 2009 about obtaining the appropriate authorisation. Mr Romano signed an authorisation for that law firm to act on 16 March, 2009. A covert surveillance authority in relation to the depot investigation was obtained from the court on 17 March, 2009 in relation to 13 employees suspected of being involved in unlawful activity in the workplace.

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The application was requested in order to authorise covert surveillance of employees that worked for the employer within the Burwood Council local government area. The covert surveillance authority authorised the use of camera and video surveillance to commence at 6.00am, 19 March, 2009. A variation to the authority was sought on 19 March. This was an order to include all depot employees and extend the use of covert surveillance to outside the Burwood Council local government area. The variation was granted and came into effect on 6.00pm, 20 March, 2009.

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This surveillance was supposed to relate to pilfering of goods from the depot and working when on workers compensation. That was its only authorised focus. Yet employees homes were placed under surveillance when there can be no suggestion that any theft was occurring from their homes. It seems more likely that Mr Child was being observed to see whether he met with a journalist and if so, then perhaps photographic evidence could be obtained and used for his dismissal.

Whether there was a campaign of (not transcribable) of those perceived to have threatened Mr Romano's reputation by the use and possible misuse of Council resources will be further explored.

So in conclusion, a key question sits at the heart of this inquiry. Is Mr Romano a rogue senior executive who uses the resources of his employer and the privileges of his employer and the (not transcribable) of his office for his own pursuits and personal gain or is he merely manipulating the system within legitimate boundaries. It's difficult to accept that expenditure of over \$65,000 authorised directly by him on private surveillance and personal home security can be a proper expenditure of Council funds.

10 It's difficult to accept that Mr Romano's failure to follow Council procedures and policies in relation to his own personal affairs was anything other than a deliberate and wilful disregard for such policies to which other ordinary citizens are obliged to conform. However, there is little doubt that he was supported from within Council by at least some members of the executive and their decisions and actions from time to time and also by paid external advisors such as lawyers and risk assessments. He was supported by at least one mayor from time to time. The extent and reason for that support will be further explored.

20 Mr Romano has stated that he considers the allegations made against him were made for improper purposes by those who gave information to the Sydney Morning Herald, "As part of a plot designed to remove me from my office so as to stop disclosure of information that would condemn the individuals involved in criminal acts within Council's employment and expose individuals who would stand to gain by changes in the political scene in the inner west of Sydney." This assertion was made by Mr Romano in a statement dated 15 April, 2009 and sent to this Commission. At other times he's blamed his attempt to restructure the depot workforce as a motive for others to make false claims against him.

30 The basis of views will be further explored with him, but at this stage it appears there are some genuine issues about his conduct that cannot be brushed aside by his claims of others plotting against him to further their own interests and protect their jobs. It appears that the main person protecting and promoting his own interests was Mr Romano.

40 The various Codes of Conduct that operated at Burwood Council from mid-2007 onwards all included the prickly principal of selflessness, you have a duty to make decisions in the public interest, you must not act in order to gain financial or other benefits for yourself, your family, friends or business interests. The decisions and conduct of Mr Romano demonstrate a cavalier approach to such fundamental obligations to his employer and to the residence and ratepayers of Burwood Council, who he's paid to serve.

The means and methods of his performance as General Manager will form a focus, but not the only focus of this inquiry. The support mechanisms within the Council and externally will also be reviewed. The way that the Councillors operate and their abilities to really know and understand the decisions taken within the management of the Council that are called

operational and not open to their scrutiny will be examined and the way that such a delineation was made by the General Manager will be examined.

Leadership involves exercising power, authority and decision making in a sensitive and empathetic way. Good quality leadership is based on a co-operative and constructive approach to colleagues. It does not come from bullying and coercive conduct. An environment based on fear and intimidation is one where corruption can flourish, as scrutiny is reduced or avoided by narrowing down the number and level of decision makers and incorporating some into the dominant culture through rewards and support.

Decisions made in a culture of fear or intimidation often lacked objectivity and robustness and are often not made in the best interests of the people they are meant to support. When the end result of that culture is corrupt conduct, then an inquiry in this Commission may be the only way to properly identify the fully extent and ramifications of that corrupt conduct. And for the organisation to be able to identify the detriments it suffered through the impact of that corrupt conduct and eliminated effectively and thoroughly.

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May it please the Commission.

ASSISTANT COMMISSIONER: Thank you, Ms Ronalds. Before we proceed any further we'll have a short adjournment so that the camera's may withdraw.

SHORT ADJOURNMENT

[10.47am]

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ASSISTANT COMMISSIONER: Thank you. Please be seated. Yes, Ms Ronalds.

MS RONALDS: Prior to appearances, there's now specifically a small group of people here who wish to make appearances (not transcribable) If I could just seek several orders under section 112 of the Commission's Act, and that is these are not, these are, I seek non-publication orders, that is the names can be used during the course of the inquiry of the names that I'll nominate in a moment, but they are not for publication. And no other, no material identifying the individuals or the company can be publicly identified in any way. And the transcript will be amended prior to it being put on the web every night or the next day so that, so that my friends should feel able to use the names, it's only a non-publication and it will then be explained to the media the purpose of that. So the names that I seek that order to apply to are XXXXXX, XXXXXX, XXXXXXXXXX, XXXXXXXX, XXXXXXXX and XXXXXXXXXX. That's the group at this stage.

40

ASSISTANT COMMISSIONER: Thank you. Pursuant to Section 112 of the Independent Commission Against Corruption Act, I direct that in respect of the persons and companies which I will now list, their names are not to be published, nor is any information to be published which might enable them to be identified or located. This order applies to XXXXXX, XXXXXX, XXXXXX, XXXXXX and XXXXXXXX. Thank you.

