

MAGNUSPUB01944DOC
26/05/2010

MAGNUS
pp 01944-01996

PUBLIC
HEARING

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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 WEDNESDAY 26 MAY, 2010

AT 10.05AM

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

ASSISTANT COMMISSIONER: Please be seated.

MS RONALDS: Sorry, Commissioner, if I could just have one second.

ASSISTANT COMMISSIONER: Take a seat, Mr Azer.

MS RONALDS: Sorry, Commissioner, we just need one second. Thank you, Commissioner, we've just sorted it out now.

10 ASSISTANT COMMISSIONER: Yes. Mr Azer, I'll remind you you're still under oath.

<KHALED AZER, on former oath

[10.07am]

MR TAYLOR: (not transcribable) declaration.

20 ASSISTANT COMMISSIONER: The form of declaration we make now applies to the whole of the inquiry.

MR TAYLOR: With respect.

ASSISTANT COMMISSIONER: There's no reason that it only has to apply day to day.

MR TAYLOR: Thank you, Commissioner.

30 MR HANLEY: Commissioner.

ASSISTANT COMMISSIONER: Yes, Mr Hanley.

MR HANLEY: Thank you.

Mr Azer, yesterday your evidence to counsel assisting you mentioned that Mr Child had had problems in relation to another worker, I think a Mr Risteski?---Yes, Risteski, yeah.

40 How do I pronounce it?--- Risteski.

Risteski?---Yeah.

And that he'd been counselled in relation to the way he spoke to someone from StateCover. Is that correct?---That's right.

Mr Risteski was, you knew he was a, somehow closely associated with Mr Romano, didn't you?---So it did appear, yes.

Yeah. And that he'd made a claim for workers compensation whilst working for the Council?---That's correct.

And Mr Child thought that this was a fraudulent claim by him, didn't he?
---Yeah, that was a claim he, Mr Child put through.

Sorry, I missed the last thing you said?---Yeah, that was a claim Mr Child has put through. That was the allegation that Mr Child made.

- 10 Yes. He was concerned that this man was defrauding the Council in effect, StateCover?---Yeah, that was the statement he put through.

And he was upset that it had been approved?---He was upset but I don't think it was approved. There was a fairly lengthy insurance jargon about it, it was not approved, no. It was, there's another term to it, I think it was called provisionally accepted or something like that.

Right?---So it was not approved.

- 20 Mr Child was trying to stop it being paid out, wasn't he?---He, he wanted him to be docked of wages, yes.

And was it as a result of that incident that it was recommended that Mr Child receive some assistance from a man by the name of Turkington?
---Yes, that's right.

And he was some sort of specialist was he in this area?---I'm sorry, I can't hear you from (not transcribable)

- 30 He was a specialist in this area was he?---Yes, he was.

And you're aware aren't you that Mr Macklin prepared a report to the general manager about the grievance lodged by Mr Risteski?---That's correct.

And it was in that report that Mr Macklin recommended that someone like Mr Turkington be used for Mr Child to have access to him for guidance?
---From memory that's probably correct.

- 40 Did you see the document that Mr Macklin prepared for the general manager about this?---I, I think I did. There was a number of documents, but possibly this one I have. If you, if you show it to me I'll be able to tell you a hundred per cent.

Well, Mr Macklin, I want to suggest, if you could test your memory of knowledge that Mr Child was very direct with staff and the way he communicated with them?---Yes.

And that was quite normal for outdoor staff?---Yes.

But he made the observation that maybe some staff have reacted negatively to that type of approach?---That's right.

He also acknowledged didn't he Mr Macklin, that Mr Child had been under considerable pressure to achieve construction projects during the majority of the year?---That's right.

10

And that may have led to a more direct approach of communication being adopted by him?---Possibly.

You also noted didn't you that it was important that Mr Child's role as civil maintenance superintendent should not be undermined in any way because of the incident with Mr Risteski?---That's correct.

Because it would be difficult for him to carry out his supervision during the day?---That's correct.

20

And it was important for Council to support him and provide guidance? ---That's correct.

And that's what Mr Turkington was brought in for wasn't it?---Initially, yes. But then afterwards there was a different issue and I've got documented evidence on that.

Have you provided that to the Commission?---No. It has not been requested.

30

Okay. And also Mr Risteski was to be monitored because of his aversive and (not transcribable) behaviour towards the public?---Yes.

And his bullying behaviour towards other staff?---Yep.

And you became aware didn't you that Mr Child did consult with Mr Turkington from time to time?---Oh, yeah, definitely. I was following it up and actually I was nominated as, as his, one of his mentors, which forms part of the coaching contract. It was myself and Roy Einarson at the time. Yes, I was following him up very closely.

40

And you spoke to Mr Turkington didn't you?---Yes, I have on occasions.

Do you recall speaking to him after The Sydney Morning Herald articles came out on 4 and 6 April, 2009?---We spoke on a number of occasions.

Do you recall speaking to him then?---I recall either an email or, or on a contact from him saying that he can no longer do the job because of the

disciplinary action being taken against Mr Child. But I think, this may have been before the, the article. I can't recall exactly whether it was before or after the article. But after he was disciplined, after disciplinary action, there was, he had to withdraw because of conflict of interest as he worked under the LGSA, which normally represents Council on industrial matters.

Which disciplinary action are you talking about? Your warning letter?
---That's right.

10 Just that?---Yeah.

Something done in the ordinary course of business?---That's right.

And that caused Mr Turkington to decide that he might have a conflict of interest did it?---That's right.

I suggest he continued to monitor Mr Child and be available to him for access and assistance and guidance?---For a very limited time left after that time.

20

Well, I would suggest that after the articles on 4 and 6 April, 2009, you rang Mr Turkington and asked him whether Mr Child had been telling him things about the Council didn't you?---I don't recall that.

And I want to suggest Mr Turkington told you it was private and confidential and he couldn't discuss it with you?---I don't recall that.

30 Had you, do you recall whether Mr Romano or any other member of the Executive asked you to inquire of Mr Turkington as to whether Mr Child had been disclosing things about the Council - - -?---No, definitely not.

Is it something you did on your own bat?---To, to - - -

Ring him up and ask him that question?---I only asked for information from Mr Turkington about information I've given to him regarding that issue to refresh my own memory.

Regarding what issue?---Regarding the whole coaching issue because I was - - -

40

You understand, sir, I'm not asking you about that, don't you? You trying to avoid the question?---No, I'm not.

Did you ring him and ask him whether Child had been telling him things about the Council?---No.

Because you told I think counselling assisting yesterday that Mr Ellul, when you interviewed him, suggested to you that as part of any changes that may

be brought into the Council and the depot in particular that he would expect from his experience at another council that you would need to really get rid of the people involved and their positions. Is that your evidence, is that a summary of your evidence yesterday about that issue?---Yes. Well, not exactly that. He said we need to restructure the position around the, around the position, not the people, and it may result into people being, having to reapply and they may miss out. That's how it was present. It's not like straightforward - - -

10 What I understand you to say yesterday something along the lines that his experience was if you were going to achieve reform in a position, to avoid any destruction to that by the person who was holding that job, that you may have to get rid of him?---It's not exactly that but I can see where you're coming from.

No, not where I'm coming from?---He was looking at - - -

20 If I misquoted you or summarised your evidence, tell me?---Yeah. He was talking about his experience in Bankstown and he said from his observation there where, where they have advertised and worked around the position rather than the person, then it was after a couple of years there was chalk and cheese between this and the area where they have tried to work around the incumbent when they were not suitable for the position.

30 So do I take it that at this meeting where you are interviewing him as an applicant for the position, that you raised the possibility that Mr Child's position may have to be changed?---He, as a reply to his comments, I told him that, there were two, there were two interviews by the way so which one are you - - -

Well, let's go to the first one?---Okay. I don't recall going to that depth on the first one. On the second one, yes.

So the second one is still an interview to see whether he was appropriate to be appointed?---That's right.

40 On the interview where you discussed with him his experience in another council and introducing reforms, did you raise the possibility that Mr Child's position may be one that should be looked at?---Yes, it was discussed as a possibility.

Did you raise it?---I don't recall whether he started with it or I, I raised it but it was definitely discussed.

Were any other positions discussed?---Yes. The parks superintendent's position was discussed.

Was that person subsequently suspended or - - -?---No, he gained his position.

Was his position changed in any way?---No, there was no change.

And Mr Child's position had not been changed in any significant way to cause him to reapply for it back in January when you and Mr Macklin had spoken to him, had it?---That was the - - -

10 Had it?---There has been some change.

There being very little change - - -?---Well - - -

- - - (not transcribable) not required to reapply for it. That's correct, isn't it?---If you're trying to compare this with the parks - - -

ASSISTANT COMMISSIONER: Mr Azer, I don't think you're being responsive and I don't think you're listening to and answering the question. You might want to give a speech about something else. You were asked a
20 very simple question. Wasn't it true that after Morrison Low review Mr Child's position changed very little?---Yes.

MR HANLEY: Thank you. But you raised it, do you say, with Mr Ellul at least at the second interview?---Yes.

And here's a man applying for a job telling you he's going to restructure the depot, is it? Is that the case?---That's right. Well, he said that that's his preference.

30 Without seeing anyone working in the depot?---No. He's, he's saying that this is what he intends to do.

Had he seen anyone working in the depot by the time of that second interview?---No, but we've spoken to him about the Morrison Low report.

Who's we?---Sorry?

Who's we?---Working, no, we - - -

40 You said we had spoken to him?---Yeah, it was myself and Mr Romano was present in the second interview.

Did Mr Romano have, did he know Mr Ellul from any previous occasion to your knowledge?---Not as far as I understand.

So Mr Romano was at the second interview, was he?---He was at the second interview.

And did he express an opinion in relation to whether Mr Child's position should be reviewed or not?---Mr Romano was uncommitted either way.

What did he say?---But, but he, he said it's open.

It's open?---Yes.

10 Was Mr Romano aware that you and Mr Macklin had spoken to Mr Child on 21 January and told him that there was no need to reapply for his position?---Yes, he was.

So he was still suggesting, was he, that it may be up for grabs in effect?
---That's correct.

Did you ask him why?---No, because he's, he has been instructing us on at least two occasions before that that due to the, the resistance to change and the problems we were having at the workplace that maybe this issue needs to be reassessed.

20 Mr Child had been spoken to by Mr Romano and Mr Ellul about the changes, hadn't he?---(NO AUDIBLE REPLY)

To your knowledge?---Sorry, I didn't hear.

Mr Romano and Mr Ellul had spoken to Mr Child about the changes that were being implemented at the depot. You're aware of that, aren't you?
---You mean Mr Dardano?

30 No, Mr Ellul and Mr Romano at a meeting with him, this is someone under your employment, were you aware of that?---Can you refresh my memory which date.

Do you remember that they had a meeting with him at all about the changes?---There's a lot of meetings that happened. I just need, you need to refresh my memory so I can give you the right answer.

