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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION PETRIE

Reference: Operation E11/0534

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 29 FEBRUARY 2012

AT 10.08AM

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

ASSISTANT COMMISSIONER: Thank you. Please be seated.

MR WATSON: Commissioner, may we continue with Vanessa Mason?

ASSISTANT COMMISSIONER: Yes.

Yes, take a seat, Ms Mason. You're still on your former oath and the section 38 declaration continues.

10 MR HARRIS: Thank you.

<VANESSA MASON, on former affirmation

[10:08am]

MR WATSON: Ms Mason, yesterday we reached the point where I'd asked you about the original joint venture agreement which had been rejected. Do you remember I asked you those questions?---Yes.

20 And I think it was a good summary of your evidence that you personally were relieved that that original joint venture was rejected?---Yes.

And you knew that any new deal, if there was to be any new deal at all, between Wagonga and any developers had to be the product of an open process?---Yes.

And it had to produce a proper return for Wagonga?---Yes.

30 Now just in that respect I want to show you two documents. The first is in Exhibit 1, volume 1, page 290. Now there's two ways that you can view it. You can view it in the volume which you've just been passed or alternatively it's on the screen in any event. But on page 290 you'll see a letter from the New South Wales Aboriginal Land Council addressed to you. We looked at this briefly yesterday, telling you why the original joint venture was being rejected. Do you remember this document?---Yes.

40 And if you look at the bullet points you'll see that they include, the first bullet point, that there was no evidence that the transaction formed part of the Wagonga community business plan. Do you see that?---Yes.

The second was that there was no evidence of appropriate consultation with or consideration by Wagonga members. Do you see that?---Yes.

Now yesterday we had some evidence that at any meeting to establish a quorum would require 13 people to be present and that it was common for a Wagonga council meeting to have perhaps 15 people present. Do you agree with that summary?---Well not entirely. I don't believe that the quorum was supposed to be 13, I think it was supposed to be 11 at that time.

Right?---Ten per cent of the total membership.

Well in any event we get a picture of the involvement at Wagonga by thinking that there are in excess of 100 members and probably only 15 who regularly attend meetings. Now what I want to ask you is as at that date, 13 July, 2006 did you understand that what the New South Wales Aboriginal Land Council were saying was that there had to be a consultation generally with members and a consideration generally by members not just those who were attending the meetings?---No, I - - -

Well what did you understand that they were saying?---(NO AUDIBLE REPLY)

It can't be anything else can it?---Well no, no, no, I'm just, just reading that again. I believe well the Land Council at the time did advertise the meetings. It's a requirement under the, the NSWALC Act.

Well that's right. We've seen and we've included in these bundles of documents advertisements which seem to have been published from time to time in the local Narooma newspaper saying that a meeting of one kind or another would be held on a particular date. We've seen that?---Yes.

That's not what this is directed at, this is directed at the people who have seen that the meeting was going to be on, but who have not attended the meeting or those who didn't notice it in the newspaper at all or for example, those members of the Wagonga Land Council who did not even live in Narooma. This is directed at consultation more widely than that. Don't you agree?---Yes.

See what it's directed at is this, is that if an important decision is to be taken by the Land Council irrespective of it being passed by 15 people who happen to be present on a Thursday night, that there had to be some broader indication to the members of the implications of the deal. That's what it's directed at isn't it?---Yes.

If you look at the third bullet point, it deals with plain English summaries. Do you see that?---Yes.

And then the fourth is the reference to the transparent selection process whether by open tender or by advertised expression of interest. Do you see that?---Yes.

Then there are other references and I don't want to labour it, but the key to them is that you needed to take independent professional specialist advice on issues. Is that right?---Yes.

And if you look over the page in the final bullet point, sorry, I shouldn't say the final bullet point, on the third bullet point on page 291 there's the possible returns and likely risks. So you knew all of that as at July 2006?  
---Yes.

I want to show you another document. Would you go in the same Exhibit 1, volume 1, page 335. I do this all the time, it's much better if I show you first of all page 334. You'll see there that there's a kind of cover sheet referring to an extraordinary general meeting on 7 August, 2007?---Yes.

10

And you'll see that for example you are present, you're the sixth person listed?---Yes.

Now, if you go over to page 335 you'll see that the meeting opens and apologies are taken, which is ordinary, and then the very first thing that happens is that Mr Malcolm Heard, H-E-A-R-D, a solicitor, addressed the Council meeting. Do you see that?---Yes.