10 **DIRECTION PURSUANT TO S.112 - SUPPRESSION ORDER IN RESPECT OF ALL EVIDENCE GIVEN BY MR ROMANO ; THE CONTENTS OF ANY EXHIBITS; ANY INFORMATION THAT MIGHT ENABLE HIM TO BE IDENTIFIED AND THE FACT THAT HE HAS GIVEN EVIDENCE HERE TODAY SHALL NOT BE COMMUNICATED OR PUBLISHED, OR OTHERWISE, TO ANYONE, EXCEPT COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO A FURTHER ORDER OF THE COMMISSION.**

20 ASSISTANT COMMISSIONER: Now I'll now take applications for leave to appear.

MR BLAKE: Assistant Commissioner, my name is Blake, I seek leave to appear pursuant to section 33 on behalf of Mr Pat Romano.

ASSISTANT COMMISSIONER: Yes, Mr Blake, you're given leave to appear.

30 MR LEGGITT: If it please the Commission, my name is Leggitt. I seek to appear for Council and to represent the following people, Mr Ian Denker, Mr Les Hullick, Mr Steven Alul and Ms Vera Karpowicz.

ASSISTANT COMMISSIONER: Yes, Mr Leggitt, I take it you're satisfied that there's no conflict between the Council's interest and, and those other people for whom you seek to appear?

MR LEGGITT: As presently advised.

40 ASSISTANT COMMISSIONER: Yes.

MR LEGGITT: I withdraw the application to represent Mr Steven Alul.

ASSISTANT COMMISSIONER: Yes, thank you Mr Leggitt. You're given leave to appear for the Council and those three witnesses.

MR LEGGITT: Thank you.

MR NEIL: Commissioner, my name is Neil, N-E-I-L, first initial P. I seek leave to appear for Mr David Baird.

ASSISTANT COMMISSIONER: Yes, Mr Neil, you're given leave to appear for Mr Baird.

MR STANTON: Yes, my name Commissioner is Stanton, S-T-A-N-T-O-N, initials S J. I seek leave to appear for Mr John Faker.

10 ASSISTANT COMMISSIONER: Yes, you're given leave to appear Mr Stanton.

MR STANTION: Thanks, Commissioner.

MR HARRIS: Commissioner, my name is Harris, A Harris, seeking leave to appear for Giovanni Luigi Dadano.

ASSISTANT COMMISSIONER: Yes, Mr Harris, you're given leave to appear for Mr Dadano.

20

MR HARRIS: Thank you, Commissioner.

MR HANLEY: Assistant Commissioner, my name is Han, initial S. I seek leave to appear for Mr Child.

ASSISTANT COMMISSIONER: Yes, Mr Hanley.

MR McILWAINE: Commissioner, my name is McIlwaine (not transcribable) I see your authority to appear on behalf of Mr Giovano
30 Giangrasso.

ASSISTANT COMMISSIONER: Yes, Mr McIlwaine, you're given leave to appear for Mr Giangrasso.

MR EKSTEIN: Commissioner, my name is Ekstein, E-K-S-T-E-I-N. I seek permission to appear for Mr Cummins.

ASSISTANT COMMISSIONER: Mr Cummins, yes, you're given leave to appear for Mr Cummins.

40 MR HOY: If it please the Commission, Commissioner I seek leave to appear on behalf of Maddocks Lawyers, M-A-D-D-O-C-K-S. My name is Kay Hoy, K-A-Y second word H-O-Y.

ASSISTANT COMMISSIONER: Mr Kay Hoy. Yes, thank you, you're given leave to appear.

MS BERGLAND: If it may please the Commission, my name is Bergland B-E-R-G-L-A-N-D and I seek leave to appear Lesley Ms Furneaux-Cook.

ASSISTANT COMMISSIONER: For?

MS BERGLAND: Lesley Furneaux-Cook. Thank you, Commissioner.

ASSISTANT COMMISSIONER: Oh, yes, yes, you're given leave to appear for Miss Furneaux-Cook.

10 MR SIBA: Commissioner, my name is Siba, spelt S-I-B-A. I seek leave to appear for Mr Matthew (not transcribable)

ASSISTANT COMMISSIONER: Yes, you're given leave to appear.

MS RONALDS: All righty. That's all. Just to assist my friends so that, we've endeavoured to advise people when they need to be here, but just so they understand that in the opening it was clear there were seven allegations. We intend to do them seriatim so that the first allegation we'll look at first up and the witnesses involved in that one and then the second one, the third one, et cetera. Obviously, there's a bit of guess work about timing, but
20 doing the best we can, we will, Mr McKenzie and I will, as far as we can tell people when they'll be needed and we'll advise them at the end of each day if that changes. But certainly there's a number of people, for example, who don't need to remain through this segment because they're involved in the later segment. They're welcome to stay obviously, it's a public inquiry, but, they don't need to do that. And we will as much as we can assist people in that regard.

ASSISTANT COMMISSIONER: All right.

30 MS RONALDS: I will now call Mr Romano, but before I do that would it be appropriate just to have a short morning tea break or should we just continue?

ASSISTANT COMMISSIONER: We seem to have just come back, but it actually might be better to get that out of the way rather than do the evidence piecemeal. So we'll have a fifteen minute adjournment and we'll start with Mr Romano at 11.30. Thank you.

40 MS RONALDS: Thank you, Commissioner.

SHORT ADJOURNMENT

[11.16am]

ASSISTANT COMMISSIONER: Thank you. Please be seated.

MR BLAKE: Commissioner, I have an application regarding Mr Romano that I wish to make in private. I've spoken to counsel assisting and

informed her of the nature of the application. I don't wish to say anything more at this stage.

ASSISTANT COMMISSIONER: Yes, Mr Ronalds.

MS RONALDS: For convenience and to, so we don't waste too much time, I don't oppose the application. I will have certain views about the content of the application when it's made. It is my view that Mr Leggitt and those who instruct him should remain as it's a matter that affects the Council but
10 as I understand it as foreshadowed to me, I don't consider there's any other legal representative that's needed to remain.

ASSISTANT COMMISSIONER: All right. Yes, well, look, I'm sorry to inconvenience everybody but would everybody mind withdrawing at this stage so that an application can be made in private. Thank you.

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**CONTINUED FROM THE COMPULSORY EXAMINATION PAGE
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ASSISTANT COMMISSIONER: Thank you. Please be seated. Yes, Ms Ronalds.