Did you see any memo in relation to that?---Without looking at it - - -

40 Well, do you recall one?---There could have been.

Yes. Well, would those sort of memos go across your desk seeing you were the person involved in looking after the depot in effect?---Yes.

Do you recall seeing anything that Mr Child had been spoken to by the two men I've nominated to you and that he had expressed a view that he was working to put the recommended changes at the depot into place?---Well, I cannot dispute it but I can't confirm it.

Do you recall it?---I don't have a clear recollection of it so I'm sorry.

Did you ever speak to Mr Child, seeing he was under your direct supervision, about - - -?---No, he was not under my direct - - -

Well, how many people between you and Mr Child?---Mr Ellul in between.

Mr Ellul?---Ellul and Dardano.

10 Well, Dardano had gone, hadn't he?---They were switching, yes.

He'd gone, hadn't he?---You still did not tell me the date so I don't know whether he was gone or not.

Well, Mr Ellul, while he was there and Mr Dardano had gone, Mr Ellul was a new man - - -?---No, no, there was, there was a time where there was an interface and there were both of them at the same time.

20 I'm talking about the time, if you'd listen, to when Mr Ellul was there and Mr Dardano had gone. Do you understand that?---So that's later on?

Yes?---Yes, thank you.

Mr Ellul was a new man in the position, wasn't he?---Yes.

Well, in view of that did you actually go and speak to Mr Child and say, look, there seems to be some resistance on your part about these reforms. This is what we want to do, why don't you just pull your, pull the line, toe the line?---We've had a number of discussions about cooperating with the reforms on a number of occasions.

30

Who's we?---Myself and Mr Child.

Okay. And he'd always indicated to you, hadn't he, that despite the fact that he had some criticisms about the way things were being done, that he would do his best to ensure that they were, they occurred?---At times he said that and at times he, he, he resisted it.

40 Resisted what?---The changes.

In particular?---The changes that, that - - -

Which change?---The planning, he said I don't want to do the planning, why are you doing this to me, you're decimating my boys, why are you moving people around and, and then I would give him more time and it's all documented on email and then he cannot do it and then we give him more time and waiting for the coaching to sort of kick in and improve things.

Do you, are you aware that Mr Ellul and Mr Macklin spoke to Mr Child on 20 April, 2009?---Yes.

And they told him that the position was going to be expanded and have more planning?---That's right.

And you're aware that Mr Child's initial response to that was that he, he encouraged having more work to do and doing some of the planning? That's correct, isn't it?---Yeah, I was not in that meeting but - - -

10

But you've seen the minutes from that meeting, haven't you?---Yes, I have.

And that's correct, isn't it?---Well, from memory, yes.

Yes. Prior to, sorry, I withdraw that. Mr Ellul did commence employment, didn't he, at the Council on 23 April, 2009?---Around that time.

Well, I can assure you that's the date?---Yeah.

20

I'm not trying to mislead you in any way. And did you meet him on that first day and show him around or anything like that?---Possibly.

Yes. And Mr Child wasn't working at that stage, was he?---I can't recall.

Do you recall Mr Child going on sick leave during that week?---Around that time he went on leave, yes.

30

Did you ever attend any meetings in the week after Mr Ellul commenced employment between him, yourself and Mr Child?---Without consulting my diary, I cannot be a hundred per cent sure.

Do you have any recollection of it?---Sorry?

Do you have any recollection of it?---There was a lot of unstructured meetings so - - -

40

You were introducing a new man around, he was taking over a position senior to Mr Child, did you think it appropriate, in your position, to introduce him and talk to him about what was going to happen?---The, yeah, I did go to the depot and I did introduce him to the depot staff and, and left it to him and to Mr Dardano to, to basically settle Mr, Mr Ellul in.

Okay. And you're aware, aren't you, that on 27 March Mr Child went on sick leave, I'm sorry, I think I might have mentioned April before, Mr Ellul started on 23 March?---You see, I told you you were wrong.

Thank you. So you do remember the day, do you?---Yes, it's now coming to me, yes.

Well, do you remember that Mr Child went on sick leave on 27 March?
---Yes, that's, that makes sense now.

So he would have been there about two or three days at the most while
Mr Ellul was present?---I think maybe around three days.

10 And then you're aware now, aren't you, that Mr Child made a protected
disclosure to the Mayor on 28 March?---Now I, I understood that.

A protected disclosure on 1 April to ICAC?---Ah hmm.

He wasn't at the Council on those days, was he?---Not to my recollection.

And on 4/4/09 the first Sydney Morning Herald article appeared?---Yes.

20 Mr Ellul had had, at the very, at the highest about two or three days to
observe Mr Child in the way he conducted himself in his position and the
depot staff, hadn't he?---Yes.

And yet on 7 April there's a CFT meeting which you were present at, isn't
there?---Yes.

And Mr Ellul announced, didn't he, that Mr Child's position should be
changed dramatically?---Yes, but you're missing a very important part of
the puzzle.

30 No doubt you'll enlighten me, what is it?---That Mr Ellul had, I'd given him
a copy of the Morrison Low report probably a week or more before he
started and he went through it and when he came he was there ready to, to,
to act so it's not like he went in cold.

There was nothing in the Morrison Low report that indicated that
Mr Child's position should be changed in any way other than the way you
and Macklin had changed it on 21 January, 2009. That is correct, isn't it?
---It is correct and incorrect.

40 Well, how is it incorrect?---It is incorrect because there's a lot of other
issues that directly impact on this position, they'd had problems with it and
if they had not been fixed properly through proper procedures for somebody
who's willing to reform things and improve the workers compensation
terrible history there and, and all the time and all these things and start to get
things planned properly, then this position was, was, was, was not
conducted in the best way.

Planning was deficient because of people like you failing to give your
workers proper implemented and detailed plans, wasn't it?---I disagree and I
told you on evidence, I've said on evidence before that I provided on the

major projects like Railway Parade, very proper planning and to the extent that we've put sectors on all the plans to, to tell the, the supervisor what resources and what times should be spent on each quadrant or each section of the job.

And that would have been apparent to the people who prepared the Morrison Low report, would it, these structures that you'd put into place?
---I, I don't think they've seen this particular part of it. They've spoken to so many, so many people.

10

It wasn't reflected in the report, in fact the contrary was, wasn't it?---Yes. In the context of that the majority of the work was not just the capital works. There was a lot of other ad hoc maintenance issues and these you can never plan for.

Which they also referred to in their report?---Correct.

I put this proposition to you, that the changes went further, the changes to Mr Child's position went further than the Morrison Low Report. The
20 changes that Steven Ellul introduced went further than the Morrison Low Report?---It was based on it and it obviously it built, it builds on it like the (not transcribable) basically it took all the - - -

Did it go further or not?---(not transcribable) went further and further and (not transcribable) went further than the Morrison Low Report. But it was based on it in terms of the, the job list of who reports to what.

The changes to Mr Child's position, I want to suggest were introduced entirely by Mr Ellul and not by any reference to the Morrison Low Report?
30 ---It was, it did reflect the Morrison Low Report because it, it took away the sweepers.

That had been done on 21 January by you hadn't it? Hadn't it?---Yeah, that was done.

Yes?---Yes.

Right. What else did it do?---Well, he's re-examined it and he said there's other aspects of the workplace that need to be improved.
40

He'd been there for three days with the opportunity to see Mr Child and how he conducted himself?---Yeah.

(not transcribable) totally inadequate wasn't it, to draw any conclusions about how Mr Child when in the depot what the workers would've done?
---Mr Ellul, I disagree with you. Mr Ellul is an experienced operator. He has been in this environment for a long time. He's been through another Council with major reform and he, he knows - - -

Now long had been at the other Council before the reforms were introduced and he had the opportunity to observe them and make appropriate recommendations?---From his presentations to me, he came possibly at the same time that he came in Burwood with the reforms at Bankstown.

And did he say that in Bankstown he had a report that he implemented?
---He (not transcribable) into too much detail like - - -

10 Well, you're giving it?---Mmm. Well he has implemented some kind of structure, yes.

This was, this was a man, Mr Ellul, working under you wasn't he?---He, he still does.

Recommending changes that you knew would result in Mr Child not being able to successfully compete for that position. That's correct isn't it?---Yes, that's why I told him you cannot make this an essential criteria, it has to be desirable.

20

But that was just rubbish wasn't it? That was just you and Macklin putting some spin on it to protect yourself in relation to the unions?---I totally disagree and please don't go there.

And that was something you just added on I would suggest because you knew that that might somehow present you, at least on paper as being fair about it?---No. It was exactly what I meant.

30

Because you knew in your heart didn't you that what would happen is if anyone turned up with tertiary qualifications Mr Child didn't have a chance did he?---No. That's wrong. It could be somebody with tertiary qualifications and not suited for the job.

And it wouldn't really matter anyway, if you wanted to get rid of Mr Child, what other people were qualified with because he wouldn't know what your decision was based on would he?---No. There's a transparent recruitment decision and a number of people on the panel, what you're saying is inappropriate and it does not happen.

40

Now, let's go back to the original proposition. The changes that were recommended by Ellul in relation to Steven Child's position on 7 April, 2009 went beyond and went further than those recommended by the Morrison Low Report. Do you agree with that proposition or not?---Of course and (not transcribable) went further. You need to build on a report. A report (not transcribable)

Leave out the building it went further didn't it?---It went further than the report, but it was in parallel with the report combined with (not transcribable) that accompanied it.

And this was something that had come only from Mr Ellul, those changes?
---The majority of it was coming from Mr Ellul, yes.

The majority of it?---Yeah.

10 Well, I want to ask you whether you've ever made this statement. I saw Steven, this is in relation to Mr Child's position change. I saw Steven, referring to Ellul, proposals as reasonable. The changes did go further than the Morrison Low Report, however, a new manager has the right to review the operations of his area of responsibility?---Yes.

That's what you explained before - - -?---That's right.

- - - when you made a statement didn't you?---Yes.

20 On 5 June, 2009?--- Yeah. Yeah. But further than the report, it depends if you're looking at the report or the report with a memo attached to it. We're talking about splitting hairs here.

That was your opportunity to explain to State Cover in relation to Mr Child's work and his compensation claim about this issue wasn't it?---Yeah.

And that's what you said?---Yeah.

30 And that's what happened wasn't it?---Yeah.

And it's just extraordinary isn't it, I want to suggest as a matter of coincidence that Mr Ellul could make these recommendations with such a short period of time to observe Mr Child in his work. That's extraordinary isn't it?---It was not extraordinary in my opinion. I think - - -

40 Don't you think it's extraordinary that someone's job could be then thrown out? He could lose his job, a man who's had at least, at the most three or four days made observations about his work?---No. You're mistaken because the unions even have not approved it in writing that they're happy for the position to be regraded (not transcribable)

Can you answer my question please. Was it extraordinary that a man could make a recommendation that could result in Mr Child losing his job when he had the opportunity to observe him working in that capacity for at least three or four days?---I disagree that he was losing his job, because advertising the job, this means that a long period of time where he can assess and review while the process was going on. And I took that into consideration. And it was one of my reasons to allow this to happen, I

thought this actually might bring Mr Child back into line working with the new manager in a more harmonious way.

