

MAGNUSPUB01806DOC
24/05/2010

MAGNUS
pp 01806-01843

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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 24 MAY, 2010

AT 2.20PM

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: If we could just attend to some domestic chores and I'm sorry for the delay, but we've been trying to sort out a matter of evidence that was, chaos was created by someone trying to help. In relation to Exhibit 244, in paragraph 159 it says Don, it should say Darren. Paragraph 173 is says Dan and it should say Darren. Can you just note that and people can amend theirs accordingly. I tender Mr Romano's statement called Driveway, Statement of Pat Romano (Driveway) dated 18 May, 2010 with a number of Exhibits. I'm advised by Mr Blake that copies for others will arrive during the course of the afternoon and be distributed to anyone who wants one.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 251.

#EXHIBIT 251 - STATEMENT OF MR PAT ROMANO DATED 18 MAY 2010 RE DRIVEWAY

20

MS RONALDS: I seek that the order in relation to the compulsory examination of Mr Macklin on 3 February, 2010 and the related Exhibits be lifted and I tender that evidence, sorry it's the 10th of the 4th, sorry, the 3rd of the 4th and the 10th of February.

ASSISTANT COMMISSIONER: Yes. The suppression order in respect of those compulsory examinations is removed. And the transcripts will be Exhibit 252.

30

#EXHIBIT 252 - TRANSCRIPTS OF EVIDENCE OF MR MACKLIN GIVEN IN COMPULSORY EXAMINATIONS AND EXHIBITS TENDERED

MS RONALDS: And, so there's two, there's two bundles. There's three days and then there's a series of Exhibits that go with it. In relation to Exhibits 170 and 179, they are matters that I put to Mr Romano that he had invented. I withdraw that allegation. Further inquiries have revealed that in fact they were, but they were not held, they were not invented, but they were not held on the main computer system as such. So when I put it we thought it was, that was the position, but we now understand it's not the position.

ASSISTANT COMMISSIONER: Yes. That's noted.

MS RONALDS: And I call Mr Azer. Unless there's any other - - -

MR TAYLOR: Assistant Commissioner, Taylor is my name, solicitor. You've previously granted me authorisation to appear on behalf of Mr Azer. I seek that that continue.

ASSISTANT COMMISSIONER: Yes.

MR TAYLOR: I can indicate that he will take an oath on the Bible and he'll be seeking the protection of a section 38 declaration.

10 ASSISTANT COMMISSIONER: Yes. Thank you. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by him during the course of this public inquiry 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.

20 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF THIS PUBLIC INQUIRY 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 Could the witness be sworn, please.

MS RONALDS: Tell the Commission your full name?---Khaled Nabil Sabri Azer.

And your occupation?---Director of Technical Services and Operations at Burwood Council.

10 And your business address?---Elsie Street, Burwood.

How long have you worked for Burwood Council?---Around two and a half years now.

And have you always only been in the position that you're currently in?
---Yes.

20 And can you give an outline of what that role involves?---There's two facets, there's the technical services side and the operations side and the operations side centres around depot activities which would include civil construction, parks, maintenance, garbage, service, sweepers and mechanical services and other related facets of depot operations. The second facet of my project, of my position is the technical services and that includes the design, engineering design, traffic, park in terms of the landscape architecture, design side of things and the tree, application of the tree preservation order.

30 Right. And you are in fact, I'm sorry, I'm just looking for something, I am listening. You were in charge of the depot, is that correct, what's called the depot?---Not directly, indirectly through the senior manager of works.

But in terms of as responsibility flows to individual directors, that's your, that's - - -?---Yes.

- - - within your directorship if I could call it that?---Yes.

40 And what, can you explain to the Commissioner what your role in relation to the depot is?---The, I've got direct responsibility to the senior manager of works and I also review their progress on projects and budgets. I also personally attend the monthly meeting with the depot supervisors which would include the senior works manager and occasionally attend the depot resolutions committee and basically support the senior manager works in his, in his position. However, I don't reside at the depot physically.

You live up at HQ so to speak?---That's right.

And there has been a depot reform process being undertaken for the last few years, that's correct?---Yes, yes.

And what involvement have you had in that process, just generally and then I'll take you through some specific steps?---Well, when it first started I was involved in working with Morrison Low the consultants on refining and reshaping their brief, organising for them to be able to speak to the relevant staff the depot, work with HR and, and depot management in that regard. I was also presented with the first and second and third drafts of the report and made recommendations to the General Manager for the adoption of the report in December 2008 and finally had it signed off officially I think on 10 21 January, 2009. From thereon I was assisting the senior manager or the acting senior manager at the time to have it put in place as soon as possible.

And how would you describe your relationship with Mr Romano?---Well, the relationship is purely professionally and that's, that's, that's the nature of, of the relationship.

Well, you worked together for several years?---Two, two, two and a half - - -

20 How do you describe the exchanges you had with Mr Romano about the issues that were within your bailiwick?---There's always been certain agreement on issues and disagreements on others. The biggest disagreements I would've had with him where starting (not transcribable) initially I, I disagreed with him to, to be acting as the chief engineer as such. When I first started he was the chair person of the capital works committee and he was co-chairing the traffic committee. As, as the general manager I did not think that it was conducive to good, to good management and I have spoken to him about it and he has agreed to leave that up to me so very shortly after I started I took over the chairmanship of the capital works 30 committee meeting and the co-chairing of the traffic committee meeting and, and then we also had some discussion about his involvement at the depot a number of times and, and I can sort of talk about it further if you want me to.

Well, in relation to Mr Child, during the course of 2007 and 2008 did you understand that Mr Romano on occasion would give Mr Child direct instruction as to how he was to perform his duty or what he was to do? ---Yes, I was aware of those issues and I brought it to his attention.

40 And when you say issues, what, was there a problem?---I did have a problem with these issues, yes, and I - - -

What was the problem?---The problem with, with it is that Mr Romano was not as informed of the intricacies of the depot running as I was and by him bypassing this layer of management I highlighted to him that he is in a way exposing Council to certain risks from an occupational health and safety risks from project co-ordination and, and, and, and, and budget blow-out

risks and other issues upon bypassing that the, the system and jumping directly to, to, to those staff members.

And were there occasions when the work he directed had to be undone and the original plans returned to?---During my time I don't have a recollection of, of that, however, I was aware that before my time there was one particular project that, that has been happening on an excessive way where I recall (not transcribable) project in particular that was, had to be laid, and re-laid a number of times before my time. So I was mindful of that risk
10 happening again under my, my jurisdiction.

And do you recall when you spoke to Mr Romano about these issues, that is, what time, what month and what year?---Well, it's on the capital works meeting and the, and the traffic committee meeting was within the first month. In terms of the capital works, the, the direct connection with the depot staff was probably around the same time as well.

So that would've been?---Maybe around August.

20 2008?---2007, August, August, yeah, August.

And he continued, did he not, to speak directly to Mr Child and give him directions during the course of 2008?---He, he did on occasions. I was aware of, of some other times he's done it, yes.

And did you raise it with him again?---I have.

And what was the response, what was his response?---The response was, I'm aware of the risks that we're taking and I, I, you need to forgive me, I'm
30 aware of what I'm doing and we've got a large number of, of customer requests coming before the elections. You need to allow me to, to, to, to, to continue with that with a promise that after the customer request issues are resolved I will wash my hands, like, Pontius Pilate that's exactly his words.

And that caused you some ongoing concern?---I did have ongoing concerns and I've always raised those concerns with him.

And do you say that he at some stage stopped giving Mr Child directions?
---It was a stop and go situation where every time I would discuss it with
40 him he would take it on board and then it comes back again and I raise it again.

So that he changed his conduct but only for short periods, is that correct?
---That's correct.

And did it continue to the best of your knowledge during the course of 2009, that is the conduct of giving Mr Child directions?
---2009, to a much lesser degree.