MS RONALDS: I can Mr Romano.

- 10 ASSISTANT COMMISSIONER: Could Mr Romano come forward, please. Yes, have a seat. Mr Romano, you've been called to this inquiry and you are required to answer any of the questions put to you. If you consider that answering a particular question might raise an issue of privilege, you're entitled to object and you're entitled to seek a declaration by me under section 38 that all of your answers are given under objection. Do you wish to seek a declaration on those terms?

MR ROMANO: Yes, Assistant Commissioner, I do.

- 20 ASSISTANT COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and documents and things produced by him during the course of today's hearing are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

- 30 **PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY THIS WITNESS AND DOCUMENTS
AND THINGS PRODUCED BY HIM DURING THE COURSE OF
TODAY'S HEARING ARE TO BE REGARDED AS HAVING BEEN
GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO
NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT
OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR
THING PRODUCED.**

- 40 ASSISTANT COMMISSIONER: Mr Romano, you are required to take an oath on the bible or make an affirmation to tell the truth.

MR ROMANO: I'm going to take an oath.

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

ASSISTANT COMMISSIONER: Thank you.

MS RONALDS: Tell the Commission your full name?---Assistant Commissioner, my name is Pasquale Henry Romano.

10 And your occupation?---I'm the General Manager of Burwood Council.

And you've been in that position since September, 2002. Is that correct?
---That's correct.

You first entered into a contract dated 2 September, 2002?---That's correct.

For a period of five years?---I can't recall at the moment.

20 And then a second contract, you entered into a second contract on 1 September, 2007?---I believe there were other contracts in between, but I can't recall (not transcribable) at the moment.

Now prior commencing in the position at, at Burwood, were you a previous employee of Burwood Council?---No.

So you arrived there just, I mean just (not transcribable) sense, but as the General Manager?---That's correct.

30 Where were you immediately prior to your employment at Burwood?---I was undertaking contracting and consulting work for my own private company.

And is it correct that you at one stage worked at Liverpool Council?---That is correct.

And when was that?---Mid to late 90's.

And what position were you - - -?---I was the (not transcribable) plan management manager.

40 And you're an engineer by training?---Yes, I'm an engineer by profession.

And is that your only post - - -?---I have a diploma in management and technology.

So prior to commencing at Burwood, what was your most senior management role within an organisation?---I worked for the Department of Transport for a short period of time. I was the senior manager of interchange assets in the New South Wales government.

Would it be correct to say that it was a bit of a jump for you in terms of control of an organisation when you joined Burwood Council?---I'm sorry, Council, I - - -

Jump in status in terms of budget, the number of employees, et cetera, that you had under your management and control?---Well, I would assume the General Manager of a Council would have a higher status than my previous roles.

10

So it would be correct would it that it was a promotion for you in effect?---I would consider that the case.

And did you consider it a significant promotion?---I considered it a great opportunity in my career.

And when you started, I'm sorry, I'll go back a step. Just to clarify, as at December, 2009, how many employees were there at Burwood Council? ---It's my belief that there would've been in the order of 200 employees, effective, full time.

20

So you're aware of the scope and purpose of this investigation?---Yes, I am.

You've had occasion to review the allegations?---Only since Tuesday.

But you've read them since then?---Yes.

So that when I refer to the first allegation about surveillance you understand what I'm referring to?---I do.

30

Thank you. Now there's a firm called IPP Consulting Pty Limited. You're aware of that company?---Yes, I am.

How did you first become aware of that company?---I can't recall exactly how I became aware of them, but, no, I can't at this stage.

Do you know a Mr Richard Mailey?---I do.

That's M-A-I-L-E-Y?---Yes.

40

Do you recall how you first met him?---I can't be sure. I'm, I don't remember.

He was originally with a company called Websters. Do you recall that? ---Yes, I do.

And Council gave some work to Websters?---I believe that is true.

In the 2003, 2005 period?---That is correct.

And then as I, Websters was taken over by IPP. Do you understand that's what happened?---That's my understanding, yes.

And that Mr Mailey then moved to IPP?---That's correct.

10 And you had occasion to request him to undertake certain duties on behalf of Burwood Council over several years. Is that correct?---Yes, that is correct.

And on some occasions you had quite extensive dealings with him one-on-one?---Most of my dealings were with Mr Mailey.

In terms of the people at IPP?---Yes.

And Ms Malouf, did you deal with her very often?---Only by email.

20 She was the office administrator or some type of admin?---I believe so, yes.

And she sent you reports from time to time?---She did.

And now in September 2007 you asked Mr Mailey to undertake some surveillance of an individual. Do you recall that?---I do recall having discussions with Mr Mailey. It was not just on a single individual, it was on a number of people.

30 All right. And who do you say were those, the people, sorry, let's go back a step. You had a meeting with Mr Mailey?---I had a number of meetings and also spoke to Mr Mailey over the phone.

Right. A review of their files suggests that the first steps taken by them, by IPP, was 14 September so would it be correct on your recollection that meetings occurred between you and Mr Mailey prior to or on 14 September, 2007?---I'm working off my memory, counsel, and it would assist me to look at my statement that I prepared for today.

40 Just doing the best you can relying on your memory?---Okay. As I've stressed, it is my memory. I believe in around that period I, I would have had meetings with him. I'm not sure if the first one was the 14th.

Right. So what I suggest to you is that, that at those first series of meetings you only nominated one person to be investigated or undergo surveillance from IPP. Would you agree?---No, that's not correct.

Well, who do you say were the other people? Sorry, who do you say you asked to be investigated?---There were a number of people, I can't recall all of them and, as I said, I have got a statement where I've, to the best of my

knowledge, recollected some of the people that I offered. One was a Mr Robert Balzola, another was a Mr Wahli, another was a Mr XXXXX XXXXX. I can't recall the others.

All right. So that's three. Let's just do them one at a time. What reason did you have to request services from Mr Mailey in relation to Mr Balzola?
---The people that I offered to Mr Mailey were the results of my thoughts on who might have been harassing my family at the time.