Well that's never, that wasn't expressed in any minutes of the meeting on that day was it?---I'm telling you this as - - -

Was it expressed in the minutes of the meeting on that day?---I don't think so.

- 10 Was anything expressed in the minutes about you and Macklin raising with Mr Ellul, maybe he was jumping the gun in relation to making a recommendation in such a short period of time to make those observations? ---We definitely told him he was, it was inappropriate for him to suggest making the position essential criteria because this means Mr Child would be denied that opportunity. And we did not think it was appropriate.

Would you answer my question., please if you can?---Yes.

Well, could you answer it?---Well we told him - - -

20

It's not reflected in the minutes you're raising any objection to the fact that maybe Mr Ellul didn't have sufficient time to make those observations was it?---No. No. We, we did not have that problem. We had the problem that he did not have the - - -

Will you please answer my question?---No, we didn't raise that issue.

No. Well, that's a little bit odd?---No.

- 30 Did you raise the fact that he was talking about potentially getting rid of someone who, on the basis of emails we've seen in this Commission from you and others during 2008 and early 2009 seemed to indicate that Mr Child was held in the highest regard in the way he conducted himself in performing his job?---Yeah.

Did you? Did you raise that?---You, you - - -

Did you raise that with Mr Ellul?---I raised that he was working well until things happened.

40

Is that in the minutes? Is that in the minutes?---No. It was, it was things that would have been discussed at the time. I remember discussing - - -

Who discussing?---I discussed it with Mr Ellul at the time.

Do you need to look at your notes?---Excuse me?

Do you need to look at your notes?---No.

You remember that do you?---Yes.

And how did Mr Ellul react to that, your defence of Mr Child in relation to his past performance?---Mr Ellul was not to make a decision - - -

How did he react? Did he just dumb?---No, he, he, I took, I told him you cannot put it as essential criteria.

10 Just, look, let's not talk about what you said. What did Mr Ellul say when you raised all these positive things about Mr Child?---I raised positive and negative things at the same time.

I'm only talking about the positive ones?---Well, they were both said at the same time.

Well (not transcribable), what did he say? What did Ellul say when you said, well, look this bloke's been doing a terrific job for us. Working really long hours. We've been concerned about how long he's working. We
20 didn't want to de-motivate him. What did he say about that?---I can't recall exact words.

It didn't happen did it? You never came to Mr Child's defence at all did you?---No, I did mention the good and the bad and I mentioned, actually Mr Romano himself in the interview, he did mention a mix of good and bad - - -

Let's just talk about this meeting on - - -?---No, on this meeting in particular I don't recall going to that issue but there has been a lot of discussions before and after.

30 Well, this was a pretty crucial meeting, wasn't it, because Mr Ellul apparently was raising these significant changes to Mr Child's position which would probably ensure he was not qualified to apply?---No, I, I don't, I don't recall going into a lot of details but I, I made sure that he was aware at the time this decision was made of the positives and the negatives.

And neither, neither are mentioned in the minutes, are they?---No, they were not mentioned in the minutes and not have been discussed in the minute, they may or not, I, I don't have a, a, a clear recollection of it.

40 You see, by 7 April, you were aware of the Sydney Morning Herald articles making very serious allegations about the General Manager of Burwood Council, weren't you?---Yes.

Did you discuss them with anyone prior to the 7th, the allegations?---No, I didn't know anything about it.

Didn't know anything about it?---No.

Didn't talk to anyone about it?---No.

Weren't you concerned that Council's reputation was being tarnished in a national paper?---Of course it was of concern.

Well, did you talk to any of your fellow executives and say, look, what do you know about this?---I spoke to Mr Dencker on the day of the article.

10 Which article, the 4th?---The first one, the Saturday.

4 April?---Yes.

What did he say?---He said words to the, to the effect that if this is true then Pat has let everybody down including his family.

And did you say to Mr Dencker, look, this sounds very similar to the allegations Mr Saad was making back in February?---Well, that's, that was only part of it.

20

No, but did you say that to Mr Dencker because he told you it was all being cleared up, hadn't he?---I don't recall making, that was a very short conversation. I don't recall making that comment at that time.

Well, did it pop into your mind maybe there was a connection?---Sorry?

Did it pop into your mind that maybe there was a connection with what Mr Saad had been saying - - -?---Definitely, definitely.

30 What did you do about it?---Well, it was being investigated at the time.

No, what did you do about it because it involved members of the staff in the depot under your control?---It was an issue under investigation. You could - - -

Who by?---It was an issue under investigation.

Who by?---By, by the authority at the time.

40 And what about you?---Well, it, if the authorities are investigating you don't go and, and cross, cross with them.

Well, did you go to Mr Dencker and say, look, are you sure that was, you know, the, the complaints by Saad have been cleared up properly because this sounds awfully similar?---I may or may have not. I don't have a clear recollection.

Any notes about that one? Any notes about that conversation with Mr Dencker?---No.

No. Is that the only person you spoke to when you saw these allegations in the Sydney Morning Herald?---From the Executive on that day that was, he was the only one.

What about after that day?---There was a lot of discussions about - - -

10 Who, between you and who?---The rest of the Executive.

So you all sat down and had a talk about it?---Yeah.

With Mr Romano?---I think there was a meeting.

Well, when was this meeting?---Ah - - -

On the 4th of the 5th?---No, not during the weekend.

20 Was it on the 6th, after the (not transcribable)?---Monday, yeah, maybe Monday or Tuesday, I can't remember.

Is this the entire Executive, the Executive got together?---There was a normal meeting, yeah.

A normal meeting?---Yeah.

What's it called, this normal meeting?---It's either directors meeting or executive meeting.

30 To discuss what had been said in the papers?---Yeah. Mr Romano was refuting - - -

He's refuting it?---Yes.

And he's pointing the finger at who he thought was responsible, wasn't he? Wasn't he?---A good possibility, yes.

40 Well, you were speculating about who might have been the person who was the whistleblower?---Yes.

Weren't you, as a group? Weren't you?---Well, there were some discussions - - -

Of course there must have been, mustn't there?---Yeah, yeah, yeah.

And you said I think to counsel assisting yesterday that it was clear to you from the description and quotation of the emails it was Mr Child?---That was to, to a high sort of percentage of possibility.

(not transcribable) did you?---Well, close to ninety per cent yes.

And Mr Romano didn't have any doubt about it and he said so, didn't he
- - -?---I think so.

10 - - - at this meeting?---I. I think so.

And you were a man who could sniff the political winds, couldn't you, at the Council?---I, I don't know what you're talking about.

Yeah well, look, you knew that Mr Romano, at least by the 6th, was very upset with Mr Child, wasn't he?---Yeah.

And so was the rest of the Executive, weren't they?---I don't know what their frame of mind, I didn't go inside their brains.

20

Well, you walked about it?---Yeah.

Were they angry?---Well, it was not pleasant, yes.

They were concerned that if Mr Romano, who was proclaiming his innocence, was correct, that the Council's image was being tarnished more than people using telephones out the front of buildings and that, wasn't it?
---Yes.

30 Were you given any instructions about what to do about Mr Child, the man under your employment?---I think that was the time that Mr (not transcribable) stepped down and somebody else was taking over.

Who stepped down?---Sorry, sorry, can you repeat the question?

Were you given any instructions about what to do about Mr Child?---By whom?

40 Anyone at this meeting?---No, I don't recall any instructions.

Well, he was under your control, wasn't he?---Yes, he was under my control.

Well, were you told to talk to him or find out where he is or anything?---I don't recall that.

You were told to get rid of him, weren't you?---I don't recall that.

You don't recall, you don't know, do you?---No.

No?---There was, there was - - -

(Not transcribable) what happened on the 7th, the day after the 6th when you had this meeting was that Mr Ellul comes up with this proposition, doesn't he, that would conveniently eliminate Mr Child and you and Mr Macklin grab it, didn't you?---Mr Ellul had - - -

10 Can you answer that question?---Well, the timing is wrong. You're saying, you're trying to link it to after that time.

You just answer my question, sir. You can deny it, or you can agree with it?---Can you repeat it please?

Mr Ellul on the 7th, the day after you and the Executive got together about these articles - - -?---Yes.

20 MR TAYLOR: Well, I object to that. (not transcribable) either Monday or Tuesday (not transcribable).

ASSISTANT COMMISSIONER: The meeting? Yes. Well, the day or the day after the day.

MR HANLEY: Well, I'm not sure which days they are. Saturday was the 4th I'm told by learned counsel next to me. So the 6th was a Monday. Two articles had come out by then?---Yes.

30 Had there been any meetings between the articles, of the Executive?
---Without consulting my diary I can't really be sure.

No, you remember this (not transcribable)?---There was definitely one meeting. There was definitely one meeting.

You told counsel that the Executive was in disarray about these articles, didn't you?---These not exact words but I can see where you're coming from.

40 I'm not coming from anywhere. I'm trying to you what I thought you had said?---Yeah.

Is that correct? Council's Executive, after the first article, was in disarray?
---Words to that effect, yes.

You were all running around trying to work out whether there was any truth to it or not, talking to each other?---Yes.

And in meetings?---Yes, it was discussed in at least one meeting that I can recall.

Between the 4th and the 6th?---I was not involved in any meetings across the weekends so it would either the 6th or the 7th.

Did you get on the telephone and ring up any of your mates on the Executive, like Mr Macklin or anyone to find out what they knew about these awful allegations?---I, I was on the phone to Mr Dencker on the
10 Saturday. I could not reach Mr Macklin or Mr Hullick.

So you were trying to get hold of anyone you could on the Executive and find out about it?---On the Saturday, yes, I did.

You were keen to find out about it?---Of course.

So, when you got to work on Monday, did you speak to anyone about it?
---I'm sure I did.

20 And on the way to work on Monday did you see there was another article?
---Yeah, I would have read it at home.

When you got to work you had two articles that would have caused you a great deal of concern?---That's right.

And who did you speak to about it?---I can't recall but it would be a number of people.

30 But people on the Executive?---Yes, yes, would have been discussed, definitely.

40 What I'm suggesting to you, sir, is that by the 7th, you, Ellul and Macklin and, at the CFT meeting, Mr Ellul raises these fairly significant changes to Mr Child's position that you and Macklin grabbed it as a convenient way of getting rid of Mr Child with the imprimatur of Mr Ellul?---I disagree because you're inferring that the idea came on the 7th. This has been, as per my evidence, something that started way before then, actually as late as when Roy Einarson was there late last, the following year, the year before and with Mr Ellul throughout March and I've got a minute in my diary to that extent on 30 March and I recall having agreements on it back in February and directions from the General Manager about it at least on two occasions so it's not something that just, the way you're portraying it that it just happened on the 7th as a direct result to the article. That's incorrect.