And in, were you aware of him giving Mr Giangrasso directions?---No.

Were you aware of him giving any other member of the depot staff directions as to how to perform their duties?---Yes. He would on occasions give direction to the acting senior, senior manager works, Graham Macpherson.

Right?---But that has ceased briefly after I have spoken to him about it.

10

And in relation to Mr Dardano, when Mr Dardano came on to the job, did you advise Mr Dardano that this was an issue that he would have to deal with?---I made him aware that, yes, this happens on occasions.

And when Mr Ellul came on board, you advised him didn't you that there had been a previous problem with the general manager giving directions to depot staff?---I definitely recall doing that.

20

And did you tell him that it was okay now, that it had stopped?---I told him it has been ceasing, yeah.

And, and therefore it wasn't an issue he needed to be alert to?---He still needed to be, and I told him he needs to keep vigilantly looking at it because as I said before, it comes and goes.

And in terms of your relationship with Mr Romano, do you say that you were equal in the decision making process with him?---As a director and general manager, no, he, he's always been the general manager.

30

And would you describe him, he describes himself as a tough but fair leader. Would you agree with that self description?---I guess tough, yes. Fair, on occasions, yes.

But on occasions no?---No.

40

And on occasions he was unfair. And can you recall any occasion that you can use as an example of that?---On occasions, the last occasion in terms of I guess the one that I can remember reading my performance appraisal of 2009, I did not think it was fair and I thought (not transcribable) expecting him to be fair on it and I did not think he was fair in that situation.\

You thought he was too tough?---Yes, he was.

But he didn't change his view?---No, he has not.

Now I just want to explore with you your role in the purchase of a car that was for the Council but was for Mr Romano's use, that is the Audi. All right. Just so you know where I'm going?---Yes.

You agree that you signed certain documents in relation to the purchase of the Audi?---Yep.

Now before you did that did you review the contents of Mr Romano's employment contract?---No. But I have raised with him that issue and he requested that I speak in his presence to Matthew Walker, the chief financial officer and he said that he is privy of that contract. He has seen it himself. And Matthew in the presence of Mr Romano has assured me that it is within
10 the context of his contract, he's allowed that. I voiced two issues regarding the car and that was one of them, the contract.

So one was the contract of employment and Mr Walker told you did he that he'd seen the contract?---Correct.

Did you see it?---No.

So you don't know whether Mr Walker was looking at the right document or a portion of the document?---No, I was not aware. I was aware that he,
20 he told me that he has seen the contract and Mr Romano said that Matthew is privy to the contract.

And you'd worked in local councils before you came to Burwood?---I have.

And in Council's where you'd previously worked, were you aware of the Council purchasing a car for the general manager?---Yes.

So you weren't surprised by that notion as opposed to having a novated lease, for example or some lease arrangement?---No. With, in the other
30 Council I worked for, we've always been purchasing the vehicles.

All right. And so you didn't review the contract. You accepted from Mr Walker that Mr Romano had a contractual entitlement for the Council to purchase him a car. Is that correct?---That's correct.

And if Mr Walker was wrong about that, you simply wouldn't know?---I also relied on Mr Romano's assertion in, in the presence of Mr Walker so it was both of them in agreement.

40 And I think you said there were two issues you'd raised?---Yes, I also raised with him the issue of the luxury car tax being refunded to Council. I have challenged his position on that.

What was his position just so we understand?---His position was that I raised it and said does luxury car tax apply to this vehicle, he said it doesn't matter, we will get it back and I said no, I disagree with you, the luxury car tax is not like the GST or the old sales tax, it's not a tax that we get back and we had a fairly clear disagreement and we both went to Matthew, as the

CFO, and with Matthew has supported my view and he's actually, he made me the, he got on the website how much the luxury car tax is and how much it, how it's calculated and he's emailed it to me at that time and he showed it to Mr Romano.

And you were correct, the luxury car tax was not going to get refunded, was it?---That's correct.

10 That is that Council was purchasing, I'll withdraw that. Were you concerned about the cost of the vehicle?---Oh, yeah, I did have concerns but primarily because of the contract entitlement and I raised it with Mr Romano, I said how come you're going from a CRV sports to an Audi and he said my, my contract allows me to get it, you're not privy to it, Matthew is and he also said that, I asked him then why didn't he get a similar vehicle in the last contract and he said I've, I've decided, I've chosen not to invoke my rights under my contract at the time but I'm choosing to invoke it now.

20 And the car was over \$84,000. Did you have any concerns about the cost as a benefit to Council?---In terms of his allowance under his contract it was, the, the contract, the situation was not just the money it's the, the issue of his eligibility under his contract. If it was, if he was eligible for it under his contract I did not have any, any concerns. It's all reported.

And as I said, if that was wrong that you simply didn't know that at the time?---No, I did not know that at the time.

30 But you were concerned about signing off on the car, weren't you?---I had, as normally what I do is I wanted to note down that we've had some discussions and I've challenged it and therefore my concerns were alleviated by referring to an email from Mr Romano referring that we've had some discussions about it so I've basically followed my duty through challenging the issues and making sure that the right questions were asked and were answered appropriately.

Why were you being asked to sign off on the car?---I'm the chairman of the fleet management committee.

40 Right. Now, there was a new policy that came in on 1 July, 2007 in relation to cars, do you recall that, fleet management?---No, it would have been before my time.

When did you start?---23 July, 2007.

Right. So this policy that came out on 1 July, 2007, you had no hand in formulating?---No, I have not.

Did you have any occasion to review it before you signed the purchase order for the Audi?---I had a brief review of it.

10 All right. Well, I'll just hand you this document. It is actually part of, if it assists our friends, it's annexure E to Exhibit 186 but I'll just give you a separate copy and send the recordist deaf at the same time. So as I say, this is in Exhibit 186 which we're going to go to in a minute so you might as well go and get it. You see there's, if I could ask you to turn then to the second page, page number 2, so there's a index and then there's a page number 2, it has the fleet management committee was, you were chairing it, that is the director TSO. You see that? You see under Preamble?---Yes.

And that was your role. If I could ask you then to turn over the page to page 3 at the top you'll see General Manager and directors (salary sacrifice). The General Manager and directors are entitled, a spare apostrophe, entitled to a vehicle via salary sacrifice as part of their negotiated salary package or by post-employment agreement. Do you see that?---Yeah.

20 Now, I'd suggest to you that that is referring to a salary sacrifice process for a novated lease. Would you agree?---No.

You say that that covers, does it, in your mind the purchase of a vehicle outright by Council?---Correct.

How?---That's the same arrangement I've had when I first started and the car is purchased and, and there's an amount of funds deducted from my salary before, before taxation so there's a certain amount deducted from my salary package - - -

30 Yes?--- - - - out of it and this would apply to it. That's my understanding.

You say that this was not, one shouldn't read the salary sacrifice arrangement as covering only a novated lease but it covers also the outright purchase?---Correct.

Now, because once Council funds are used to purchase the \$84,000 vehicle obviously those funds aren't available for other Council purposes, are they? ---I - - -

40 That is, it's a cold expenditure of that amount of money?---That's right.

And a novated lease doesn't require that expenditure, does it?---Yes, a novated lease would - - -

In a bulk like that?---A novated lease or, or a, or an outright lease.

Yeah. That requires payments over time rather than one significant, sorry one expenditure at one time?---Yes.

And therefore it would be more prudent, wouldn't it, to have a novated lease which wouldn't mean that a large amount of Council funds are tied up into, in one vehicle?---It's, it's debatable because with a novated lease there's also interest applies so it depends on Council's preference at the time.

10 Now, did you see any policy anywhere that addressed the expenditure of Council funds to purchase a vehicle outright, anything specifically addressing that issue?---No, but it was the practice at Council and the previous council I worked for before so it was fairly consistent with what I've done in the previous council and what has been done in this council.