10 And what do you say was the harassment of your family at that time and we're talking September 2007?---If I can beg your pardon, I, I don't believe it was just September '07. It, the harassment of my family and myself commenced in August. It was mid to late August.

All right. And what was it?---That, the harassment started with phone calls and then - - -

And those phone calls, just let me stop you there, those phone calls were to your mobile phone or to your home phone?---Some were to my mobile
20 phone or a couple were to my mobile phone. One was to my wife's mobile phone, others came to my home and work over a period of time.

And what, is there a common theme of what was said?---Again, you must beg my pardon on this, I, I am very nervous today and I can't recall all of the comments that were made to me over the phone at this point but if you allow me to refer to my statement I - - -

I just want you to do the best you can at the moment. Do you have any contemporaneous records of the comments that were made to you you say
30 over the phone in August, September 2007?---I didn't notate anything in my diary if that's what you're asking me.

Yes, I am. Did you make any other records not in your diary but somewhere else, in a notebook?---No, no, I didn't. I, I did speak to - - -

Why not?---Well, at first, at first I didn't think that they would continue to harass us. I, I honestly believe that as it had happened in the past to me that there may be one or two calls, I thought it might have been a disgruntled resident or developer in the area and I had occasion over the years since my
40 commencement at Burwood to receive calls of that sort. In the past I have ignored them and the calls have usually stopped. In this instance, in that period between August and, and December 2007 they didn't, they continued but the hassle didn't stop at phone calls, it continued with attacks on my home.

What do you say they were?---On one occasion my home was egged while I was asleep with my family of an evening and at weekend.

So that was eggs, do you mean eggs were thrown at your house?---Eggs were thrown at my home.

And did you take a photo of that, Mr Romano?---No, I didn't.

Why not?---Well, it didn't occur to me to take a photo. I went out the next day, saw that it was eggs. I thought it might've been kids roaming in the street at night and I washed the window down.

10 And what's caused you to change your view that it was kids roaming the street?---Well, it continued, the harassment continued over a number of weeks.

What happened next?---The power was, on the main switchboard at my home, turned off.

The power was turned off. When you were in the house?---When we were in the home.

20 And when was that?---Well, that one (not transcribable) council. I, I can't recall. Some time in September.

So do you have notes of that event?---The statement that I prepared today.

No, just leave the statement aside. Do you have any contemporaneous notes that you made at the time of the eggs being thrown at your house?

---Counsel, the answer to that question is no but I have made a statement which includes the detail of what occurred over a period of time.

30 I understand that. Mr Romano. I'm asking you to do the best you can based on your recollection. Do you understand that?---I do understand that.

What I'm trying to explore with you whether, while this was happening, you made notes?---No, I didn't make notes.

Well, you often make extensive notes in your diary, don't you?---I sometimes do, yes.

40 About meetings and about thoughts you have about certain things?---That's correct.

And we'll go to those during the course of the next two weeks. So that that is your habit on some occasion of making notes, would you agree

---Counsel, that is correct, but there are periods of time when I haven't kept any notes at all.

And there's other times, is it not correct, that you sometimes make notes in a notebook?---If it's the notebook that I think you're referring to, it's part of my diary.

All right. But in this instance, there's no contemporaneous notes of these incidents you are now relating?---That's correct. I didn't make notes.

10 And you say, it's your evidence, is it, that that, you consider that to be a campaign of harassment?---I, I believe that it was a concerted effort to intimidate me and harass my family, yes.

And you were concerned that it was Mr Balzola. Mr Weiley or Mr XXXXX?

---Again, if you beg, I beg your pardon, I wasn't sure who it might be. I nominated some problem to Mr Mailey with a view of trying to determine whether they may or may not be involved.

20 Now, Mr Balzola at that stage, was he a member of Council?---No, he wasn't.

And Mr Weiley?---I believe he was a councillor at the time.

And Mr Weiley had previously been a mayor?---That's correct.

And you'd had a falling out with Mr Weiley, would that be correct?---Mr Weiley and I had numerous arguments, disagreements.

30 After he ceased to be mayor, in January, 2006, for example, in your diary, there's a series of notes about phone calls between you and Mr Weiley?---If they're in my diary they must be there. I can't recall them.

Where he was making demands about invitations being sent on to him?---I, I can't recall. I need to see my notes. If you show me the notes maybe I can give you a better answer.

40 All right. We'll go back to them later but would it be right that by August, 2007, you didn't, you would describe your relationship as less than harmonious?---I don't recall talking to Mr Weiley during 2007 in the, in the form of arguments.

All right. So by August, we're looking at August and September, 2007, and you told the Commissioner that you, that there was a campaign of harassment and you nominated to Richard Mailey three possible people?---Again, if I may correct you, it was more than three people. I just can't recall who they were now.

So Mr Balzola, what connection did he have with you that by August, September, 2007, you would've thought he might have a campaign against

you?---Mr Balzola worked for the local Federal member, John Murphy. He, on one occasion, came to Council offices in Conder Street. He was very abusive to some of my counter staff and my staff complained to me through our management team about the incident. I was highly concerned that someone working for the local member went into the building and behaved in that fashion so I, I telephoned Mr Murphy and asked to see him about the incident. I felt it was more discreet to talk to him and to communicate my concerns to him and possibly even have a discussion with Mr Balzola at the same time about that behaviour. We had a meeting and I offered my
10 concerns to Mr Murphy who then asked if I would have the same conversation with Mr Balzola present. I agreed. Mr Balzola joined the meeting and I expressed to him my concern about his behaviour and the fact that he had entered the building, was quite abusive at some people on staff. They were frightened and I asked him to explain why he did that. I won't bore you with the detail but enough to say that he became very aggressive towards me, was quite rude and insulting. I did not respond. I said to him that his views were his views but I would not tolerate any further outburst on Council property on my staff and asked him not to behave in that fashion in the future and if he had a problem that he could contact me personally. I
20 offered him my phone numbers which he took. My phone numbers included my home number. The meeting finished. I, I did have some words in private with Mr Murphy before leaving and we both agreed that we would not progress that issue in a formal sense for the moment and that should any occurrences occur in the future that we would, we would reconsider our position. I felt that Mr Balzola was quite hostile and quite aggressive in his manner towards me.