So you had recommendations from the General Manager before this about Mr Child's position, did you?---Yes, I recall he, he - - -

Was that documented?---No, it was not documented, it was verbal.

In your diary?---No, I didn't keep a diary note on it.

Is this diary a diary that has dates on every page?---No.

Numbers along the bottom of each page?---No.

Why not?---It's a spiral diary, it's an informal diary.

10 Something you can just write in whenever you want to?---That's right.

And we have to accept that you did it contemporaneously, is that right?
---Well, that - - -

Is that right?---Yes, that's right.

20 And all these other recommendations or prior recommendations that Mr Ellul made about Mr Child's position prior to the 7th, were they documented by Mr Ellul to you?---Sorry, can you repeat that, I didn't hear it.

You told me that Mr Ellul had been making recommendations about Mr Child's position well before 7 April?---That's right.

Were they documented?---Yes, I remember late March he, he gave me a printout for my review of the proposed position description and this was when I told him I don't like the essential criteria being there as tertiary education.

30 So this happened before 7 April, did it?---That's right.

And that document was directed to you and anyone else?---No, I think he, he printed it, I think it was in hard copy and from my recollection he went to my office and discussed it.

And how long before the 7th did this occur?---Sorry?

40 How long before 7 April did this event occur?---It would have been on or around 30 March.

Did you tell Mr Child?---No, it was still in, in, has not been formalised through the General Manager yet.

Did you tell Mr Macklin or HR?---Yes, it was discussed with Mr Macklin and Mr Macklin was not in support.

But he appeared to have become supportive of Mr Ellul's position by 7 April, is that right?---No, I was in support of (not transcribable) before then.

No, not you, Mr Macklin?---Sorry?

Macklin, he was supportive of Mr Ellul's position by the 7th though, was he?---With the, with the condition that it is, leaves the door open to him to apply.

10

Well, that was just added on to protect the Council, wasn't it?---No, this is something I've raised even before the 7th with Mr Ellul and I ensured that it happens.

And so how was that arranged, in your diary or some letter or memo or email?---No, it was, the first time it was minuted to downgrade it from essential to desirable was on the 7th but I have a very clear recollection that I spoke to him about it before that.

20

Okay. So you have a clear recollection of that despite your memory failing you on many other areas without the assistance of your diary notes. Is that correct?---Well, I, I - - -

Is that correct?---I've consulted by diary notes and other, and other emails and stuff and I can, I can be sure about it.

And after the 7th it took you and Macklin and Ellul until the 20th, wasn't it, or 21 April to tell Mr Child about this, these changes?---Yeah.

30

Is that correct?---Yes.

Why did it take you so long?---I was not hands-on so they were working on it and it was a busy schedule I guess, it, it, it is not a very prolonged period.

It's a pretty significant step that was being taken in relation, so far as Mr Child was concerned, wasn't it?---Yeah, well, Mr Ellul was starting new and he had a lot of other things to do.

40

Concerned about Mr Ellul, why didn't you, as the senior man, go down and say to Mr Child look, Ellul's made these propositions, we're thinking of doing something about it?---It's, there are certain processes that should happen through, through HR and there needs to be certain steps of consultation that would happen. It is not an area that I would just step in without consulting with HR on what to be done next.

You'd already consulted with HR according to you?---Yeah, but they actually drive the actual aspect of the industrial relations side of it.

Did you talk to Mr Macklin about going and seeing Mr Child as early as possible to give him some warning?---Yeah, I, no, I understood that him and Mr Ellul were going to meet.

Look, you knew that Mr Romano wanted to get rid of Child as at 6 April, didn't you?---That's right.

Okay. And this was just a convenient way of doing it, wasn't it?---No, it was not convenient. It was - - -

10

It might have been inconvenient but it was a way of doing it, wasn't it?
---But it was happening before then, well, before then.

So you say?---So I'm sure.

And despite the fact that it seemed to be completely contrary to your assurances to Mr Child on 21 January?---That's right.

20

And you knew that there was no way that Mr Child was going to be able to be sufficiently qualified under the new criteria, didn't you?---No, I disagree. I thought he has a chance.

A chance?---That's right.

Well, just in case he didn't have a chance, what were you going to do about him?---There are processes, there could be retraining, redeployment, other options and at the end could be redundancy.

30

Was that ever discussed with him?---I'm sure - - -

No, not sure, was it?---It, it, with the industrial relations cycle there you don't go and tell somebody when you advertise you're going to miss out and this is what's going to happen to you.

But did you discuss with Mr Child that if he was unlucky about it in his application - - -?---Can you repeat please?

40

Did you discuss with Mr Child if he was unsuccessful in his application that Council would set into motion various other things that would make sure that he was properly remunerated?---I believe that was one of the issues that Mr Ellul and Mr Macklin would have covered with him.

Did you see any documentation along those lines?---If it is not in the, in the minutes of the meeting of Ellul and, and, and Macklin then I haven't.

Morrison and Low have made certain recommendations about what should happen when employees were adversely affected, haven't they?---(NO AUDIBLE REPLY)

Or don't you remember?---No, I don't recall that part of the report.

It was a fairly significant part, wasn't it?---Well, the whole report is very significant.

No, that part was very significant in relation to people who may lose their jobs?---Well, in this case it would be significant for that case.

10 Well, what were they? What were the recommendations?---I don't recall there were recommendations in it. There could be some recommendations.

Well, when you were talking about Mr Child potentially not being, his position being readvertised, did you look to the report to see what might happen or what your obligations might be as recommended by the authors of that report?---I don't recall going to the report but I recall that we have certain industrial relations codes and practices that apply in this situation which was applied on a number of occasions.

20 Well, forgetting the normal codes of whatever, industrial relationship, what did the report tell you to do?

MR TAYLOR: Well, he's answered that question twice, he doesn't recall it.

MR HANLEY: Has he, he doesn't recall. Okay.

30 Last night I was just wondering whether you had a chance to refresh your memory in relation to the Burwood Council's policy for, in respect of dealing with anti, with discrimination claims?---(NO AUDIBLE REPLY)

Did you refresh your memory last night or - - -?---Was I supposed to?

No, I didn't ask you to but I thought you might have in view of the fact that you didn't seem to know what it contained and you're still in your position supervising other people at the depot?---Can - - -

Did you have a look at it?---Can you repeat that, please?

40 Did you have a look at the report, the policy?---The Morrison Low report?

No, the discrimination policy of Burwood Council?---I've, I've, I've looked at it recently, yes.

And in relation to the discrimination claim by Mr Saad, you're aware, aren't you, that subsequently Mr Child was suspended?---Mr - - -

Weren't you?--- - - - Saad?

Sorry, Mr Child was suspended about Mr Saad's complaints?---That's right.

Yes. Did you make any inquiries as to whether Mr Child had been advised to attend any meetings in relation to the allegations by Mr Saad?---I don't recall.

Did you instigate anything along those lines?---No.

- 10 Did you consider whether the suspension was appropriate in accordance with the policy of the Burwood Council?---I did not examine it. I was relying on, that the solicitors were advising Council and it was handled through the, through the group.

Okay. I want to, I want to suggest that there were attempts made by the Executive, including you, to get rid of Mr Child by way of suspension before Mr Saad made his complaint, that's correct, isn't it?---You're talking about the meeting of 28 June?

- 20 Yes?---I recall that issue being discussed, yes.

And were you made aware that other members of the Executive like Mr Hullick had sought legal advice as to whether the fact that Mr Child has complained to The Sydney Morning Herald entitled or did not give him any protection under the protective disclosure legislation?---I've seen an email from Mr Macklin about it, yes.

What about Mr Hullick?---He may have.

- 30 And you know from the letter from Mr Macklin addressed to David, David and Darren which was attached to Mr Dencker's email on the 30th, I think, or the 28th of June, that they were seeking, that is the Executive, were seeking advice to get rid of Mr Child by way of suspension because he'd spoken to The Sydney Morning Herald?---I recall that in the email.

- 40 Did you make any inquiries as to what advice had been received about that?---No, because I was, at that time I was not very close to the decision making because there was a number of meetings and it was, when it was discussed with the Executive, I made it also clear that I don't have enough information to be, to be a hundred per cent effective in making the decision.

Were you aware that after Mr Saad's claim that he'd been discriminated against, that Mr Child advised Council he was fit to come back to work?---I was made aware of that.

Who by?---I think a member of the (not transcribable) probably maybe Mr Macklin.

And that, that had been stopped by suspending Mr Child?---I think I was aware of that.

Did you ask whether that was consistent with Council policy in relation to discrimination claims and the rights of a person whom the allegation had been made against?---I remember by me asking the question or just being given the information that there were, I received words to the effect that the allegations are serious enough to warrant suspension.

10 And who told you that?---It could've been Mr Macklin or another member of the Executive.

Well did you make any independent inquiries as to whether that was the appropriate way to deal with a member of your staff at the depot?---No, I have not.

20 So you're, I suggest to you, sir, that your behaviour in relation to Mr Child was to absolutely avoid doing anything in accordance with what you should've done for him, wasn't it?---I, I agree and disagree. I did not have enough information to be able to make solid judgements because I had been missing a number of meetings, little meetings that where these issues would have been traversed.

And you didn't make any inquiries did you, really?---I have always been seeking to be briefed on issues. And I did receive just enough information so I know what's happening.

30 Counsel Assisting, Mr Chalmers asked me if I would ask questions on behalf of Issa that he forgot to. I was wondering if I may just put - - -

MS RONALDS: Yes.

MR HANLEY: Mr Azer, you are aware aren't you that a letter was written to Mr Ammer Issa about him not attending the Christmas party of 2009? ---Yes, I was made aware of that.

Were you a person who was involved in the drafting of that letter?---I don't recall. No, I don't think so.

40 Have you see that letter?---At some occasion, it could be at the time or it could be now. I remember seeing it but it could be throughout the inquiry.

May he be shown Exhibit 187, please, Assistant Commissioner. Do you have a document in front of you, sir? It should be addressed to Mr Ammer Issa from Mr Macklin. It doesn't appear to have a date. But it refers to the Christmas party. Have you seen that letter before?---Yes.

Have you seen that letter before these proceedings?---I don't think so.

Did you have anything to do with the drafting of it?---No.

Did you or was your advice sought by Mr Macklin as to whether this letter should be sent to Mr Issa?---I don't recall.

Do you recall whether it was discussed with you whether members of the depot should be excluded from the Christmas party?---Yes, it was discussed.

10 With you and Mr Macklin?---Myself, Mr Macklin and Mr Ellul, from memory.

And was it determined that Mr Issa was to be excluded?---Yes, it was.

Was Mr Child to be excluded? Without looking at the (not transcribable) it's mentioned in the letter - - -?---Possibly, yes.

Mr Giangrasso?---Was he?

20 To be excluded?---I don't know Mr Child, I remember, I can't remember Mr Giangrasso.

And these are three men who you knew or suspected very strongly of having been whistleblowers in relation to the allegations?---That's right.