Did you cause any inquiries to be made of DLG, the Department of Local Government, whether they had any views about cars and the use of Council funds to purchase cars?---No, I have not contacted the DLG.

Were you aware that they brought in a policy after July 2007 that required, that only Australian cars could be purchased?---No, I'm not aware of it.

20 Are you aware that they have a policy that forbids cars being purchased if they are over the luxury tax threshold?---I'm not aware of that.

And are you aware that they have a policy that has certain things that cannot be put on a car purchased through using Council funds?---No, I'm not aware of that.

Significantly a car, a sunroof, are you aware that that's on the banned list?---No.

30 And other wheel packages that provide flasher wheels than the ones that come with the car standard?---No, I'm not aware of it.

And were they any matters that you turned your mind to when you looked at the contract for the purchase of Mr Romano's car?---No, it was purely the, his entitlement under his contract and the, the clarification of the luxury car tax issue.

40 All right. Well, if I could just ask you then to turn to the vehicle options and accessories, do you see on page 4?---(NO AUDIBLE REPLY)

Do you see that, in about point 6 on the page under Accessories on page 4?---Yes.

You see a maximum of \$1,000 for reasonable accessories is allowable on any category 3 and 4 vehicle. Now, Mr Romano wasn't a 3 and 4, he was a group 1 as I understand it. Is that your understanding?---That's my understanding.

And where if anywhere is there is a limit on the accessories that can be purchased in relation to a group 1 car, that is the General Manager's car?
---The limit would have been according to his contract.

And how did you satisfy yourself that the accessories Mr Romano had put on the Audi were within the terms of his contract?---Because the value of the vehicle including its accessories, I flagged it with Mr Romano and Matthew Walker and I, I was assured that it is within his contract.

10 And you saw the detailed invoice of the car. Would you agree?---I did.

And if the witness could be shown Exhibit 186. Now, even though this car was being purchased by Council funds, it was clear in your mind at the time you were going through this process that it was solely for Mr Romano's use?---Yes.

It wasn't a pool vehicle was it?---No. Sometimes other staff would use it, but it's not the predominant use of it.

20 And you see, I've just opened up pages, a single page number 1 down the bottom. You see it's a fax addressed to you and Mr Romano?---Yes.

And it sets out that it's an Audi A6 2.0 Turbo?---Yep.

Oyster grey exterior, black leather interior?---Yes.

Deliverable before 23 December, 2007. Do you see that?---Yes.

And then it has vehicle price \$65,838.89, so essentially almost \$66,000.
30 And then there are a series of extras, so you had no role in selecting these options did you?---No. But I've questioned them and - - -

We'll just go one at a time. All right. You didn't go to the car yard?---No, I haven't.

And select the car?---No.

You didn't decide, wanted metallic paint and all these other matters?---No.
The colour - - -

40

It was solely Mr Romano's decisions?---Correct.

So metallic paint for \$1,481. Electric, electronic sunroof for \$2,185. Did that concern you as something that Council was paying for?---I've asked Mr Romano that question and his answer was that there's a vehicle coming into, into the country and it's got those accessories in them and he would like to have them.

And so you agree with him?---I agreed (not transcribable) within his contract.

And again, Bluetooth phone prep, well the LGA says that's okay. Tinted windows, seventeen inch nine spoke alloys, remain a mystery to me, but I'm told it's just a bloke's thing, \$3,181. So that there, so that the car, total on road if you go down to the bottom, \$84,810.46. Now you received this so you were fully appraised of what the cost of the vehicle was?---Correct.

10 And your evidence that you'd been told it was part of the contract and so you didn't have any further concerns. Is that correct?---Correct.

And you thought it was an appropriate expenditure of Council funds. Is that correct?---Correct.

If I could ask you to turn to page 5. You'll see that that's a purchase order. The page that you're open at now, I think, Mr Azer?---Yep.

See that?---Yes.

20

Now that's your signature authorised by?---Correct.

And you have, see, is that a GM's email, 19/11/07. Do you see that?---That's correct.

At 2.51. Now why did you feel that you had to write that on it?---Because it did sum up a very important issue that I've had a challenge with and I've discussed it with him and this is how the opened up his, his email.

30 I'm sorry, this is how he opened up his - - -?---That was the opening of his, the email that I referred to.

Right. And then if you turn over the page you'll see you've approved the payment. So it's not been received by anyone, the very next page from the page you were on, so page numbered 6 down the bottom. Do you see that? ---Yep.

40 So it's not, there's been no receiving officer to sign off and these are the documents from the Council file. Is that, that's unusual isn't it?---He has received it via email and he's written that he's received it. And I took that as, as being, as being received and I've witnessed the vehicle myself.

Right. And then it says motor vehicle received by the general manager himself. Please see his notes and signature on the invoice. Do you see that?---Yep.

And then if I ask you to turn to the next page, page 7, see there's an Audi Five Dock and then refer to Khaled Azer and that's I think Mr Romano's signature?---That's correct.

Is that what you mean by he signed off the relevant documents?---This is I think part of it. There also might have been an email from him. I recall an email as well.

10 Right. And, and if you go, sorry, back to page 3 you'll see there's an email dated, the first one is from you to Mr Romano on 19 November at 2.47. Do you see that? And it's, sorry, it's from the Audi man to you and to Mr Romano. And then he sends it on to you as per, if this price is okay, please place order today. What role did you think you had in negotiating the price in relation to the Audi?---The, it was to procure two other prices so that I, I'm in accordance with the purchasing policy.

20 Right. Well, if the witness can be shown Exhibit 49. So you had the job did you of searching out two other quotes for an Audi A6 Turbo, seventeen inch wheel, sunroof, et cetera? Was that your job as you understood it from Mr Romano?---As I understood it, he was happy with it and he said just to do due diligence in terms of pricing.

No. Please listen to the question, Mr Azer. Was it your job as you understood, give to you by Mr Romano to find two other quotations for an Audi A6?---He did not say that directly, but I took it this way.

And so what did you do?---I organised two other prices for the Audi.

30 Okay. And where were they from?---I can't recall, but I, I put them down on an email, on the system.

Are you able to explain then why that has not been produced to this Commission?---I'm not in charge of producing information under section 22. So I'm not aware of it. But they were definitely attached to the invoice.

Well, they've not been produced at this stage, so you're one ahead of me. So you say that you made inquiries - - -?---I have.

40 - - - of Audi, two other Audi shops or whatever they're called?---Correct.

Are they called a shop?---Dealerships.

Dealerships, thank you. There were two other Audi dealerships you approached them and asked them for the value of the same car?---Correct.

And they told you a certain amount, each gave you a quote?---Correct. One of them was more expensive, one was a touch cheaper, but it was a different colour.

Right. And so then what happened?---I spoken to Mr Romano and told him I've got a price that was around three, four hundred dollars cheaper for a different colour and he said, no, he prefers this one because, also the delivery was, was sooner than the other one.

Right. And that's what he's referring to, you say, when it says, if this price is okay, please place order today?---Correct.

10 Right. So you say do you, that in terms of Exhibit 49 that you have, which is the purchasing manual, if you turn to the second set of page 2's, there's purchase, there's requirements for purchase of between 50 and \$99,000. Do you see that in (e) the second page 2? Do you see that? Perhaps if you could hand me the Exhibit and I'll find it for you. It's a confusing document. It's got two sets of page numbers for some reason best known to the author?---Yeah.

20 You see there - paragraph (e) on the page I've handed to you, it relates to purchases between 50 and \$99,000 and this vehicle came within that category?---Yes./

And you say that the steps you took, did you, was that your view that you were complying with that policy at the time?---Yes. Yeah, sorry, it's not a policy, it's a manual.

What's the difference between a policy and a manual?---The policy is, carries more weight than the manual. At the time the draft policy, I've just started activating and getting, putting in place.