20 He addressed first on an important issue for the Council which was whether or not the \$20,000 which The Medich Group had provided by way of deposit had to be returned to The Medich Group?---Yes.

And then the second issue is the one I want to take you to. This is a record of what Mr Heard was saying at a meeting at which you were present, that the disposal of Council land had to be transparent, an expression of interest document had to be supplied, discussions would take place with members as to what was wanted out of the development. Do you see all of these?---Yes.

30 Then after there are expression of interests, those expressions would be discussed to arrive at the best possible choice. Do you see that?---Yes.

And then there's a statement, "A local Aboriginal land council cannot do land deals that are at risk." You understand that to be a risk of losing money?---Yes.

Or even at a risk of dealing with insubstantial developers, \$2 companies?  
---Yes.

40 And then there's a need to work out non-monetary benefits of particular kinds. Do you see that?---Yes.

Then Mr Heard went further and said that if you let his firm know, he would draw up the expression of interest. Do you see that?---Yes.

Now, if you go over the page to page 336, the third motion moved that evening was that Mr Heard and his firm be instructed to carry out the preliminary work on an expression of interest. Do you see that?---Yes.

Now, at this point in time, the original joint venture had been rejected by the New South Wales Aboriginal Land Council. That's so, isn't it?---Yes.

You had known that for some time or at least since their letter dated 13 July, 2006. Is that so?---Yes.

There was however a new proposal being put forward by Gattellari for The Medich Group. Is that so?---Yes.

10 Now, you knew that if the Gattellari interest or The Medich Group interests came forward with a new proposal, you had to do all of those things pointed up by the New South Wales Aboriginal Land Council, didn't you?---Yes.

You had to have an open process by tender or expression of interest?--- Yes.

Is that right?---Yes.

You had to get specialists to look at the financial, the town planning, the real estate issues. Is that right?---Yes.

20

You had to get some assessment made of the risk to the Council. Is that so? ---Yes.

And you also had to work out so that you could see whether or not the returns on the Land Council's assets were equitable returns. Is that so? ---Yes.

30 Now, if you look at page 340, or first of all, page 307 of Exhibit 1. I show you this by way of background although in terms it does not seem to have gone very far, but Mr Gattellari for The Medich Group was writing to a solicitor at Heard McEwan in respect of moving ahead on Lot 921. Do you see that?---Yes.

Now, whether or not that went very far, if you turn to page 348 of Exhibit 1 you'll see the first page of an extraordinary meeting held on 29 August, 2007?---Yes.

40 This is a pretty crucial time because you knew there were all these number of things, I won't list them again but six or seven things which you've been told you had to do by the New South Wales Aboriginal Land Council and those things that Mr Heard had said were essential, so you knew all of that as at that meeting 29 August, 2007?---Yes.

Now, I just want to show you something. Your role at this meeting is pretty important because if you look just under the opening credits you'll see that the meeting was opened at 4.00pm by you as chairperson?---Yes.

And then I want to show you something else. If you look just immediately above motion 3 there's a discussion about the coordinator's salary?---Yes.

This is at a time when you were the coordinator, isn't it?---I was just recently appointed, yes.

Yes. So at this meeting you were the chairperson and the coordinator?  
---Yes.

- 10 I know that that was soon to change and that you were to be replaced as chairperson by your mother but the point is that you're the key decision-maker now at this meeting on 29 August, 2007, don't you agree?  
---Yes.

Now, what I want to show you is page 350, sorry, so sorry, 351. Do you see motion 10?---Yes.

How did that come about?---(NO AUDIBLE REPLY)

- 20 It seems there's no discussion. There's a motion put that lot 921, that's the Fullers Beach property, be leased with for 33 years with options for renewal. Where is the discussion?---I don't know. I, I didn't type the, I didn't write the minutes, I didn't type the minutes, no.

Well, you were the chairperson and the coordinator at the time. Can I ask you, and I'm going to use the New South Wales Aboriginal Land Council letter as guidance, where is the evidence that that transaction formed part of the Wagonga community business plan?---I don't know.

- 30 There wasn't, there wasn't one - sorry, it wasn't part of the plan, was it?  
---No.

Where is the evidence of appropriate consultation with or consideration by Wagonga members outside those who happened to be present at that meeting?---I don't know.