30 Were you concerned that this exclusion from their workplace Christmas party might be a form of recrimination and discrimination against them as your direct employees?---I did not believe that if you break them down one by one Mr Issa, it was the view conveyed through Council's insurance that he is of a high risk of re-injury and basically even to the extent that we were talking about that he may actually trip on his way in the car park. And it was serious to that extent because of his number of worker's compensation claims. There was for the back and also came to the knee. So he was highlighted as a high, high risk.

40 He could've tripped on his way to doing some light duties work couldn't he?---Yeah, but it would not impact on your worker's compensation premium which you need to sort of make sure it doesn't unnecessarily go sky high.

So he's at the Christmas party and he trips over that could be a problem? ---Well, it was one of the issues discussed, yes.

Was it?---Yes.

What about the fairness of letting him attend? Was that discussed?---Well, it was not just the fairness, there was also a concern regarding behaviour of other staff members. I don't know if you're aware of the amount of hostility

from the majority of the good working depot people towards this particular group because of the background of what has been happening. I have been, I've received one to one complaints about them and it was not also, we could not really could have guaranteed his safety to be honest. And that was - - -

Could you guarantee his safety if he was allowed to do light duty work?
---At that?

10 At any time when he was - - -?---Well it was a risky situation.

Was anything written to him about that? That he might be in danger of some assault if he turned up for light duty work?---No.

No. And this was just another form of recriminations by the Executive of the Council against him wasn't it?---I don't believe so.

20 This group you just referred to, Child, Giangrasso and Mr Issa, had been the backbone of the depot hadn't they, work wise?---I disagree with you. And if you ask your client, towards the end he actually approached me one to one and told me, Khaled, can you open for me a new depot. He did not belong towards the end. He said, I want to go to another depot. I can't work with these people. So it was, it was as serious as that. Even came from Mr Child himself.

You had taken these three men out for lunches because of the hard work they had specifically done as distinct from other members of the depot hadn't you?---That's right.

30 And Mr Giangrasso, was he suffering any potential damage to his worker's compensation claim (not transcribable) the party?---I was not involved, I was not involved into his worker's compensation claim.

All right. Was he in danger of falling over or something?---I was not close to that issue at all.

40 Mr Child wasn't in any danger of falling over, was he? He wasn't (not transcribable)?---No, no, Mr Child, I think Mr Child's situation was different.

See, I want to suggest the exclusion of each of them from the party was a petty and petulant recrimination against the three of them, wasn't it?---I disagree.

Yes, thank you, Commissioner.

ASSISTANT COMMISSIONER: Yes.

MS RONALDS: I don't know whether it will assist or not assist but I do have a couple of short questions about the (not transcribable) flowing on from what Mr Hanley said but I've also just got a few documents to tender that have come up in the course of, if I could tender a copy, and it's not actually, it's a print off rather than the actual newspaper of the Sydney Morning Herald, 6 August, 2009.

ASSISTANT COMMISSIONER: 6 August. Yes, that will be Exhibit 261.

10

#EXHIBIT 261 - ARTICLE IN THE SYDNEY MORNING HERALD DATED AUGUST 6, 2009 TITLED, 'HUSH, AND YOU CAN HAVE YOUR MONEY'

MS RONALDS: And if I could tender a copy of the advertisement for the Civil Construction and Maintenance Co-ordinator that was in the Sydney Morning Herald on this Saturday and it's an extract from Mycareer.com.au dated May 22, 23.

20

ASSISTANT COMMISSIONER: Yes, that advertisement will be Exhibit 262.

#EXHIBIT 262 - ADVERTISEMENT OF CIVIL CONSTRUCTION & MAINTENANCE COORDINATOR – MY CAREER.COM.AU

30

MS RONALDS: And if I could tender a copy of a, on the front is a facsimile from Burwood Council to Mr McKenzie dated 24 May and attached to it is the position description which is the long version of the advertisement, I mean the, the job description that you get if you go on the Web. You find it and it tell you in the covering fax how to find it.

ASSISTANT COMMISSIONER: Yes, that position description will be Exhibit 263.

40

#EXHIBIT 263 - FACSIMILE FROM BURWOOD COUNCIL TO MR MCKENZIE DATED 24 MAY 2010 – POSITION DESCRIPTION FOR CIVIL CONSTRUCTION & MAINTENANCE COORDINATOR ATTACHED

MS RONALDS: Now, Mr Azer, what I want to suggest to you is this that when you looked at the change that Mr Ellul had made to including tertiary education, you knew that wasn't going to fly with the unions, didn't you?--- That was also a, a, a, a, a consideration, yes.

And you and Mr Macklin discussed that, didn't you, prior to the meeting on 7 April?---A good possibility, yes.

Well, you did, didn't you? You and him had a discussion about how you could remould the position to ensure that Mr Child was excluded but it didn't look quite so clear as the way Mr Ellul had made it, would you agree?---I don't have clear recollection of, of that but what I can recall that I've always had in my, back of my mind that there was chance for Mr Child to be able to work through with the new manager and have a fresh start and then he would be considered. I was hoping it wouldn't go that far.

If I could you to listen to the question. Now, Mr Hanley's asked you that, the Commissioner's asked you to do it?---Yes.

And answer the question, not give us a little discourse on what you want to answer?---Yep.

All right. And we'll get there faster?---I don't recall.

And I suggest to you is that you and Mr Macklin between you came up with an idea that you extend the position to nominate project management and contract management, would you agree?---That was discussed I think with Mr Ellul more than Mr Macklin.

All right. So it was you and Mr Ellul who came up with that process, was it?---It started from Mr Ellul I think.

And when you said to him you can't have the tertiary education, you came up with a way of putting in functions that you knew Mr Child wouldn't be able to qualify for, would you agree?---It was not put this way. It was put that we had major problems with work planning and management and that had to go there. Whether it did actually work in this, in this scenario that was another issue.

See, what I suggest was that the changes that actually were put in on 7 April, were contrary to the Morrison Low report, would you agree?---I don't believe so.

All right. Well, can the witness be shown a copy of 209, Exhibit 209 please. If I could ask you to turn. The pages aren't numbered in this report but there's your memo on the front, you and Mr Macklin did a memo?---Yes.

And then it starts, "Burwood Council depot operations review, August, 2008"?---Yes.

And that's where the Morrison Low report starts. And it's page 6 of that report so there's a page, there's a couple of pages and then there's one page

that's got Option 1, Option 2 with little diagrams on it. Do you have that page?---Yes.

And then immediately after that there's a diagram that says, Option 3?
---That's right.

And then the third paragraph down. If I could ask you to turn to that. See the paragraph that says, Other Major Issues? Do you see that paragraph?
---Yes.

10

If you could just read that paragraph to yourself and tell me when you've completed that task?---Yes.

You see, what it's saying is the civil, leave aside the Parks Co-ordinator. The Civil Maintenance Co-ordinator to concentrate on maintenance. Do you see that?---Yes.

20

And in-house (not transcribable) it says, "ensuring efficient operations while there's clear separate accountability for contract management". That's what Morrison Low was suggesting, wasn't it?---That's right.

That was the recommendation?---Yes.

All right. If the witness can then be shown Exhibit 247 and 258. If you could turn to page 17 of Exhibit 247. This is a copy of the position description circulated by Mr Ellul on 31 March, 2009. Do you understand that?---Yes.

30

So if you turn to page 17. Do you see that?---Yes.

And under Essential Criteria, you see there's the tertiary qualification and then "demonstrated experience in construction and maintenance of civil infrastructure works including the planning and management of them"?
---That's right.

And that was what was proposed as at 31 March, 2009. Do you agree?
---That's right.

40

Do you have then Exhibit 258? This is the draft position given to Mr Child on 20 April, do you see that?---Yes.

Could you turn to Essential Criteria?---Yes.

At the top of page 2?---Yes.

"Demonstrated experience in project management of multi-faceted projects including project definition and cost planning, demonstrated experience in contract administration with specific experience in preparation and use of

contract documentation for multifaceted civil infrastructure projects.” They were the two critical changes that were made, weren’t they?---Yes.

They were putting in functions that were not in the 31 March proposal, were they?---No they were not.

And what happened I suggest to you was at the meeting on 7 April they were the critical changes that were made?---Yes.

10

The tertiary qualifications was just a furphy, wasn’t it?---(NO AUDIBLE REPLY)

The real change that was made was about project management and contract administration, wasn’t it?---I think that qualification is something you either have or you don’t. In terms of experience, it’s, it’s not, it’s not a furphy. It could be seen even as a furphy because it’s not black and white. In my opinion it did, it did not preclude him because it was part of his job.

20

Mr Azer, I’m not asking you that, am I?---Yes, okay.

Just listen to the question, please, sir?---All right.

What I’m suggesting to you is that project management and contract administration had not been in the previous draft, were they?---No, they were not.

30

And they were not in the position as put to Mr Child and agreed with him on 21 January, were they?---They were not.

It was an entirely different focus for the position, wasn’t it?---It, it is, it is different from that but it’s along the same lines of his current position, the position he had at the time.

I’m suggesting to you, sir, that you well knew when you agreed to put project management and contract administration in that they were skills Mr Child would not be able to demonstrate, didn’t you?---I felt that he, he would, he would struggle but I did not think it was cut, cut and dry.

40

And you did it as a way of getting it past the unions but ensuring that Mr Child would not be able to obtain the position, would you agree?---No, I
- - -

And that’s what you were trying to do on 7 April, wasn’t it?---No, no, my clear, my clear recollection of that is I, I thought that he would still have a chance and all that it is is just he needed to improve his standing and try to use that time to demonstrate it.

He didn't have any chance, did he and you knew that because by making project management and contract administration as the first two essential criterias for the position you'd knocked him out of the arena, hadn't you?
---No, I disagree because I've already sent him, he, he's, he was involved into, into project management. His, his, his, he was ready, I sent him to training with the tendering and people that prepared the policy for, for tendering and purchasing. He was on the, on the panel that awarded one of the major projects with his peers and he sat down with the governance officer who had prepared the tender documents and he has been managing Council's work in-house. He's been managing Council contracts and it was part of his substantive role.

Mr - - -?---He did have a chance and that was my clear view.

It was such a substantial change to the position, it was the reason the job had to be readvertised, wasn't it?---Well, it was part of the reason definitely, yes.

Yes. There was no way it was just a minor tinkering and it missed, and it was the same, was it?---Well, I agree, it is different to what was proposed in the past but it's not a major difference between it and the substantive role.

If it wasn't any major difference it wouldn't have needed to be readvertised, would it?---No. Actually, no, I disagree because I remember an email from Mr Macklin saying that the unions would have had problems if we don't readvertise if the grade has changed. So there were problems with - - -

And the (not transcribable) had changed substantially, hadn't they?---No, change, change that would, would, would lead to a great change which is what was proposed because remember Mr Child wanted a significant increase at the same time, he demanded it and it's very well documented.