30 Yes. So a manual you can disregard if you so select, is that what your evidence is?---No, I'm not saying that.

Binding, isn't it?---Not as binding as, as policy in terms of adherence to it to the letter of the law.

So you can decide to ignore it if you want to?---No, I'm not saying that.

40 Well, where does it fall, Mr Azer? What are you saying? It's either binding or it's not, isn't it? It can't be a little bit binding on some occasions and not binding at all on other occasions and binding on someone else on another day?---It it's considered best practice.

You'd agree that it would be important, wouldn't it, for the general manager to follow manuals? He should be the leader showing best practice, shouldn't he?---Of course.

And the directors should be doing that, too, shouldn't they?---Correct.

So that it wouldn't be discretionary in relation to your role as purchasing a vehicle, would you agree?---It is important to adhere to it, yes.

And you say the process you undertook adhered to it, do you?---I believe so.

But you chose the dealerships you approached?---Yes I have.

I assume there's only a limited pool of Audi dealers?---Yes.

10 And as to the rest, you say, do you, that I've not seen any disclosure of interest or anything like that? Mr Romano had an interest in the outcome of the process, didn't he?---He did.

Because he had a view about what he wanted, sunroof, wheels, silver, whatever?---Yes.

So he had an interest in the outcome?---He would have.

He had a personal interest in the outcome, didn't he?---Yes.

20

You didn't have any personal interest in the outcome?---No.

You, just to keep the general manager happy but apart from that it wasn't going to be a vehicle for you, was it?---Yeah, keeping the general manager happy was not a top issue at the time but it's following the process first and then that was secondary.

And did you ask him to complete a disclosure of interest declaration?---No, I have not.

30

Why not?---I did not believe (not transcribable) because I was checking on the prices anyway.

Well, the policy says two persons, doesn't it? Who else was involved?---I have copied this information to, from memory from, to Les Hullick and Matthew Walker as observers on (not transcribable) and also Matthew was part of our discussion regarding the entitlements.

40 Mr Walker's more junior to you, isn't he?---Yeah, but he was one that was privy to the contract and, but, and I've also copied Mr Hullick. He was equal to me.

And what role do you say Mr Hullick had in the purchase of the - - -?---He's just as a, as a reviewer, as a, so he's aware of, of this happening.

Well, did you discuss it with him and say, I'm sending this to you because I want you to make sure it's okay. I'm relying on you as a reviewer of the process?---I did recall discussing it with him, yes.

When?---At the time when we were, some time between our discussion with Matthew Walker and the purchase.

And do you say that you weren't troubled by the cost of the car?---Initially I was, until I was assured by the general manager and the CFO that he was entitled to it as part of his package, employment package.

10 But you didn't ask to see the contract?---I have asked about the contract and I was reassured by Mr Romano in the presence of Mr Walker that it is part of his contract and Mr Walker was a witness that he has, he's been privy to it.

Now, if you could turn to, sorry, if you could just shut that purchasing manual up and if you could turn to, have you still got exhibit, have you got the, Mr Walker's statement there?---Yes.

If you could turn to page 27. Do you have that?---Yes.

20 You see it starts off at the top, "Contract of Employment, 1 September, 2007". Do you see that?---Yes.

And that's before you signed the documents which was November, 2007? ---Yes.

30 And do you see it says, "This schedule operates on and from" and then it goes down, it sets out certain matters and if you see under "motor vehicle", if you could just read that to yourself rather than me read it out to you and tell me when you've read it?---Yes.

You say that you didn't see this at the time?---No, I have not.

And is this the first time you've had occasion to read what was the contractual entitlement at the time?---It is the first time.

And you don't know anything about what Mr Romano did about paying, the amounts he might've paid out of his salary package for the car?---No, I'm not privy to his salary package.

40 And you don't know what he did later in terms of withdrawing funds?---No, it's not, it's not (not transcribable) within my jurisdiction.

And as far as you were aware, when you signed off in November, 2007, that was the end of the matter for you, would you agree?---Correct.

And you had no further involvement in it?---Correct.

And recently are you aware that the vehicle has been returned?---Yes.

And are you able to tell the Commission what's happened to it?---It is currently being prepared to, to be sold.

It's been sent to an auction house?---It's in the process, yes.

So it won't remain the property of Council?---No, it will not.

10 If you could just shut that. Sorry, I've put so many documents I have difficulty finding them all. Now, if we could just turn to a separate issue. You were aware of an employee called Joe Saad or Youssef Saad?---Yes.

And you were aware that he was terminated?---Yes.

And, now, he was a depot staff member?---Yes.

And so he was strictly within your jurisdiction, I mean, down a bit, but still came within your managerial responsibility?---Yes.

20 What view do you say you had about terminating Mr Saad's employment? ---Given the circumstances, I was against the timing of the termination. I didn't think it was appropriate timing.

Why not?---Because at the time there was serious reforms happening and Mr Saad was assisting the senior manager at the time with the reforms and I was also aware that he has raised with Mr Dardano issues to do with work on Mr Becerra's units.

30 Right. And did you think that was a reason why he should be kept on?---It was to me a reason to keep him on until issues are further clarified. It's just the timing was not, was not the best.

40 Well, I'll just, if the witness can be shown Exhibit 200, please, and perhaps return the ones that he's got there so he doesn't drown in documents. I'll turn to the disclosure issue in a moment, but I'm just addressing the termination issue at the moment. Now, you'll see there's some handwritten page numbers down the bottom. Do you see that. Now, if I could ask you to turn to page 12. You'll see that's an email from Mr Ellul to Mr Dencker and you're copied in, saying that the matter be deferred until they address other staffing issues. Do you see that there at the top?---(NO AUDIBLE REPLY)

Do you need a moment to read it or are you familiar with this document? ---Yes.

And you agreed with Mr Ellul at that time. Is that correct?---I did.

Now, that's the 27th of April at 8.37am. And then if I could ask you to turn to the next page, you'll see that it's the minutes of a meeting from the 27th of April, 2009. Do you see at page 13?---Ah hmm. Yep.

3.30 to 4.30.---Yes.

And do you see your present?---Yes.

10 And the termination of Mr Ellul was discussed at that meeting. Do you recall that?---Mr Saad?

I mean, sorry, Mr Saad, not Mr Ellul. Dear me. Sorry about- -?---I'd like to (not transcribable)

I didn't mean to sack Mr Ellul overnight. Sorry, Mr Saad. I was discussed at that meeting, wasn't it?---Yes, it was.

20 And there was a split, wasn't there, between the members who, the people who were present at the meeting?---Yes, there was.

And would you agree that Mr Ellul did not want to terminate Mr Saad's employment?---Yes,

And he said that?---He did.

And he was supported by Mr Dardano?---Correct.

And by yourself?---Correct.

30 And Mr Macklin agreed as well. Do you recall that?---I recall that.

And indeed Mr Macklin noted, didn't he, that it might destabilise the reforms that were going ahead?---That's right.

But Mr Hullick wanted him terminated?---Yes.

And Mr Dencker wanted him terminated?---Correct.

40 And that's what happened, isn't it?---That's right.

How is it that you're in charge of the depot as a director, but you are in effect outvoted by two other directors?---Um, the voting rights are effected to the directors' level, so basically I was outvoted two to one and Mr Dencker at the time was acting general manager of depot reform so he had the, the utmost sort of vote on it.

So he had the casting vote, did he?---He had the casting vote and it was two to one anyone so he didn't even need it.

And did that disappoint you, that your colleagues didn't support you even though you're the person who's in charge of the depot?---Yes, it was, it was disappointing.

And that those who were most closely connected with the depot, I'll just try that again. Those most closely connected with the depot reforms were all those who wanted to keep Mr Saad on?---That's right.

10 And those who really had no involvement with it at all were the ones who wanted to get rid of him?---Mr Dencker, by that time he had some more serious involvement in it and him and I, we had some discussions about it, so he was more involved than what appears.