So you thought it might be him and then there was Mr Weiley?---As I explained earlier, Mr Weiley and I had numerous arguments and
30 disagreements about the operations of Council and his authority and, and, and my authority to conduct the business of Council. There were numerous, I can't recall them all at this stage.

And then there's Mr XXXXX XXXXX. Now, he had only a personal connection with you, would you agree?---I did not know Mr XXXXX at the time.

There was no business or Burwood Council related connection between Mr XXXXX - -?---I was not aware of that at the time.
40

See, what I suggest to you is that the only person who was subjected to any surveillance by IPP starting from 26 September, 2007, was Mr XXXXX. Would you agree?---I would agree with that.

And that there was never any surveillance of Mr Balzola by IPP, was there? ---That is correct. There was never any surveillance of any other persons.

And there was never any surveillance of Mr Weiley?---Not that I'm aware of.

At that time?---Not that I'm aware of.

So that the only person who was subjected to any surveillance in relation to what you claim was the harassment, was Mr XXXXX?---That is correct.

10 All right. And I suggest to you that at the time you requested the surveillance of Mr XXXXX by IPP, you knew that there was no business connection or professional connection between Mr XXXXX and Burwood Council, would you agree?---I, I, I can't answer that in a positive sense and I'm sorry that I can't but the (not transcribable) any information to you that would assist you in your investigation here but at the time I was not, I couldn't tell you positively one way or the other whether I thought he was involved with Council business or not. I wasn't, I was not - - -

Mr Romano - - - -?--- - - - of that opinion.

20 Sorry, I thought you'd - - -?---Sorry, but what are you asking?

Mr Romano, the only reason you asked that Mr XXXXX be put under surveillance was because of a personal matter, wasn't it?---Again, counsel, I did not ask Mr XXXXX XXXXX to be surveilled. When I became aware that he was the subject of a surveillance, I was quite concerned.

30 Well, where do you say - - -?--- - - -And if I, if I can continue please. In my statement, if you allow me to go to my statement, I can, with more detail, communicate the series of events that occurred up to that point. I think it's (not transcribable) that I'm not able to access that information to give you a full picture. There were circumstances at the time that I was not aware of and it's difficult for me to give you a full and honest answer without communicating the full story.

Mr Romano, let's just break it down, shall we. I'd suggest to you that you gave the name of XXXXX XXXXX to Richard Mailey, would you agree?---Counsel I gave XXXXX XXXXX's name, amongst others, to Mr Mailey, that is correct.

40 That is correct?---And you gave certain detail about Mr XXXXX to Mr Mailey?---I gave Mr Mailey his name and phone number.

And you gave him the home address?---No.

And you asked that Mr XXXXX be subjected to surveillance, would you agree?---We discussed the possibility of surveillance at one point. We did not specifically talk about XXXXX XXXXX.

Well, it wasn't long before you were receiving detailed reports about the surveillance of Mr XXXXX, was it?---I've not denied that I've received reports, yes, I did and yes, he was surveilled.

And - - -?---And, and there were reasons for that.

And he was put under surveillance at your request?---I authorised that expenditure, yes.

10 Right. And that surveillance commenced on 26 September, 2007, would you agree?---Counsel, without referring to my notes I can't be for sure.

But you'd agree during the course of October and November 2007 you received on a regular basis detailed reports about the surveillance of Mr XXXXX?---I received some reports, yes, I don't know how many but I did receive them.

And on a review of those reports you'd agree there was nothing to suggest that there was any connection between Mr XXXXX and Burwood Council?
20 ---At the end of that process I would agree that I could not determine one way or the other, yes.

Well, I'd suggest to you, Mr Romano, that it was very clear from the beginning of the process, would you agree, that there was no connection between Mr XXXXX and Burwood Council?---I couldn't say that because I don't believe that at the beginning of the process I was aware one way or the other, yes, towards the end I formed an opinion that possibly there, there may be not be a connection but I could not determine for certain one way or the other.

30 Well, you'd only come up with Mr XXXXX' name, hadn't you, because he worked with your wife?---Again, counsel, that is not the case. I gave XXXXX XXXXX' name amongst others to Mr Mailey.

No, that wasn't my question. Please, Mr Romano, you've already told us that you gave him with others. I'm saying to you that the only way you came in possession of Mr XXXXX' name was because he was a work colleague of your wife's?---I retrieved his name from my wife's mobile phone.

40 You were looking, were you not, at some emails that were on your wife's BlackBerry or whatever instrument she uses?---I was not looking at her emails, I was retrieving phone numbers or I thought I was going to find the phone number of the person that may have contacted my wife through the harassment process.

And you found Mr XXXXX' name there?---Yes, I found his name there.

And you then added him to your possible list?---I did, yes.

And then you had him followed over some significant period of months?
---I did not instruct Mr Mailey to follow him.

So are you saying that Mr Mailey acted without your instructions?---He acted on a list that I gave him. I was unaware that he had selected Mr XXXXX at the time.

10 Well, you received emails of reports from - - -?---Yes, I did and I knew, I knew at some point after I - - -

Mr Romano, it just helps if we go one at a time - - -?---My apologies.

- - - because it gets confused on the transcript. Okay?---Okay.

So if I could just finish and then I'll wait for you to finish. It was very clear quite early, that is by the beginning of November 2007, that Mr XXXXX was under surveillance by IPP. Would you agree?---I would agree.

20

And no one else was under surveillance, would you agree?---That is correct.

And you received detailed reports, sometimes daily and sometimes weekly, about those surveillance activities?---I, I'm not able to confirm whether they were daily or not but I did receive regular reports.

And they were non-productive, that is, there wasn't anything in them of particular interest, was there?---No, there wasn't.