Do you, I give up. Excuse me a moment and I'd ask you again when other counsel arise, please answer the questions, don't editorialise. It's not assisting the Commissioner?---Sure.

ASSISTANT COMMISSIONER: Mr Azer, you'd accept, do you accept that this eventual format of the PD was not a result of the recommendation from the Morrison Low report?---No, it was different.

In fact it was contrary to - - -?---Yes.

- - - the Morrison Low report?---Yes. Now, now looking at it in - - -

Yes?--- - - - in great detail it is contrary.

Yes. So all of the Council documents and emails which say look, this was justified because of the Morrison Low report, you know, it may have been justified but it certainly wasn't a result of the Morrison Low report, was it?
---Well - - -

You've already said it wasn't. In fact, it's contrary to what they were saying should happen?---Well, there's a, there's a difference in it, definitely.

Well, yes, it's different - - -?---Yes.

10

- - - and therefore contrary to what they were saying?---Yes, well, it is different.

Yes. All right, thanks.

MS RONALDS: And before 7 April had you discussed that change, that is, inserting the project management and contract administration into the job description?---I remember discussing it with Mr Ellul and possibly maybe Mr Macklin.

20

Before the 7th?---Yes.

Thank you.

ASSISTANT COMMISSIONER: Yes. Is anybody else seeking to cross-examine this witness? If not, we'll send him on his way.

MR BLAKE: Yes (not transcribable).

30

ASSISTANT COMMISSIONER: Yes, Mr Blake.

MR BLAKE: Mr Azer, you were asked some questions about your involvement in the purchase of a motor vehicle for the General Manager in late 2007?---That's right.

Do you recall that? I think your evidence was that you had a discussion with Mr Romano and then that led to a three-way discussion between yourself and Mr Romano and Mr Walker?---That's right.

40

Firstly, just dealing with your discussion with Mr Romano, you understood that with the proposed purchase of an Audi motor vehicle there would be a luxury tax payable?---Yes, I realised that, after I've seen the prices.

And you were concerned as to who would pay for that, the Council or Mr Romano?---No, I thought it was part of the purchase so I accepted that it would be part of the Council purchase.

And you raised with Mr Romano I suggest just the question in the first conversation you just had alone with him about who would be paying the luxury tax, whether that was something that the Council would pick up, you just wanted to check that?---I don't recall discussing that particular issue. I discussed another issue related to it which was, he said that the luxury car tax Council would get back, like the GST and like the old sales tax and I had a disagreement with him on it.

10 So there was an issue with you, between you and Mr Romano, where you discussed the issue of luxury tax and whether it would be paid by Council and reimbursed or not reimbursed. That was the issue, wasn't it?---That's correct.

Yes. And Mr Romano was asserting in the first conversation he had with you that he was entitled to a car and the Council would pay the luxury tax? ---I don't recall him specifically talking about Council paying the luxury car tax but I recall he said he's entitled to the car.

20 Yes. Well, I suggest to you that the luxury tax issue was also raised by Mr Romano as being something the Council would pay, that's something that could have been discussed, would you agree with that?---It could have been. It was part of the purchase. I've never questioned that somebody else would pay part of it, you buy, you buy the car, you pay, pay the price including the tax.

And you had a concern from that conversation with Mr Romano to verify what he was saying to you about his entitlement to the car and payment of the tax, do you agree with that?---I had two, two issues to resolve, yes.

30 And you suggested that you speak to Mr Walker?---Yes. We ended up talking to Mr Walker.

And Mr Walker confirmed in that conversation Mr Romano was present?
---(NO AUDIBLE REPLY)

To your recollection?---I believe so. I think the three of us were there, I hope my recollections are clear.

40 And Mr Walker confirmed that Mr Romano was entitled to a car in his contract, that's something he said?---He, he said he's seen the contract or parts of the contract and he was satisfied that this car would, would, would be as per the contract that he's seen.

And he also said it was Council's practice to pay for any tax on the car?
---I don't recall this specific discussion but I, I took it as for granted you, you pay the, you buy the car, you pay the tax.

Indeed, as part, you understood, that as part of Council had a fleet of cars?

---That's right.

Yes. And your understanding was that in purchasing any car within the fleet that Council paid the cost of any taxes payable?---Yes.

You were also, I'm about to go onto another topic, Commissioner, I see it's one minute before 11.30 but I'm happy to start if - - -

10 ASSISTANT COMMISSIONER: No, look, we will adjourn but we will be resuming at 10 to 12.00 sharp, with or without counsel. Thank you.

SHORT ADJOURNMENT

[11.30am]

ASSISTANT COMMISSIONER: Thank you. Please be seated. Yes, Mr Blake.

20 MR BLAKE: Mr Azer, I want to turn to the termination of Mr Saad. And you recall being asked some questions that topic?---Yes.

Right. In about November of 2008, the Council's budget was examined and an excess of about \$1 M in the, in excess over budget in the Council's operations budget was identified. Do you agree with that?---Yes.

And there were a number of discussions within the Executive about to deal with that cost overrun in late 2008 and early 2009?---Yes, I recollect.

30 And a number of decisions were taken regarding dealing with the cost overrun. One was to cease all overtime payments to staff?---Yes, I have recollection of that.

And another one was to phase out or terminate all non-essential staff immediately?---Yes.

Another one was to identify as many capital works items as possible that could be delayed?---From memory, yes.

40 And another one was to try and identify other areas where cost savings could be achieved?---Yes.

The issue of the overrun in the budget, it was a matter that to your knowledge went to the Council?---As part of the quarterly report?

Yes?---Yes, that's possibly correct.

And can Mr Azer be shown Exhibit 200, please. Can you turn to page 1. These are minutes of a meeting at which you're not recorded at being

present, but I want you to look at the sixth dot point, per our advice, is under instruction from the Mayor and Council. Can you see that?---Yes.

That's something that you understood in early 2009 that there was an instruction from the Mayor and the Council to cut costs?---No. It was from the general manager. I don't think it was instructions from the Mayor and the Council.

10 Yes, well, I suggest that you understood that early 2009 the Mayor and Council had expressed concern about the cost overrun and wanted costs cut?---I recall that coming from the general manager. I don't have exact recollection that the Mayor has also had the same concerns.

Right. You can't recall that now?---I definitely recall the general manager, but I cannot recall the Mayor.

20 Yes. All right. You certainly wouldn't disagree that that matter had come before the Council and the Council had expressed concern in early 2009 would you?---It would be part of the quarterly reporting and there would be some element of it there, definitely, yeah.

And the effect is that in early 2009, Mr Romano expressed criticism of you that you had failed to act quickly enough to cut overtime?---That's right.

And expressed a criticism of, of you that you failed to act quickly enough to cut staff?---No. I only recall the overtime.

30 The overtime. And the fact is that, you can just close that now, Exhibit 200. Can Mr Dardano be shown Exhibit 253.

MS RONALDS: It's Mr Azer.

MR BLAKE: Sorry.

MS RONALDS: Mr Dardano is not here (not transcribable)

MR BLAKE: Yes, it could be. I'm indebted for counsel assisting reminding me of my memory lapse. Mr Azer, I apologise?---That's okay.

40 The last note of 10 March, 2009 refers to Mr Romano questioning you, criticising you for not following instructions in cutting overtime by Christmas?---That's right.

Yes. And in fact you had a number of discussions with Mr Romano on that topic about that time when he was criticising you didn't you?---And before.

Yes. And you expressed to him that you were doing your best to cut off overtime but it wasn't that easy as simply signing no overtime?---Yeah. He

wanted it done suddenly and I couldn't, we cannot do it suddenly and I've used a certain sort of example to, to explain that.

You said you just couldn't turn off the tap?---That's exactly what I said.

And you were concerned about industrial unrest arising if you just turned off the tap?---Yes. And actually people's livelihood. People are sort of accustomed to certain issues. You need to give them time to adjust. Plus also the projects were still running, so there were a number of reasons for it.

10

And you said you'd have to do it slowly, not that quickly?---That's right.

And that was a serious point of disagreement between you and Mr Romano wasn't it?---It was a serious point of discussion, but he did agree to it.

Yes. Well, I suggest he kept urging you to cut overtime as immediately and you kept coming back to him and saying it's not that easy?---It was discussed as least on two occasions.

20 Yes. Probably more than two I suggest to you?---I'd say at least, it could be more.

Yes. And now do you still have Exhibit 200 in front of you?---Yes.

Can you go to page 7, please. This was a briefing note prepared by Mr Ellul?---Yes.

MR BLAKE: You saw that at the time, didn't you?---I'm just wondering why haven't I signed it.

30

No, well, it's, it's a draft, Mr Azer, but you saw the draft at the time, didn't you?---I'll have to accept that.

Well, just so you can satisfy yourself, can you look at page 9. They're the minutes of a depot reform meeting?---Yes.

Records you as being present?---Yes.

40 And item 1.1 refers to the briefing note on the proposed reforms ready for circulation?---Yes.

And the briefing note is the one at pages 7 and 8, isn't it?---Yes.

And if you can just go back to the briefing note on page 7, item 2 referred to the background back to 20 February when there was approval sought from the General Manager for a short term restructure of the works and operations group?---Yes.

And that was a reference to your group?---The works and operations group?

Yes?---Yeah, that's the part of the depot.

And part of the restructure was to reduce the number of full-time equivalent staff by three positions, wasn't it?---Yeah, from memory.

10 And if you look down the bottom of the page, you'll see the second last paragraph. "It was proposed to reduce the full-time equivalent FTE by three positions, resulting in 12 FTE positions. To achieve this it's proposed that" and you'll see one and two, "two vacant positions in the civil area not to be filled, and all casuals are to be released within four weeks" and "(2), one of the restorations special project team to be made redundant"?---Yes.

And in the last paragraph it spoke about the need for staff to be multi-skilled?---Yes.

20 And over the page, the recommendation in (a) was that three vacant positions in the depot, two civil and one mechanical not be filled and casual staff be released?---Yes.

Mr Ellul's view was that the casuals were to be released within four weeks? ---Yeah, that was his view at the time.

Yes, and the point of disagreement at the depot reform meeting on the following day was whether the casuals should be released immediately or within four weeks?---That's a possibility.

30 That is the case, isn't it. That, that was point of disagreement. Mr Ellul and you were arguing that some time, four weeks, should elapse before it takes effect and Mr Dencker and Mr Hullick, who outvoted you, said it should happen immediately?---I accept that.

And certainly Mr Ellul after that meeting, he was unhappy with that decision, wasn't he?---No, he wasn't happy.

Yeah, he was unhappy about the decision that was made that all the casuals were to go immediately?---Yeah.

40 And he was particularly unhappy so far as the effect of that decision involving Mr Saad?---That's right.

And he made an attempt to have that decision deferred or reversed?---That's right.

And if you look at page 12 of Exhibit 200 that's an email sent by Mr Ellul to Mr Dencker and you were copied in on that email?---That's right.

And did you discuss the contents of that email with Mr Ellul before he sent it?---No.