There wasn't any, was there?---I don't know. Well, like I said the membership, the process is to advertise the meetings.

- 40 Oh, you know what I'm talking about. I just said members of the Council outside those who happen to be present at that meeting at that night?---I know what, I know what you mean.

Where was, where was the evidence that they were told about this?---Sorry, can you just repeat that again?

They weren't told about the fact that this deal, motion 10, was going to be entered that night were they, the people outside who did not attend the

meeting that night?---It was up to them, it wasn't up to me for them to read and I did what I, what I was supposed to under the recommendations from the Land Rights Act.

Where is the plain English summary of the transaction contract for the purposes of the New South Wales Aboriginal Land Council directive to you dated 13 July, 2006, where is that?---Where is the what, sorry?

10 Perhaps it would be helpful if you look again at page 290 or I'll tell you what I'll do is that I'll ask that Mr James put page 290 on the screen and show the bullet points - - -?---Ah hmm.

- - - on page 290 while you have the book open at page 351 and do you see what I'm looking at is motion number 10 and trying to work out how that could be passed in light of what you had been told by the New South Wales Aboriginal Land Council in 2006 and now we've got it in front of us, you've agreed there's no evidence that the long term lease over Fullers Beach formed part of a Wagonga community business plan, you agree with that?---Yes.

20

You agree that there was no consultation with members of Wagonga Council outside telling them that there was a meeting to be held?---Yes.

If you look at the third bullet point, do you agree there was no plain English summary of the transaction or the contract?---Yes.

That's three breaches out of three, isn't it?---Yeah.

30 And you're chairperson and coordinator. Let's look at the fourth. Was there a tender or an expression of interest called for before that motion was put and passed?---No.

That's four breaches out of four. Are there any details of the proposed properties? I don't think that one applies here, so let's assume that that was okay, you did okay there. Could I ask you to look at 6. Did you take independent legal advice on motion 10?---No.

40 That's another breach. The next one is, relates to independent advice. Did you take any independent financial advice on motion 10?---No.

Town planning advice?---No.

Project management advice?---No.

Real estate advice?---No.

Did you acquire any financial information, for example, from The Medich Group to see whether or not that they were anything more than a \$2 company or could provide the financial substance for such a transaction? ---Here, I don't understand, it was, doesn't say anything about who's going to lease it.

Well, I might say this, it's pretty apparent from things which will follow that it was The Medich Group, but that's something I was going to ask you about. But did you do anything to find out anything about the finances of  
10 The Medich Group, about whether they had the financial wherewithal to go through with the transaction?---No.

The second-last one, did you provide any details of possible pecuniary interests of Wagonga members?---No.

Yet you knew that there were some because you knew that Walkun Mara Aquaculture Pty Limited held a long-term lease over at least a portion of Fullers Beach, didn't you?---Yes.

20 And you knew that Mr Gattellari was proposing a separate \$400,000 payment to the owners of the shares in Walkun Mara Aquaculture Pty Limited?---I'm not sure if I knew that before this.

You knew that your father, Ron Mason, your brother, Ron Mason, and your brother-in-law, Doug Williams, were each shareholders in Walkun Mara Aquaculture Pty Limited?---Yes.

And then the final bullet point is, evidence of compliance with all statutory requirements. Let's assume that that was okay. Could you go, on the screen  
30 could Mr Jones show you the next page. And just thinking about motion 10, have a look at the third bullet point. Was any assessment made of whether the return on a 40-year lease was an equitable return to Wagonga?---No.

In other words, motion 10 was a very serious breach of the requirements of the New South Wales Aboriginal Land Council. Is that so?---Yes.

Then could you explain to the Commission how we could, sorry, I should show you something else just so you're confident about it. Go to 352 of the bundle. You'll see that in response to what I've been calling motion 10, I'm  
40 not sure why, but it moves onto motion 11, the solicitors were instructed to draw a draft lease as soon as possible. Do you see that?---Yes.

Now, in light of the obvious non-compliance with the requirements of the New South Wales Aboriginal Land Council, can you explain how it was that while you were chairperson and coordinator that motion came to be put? ---I don't know.

If you look again at page 351 you'll see that the motion about the lease was put by Ursula Moore. That's your partner, is it not?---Yes.

And seconded by Vivienne Mason, that's your mother is it not?---Yes.