And at the time, Mr Romano was not present?---Not in this meeting, no.

But it was know, was it not, and discussed at the meeting that Mr Romano wanted Mr Saad to be terminated?---It, I recall discussing that, yeah.

20 There was a discussion at the meeting about that?---That's right.

And Mr Romano's view that Mr Saad should be terminated was stated?---I can't recall if it was stated straightforward or indirectly.

Well, doing the best you can, was it stated directly or indirectly?---No, indirectly.

And who would have stated it?---I can't recall.

30 Mr Dencker?---I don't think so.

Mr Hullick?---I don't think so.

You?---No.

Mr Macklin?---It may even be the fact that Mr Romano used to sort of talk to, talk about Mr Saad unfavourably, but I took it maybe that maybe he's had some other private discussions with Ian and Les, but I haven't, I haven't sort of, haven't been part of- - -

40

You weren't part of those conversations.---No.

How, Mr Romano had directed, had he not, that all casuals had to be terminated?---Correct.

But Mr Saad was the only person who was in fact terminated as a casual, wasn't he?---He was the only casual when he was terminated. The others were not casuals.

Right. Now, Mr Dardano had a negative view about Mr Saad, didn't he?
---He had mixed views.

Well, he considered Mr Saad unreliable in terms of the things he recounted.
---Correct.

And you agreed with that, didn't you?---That's right.

10 And Mr, Mr Dardano had said that not only at this meeting but at earlier meetings of the depot CFT. Would you agree?---Yes.

And that Mr, the word of Mr Saad could not be relied on. That was Mr Dardano's view?---That's correct.

And you agreed with him about that?---I did.

20 And what basis did you have to form that view about Mr Saad?---Um, it's a number of incidents that I, that were reported to me. The one that comes to mind was a report from Mr Saad that there was concrete that was poured on Park Street where the concrete was excessive and it was used in another job and that led to court orders being taken which confirmed that the concrete was in the ground fairly thick, a lot thicker than what was envisaged, but it was no evidence of misappropriation (not transcribable).

And when you say used on another job, you mean Mr Saad alleged, didn't he, that concrete had been taken by somebody and used on a private job?
---That's correct.

30 And that was quite a serious allegation.---That's right.

Stealing council resources.---Yes.

And so Mr Dardano organised for there to be drilling of the concrete?
---I don't know if it was Mr Dardano or somebody else, but yes.

No, he organised it. I'm not saying he did the drilling, but he organised the drilling.---Yes.

40 And Mr Saad was completely wrong, wasn't he?---He was.

Not only was there adequate concrete but it was thicker than anyone had anticipated.---Yes.

So it was a reverse proposition.---It's debatable, yeah, and- - -

But there was certainly no concrete missing.---That's right.

And so Mr Saad at that point was shown to be an unreliable source of information.---That's correct.

And that wasn't the only time he was shown to be an unreliable source of information, was it?---No, it was not the only time.

There were others where he had made serious allegations against depot workers and upon investigation, none of them had been found to be correct. ---Yes.

10

And Mr Dardano said that even though he was unreliable, he still was a good worker.---Yes.

That he may have caused a waste of management time while people ran around and tried to investigate his allegations, but as a worker, he was fine. ---That's right.

And so Mr Dardano wanted to separate the two issues out, even though he himself, Mr Dardano that is, didn't trust Mr Saad on anything he reported.

20

---That's right.

But Mr Dencker and Mr Hullick took a different view and that was the view that prevailed.---Ah, yes (not transcribable) different views, yes.

So Mr Dencker in particular was driving the matter, was he?---Ah, well, he, he's the one who's been to the depot and has spoken to Mr Saad and saw him in action.

Ah hmm.---So he also had more hands-on experience with Mr Saad.

30

All right. Now, in relation to the earlier Saad disclosure about the units, you know of which I speak?---Yes.

Would you agree that Mr Dardano came to see you on 5 February, 2009 and told you certain things that had been said to him?---That's correct.

What did Mr Dardano tell you, doing the best you can?---He said I've got allegations from depot staff and he said - - -

40

Did he identify who?---I think he did. And he said two issues, one that the mechanic, Mr Quirke, has been procuring hands-free kits for his own use as part of Council's work and the other one was - - -

Hands-free telephone kits?---That's right. And another issue was he said and also Mr Saad is alleging that he, he has done some work on a block of units under the supervision of Albert Becerra, Council's principal architect.

So, and what was your response to Mr Dardano?---At the time Mr Macklin was at the door so he overheard it and he, he, he was part of that discussion.

So he joined the discussion during the course of it, did he?---Well, well, he, he was there at basically right at the beginning.

Right. So he heard the disclosure from Mr Dardano?---He heard it the same time, the same time I heard it, yes.

10 Right. And what did Mr Macklin say?---Mr Macklin was just listening at this point in time and Mr Dardano was fairly concerned. I, I told him let's separate the two matters because the first matter is already under investigation with HR so look at the matter of the units. So I told him we need to look at it in context because there's something you don't know, that Mr Becerra is actually a contractor to Council and he has got his own practice and he could be very well supervising a block of units for one of his clients and maybe he is asking one of the depot workers to come and do some extra work on the site so in this case this could be just a, a pure, this is come, for example, to get, to come to some consensus, it was part of the, the
20 sort of brainstorming I guess. I said it could be as simple as declaring a secondary employment issue so I stopped at that and then Mr Macklin joined the conversation and he said, no, Mr Director, this could be very serious. I said what, what do you mean? He said this could be at Council time, it could be using Council resources, you can't, you can't sort of judge it this way so I said yes, I can see (not transcribable) critical so I asked Mr Dardano, I told him are you aware of this work taking place at Council time, he said, I don't have that confirmation. I said, do you think Council resources were used? He said, there may be so at the time I realised that maybe I, I was too simplistic in my initial judgment and I took on board
30 Mr Macklin's views and I can see that maybe I've got some sort of interest in there that maybe I should not be in charge of the, of looking after that matter.

Why did you say that? Did you say that or did Mr Macklin say that to you? ---He suggested it, he suggested it by saying that maybe you are trying to, you influence because it's your area of influence so I said yes, I agree with that and so I said yes, I'm, probably it's my area of involvement.

40 But didn't that mean that you should be hands on trying to work out what had happened?---In normal situations I would have but however, the, if, if his perception from the outside that I am trying to, whatever call I've made on the issue initially seems to be seen by him that I'm trying to make it not an issue that I thought from somebody from the outside would definitely come to the same conclusion so I looked at it. If it is not a conflict of interest, would we definitely proceed a conflict of interest if one of the three people brainstorming it comes with it outright.

I'm sorry, I'm at a loss. Mr Macklin identifies what he says is a potential conflict of interest because Mr Saad works in an area you're ultimately responsible for, that's essentially what he said, isn't it?---Essentially what he's saying is that I've simplified the issue too much to the extent that maybe I'm trying to look at it as a non-event and basically tried to dismiss it because it comes under my area.

10 And so what was the decision that you made then?---I've agreed with the sentiments of his argument and he, he suggested that he would take it up to Mr Cummins for an arm's length investigation and I agreed to that.

And did you ever speak to Mr Saad about the matter?---No.

Why not?---Because I'd been removed from the, from the, from managing the issue.

20 But you've removed yourself not been removed?---Well, you're either removed or you're not removed so if I'm removed I might as well leave whoever is dealing with it to deal with it at arm's length. If they want to approach me they know it came through my office.

So you just walked away from it in essence even though it involved a depot staff member?---No, I had not. I'd been following it up with Mr Macklin and when it went to Mr Dencker I followed it up and I, I, I asked about the progress and if there's any issues that I can deal with and at the time I was reassured that it was number 1 not a, not a protected disclosure and number 2 - - -

30 Who told you that?---Mr Dencker and number 2, he reassured me that there was no work done at Council time and it's not an issue.