It certainly accorded with your view though, is that what you tell the Commission, that there should be a deferment?---Yes.

Yes. And that was rejected by Mr Dencker, wasn't it?---It was, yeah.

10 And instead of within four weeks, Mr Saad went immediately?---That's right.

Yes, thank you. That can be closed and returned for the time being. Do you have Exhibit 253 in front of you at the moment?---Yes.

I want to now turn to the protected disclosure of Mr Saad. I think you said in your evidence that the conversation of which you've made a note at 8.40pm when Mr Romano phoned you on the mobile, was a lengthy conversation?---It was a lengthy, yes.

20 Yes. And the following day you made some brief notes of the conversation, didn't you?---That's right.

You just gave a summary of the substantial points covered?---Well, whatever I could put down on this issue.

And you certainly didn't record the conversation as it proceeded what you said and what Mr Romano said?---I didn't write it word for word, no.

30 Yes, yes. And when it came to give your evidence about this conversation, have you refreshed your memory by this note before you gave evidence to counsel assisting yesterday?---Yes.

And I suggest to you that this note, sorry, I withdraw that. Other than what was recorded in this note, I suggest to you that when you gave evidence yesterday you didn't have a good recollection of all that was said in the conversation with Mr Romano. Do you agree with that?---Well, I can't record everything, I can't recall everything within word for word. I remember the main points, yes.

40 You did your best to reconstruct it, what was said, the words that were said on the basis of what was recorded in the note, is that your process in giving evidence?---No, I remember I also had independently provided an, a statement to the ICAC partly recording what partly was discussed in that issue earlier on.

That was your statement that was tendered - - -?---That's correct.

- - - of Exhibit 127?---I don't recall the first statement.

Yes. And in that conversation I suggest that when it got to the point of the protected disclosure, that's the third item in your note, that Mr Romano in fact asked you or suggested to you that he understood there had been some allegations. That's how that part of the conversation started off. He raised the issue of some allegations?---Yeah, he raised the issues of allegations.

Yes, you certainly didn't raise it with him?---No, not, not on this conversation.

10

Yes. And he complained to you that you hadn't told him about the allegations, didn't he?---Yeah, yeah.

And you said to him that you didn't tell him about them because you'd told Mr Macklin?---I told him I didn't tell him about it because Mr Macklin was handling it and somebody else was looking into it.

20

Yes. Well, you said to him that there'd been a discussion between you and Mr Macklin and that's why you didn't tell him about it?---That's a possibility, yes.

Yes. And Mr Romano, he complained to you that the fact that you discussed it with Mr Macklin didn't alter the fact that you hadn't told him, he made that complaint to you, didn't he?---Yeah, he was a bit upset I didn't tell him about it.

And you said you had a conflict of interest?---I did.

30

And he quizzed you about the conflict of interest, what was the conflict of interest, didn't he?---We definitely, he quizzed me on the conflict of interest, whether it was during that night or another, in another, anything later on could be a possibility, either or.

40

And I suggest to you that you did tell him in that meeting that you had a conflict of interest because it involved a staff member and he criticised you for that. He said you were the director and you had a responsibility to deal with matters involving your own staff?---No, I disagree. I didn't tell him because it involves a staff member, I said because it's potentially could be seen that I'm trying to influence the outcome because it's my area.

Yes, well, I suggest to you he criticised you in that evening conversation for walking away from your responsibility?---Definitely he did.

Yes. And I suggest that in the conversation you told him that Mr Macklin would be involved in the investigation and Mr Cummins?---I don't recall saying Mr Cummins but possibly Mr Macklin.

Yes. And, well, I suggest to you there was a discussion about Mr Cummins because the issue of a previous investigation by Mr Cummins came up in that conversation?---I don't have a clear recollection about that.

It came up in that conversation that Mr Cummins had investigated Mr Dencker about toner cartridges for a printer and he'd gone off on a tangent, Mr Romano mentioned that to you, didn't he?---It was but I was not clear whether it happened on that night or a number of days later as per my, my statement.

10

Yes, you accept it may have happened that night though?---I'm sorry.

It may have happened in that night?---It's a possibility.

Yes. And I suggest to you that Mr Romano said to you that it's important in matters like this that the management team stick together and discuss matters as a collective and not as individuals?---That's right. Can I just make another, I've got, had another recollection?

20

Yes?---I don't recall him saying that Cummins was investigating the cartridges for Dencker but I remember the, the cartridges being discussed but I don't recall that he mentioned that Cummins had investigated that even now it's not part of my knowledge even after all the inquiry.

You recall Mr Romano certainly talking about an investigation about toner cartridges for a printer where the investigation had gone astray?---That's right.

30

Yes?---But I don't recall him linking it to Mr Cummins.

I see?---Yeah.

And he expressed concern that without foreknowledge decisions could be made out of context?---That's right.

I suggest to you that you, when you gave evidence yesterday you didn't have a clear recollection of the exact words said by Mr Romano in that part of the conversation?---About the cartridges?

40

No, about the protected disclosure conversation, you didn't have a recollection of the exact words used by Mr Romano, did you?---I don't have a word for word recollection.

Your note in the first, this is item 3 in Exhibit 253, said that he asked your version of events regarding a meeting with HR, Mr Romano said that?
---Yeah. Well, he didn't say it but he, that was the questions - - -

That recorded something he, a question he asked you?---Not in exact words but - - -

No?--- - - - words to the effect of that.

And the second sentence was something you said?---Yes.

10 And the third sentence, I only became aware, is expressing something about your awareness or state of mind?---I only became aware of his involvement this morning when he saw us.

And the last sentence, Pat denied any wrongdoing?---That's correct.

So your note records two things that Mr Romano said in the first sentence, asking you a question and the last sentence his denial?---Yes.

20 And I suggest to you other than that you don't have a clear recollection of the exact words Mr Romano used?---No, I have recollections on other issues which I've mentioned in the, in my statement.

Well, I suggest to you that Mr Romano didn't say in that conversation to you that there was an issue with Mr Dencker and that he looked after him and I should do the same?---It may not have happened on that night.

Yes. And I suggest to you that it didn't happen on any other occasion either?---I disagree.

30 Yes. And I also suggest to you that Mr Romano didn't say to you that you needed to look after his back?---I disagree.

Yes. And, thank you. Now, there, you had a further conversation with Mr Romano about this issue around about that day or a day or so later, is that, is that correct?---Yeah, possible.

40 Could Mr Azer be shown Exhibit 242, please. Right. Mr Azer, can you please turn to page, you'll see page numbers in the bottom right-hand corner at the beginning of the document and look at paragraph 107 which runs on page 17 over to page 18 and can you just read that paragraph to yourself? ---Yes.

You had a conversation to that effect with Mr Romano on or around 12 February, 2010, 2009, I beg your pardon didn't you?---Yeah. I don't agree for the words for words. But there were discussions to that effect.

You don't agree with the precise words but the substance was as recorded by Mr Romano?---Overall, with a number of gaps, yes.

Yes. Thank you?---Like for example I didn't use the word scared and issues like that. And I didn't say I didn't know what to do.

So you, other then you didn't use the word scared and you didn't use the words I didn't know what to do, it sets out the substance of the discussion? ---I still have the question regarding, I still cannot be sure that we discussed Cummins on that night.

10 Well, this is not said to be the conversation of the evening, Mr Azer, it's a conversation he had with you on or around 12 February. It's not, it's not the evening conversation?---Okay. All right. We could've had that discussion.

Yes. Thank you. Now counsel assisting also asked you about a conversation on 14 April, 2009 and I'm just wondering can you go to paragraph 250 in Exhibit 242, which is on page 43 and read that paragraph please?---Yes.

20 Okay. You'd agree that that paragraph accurately sets out the substance of the conversation that you had with Mr Romano on 14 February, 2009?---No. My reference to, I don't recall having that discussion prior to the Executive meeting talking about telling the meeting. I remember a meeting after, between the, after the building and development meeting that night and where the same issue was discussed.

30 Right. So you don't accept the timing, you say it was a little bit later that night?---It was a lot later and it, it, half of it was talking about telling the meeting. The meeting we were talking about was a Council meeting and it would not have been appropriate for me to tell the meeting anything about this issue.

Well, I suggest to you that there was a meeting, it was a conversation that you had prior to an Executive team meeting where a conversation along those lines took place between you and Mr Romano?---I'm sorry, I can't recall that at all.

40 You can't recall it. Thank you. I want to, you can close that now, please. I want to ask you some questions now, you were asked some questions yesterday about surveillance of Council staff in March and April, 2009. Do you recall those questions?---That's right.

Can Mr Azer be shown Exhibit 226, please. You attended a meeting of the Executive at Maddocks office on, I think it was 18 March, 2009, a Monday?---I remember attending a meeting at Maddocks. The exact date, it was around that time, yes.

Yes. And it was a meeting at which Mr Mailey attended for part of it and he showed a PowerPoint presentation?---He showed something, yes. Yes, he showed some pictures and some - - -

Well, he gave - - -?---It was an overhead projection, yes.

- - - yes, an account of his observations of the depot in the period prior to that?---Yes.

And he expressed the view that from what he had seen he thought there was a, a prima facie case of theft and pilfering occurring at the depot?---That's right.

10

And you have no real doubt that Exhibit 226 is a copy of the overhead that was shown at that meeting?---It could have been this meeting or a prior meeting that was held at Council.

I see. Around that time you saw the overheads that Mr Mailey showed? ---Yeah, I've seen those.

Yes?---But possibly not at Maddocks. I think they showed something different at Maddocks.

20

But you're not clear one way or the other what was shown at Maddocks? You can recall something being shown?---Yes, yes, but I am pretty much confident it was not, this was the prior meeting at Council.

I see. And at Maddocks a decision was made to seek an order from the court permitting covert surveillance under the workplace surveillance act? ---I thought that was at the meeting at the Council, prior to that meeting.

30

You can recall a decision being made, maybe the place is wrong but to seek an order permitting covert surveillance under the Workplace Surveillance Act?---I remember that.

And you were part of that decision, weren't you?---That's correct.

And it was your view, sorry, I withdraw that. And you received, along with the other directors, legal advice from Maddocks that that was an appropriate step to take in the circumstances?---I don't recall receiving the advice. I recall that Mr Romano was working with Maddocks on it.

40

And it was your belief that seeking an order for covert surveillance was in the best interests of the Council?---That's right.

You were concerned that there was evidence of theft or allegations and prima facie evidence of theft and pilfering at the depot?---Yeah. It was demonstrated enough to be looked at.

Yes. And you became aware that a covert surveillance authority was obtained from the court on 18 March, around about that time?---Mr Romano

kept it very close to his chest so I was not exactly aware of the timing. Yes, was this on a Friday or a Saturday?

I'm just, I can't help you, Mr Azer, but about that time you became aware that - - -?---Yes.

- - - permission had been obtained?---Mr Romano called me about it.