You would have known while you were at that meeting, and apparently voting in favour of the motion, it was unanimous, you would have known of the breaches. You had to know didn't you?---Yes.

10 How could you personally support it?---I didn't support it.

Oh, come on. It says, there's a motion put and it's carried unanimously?  
---Yeah, I know, I know, I can see that, but I didn't support it.

Well look over the page, it says that a motion is put and it's carried unanimously. Do you see that?---Yes.

Really, I mean you're denying supporting that. Is that what you're saying?  
---Yeah, I didn't support it.

20

I'm sorry Ms Mason to put this to you but - - -?---I know it doesn't look good on the paper, but I didn't support it.

Well I'm afraid it'll look worse once I show some additional materials. Now I want to ask you something about that page 351?---Ah hmm.

30 You appreciate that details of certain of the properties is provided at particular places, for example, on the same page you see that there are details given on motion 9 of the sale of the property, a price. Do you see that?---Yes.

And just for example if you go to page 353, you'll see motion 16 is that, for example, that a particular property lot 241 be sold to Ursula Moore at the current market value?---Yes.

Well can I ask you about motion 10, why is there no reference to the person to whom the lease would be granted? Why the party is not identified in short?---I don't know.

40 Well can you explain that now?---(NO AUDIBLE REPLY)

It's pretty important isn't it?---It is, it's very important.

Why is the amount of the rent not specified?---I don't know.

I don't want to go through this and labour the detail, but as we look at it now putting motion 10 and passing it was a complete breach of the advice

given to you at a previous meeting by Mr Malcolm Heard of the solicitors wasn't it?---Yes.

Now at the time that someone put a motion, number 11, this is page 352, that solicitors draw a draft lease as soon as possible. Had there been any discussion about the name of the lessee?---I'd say there would have been but I, like I said I didn't write the minutes and I didn't type the minutes.

10 Would there have been any discussion about the rent?---There would have been, yeah.

Well if I take you to page 360 of Exhibit 1, you'll see an email which passes from Malcolm Heard to Lucky Gattellari and you can see from reading it that Mr Heard and Mr Gattellari have met in person and Mr Heard confirmed his instructions from Wagonga. Now you'll see that the first one is quite clear, it was that lot 921, that's the one that we call Fullers Beach, lot 887 and lot 889 were all concerned. Do you see that?---Yes.

20 Where was any motion put to the executive or to the meeting of the Wagonga Land Council that there be leases granted in respect of lots 887 and 889?---I don't know.

Well you see Mr Heard says he's got instructions from Wagonga. Now at this stage your mother was chairperson and you were CEO. From whom, who would have been giving Mr Heard the instructions to lease two blocks of land when it is not known whether the Council had even given permission to do so? Who would have given him those instructions do you believe?---Either myself or the chairperson.

30 Do you recall giving the instructions?---I think I did, yes.

How could you give instructions to enter leases over lot 887 and lot 889 in the absence of any permission to do so?---I don't know.

Why were you doing it?---I guess a lot of, I received a lot of pressure.

From who?---Waterview Developments.

40 So a lot of pressure. Did that mean that you were threatened physically?---No.

Was the lot of pressure that you were under the fact that Gattellari had become increasingly cranky because he had made secret payments to persons associated with Wagonga to secure these deals?---No.

Was that the pressure?---No.

Well, then what was the pressure?---He would call me, call the office numerous, on numerous occasions.

And so that meant that you would then do something which seems to be an alienation of property even though the Wagonga Local Aboriginal Land Council had never agreed to it, is that what you're saying?---No.

10 Well, I just don't understand at the present time what your evidence is. How could it possibly be that you would instruct a solicitor to prepare leases when you did not have any authorisation to do so?---I was asked to do the leases so what was to happen is to send that to, the drafts to the State Land Council to have a look at. They, they required draft contracts, draft leases before anything so if you look at the section 40D policy that they have it tells you.

I've read section 40D and I can tell you one thing I don't think anybody down at Wagonga had or at least at this period of time. Can you see any - - -?---I did.

20 - - - instruction there that it was to be sent off to the Aboriginal Land Council, the New South Wales branch?---On this - - -

Yes?---On page 360?

Yeah?---No.

No. Well, let's just go through it. Do you see that the tenant was to be Waterview Developments Pty Limited?---Yes.