30 And then you understand that the person who had been, sorry, I withdraw that. Then Mr Mailey said to you on or about 24 October that the person who had been following Mr XXXXX was compromised?---There was some discussion about one of his operatives being compromised but I, I don't know when that was, counsel.

All right. And then do you recall meeting a person called David Travini with Mr Mailey on 25 October, 2007?---No, I, I can't recall that meeting.

40 You do not recall the meeting at all or you don't recall the date?---I don't recall the meeting.

You see, what I'd suggest to you is that Mr Travini came from a company called Control Group. Have you heard of that?---No.

And that he was organised by, he was organised by Mr Mailey to take over the investigation of Mr XXXXX once the IPP operative was compromised. Do you recall that happening?---As far as I was aware from Mr Mailey the

operative was replaced and the investigations continued. I, I, I wasn't aware of a company being involved.

All right. Do you remember meeting, so you don't recall meeting Mr Travini in the Bar Cupola at Angel Place?---No, I don't recall that meeting, no.

Where Mr Travini and Mr Mailey had a discussion and you were present during that discussion?---I don't recall that, I'm sorry.

10

And that's a place you're familiar with, Bar Cupola?---Yes, I am.

It's within view of Maddocks?---Yes, it is.

And it's a place you, on your expense account, seem to attend relatively regularly. Is that correct?---I'd, I'd on occasions have coffee or a lunch down in the bar, yes.

20

And certainly on your claims on 25 October you were, you claimed to have been at Maddocks on 25 October, 2007?---It's possible that I may have had a meeting with Maddocks as well, yes.

Yes. But it is possible that you met with Mr Travini and you just don't recall it?---I don't recall that meeting, no.

You see what I attest is, Mr Travini then took over and he organised a number of operatives to follow in tag-team Mr XXXXX. Do you recall receiving reports to that effect?---I remember seeing reports from multiple operatives, yes.

30

And so you knew that at some stage Mr XXXXX was followed by one person and they'd tag team to another person?---Look, I'm not aware of how they undertook their business but I, I was aware there was more than one person involved, yes.

Right. And you had discussions with Mr Mailey during this course of late October and November 2007 about the conduct of this investigation. Do you remember that?---I do recall having discussions with Mr Mailey about that operation and a number of other issues.

40

Well, one of the issues was the ongoing operation, wasn't it, that is the surveillance of Mr XXXXX?---Well, we did talk about that from time to time, yes.

And Mr Mailey advised you, didn't he, that nothing was happening and it shouldn't continue?---That's not my recollection.

And what I'm suggesting to you is that's what occurred and you insisted that it continue?---No, that's not true. I, I in fact raised with him that I was unhappy about the results and I was quite concerned about costs and, and the number of people involved and I was quite insistent with him that unless he found some evidence that this person was harassing me that the work should be completed.

10 Well, what I'd suggest to you is this, that by 8 November, 2007 you well understood that Mr XXXXX had no connection with anything to do with Burwood Council, would you agree?---I, I don't know whether that date was the day that I might have had suspicions that he was not involved but I did have doubts towards the end, yes.

You see, what I suggest to you is that you never had any basis to form a view about any connection about Burwood Council and Mr XXXXX, would you agree?---I had no idea who was perpetrating the harassment on me and my home and, and - - -

20 That's a separate question, Mr Romano?---Well, I'm, I'm, I'm trying to assist you in answering your question. I'm trying to offer as much information as I can to be helpful. I had no idea who was doing the things at, at my home and to, to me and my family. I couldn't rule anyone out at the time, I was highly stressed. There was a lot happening in, in my private life as well as my work life and even to the end I, I had no idea whether Mr XXXXX or anyone else for that matter may or may not have been involved in the harassment that was occurring to us.

30 Just bear with me while I find the document. Sorry, I just have to find the document, I've just got a problem a few copies. Mr Romano, there's a screen in front of you and I will show you documents. If you'll just tell me whether you prefer to see them in hardcopy or if you're content to see them, there's a handwritten note which is a bit unclear, so I'll hand you a clearer one. But just as a matter of practice, Mr Romano, if you could tell me whether your preference is to always be handed documents in a hardcopy or whether if they're clear you're content to see them on the screen?---If they're clear on the screen, I'm happy to use the screen, but I can't read the writing on the - - -

40 Yes. I'm just saying, this one, of course the one we start off with is always the worst. This one has an unclear handwritten note down the bottom. Now you see this is an email dated 3 October, 30 October with some photos attached. Do you see that?---Yes, I do.

And it's sent to you at your work email address?---That's correct.

And if I could ask you to turn to the second page you'll see there's four photos of someone?---Yes.

And you understood when you received that that they were photos of Mr XXXXX?---Yes, that's correct.

And if I could then ask you to turn back to the note, so, sorry, I'll go back a step. So the surveillance starts on 26 October and by 30 October you're sent this email with some photos?---I can't understand the note so if your question is that did I instruct anyone to do to do - - -

10 No, I haven't got to the note. Just don't worry about the note for the moment. Okay. Just concentrate on the email and the attachments, if I could ask you to do that. And you see the attachment is on the email because you understand that that PDF thing there indicates that there's a PDF attachment?---Yes. Yes.

And, and just understand that they're both- -?---And again, I received those photos with this email, yes.

20 So on 30 October, by 30 October even if not before you, it was clear to you that Mr XXXXX was being investigated and under surveillance, such that photos were being taken of him?---I wouldn't deny that he was being investigated and I was aware that he was being investigated.

30 Right. And then you'll see there's a handwritten note, just so you understand, this is from the IPP file that says, 8.11 instructions see INS (not transcribable) client to Dave. And I suggest to you that means Mr Travini, continue observation week days only, no weekend until advised. Do you recall giving an instruction on or about 8 November, 2007 that you no longer wanted surveillance of Mr XXXXX at the weekend, you only wanted it during the week days?---If I may refer to my notes, I can give you more precise details. I think I - - -

Doing the best you can?---Sorry?