10 And you also became aware that that was varied to permit surveillance of all employees during the period in question?---I haven't seen the actual permit so I think initially it was not and then alter on got it extended.

And that, that was something that you were briefed on at the time?---On the first one definitely, on the second one I, yes, I do have some recollection I was briefed that it was being extended, yes.

20 Yes, thank you. Did you become aware that the surveillance stopped for a brief period during, immediately after the allegations were made in the Herald on 4 April and resumed again on either the Monday or the Tuesday?
---I was aware of the surveillance stopping and starting sporadically throughout the project but this gap in particular I don't, I cannot judge the exact date.

30 And did you have any involvement in the decision to stop and start the surveillance?---I recall when we were at Maddocks we did vote to, to stop it because the evidence was not as overwhelming as it was and I recall Mr Romano pleading with the Executive to carry it over until I think from memory 3 April. No, further than that, until the end of the covert approval and, and then he pleaded with the Executive that we've got to go the whole hog and then he put it to us that maybe 3 April is a compromise and that was towards the end of March.

All right. Now, you became involved towards the end of that in reviewing some of the DVD material, is that correct?---Yes, I was involved in that.

40 Can Mr Azer be shown Exhibit 233. If you can go to Exhibit 233, you'll see there's a number of emails together but the very last email in the bundle is an email sent by Tania, Tina O'Riordan on behalf of Mr Dencker to you on Friday, 22 May 15 4.41pm. Do you see that?---Which page?

The very last one in the bundle. They're not numbered, this group in this exhibit?---Yes, I remember seeing that email.

And you understood that the reason for reviewing the DVDs was with a view to finalising the report to be provided to ICAC?---That's right.

And you in fact went to the office of IPP in the city?---That's right.

With Mr Macklin or did you do it separately?---I recall going twice to IPP. One with Mr Macklin, possibly towards around sometime in March and once on, in late May.

All right. And you viewed the DVD tapes with a view to trying to identify any particular Council employees that were depicted in the tapes, is that correct?---That's right.

10 And you passed that on to Mr Macklin, was it?---No, that was done on the first time where we sort of identified the employees and Mr Macklin was, was with me so we made notes of it. The second time was mainly to look at, which is in May, mainly to look at certain aspect of a particular footage and, and to also help with no, sorry, to look at the quality of the, of the, of the work that was provided because (not transcribable) did not link up the videos. They're not linked with the printed material.

Yes. And what, you expressed, when you looked at it, you told Mr Mailey, was it, what you were able to identify in the, in the video or DVD?---
Mr Mailey was - - -

20

ASSISTANT COMMISSIONER: Mr Blake, I'm sorry, but we've been all though this evidence already. Unless you want to put something different to him or suggest it didn't happen, I mean, your client wasn't there as I understand it. We just seem to be going over the same evidence he's already given yesterday.

MR BLAKE: Well, I'm pretty sure he wasn't asked this question, what he did with the information discovered.

30 ASSISTANT COMMISSIONER: Well, that's probably the only one of the about a dozen questions you've asked about this issue that he wasn't asked. Maybe you could have gone straight to that.

THE WITNESS: Yeah, on the first time I've made - - -

MR BLAKE: No, I'm just talking about the second time. Did you give instructions to anybody about what you saw on the DVD?---Yes. We, it's either Mr Mailey or Ms Malouf.

40 Sorry, Mr Mailey?---Mailey or Ms Malouf, whoever it was at the time. I told them that the, I cannot follow and link the videos with the written transcripts and for it to be useful to anybody this needs to be tagged on, maybe on the left-hand side. That's what I suggested to them as a minimum.

Yes, thank you. And that was your end of the involvement with this matter, is that correct?---Yes.

I want to ask you some questions about depot reforms. Can Mr Azer be shown Exhibit 242 please. Can you go to page 24 please, Mr Azer, and just look initially at pages 143, sorry, paragraphs 143 and 144?---Which page again?

Page 24?---20. Which paragraph?

143 and 144?---Yes.

10 You attended a meeting of the Executive on 16 February, didn't you?---Yes.

And Mr Dardano attended that meeting for part of it?---Yes.

And he expressed that some staff were resisting the depot reforms including Mr Child?---From memory, yes.

And paragraph 144 sets out accurately the substance of part of the discussion while Mr Dardano was present?---I can't be accurate word for word but I agree with the substance.

20

Yes. And similarly can you just read paragraph 145. I'm just asking about 145 for the moment, please?---Yeah.

Mr Dardano expressed in that Executive meeting the opinion that he didn't believe Mr Child was up to the role, didn't he?---Yeah, he would have said that.

And he acknowledged his energy and enthusiasm but said he lacked the reporting or planning ability, didn't he?---Yeah, that's what he suggested.

30

Yes. And the substance of what was said by Mr Dardano on that topic is accurately set out in paragraph 145, isn't it?---Yeah.

Now, can you look at 146, please?---Yes.

Mr Macklin handed out some job descriptions, draft job descriptions for coordinator roles at that meeting, didn't he?---I can't exactly remember that happening on that meeting particularly.

40 It could have though, couldn't it?---Definitely, yeah.

Yes. And can you now recall a conversation along the lines of what's set out in 147 at that Executive meeting?---I definitely recall Mr Macklin's sort of main points, they were definitely Mr Macklin's words. I would have to accept they were part of that particular meeting, not another one.

Yes. Okay. And you would agree that with paragraphs 147 and 148 were also part of that meeting too?---I can't recall the timing but I recall

discussing the meaning of tertiary education and maybe even done by email rather than verbally.

And that was discussed in an Executive meeting, wasn't it?---You're testing my memory here, I can't be a hundred per cent sure.

But it's likely to have been discussed in any Executive meeting, isn't it, Mr Azer?---A good possibility, a good possibility.

10 Yes, thank you. You can close that now, thank you. Can Mr Azer be shown Exhibit 200, please, I don't know if he still has it. Can you go to page 4 please and they're the minutes of the depot reform meeting of 7 April, you're familiar with those?---Yes.

Your view was, as at 7 April, was that it was appropriate to include contract and project management experience and training as part of the civil maintenance coordinator role, wasn't it?---That's right

20 You believed that it was in the best interests of the Council that that particular position include those particular functions?---Yeah, I supported that. Yeah.

And your view was that the absence of those particular functions or responsibilities had created problems in the operation of the depot?---Yeah, in recent times.

30 Yes. And in coming to that view you were not influenced by the fact that allegations had been made against Mr Romano were you?---No. I, I don't believe I was.

And can you go to page 5, please, sorry, if you can just review it. I'll withdraw that. The minutes, item 2 (not transcribable) a process that was to be followed that draft position descriptions would be reviewed by Mr Ellul? ---Yes.

And items 2.1 to 2.6 set out the process that was agreed to be followed by the cross functional team in terms of pursuing the changed nature of the role of the civil maintenance co-ordinator?---That's right.

40 And when you referred in evidence to, I think it may have been Mr Hanley or counsel assisting, the process that needed to be followed, is this the process that you had in mind?---Yes.

Can you go to page 5, please. And I'm correct in saying that at least from 7 April that Mr Dencker was the acting general manager dealing with the depot reform issue?---Correct.

And that Mr Romano was not attending meetings of the cross functional team?---That's right.

Yes. And if you go to page 5, that sets out the minutes of a meeting the following week, on 14 April?---Yes.

10 And I take it you personally were conscious of the issue of any action taken in relation to changing the role of the civil maintenance co-ordinator that may give rise to a problem with ICAC?---I remember considering that at making the decision, yes.

And the decision at that meeting was that you would obtain legal advice to ensure that, to find out whether any change in the position description needed to go through ICAC or not?---Yes.

And if you go to page 6, that's a further meeting, two days later on 16 April, and you attended that?---Yes.

20 And items 1.1 to 1.3 set out the agreed steps that were to be taken to progress this issue of the role of the civil maintenance co-ordinator?---Yes.

And you agreed with those processes didn't you, those steps?---Yes.

Can you go to page 7 and 8. It's a briefing note, I took you to it before?---Is that the draft briefing note?

The draft briefing note, yes?---Yes.

30 And you saw the recommendation in paragraph d on page 8 that all positions in the civil maintenance area be spilled and internal applicants requested to reapply along with external applicants?---I saw that.

Yes. And you understood that that proposal was being made by Mr Ellul to ensure that all staff were multi-skilled?---I don't have the exact recollection of the reasoning and I think I may have been challenging the extent of it.

40 Yes. But you thought at the time that was a desirable position to have multi-skilled staff within the civil maintenance area didn't you?---Yes. Multi-skilling is something I supported, definitely.

Yes. And I think you said, looking at page 9, that the briefing note was something which was tabled at the next meeting on 23 April?---Ah hmm.

Can you recall any discussion at that meeting about the briefing note?---I have some recollection but, that Mr Ellul said that it's ready and I had not sort of approved it yet. Something along those lines.

The last issue that really needed to be dealt with before that briefing note could go forward was the changes to the role of civil maintenance co-ordinator. Do you agree with that? That was the outstanding issue wasn't it?---Can you repeat that please?

The outstanding issue before the briefing note could go for approval was the finalising the changes to the role of the civil maintenance co-ordinator?
---Well, that was part of the briefing note.

10 Yes. That was the outstanding issue?---Outstanding issue from, on the briefing note?

Ah hmm. It was not yet completed?---No, because we've had a lot of things that didn't happen.

I understand that but can you look at item 1.1 on page 9?F---Yeah.

You'll see it refers to the briefing note ready for circulation?---Yes.

20 You see it contains recommendations in line with the Morrison Low report and it was awaiting further input from Mr Child regarding proposed position of civil maintenance and construction supervisor?---Yes.

And that was the issue that needed to be resolved before the briefing note would go forward for approval. Do you agree with that?---No, I recall having other issues with the rest of the recommendations, that's not the only issue.

30 I see. Right. What other issues did you have, Mr Azer?---I thought, I thought the recommendation to, to, to spill all the, all the positions in the maintenance all was a bit too, too much. I needed to be convinced otherwise. That's mainly it.

Yes, thank you. And you became aware, I'd suggest, in late April of correspondence between the union and the Council regarding Mr Child's position, if you can look at pages 10 and 11 and pages 14 to 16, you saw those letters at the time?---Yeah, a good possibility. I see it now. Yes, I recall that letter.

40 And you recall the response from the union to the Council at pages, sorry, I withdraw that, a response from the Council to the union, pages 14 to 16?
---I recall seeing that letter.

And there was a meeting of the cross functional team again on 30 April, page 17?---Yes.

And the two items regarding the civil maintenance coordinator are items 1.1 and 1.2?---Yes.

And you agreed with those steps, didn't you?---Yes.

And if you go to page 18, there was a further meeting of the depot reform team on 18 May?---Yes.

You were present at that meeting?---Yes.

And Mr Macklin gave the report in item 1.1?---Yes.

10

Commissioner, I see it's 1 o'clock.

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

LUNCHEON ADJOURNMENT

[1.04pm]