And did you have occasion to review the protected disclosure policy of the Council at the time that this issue arose?---Not at this point in time.

Were you familiar with the policy on 5 February, 2009?---I think I've, it was reviewed earlier on, yes.

40 Were you familiar with it as at 5 February, 2009?---I was familiar with, with it, yes.

And when Mr Dardano was talking to you did you form a view about whether it was a protected disclosure or not?---It was not clear that this was a protected disclosure in my opinion at the time.

Well, what did you understand at 5 February, 2009 were the characteristics of a protected disclosure?---Well, okay. First it says you normally have something that is fairly, my understanding at the time of the policy that it would have been something that is documented and supported.

So you say it had to be documented?---That was my view at the time.

So you mean, by that you mean in writing?---In writing, yes.

And had Mr Saad been asked to reduce his concerns to writing as far as you knew?---I understand that Mr Macklin was going to do that.

10 Ah hmm. But as at 5 February, 2009 during this initial discussion
Mr Macklin told you, did he, that he was going to go and ask Mr Saad to put
it in writing?---Yes.

And so you left all that to Mr Macklin?---To Mr Dencker at the time.

Mr Dencker?---Yes, he was in charge of the investigation.

20 But that happened later, didn't it? I'm still at the initial conversation where
Mr Macklin's taking it over from you and saying that, and you giving it to
Mr Macklin?---I don't recall him discussing getting something in writing
from Mr Saad at that initial meeting.

And Mr Macklin told you he was going to give it to Mr Cummins?---That's
right.

But now you're saying Mr Dencker came in but that was later, wasn't it?
---That's right.

30 Right. And what involvement do you say you had after that?---I was
expecting some contact from Mr Cummins and it did not happen and instead
we got an email from Mr Romano saying that the matter is being removed
from Mr Cummins to Mr Dencker and I have followed up with Mr Dencker
afterwards and made sure that the matter has been followed up and it has
been resolved in whichever way and I was assured it was.

And who assured you that?---Mr Dencker.

And did it concern you that it'd just been swept away like that?---No, I
thought he's followed due process.

40 How could you establish that?---He assured me, he said there is, there was
no work done during Council time and it's not, does not constitute a
protected disclosure, he's checked the policy and he discussed it through
Mr Macklin with Mr Saad and he was satisfied with that.

That was Mr Dencker's view?---That's right.

And you accepted his view as being correct?---I did, yes.

Do you now understand that that was incorrect, that is, in terms of work being done on the units during Council time?---Actually up until when I actually I think that even reading the transcripts (not transcribable) done was not during Council time.

But do you understand that others did work during Council time?---That's right but that was not part of the disclosure.

10 Do you recall that Mr Romano called you at home, called you at your mobile, on your mobile but you were at home, sorry, (not transcribable) confused, on 10 February, 2009, at approximately 8.40pm?---That's correct.

And do you recall what he said to you?---Yes. He, he said that words to the effect that what do you know about the (not transcribable) disclosure? I found out about it.

And just stopping you there. Was it common that Mr Romano would call you in the evening on your mobile?---No.

20

And could you describe to the Commission his tone of voice at the commencement of the conversation?---He was fairly uptight and basically on the attack.

All right, go on. So what did he say?---He said words to the effect that what do you know about the protected, the, the report from Mr Saad and why did you keep it away from me?

30 Why did you keep it away from him?---Correct.

All right?---And why did you declare a conflict of interest and he had a number of other questions on the side.

Did he say to you that you needed to look after his back?---He did.

About things like this?---Yes.

40 Did he say anything else along those lines?---No, (not transcribable) but very soon later on he mentioned that there was an issue with (not transcribable) with Mr Dencker and he looked after him and I should do the same.

And did he tell you during the course of that conversation that he was going to call Steve Child and talk to him?---No, I don't recall that.

And I've said to you it was 10 February, but you're not quite sure about the date of that phone call, are you?---No, I think it was the 10th. What I'm not too sure is the second discussion about the time it was 11th, 10th, 11th or 12th.

All right. So that may have been, it may have been part of that conversation or it may have been part of one that happened in the next day or two?---
That's correct.

Now, you're aware that Mr Romano removed Mr Cummins and put Mr Dencker in to run the, to look at the matter?---That's right.

You didn't play any role in that, did you?---No.

10

You were present at the conversation between Mr Cummins, Mr Dencker and yourself when Mr Dencker said, "I'm the cleaner. I've been brought in to clean up your mess"?---I was reminded later on that I was around however, because I was in a room that was very crowded and I didn't hear much of the details.

20

But you heard something like that? You heard Mr Dencker talking about being the cleaner and being brought in?---Not, not to my, I remember there was some form of (not transcribable) happening but I didn't hear the details.
The room was very crowded. There was a lot off staff around.

Well, were you concerned about the allegations made by Mr Saad, that is, that there was work being done on units?---Well, initially I was not concerned. However, when particular use of Council time was concerning to me at most.

Because that would've been a serious issue, wouldn't it?---That's right.

30

And one that needed to be followed up?---That's correct.

And that didn't happen, did it?---No, I was assured by Mr Dencker that he's followed up.

What did he tell you he'd done to follow it up?---He said that he's checked the protected disclosure policy. He's given Mr Saad opportunities to put things in writing and he's listened to the allegations and he reassured me there was nothing that was done during Council time and it was not an issue.

40

And that was it?---That was it.

Now, Mr Romano sent an email out to others including yourself. Could the witness be shown Exhibit 249 please. Mr Romano continued to be unhappy, didn't he, that there had been these allegations made and he'd not been told?---Yes.

And he made that point to you on more, just don't worry about the document for the moment, just listen to the question please. He made that

point to you on more than one occasion, not only in the phone call to you at around 8.40 at night but in the next day or two he repeated his concern, didn't he, that he had not been immediately advised about the allegations?--- I recall so, yes.

And he blamed you for that partly, didn't he?---That's right.

Because you were the original director who received the information?
---That's right.

10

And he inferentially, well he said to you, didn't he, conveyed to you that you should've gone immediately to him and told him about it?---That's right.

20

And what was your response to him when he put that proposition to you?---I told him there was a conflict of interest with the issue and also on the other hand I was also in effect acting under his direction not to be involved into investigations, to, reminded him of his comments that I wanted to concentrate of building the assets and looking after the assets, not to be distracted with investigations, I want you to be, I want you, he used to call it Bob the builder. So as a result I could not sort of be involved. Once I'm involved, not involved, it's not up to me to disclose it. It's up to whoever is investigating it.

30

What was the basis for him telling you it'd be Bob the builder and not to be involved in investigations? Had you got involved in something earlier that he was unhappy about?---Yes. There was an investigation earlier. It was not me personally, it was the senior manager of works, Roy Einarson. He was investigating some allegations that Mr Giangrasso was illegally dumping his own private waste on Council account and he did inform the general manager at the time of it and as a result Mr Einarson sort of used somebody else to let him know when this was happening and it was clearly, it appeared that Mr Giangrasso knew of the movement of Mr Einarson out of the depot and he got a phone call when he was away visiting another neighbouring council and say, (not transcribable) you now, the, his (not transcribable) so it obviously from (not transcribable) could see that the investigation was not, was not successful.

40

And what was your role in all of that?---I was advising Mr Einarson and he sort of, he let me know what's happening so I was following it up.

He was the acting depot manager was he?---He was the general, the, the, the, the, the new manager at the time.

And he lasted just a couple of weeks, didn't he?---A couple of months maybe.

And then he left?---That's right.

He quit, didn't he?---He left, yeah, left Christmas Eve.

And why did he do that?---We tried to get a, an exit interview from him and we were not successful.

So you don't know why he quit?---No.