Doing the best you can, do you recall giving that instruction at some stage? ---Look, I can't be specific with dates. But I did have discussions with Mr Mailey about scaling back the activity because I was not happy with the results he was delivering.

40 And it would be correct if it said client, that was referring to you?---Well, I wouldn't know.

Well, there was no one else at Burwood Council involved in organising this surveillance was there?---Not that I'm aware of, no.

And you were the only person as far as you knew who was speaking to Mr Mailey about this surveillance?---That's correct.

In fact you were the only person who knew in Burwood Council about this surveillance?---No, that's not correct.

10 So who do you say knew about it?---I informed my executive team at one stage that I was having issues and at the end of one of our meetings I held a number of them back and I spoke quite candidly and told them that I was having problems, like harassment, and that I'd engaged Richard Mailey and his company to do some investigative work. And then as soon as I had a report available that I could detail that information to them then I would tell them.

And did you tell them that only one person, that is Mr XXXXX was under surveillance?---No, I did not tell them that, no.

And did you tell them that you'd given Mr Mailey some other names but nothing had happened in relation to those other names?---Sorry, can you repeat that again?

20 And did you tell them you'd given Mr Mailey some other names but there was no active surveillance or investigation - - -?---No, I wouldn't - - -

Just wait for me to finish. No other surveillance or investigation of any of the other names?---I did not talk to them in that level of detail, no.

Why not?---I was briefing them on what was happening at the time. It didn't occur to me or I didn't see the need to go to that level of detail. I did say to them I'll provide them with a report and more information at the appropriate time once I was able to get enough detail to present to them.

30 Well, I suggest to you that the only reason that you didn't tell them anything about Mr XXXXX was because you well knew that it was a personal connection only and had nothing to do with Burwood Council. Do you agree?---Well, again, Counsellor, if I may correct you, at my meeting and discussion with my executive, I did tell them that it could be a personal matter. I did communicate that to them. And in fact there were emails that I exchanged with some of my staff after that meeting where I confirmed that I wasn't sure whether it was a personal or business matter. In fact that was the, that was offered in a, you might say a disagreement between myself and a couple of my staff.

40

And who was that?---Well, in particular Mr Cummins and Mr Walker.

And what did they say?---They had the view that until such time as I could determine, and this is to the best of my knowledge, without my notes in front of me, I can't be specific, but to the best of my recollection I believe that they said to me that I needed to get independent approval or advice on whether this was business or private. And they were uncomfortable with the

expenditure to be paid until, until a (not transcribable) answer could be given.

And the total expenditure was \$44, 341 and that includes GST. So they were right to be concerned about the quantum weren't they?---I'm not sure what you're asking me.

Well, it was a significant amount of Council funds to be spent wasn't it?---It is a large sum, yes.

10

Now you never asked IPP to conduct surveillance of your own home?---No, I didn't.

So there was never any surveillance of , there were no operatives sitting outside your house at any stage?---I would say no. I was very conscious that, you know, it was a costly exercise. Even if it had occurred to me, I'd probably not, would not have gone down that path.

20

Well, you were worried you say about people attending at your personal property?---Yes, I was. And the way that I dealt with that issue was to explore other avenues with Mr Mailey on his suggestion. And he did suggest to me at some point, I can't recall when now, but in my statement I, more detail, I, I recall having a number of discussions with him probably from about mid to late September and onwards about upgrading the security at my home.

No, I'm not talking about upgrading the security, I'm talking about whether you had any operatives putting your own home under surveillance?---No, I did not.

30

But it was your home that you were most concerned about?---Well, I was worried about my family, not necessarily my home. My home is replaceable, the people not.

All right. So you were, was there any, you've reported a number of things that you say occurred, but there's no suggestion your family were followed by anyone was there?---I don't know. How would I know?

40

Did you at the time have a view that someone was following any member of your family?---No, not at the time.

So the only thing you've, the matters that you've reported are telephone calls and on one occasion eggs thrown at your house and another occasion the power turned off?---And there was another incident where there was shouting and what I refer to as hooning in the car or in a car or two at the front of my home at about the same time as the egging occurred.

So that could've been unrelated to you entirely from some neighbourhood louts?---It occurred one night after the other, so I just link the two.

Is it the sort of neighbourhood where that disturbance wouldn't normally happen?---(not transcribable) occasion where that might happen, but at the time I didn't think it was street kids.

10 You didn't think it coincident?---I didn't think it was a coincidence and I didn't think that it was kids hooning on. But they'd made reference to my wife to play the incidents down. But it might've been kids but in my mind I was worried.

All right. Commissioner, if I could tender that earlier email with the attachments.

ASSISTANT COMMISSIONER: Yes, the email with attachments dated 30 October, '07 will be Exhibit 1.

20 **#EXHIBIT 1 - EMAIL DATED 30TH OCTOBER 2007 TO MR ROMANO WITH ATTACHMENT**

MS RONALDS: Now, I want to show you a document which is one of the reports that I've referred to, Mr Romano, and you'll see this is an email from Yasmine Malouf and she's from IPP to you dated 5 November, 2007, at 10.13am. Do you see that?---Yes.

30 And attached to it was a report?---Are you asking me the question or - - -

Yes. And did you open the report when it was, when you received it ---Well, I can't recall it now but I would assume I did.

All right. And you see a, and if you just look on the scene for a moment. Again, do you want to see a hard copy of this?---No, looks fine on the screen.

40 You see it sets out surveillance day 10 and then it sets out what happened and it goes through three pages of details and then on the fourth page it has a summary. Do you see that?---(NO AUDIBLE REPLY)

And it sets out a number of conclusion about the subject, that is Mr XXXXX?---Yes.

Now, upon reading that, there's nothing there that indicates any connection with Burwood Council, is there?---No.

And they are the sort of reports that you received about Mr XXXXX?---
They are typical of the reports and the reason why I was disgruntled with
Mr Mailey about the results.

Well; do you see, I suggest to you that Mr Mailey was only doing as you'd
asked, that is, following Mr XXXXX, would you agree?---No, I don't agree
with that.