30 Was that a \$2 company?---I don't know.

Did Gattellari have any personal funds, for example, if the deal went foul would you have been able to sue Gattellari to cover the losses of the Wagonga Council?---No.

You didn't know one way or the other?---No, we didn't, we didn't have funds to do that.

40 Gattellari didn't?---I don't know.

I mean, the fourth item and this is delightfully ambiguous, the initial rent was to be \$12,000 plus GST. Now, this is something which Mr Heard said he'd received as instructions. You say you gave the instructions. What did you mean? Was that for all properties for each of the properties?---Each.

12,000 each?---Yes.

Here there are some other terms. Could I take through you page 375 of the same exhibit. Now, you'll see that this is sent by Malcolm Heard to Lucky Gattellari but also to Wagonga, do you see that?---Yes.

That address at Wagonga was your Internet address, your email address, is that right?---Yes.

So you received a copy of this in all probability?---Yes.

10 Do you agree?---Yes.

Mr Heard writes to Gattellari, "We're finalising documentation but request your confirmation that you understand the initial rent of 12,000 is for each," do you see that?---Yes.

20 So you can see at least somebody thought there was an ambiguity in it. Would you turn to page 376. You'll see that this is on the letterhead of Waterview Developments Pty Limited. It's addressed to Mr Heard but at the foot of the page a copy is also said to have been sent to Wagonga. Did you receive a copy of this letter?---Yes.

And you can see that contrary to what your instructions were, Gattellari understood that the \$12,000 per annum was for Fullers Beach and Fullers Beach only. Do you see that?---Yes.

And then there's a discussion that the other ones would be much lower? ---Yes.

30 Now, what I want to ask you is this. You gave the instructions to Mr Heard. From where did you get the figure of \$12,000 per annum for each of the properties?---Gattellari and I think it was Caddey Searl and Jarman, the valuers.

If you can find a document to suggest that the valuers had any hand in it at this stage, I can tell you the Commission would be greatly relieved to find it and it also may help clear your name, but I'm going to suggest to you now that Caddey Searl and Jarman were only called in as valuers much later than this. Do you accept that?---Yes.

40 You got the figure of \$12,000 from Gattellari. I'm going to ask you, as the coordinator at Wagonga and in that capacity while instructing Mr Heard, did you do anything to find out whether \$12,000 was a fair or equitable return for the property?---No.

Why not, Ms Mason, why not?---Like I said, I had been pressured by Gattellari.

It wasn't physical fear you suffered, why didn't you just slam the phone down in his ear?---I was a bit scared of him.

Right. Okay. So it was physical fear. Did he ever threaten you?---No.

You were friendly with him. You dined with him?---Yes.

You and Ursula would dine with Mr Gattellari in restaurants, just the three of you. Is that right?---No.

10

He paid for you and Ursula to go on a holiday?---No.

Really?---Really.

I'm sorry, I thought you'd accept that. You remember giving evidence here at the private- - -?---Yes.

Could it be that Mr Gattellari to your knowledge had paid your father secret sums to try and get these deals through, could that have influenced you?

20

---No, I had no idea.

Could it be that Mr Gattellari had paid Ken Foster secret sums?---I don't know.

Could it be that you personally were trying to either attract secret sums from Gattellari or his interest in an alternative business deal?---No.

Well, then this is your opportunity. You were the coordinator at Wagonga. On what basis did you fix on the figure of \$12,000?---Like I said, pressure from Gattellari at the time.

30

What if he'd said \$1?---I'd say no.

I beg yours?---I would say no to \$1.

Well, you would say no at \$1. What, what was the level at which you would say yes?---I don't know.

Well, \$100, if he offered \$100 rent per annum would you have said fine?

40

---No.

We'll give away a 99-year lease at \$100 a year?

MR HARRIS: Commissioner, with, I think that's a very difficult question

- - -

MR WATSON: I won't press that.

MR HARRIS: - - -given the hypothetical nature of it.

MR WATSON: You see, you still went ahead with the deal, didn't you, or you tried to?---No.

Oh, really? Oh, dear me, Ms Mason. Could Ms Mason be shown Exhibit 2, it's volume 2, in this instance page 1?---Thank you.

10 Do you see that this is an email from you to Malcolm Heard, copy to Gattellari, telling Mr Heard that the members of Wagonga have endorsed motions? Do you see that?---Yes.