10 Now, if you could look at the document I've just handed you. That's Exhibit 249. If you can go to page 2 and it's, our email start down the bottom. You'll see there's an email to Mr Macklin from Mr Romano dated 12 February at 12.48 and you'll see it's copied to Hullick, Dencker and Azer. Do you see that?---Yes.

Now, it's not copied to Mr Cummins, did you notice that at the time?---No.

So you didn't notice that at the time?---No.

20 Would have been a matter that would've been important to send to Mr Cummins, wouldn't it, given what is addressed in it?---Correct.

So you didn't notice that he had been excluded?---No.

And is now the first time you've realised that?---Yes.

30 All right. Now, that sets out that, "Peter, as discussed, effective immediately any complaints, allegations, personal matters that affect Council operations and/or grievances that are presented to you or made known to you are to be reported to me immediately. You are not to proceed with investigating or acting on these disclosures without my approval." Now, and then it goes on. Now, when you read this, what was your reaction?---It was, well, I guess it was a bit restrictive on, on staff to do what they need to do.

Well, it was more than that, wasn't it?---Yeah.

It was an improper suggestion, wasn't it?---Yeah.

40 It was seeking to influence any complaints made about Mr Romano, that is, they had to be, that he was the only person who could approve any investigation into any matter involving himself, that's what he's saying, isn't it?---Yeah, yes.

And did you respond to this email?---No, I have not.

Why not?---Because I remember (not transcribable) at the time and Mr Macklin has made a very strong response which I agreed with.

Well, how would anyone know that you agreed with it?---(NO AUDIBLE REPLY)

Did you take any step to support Mr Macklin?---I can't recall, possibly I did but I can't recall now.

Well, in other matters you sent lengthy emails setting out your view and you didn't in this regard, did you?---I did believe that Mr Macklin has set it out appropriately.

10

Mr Macklin's not a director, is he?---Yeah, but he's, he's, he's, he reports directly to the General Manager as well.

He's not a director, is he?---No, he's not.

And you as a director did nothing to support him, did you, against Mr Romano's (not transcribable)?---I disagree, I've supported Mr Macklin on a number of occasions?

20

How?---With this one I can't, I don't have a recollection, I don't recall on this matter, no.

What I'm suggesting to you, sir, is that you did not make your views known at all would you agree?---I can't agree because I can't recall, I might have.

Well, in all the documents that have been produced there's been no response by you in relation to expressing any view in support of Mr Macklin to Mr Romano?---I agree there's nothing in writing.

30

So do you have any recollection of doing anything?---I might have but I can't be sure. I might have spoken to Mr Macklin but I can't be sure.

Well, what about to Mr Romano, it's him who's putting forward the ideas? --- (NO AUDIBLE REPLY)

You see, I'd suggest this to you, Mr Azer?---Yes.

What Mr, what Mr Romano was proposing was a very serious disruption of proper processes, was it?---That's right.

40

And it was a matter of serious concern that he was trying to take away the independence of any of the senior members of staff to investigate matters, that is, that could only occur with his authority, that was a serious matter, wasn't it?---Yes, it was.

It was a matter that Mr Romano needed to be taken on about, wasn't it? That is, he had to be challenged in his view, didn't he?---And he was challenged.

He was challenged by Mr Macklin?---Correct.

But not by you?---No, but I thought it was very appropriate the response and I thought that would have effectively cut this, this issue.

Well, do you see that that in fact didn't have and if you look at the email that Mr Romano sends back to Mr Macklin, he's in fact entrenching his views. Now, you're not copied on that email. Do you recall whether you
10 ever saw it, did Mr Macklin send it to you?---No, I don't recall.

What did you do to follow up about whether this policy that Mr Romano wanted to put in place and what I'm suggesting to you was a totally inappropriate policy, was actually Council policy after 12 February, 2009?
---I thought that the issue was appropriately responded to.

But Mr Macklin's not the decision maker, is he? Mr Romano is?---Yeah, but, you can only tell him it's not appropriate and that's what Mr Macklin has put forward, I agree with that.
20

What I'm asking you is what did you do to determine what was Council's policy after 12 February, 2009 in relation to complaints made about the General Manager?---I can't recall.

Does that mean you did nothing?---I'm trying to think, maybe I did but I can't recall.

ASSISTANT COMMISSIONER: Mr Azer, at this time did you know that Mr Romano may have had some involvement with the units as well?---I did
30 have some form of, I had some doubts that it, he would have, yes.

Sorry, had what?---I had, I had, initially I had some concerns that he might be involved in it, yes.

Based on what?---Based on, initially it was based on the relationship between Mr Becerra and Mr Romano and, and also when Mr Romano rang me that late night I actually told him that I also had some recollections from Mr Romano earlier, later last year when he said that he knows all about bricks and mortar, on sort of a (not transcribable) discussions and he has
40 renovated a block of units and it had rented well and he knows all about bricks and mortar so I did have a link in my mind that he, he could be involved in, yes.

So you put two and two together there so when he was talking in that conversation about watching his back you, you took it as something personal to him, he had some personal interest in this?---When he rang me that night, yes, I had and I told it to him, I asked and I told him I thought

you, you were also involved that's why I did not, that was part of the reasons I didn't tell you.

And what did he say to that?---Oh, he was furious.

He didn't accept that as a good reason not to tell him?---He was, he was, he did not like it.

10 He didn't like it. Well, just thinking, I mean, that should have made this even more serious to you wouldn't it? If you thought that this direction was in some way to protect himself because of some involvement he had with the units, did that occur to you that that was what this direction was all about?---Yes, it did occur to me.

But you didn't take any action in respect of it?---I, believe that Mr Macklin has written words that were very strong and I'd been copied on it with the other directors and I thought that that would sort of fix that issue.

20 Thank you.

MS RONALDS: Well, not all the other directors, not the director of corporate governance, he's excluded from this little exchange, isn't he?---At the time I did not realise he was not party to it.

Were you ever told from Mr Dardano when he first saw you on 5 February that Mr Saad has said that others, being Child, Giangrasso and Vadala had also worked on the unit?---No, I recall that he said that what he told me was that Child was the link between him and Becerra.

30 And wasn't that a matter that needed to be explored?---He has not, there was nothing to suggest that Mr Child would have done any work on units apart from basically getting Mr Becerra to know, to know Mr Saad.

(not transcribable)?---Well, that was how it was presented.

Did you go and talk to Mr Child about it?---No, I was not handling the investigation.

40 No, that doesn't matter, does it? What I'm asking you is did you go and speak to Mr Child about it, he's in your jurisdiction, isn't he?---Yes, he was.

Did you go and speak to him about it?---No.

Why not?---Because it was, the investigation was handled by Mr Dencker.

And when Mr Dencker reported back to you did you ask him whether he'd spoken to Mr Child about the matter?---Not that specific question but I

asked him what, what was the outcome and he told me the outcome is it's not a protected disclosure.

That's a completely different issue, isn't it? Whether or not it was a protected disclosure and we'll disagree about that?---Yeah.

Whether or not it was a protected disclosure is one issue, whether the link identified by Mr Saad of a role being played by Mr Child was an important matter, wasn't it?---It was, it would have been if that was the case but
10 Mr Child's name was mentioned merely as a person who connected Mr Saad with Mr Becerra or in the context of Mr Dardano's discussion with me on the 5th, that's all that was done, there was no discussion of Mr Child doing anything or touching anything to do with the units.

Mr Child is a supervisor and he's putting a member of staff in touch with another member of council staff. Are you seriously telling the Commission that you didn't think that was a matter that needed to be followed up?---If there had been inappropriate behaviour in terms of working during council hours or use of resources, definitely yes.
20

Well, you wouldn't know, would you?---I was assured by Mr Dencker that that was the case.