10 And that he could only tell you what his operatives saw or those acting on
his behalf, would you agree?---I would agree that he can only tell me what
they saw and I don't dispute that.

All right, just bear with me one minute. Now, from September to
December, 2007, you created a series of emails and letters that you caused
to be sent that were anonymous, would you agree?---Yes, that's true.

And in some of those you used some of the surveillance material of Mr
XXXXX, would you agree?---That's true.

20 Now, I suggest to you that the initial emails in relation to this matter, that is,
the first, not the letters, we're just focussing on the emails at the moment,
were prior to the commencement of the surveillance on 26 September, 2007,
would you agree?---Yes.

And one related to an email from an email address called Bobbi,
B-O-B-B-I.big@gmail.com?---That's correct.

And that's an email address you invented?---That's correct.

30 And you sent an email, you sent several emails from that email address?---
That's correct.

You sent one or pretended to send one to yourself?---That's correct.

Did you actually send one to yourself or did you just pretend to do that?---I
sent it to myself.

And you sent one to your wife?---That's correct.

40 And at the time you didn't tell your wife that that was from you?---That's
correct.

And you sent one later, sorry, just bear with me. And you sent one on
4 October, 2007 to Mr XXXXX, would you agree?---I can't recall the date
but I did send one to Mr XXXXX.

You see, I suggest to you that the Bobbi.big@ gmail.com emails commenced prior to the commencement of the surveillance of Mr XXXXX, would you agree?---That did occur, yes.

And that happened because you well knew that the connection between Mr XXXXX and yourself was a personal one, that is, not a business one?---I, I thought that there was a connection between my wife and that person, yes.

10 Nothing to do with Burwood Council?---I, I wasn't sure at the time.

You never had any doubt did you, Mr Romano?---I did have a doubt.

You knew exactly what was going on, that is, you thought there was a connection between Mr XXXXX and your wife with no connection with Burwood Council. Would you agree?---No. I knew there was a connection between my wife and that person but I was not aware of whether or not this person may have been involved with activities that involved my business.

20 Now, you told your wife, sorry, I withdraw that. Your wife told her employer that you'd been receiving phone calls from a phone at the XXXXX number, from the XXXXX number, do you remember that?---I invented that, yes, I do recall that.

And that, she told them on 12 September between 8.00 and 8.30 on your two mobile phones you told her you'd received phone calls with the XXXXX number?---I invented that, yes.

30 You invented that, didn't you, and you invented that on 12 September so that was before the surveillance of Mr XXXXX occurred, would you agree? ---That's correct.

And the employer then did an analysis of calls from their workplace? You were told about that?---I was aware there was something going on. I wasn't sure what.

And they could find no record of any calls going from the XXXXX number to your mobile phone numbers on the date and time you'd indicated?---If you say that, then it must be correct.

40 Well, that wouldn't be surprising, was it, because you didn't receive any calls?---I invented it, yes.

Yes. So you wouldn't expect that the records to record any - - -?---No.

- - - because you'd invented it. And they told your wife about that on 26 September and she reported that to you, do you remember that?---I don't recall that, no.

What, that she didn't tell you that that had happened?---I don't recall a discussion between my wife and myself regarding that.

But at that time you didn't tell her that you'd made up about the phone calls?---I didn't tell my wife a lot of things during that period.

All right. And on 21 September you told your wife that you'd received an email from the Bobbi.big@gmail.com at 9.04. Do you remember telling her that?---I have a recollection of that sort, yes.

10

And I think you've just told me you actually sent yourself an email?---At some stage I did, yes.

And then you sent Mr XXXXX an email that I've indicated on 4 October, 2007. Do you remember that?---I can't recall the date but I recall sending an email to Mr XXXXX.

I'll just show you this document. Sorry, we'll provide the others with copies of these (not transcribable)?---Yes, I, I - - -

20

You remember it now?---I recall the email, yes.

And it's 4 October, 2007?---Yes, that's what it says at the top of the email address box.

And that'd be right, wouldn't it, I mean that's the time that it was all happening?---It would appear so, yes.

And it's from Bobbi Big at bobbi1@gmail.com so that was a different email address that you invented?---At one stage I changed the email, yes.

30

From bobbi.big to bobbi1 - - -?---Yes.

- - - or the other way round?---Well, I changed it three times actually.

And you set out certain matters in there, do they reflect your views at the time?---They reflect my imagination and my mental condition at the time.

But they make, there's no suggestion, is there, in this email that Mr XXXXX has any connection with Burwood Council?---No, the email wasn't meant to be reflective of whether he was involved with Burwood Council.

40

Right?---It was to do, it was for another purpose.

It was an entirely personal matter, wasn't it, Mr Romano?---It was a matter that was affecting my mental condition at the time.

Mr Romano, please listen to the questions. It was an entirely personal matter, wasn't it?---This email was of a personal matter, yes.

All right. 4 October, 2007, it is clear from this email that your concerns with Mr XXXXX were entirely personal, would you agree?---I was consumed and obsessed with the issue, yes.

No connection with Burwood Council was there?---I was not convinced or aware that there was or wasn't at the time.

10

I note the time, Commissioner.

ASSISTANT COMMISSIONER: Yes.

MS RONALDS: If I could tender the email from Ms Malouf to Mr Romano dated 5 November, 2007 with a four-page attachment including the summary to which we referred and if I could tender the email that I just referred to dated 4 October, 2007 from Bobbi Big to XXXXX XXXXX headed work affairs.

20

ASSISTANT COMMISSIONER: The first will be Exhibit 2.

#EXHIBIT 2 - EMAIL DATED 5 NOVEMBER 2007 FROM MR MALOUF TO MR ROMANO WITH ATTACHMENT REPORT

ASSISTANT COMMISSIONER: The second email is Exhibit 3.

30

#EXHIBIT 3 - EMAIL DATED 4 OCTOBER 2007 FROM BOBBI BIG RE WORK AFFAIRS

ASSISTANT COMMISSIONER: We will now adjourn until 2 o'clock.

LUNCHEON ADJOURNMENT

[1.01pm]