But you didn't ask him about Mr Child, did you?---(NO AUDIBLE REPLY)

You didn't say to Mr Dencker, did you interview Mr Child about this matter, and ask him what his role in it is if anything?---I did not ask that specific question, no.
30

Well, why not?---Because if there was no appropriate behaviour then, and that was the conclusion he came up with, I accepted that as a, as a matter of fact from his investigation.

You see, what I suggest to you is this, Mr Azer, that Mr Saad's revealed some serious matters and you were active participant in covering it up. Would you agree?---No.

You made no inquiries of Mr Child. Would you agree?---I've made no inquiries of Mr Child.
40

You knew from the beginning that it involved the general manager. Ah, I didn't know. I had some suspicions.

You had a very healthy suspicion, didn't you, that were confirmed when he called you in the evening at home and demonstrated how upset he was about it?---That's right.

You didn't have any doubt after that, did you?---No.

And what I suggest to you is, that you and Mr Dencker actively participated in a cover-up, didn't you?---I disagree.

And you knew that something funny was going on but you didn't want to know what really was going on because you knew that that would expose you to the wrath of the general manager.---Ah, I disagree.

10 Well, what explanation do you offer the Commissioner for doing nothing about it at all, apart from handing it to Mr Dencker?---I did follow it up personally with- - -

MR TAYLOR: Objection. I object to that (not transcribable) handed it to Mr Dencker at all.

MS RONALDS: I'm sorry. Apart from knowing that Mr Dencker was investigating it and he reported certain matters to you, you asked him no in-
20 depth questions about it, did you?---No. Well, I've asked him all the relevant questions at the time that I thought were appropriate to be asked and I got appropriate answers.

Mr Saad had identified Mr Child as the link but you didn't ask Mr Dencker if he'd interviewed Mr Child. Is that correct?---I didn't go into details of his investigation.

And why not?---Because that was a matter for him as the investigator.

30 Mr Child is a member of your staff, isn't he?---Yes, he is.

You are responsible down the line for his activities, aren't you?---Yes, I am.

Well, why weren't you concerned what he was doing when he was linking up two other people to perform work on units that you were pretty certain were owned by the general manager?---

MR TAYLOR: Well, I'd object to that, that's not his evidence at all. He said he had a suspicion.

40 MS RONALDS: No, I'm sorry, he said that after the phone call it was more than a suspicion.

MR TAYLOR? (Not transcribable)

MS RONALDS: The conversation you had with Mr Dencker about what he'd done in terms of, I think investigation might be a little lofty, but his review of the matter, that was after the conversation you'd had with Mr Romano in the evening at your home, wasn't it?---That's correct.

Thank you. Now, and your answer to that whole range of questions is, Mr Dencker told you it was all all right and so that was fine.---No He, he didn't just say it's all right, he said he was satisfied that there was no work done during council hours so there was no breach of any, any rules.

And Mr Romano raised the matter with you again, didn't he, after the publication of the articles from the 4th of April in the Sydney Morning Herald?---That's right.

10

And can you tell the Commissioner what he said to you?---(NO AUDIBLE REPLY)

Firstly, where were you?---Which date are you talking about?

As I understand it, it was the 14th of April, 2009.---Yes. That was immediately after the building and development meeting where there was an extraordinary council meeting and we were excused from the meeting and at the time Mr Romano told me words to the effect that he went over the same issue again, he said he went out - - -

20

Don't, just tell us what he said rather than giving us a summary. All right. ---Yeah. He said words to the effect that, you should not have declared a conflict of interest, you should have taken the investigation yourself rather than leaving it to go to Mr Cummins, and that was outside the council chambers in the committee room number 2.

And did he say something about Mr Saad and that complaint? That's what he's talking about when you said it wasn't a conflict of interest, right?---

30

That's right.

And he told you that you should have handled it rather than let Peter Macklin give it to Mr Cummins?---That's right, he said that.

And was his tone and manner during this conversation?---He was fairly upset and uptight and the gist of it is you've caused all this to happen. You should have handled it yourself.

He was blaming you for it, was he?---That's right.

40

And you understood he meant the articles in the Sydney Morning Herald?---That's right.

And what did you say to him?---I told him that I could not handle it anyway due to the conflict of interest and also I reminded him of his instructions to me that I'm not to be involved in any investigations. That was several times he has made that direction to me. He said you're not authorised to do any

investigations, you (not transcribable) don't get distracted by any allegations happening.

And was you'd agree that after the Sydney Morning Herald articles were published, the senior management of Burwood Council was in some disarray?---Well, definitely it did have an impact on the management, that's right.

10 Well, how would you describe the impact?---Just due to the fact that one of the directors were not there anymore and two of the directors were made acting general manager of different issues and I was the one director remaining just as a director. It did tip the balance of powers I guess somehow and there were a number of issues that I was excluded from.

And were they issues that you felt you would normally have been included in?---Yes, I thought that was the case.

And they were issues that affected your jurisdiction?---Correct.

20 Matters that came under you?---Correct.

And did that include the depot reform?---Not directly but the workers compensation claims (not transcribable) impact on the staff, yes.

And you were excluded from that?---I was excluded from that.

30 And was your understanding of why you were excluded from that?---I asked Mr Romano a number of times. In one case he told me we're going to this meeting without you because it's about you and I failed to understand it. I asked the question again a few days later and I got a different answer. It was - - -

And the answer was - - -?---It was because I worried about you, you might too stressed. I said, "I'm not stressed. You need to tell me. This is my jurisdiction" and - - -

What did you understand when he said you couldn't go because the meeting was about you?---It did not make sense at the time to be honest.

40 Can you remember when that was?---I would have made a diary comment and (not transcribable) I wouldn't remember now.

But do you have your diary available overnight?---Yes.

And could you determine that for me and advise me in the morning?---Yes.

And bring the diary with you?---Yep.

Thank you. And so in terms of handling Mr, and we'll go into some of the details tomorrow but Mr Child's employment, was that not matters that you didn't then have much involvement in or any involvement in?---The matters of?

10 Mr Child's employment and his suspension?---I did ask Mr Romano that I want to be involved in these things or at least if he doesn't want to me directly involved but I need to be briefed and I mean, mean it's, when I discussed that with him and so I was not directly involved but I as informed as I managed to get myself informed. I actually recall (not transcribable) in my diary when I raised that issue with Mr Howe, Bob Howe and I told him that I'm responsible for this area and I'm not getting enough hands on information about (not transcribable) being able to manager it and he did agree with me and he raised the matter with Mr Romano. I've got a minute of that as well.

20 And did you ever approach Mr Baird to intercede with Mr Romano on your behalf on this or any other matter?---No, I've chosen just to speak to Mr Howe on this matter.

And what about any other matter. Have you ever approached Mr Baird to try and intervene with Mr Romano on any matter that you were involved in? I don't know if you were here when Mr Baird gave evidence that some members of the Executive had approached him to talk to Mr Romano about issues. Have you ever taken that avenue as a way of getting another view to Mr Romano?---No I haven't. The reason for that is I did not have as many legal issues to deal with so my relationship with Mr Baird was not as close as the other executives.

30 But Mr Howe was a de facto member of the team, was he?---I wouldn't say that but he would, if you had a case that the (not transcribable) doesn't work, sometimes it does work if he hears it from Mr Howe.

And so you used him on this occasion and he said he agreed with you that you were being unfairly excluded - - -?---That's right.

- - - from the management of this issue?---Yes.

40 And did the same happen in relation to Mr Giangrasso, that is, were you excluded from the decisions about his workers compensation claim and his suspension?---My comments were encompassing the whole team, yeah.

All right. Okay. I'm about to move onto something else. I notice the time.

ASSISTANT COMMISSIONER: Yes. All right. We will adjourn at this time until 10 o'clock tomorrow morning.

<WITNESS STOOD DOWN

[4.00pm]

**AT 4.00PM THE MATTER WAS ADJOURNED UNTIL
10.00AM TUESDAY 25 MAY 2010**

[4.00pm]