They were motions which effectively granted all these leases, weren't they? ---I can't remember.

20 Well, don't worry, I'll be able to show them to you. Would you look first of all at page 41 of the same Exhibit 2. I'll just show you this one. There are, I want you to assume, if you need to be shown them I'll show them to you, but I want you to assume one's in respect of the other lots, but this is a Deed of Agreement for Lease. Do you see that?---Yes.

We can match up from other documents that the footer, that's the line at the bottom of the page appears to come from Mr Heard's office. Do you accept that?---Yes.

You'll see that there's a proposed lease between Wagonga and Waterview over lot 887. Do you see that?---Yes.

30 Now if you turn to page 45 you'll see that there's an annexure to the lease. Do you see that?---Yes.

And at page 47 as part of that annexure there is a reference schedule which amongst other things defines the rent which is item 6 in the lease of this property 887, you had agreed to effectively sign it away for 99 years for \$1,500 per annum. Do you see that?---(NO AUDIBLE REPLY)

Do you see that?---Yes.

40 Where did you get that figure from?---Like I said Gattellari pressured me.

So before I said one dollar and then I said 100, and I agreed that it was speculative but now what you've effectively done is agreed that a property could be signed away for 99 years for \$1,500 per annum. Do you see that? ---Yes.

That's pathetic isn't it?---Yes.

I'm sorry Ms Mason but you did this because effectively you've been caught up in a, in a system where Gattellari and the Medich Group have secretly paid money to acquire these deals. That's why you were doing it wasn't it?---No, I don't, I don't know.

Well then tell us why you did it?---I was pressured. That's all I can say. That's, that's the truth.

10 Have a look at page 199 of Exhibit 2. Is this an email sent by you to Mr Heard?---Yes.

Where you require Mr Heard to draw the leases promptly and you feel the process has been dragging on for far too long. Do you see that?---Yes.

It's not the fact that you were pressured, you were pressuring others to get it through weren't you?---No. I was being pressured that's why I pressured Malcolm Heard.

20 You know that it would have been very opportune for you if you felt that you were being pressured by some carpetbagger developers from Sydney to either to go to the New South Wales Aboriginal Land Council or a similar authority for guidance hand help don't you? You could have done that at the time?---Yes.

Did you? Did you?---I've been on the phone to them, yeah.

30 Are you saying that you told them that you were putting through deals because you were under pressure which you felt reflected a pathetic deal for Wagonga?---No, it had to go to the State Land Council before it got approved. The State Land Council had to approve it not me.

Well have a look at page 207 if you would. Sorry, I just want to show you something which is important. If you look at page 204 you'll see that there's an attendance sheet for a Wagonga board meeting. Do you see that?---Yes.

40 Now the arrangements changed a little at Wagonga so that a board was appointed so that there would be two types of meetings, one for the board and another for the membership?---Yes.

Is that so?---Yes.

Now this was at a time that you've been in a position of coordinator or CEO for some time. Is that right?---Just over six months, something like that, yes.

Now look at page 205, motion 12?---Yes.

While that meeting was taking place, and incidentally you were present - -  
-?---Yes.

- - - a motion was put which effectively was claiming your merit and your  
qualifications to be CEO, is that right?---Yes.

Concurrently you were betraying the Members of that Land Council by  
proposing a deal which you felt was no better than pathetic. Is that right?  
---I didn't propose it, what, what are you talking about?

10

Oh, really. You were instructing Mr Heard to draw up leases weren't you?  
---Yes.

Now, I just want to show you a document at page 207. You see that this is  
Caddey, C-A-D-D-E-Y Searl, S-E-A-R-L and Jarman, J-A-R-M-A-N, the  
valuers from the local area, providing a valuation of 7 February, 2008?  
---Yeah.

You see this?---Ah hmm.

20

So this is the valuation that you were referring to earlier, isn't it?---Yes, I  
think so.

It was obtained because Mr Heard insisted it be obtained, do you accept  
that?---Yes.

And if you go to page 208 you'll see the reference to the properties are the  
three properties which were to be the subject of the 99 year leases?---Yes.

30

You see that?---Yes.

Now, if you go over to look at what you had agreed in respect of lot 887,  
this is the independent valuer. He says that the rent should be in the order of  
\$8,728 per annum whereas you had instructed Mr Heard to prepare a lease  
in favour of Waterview for \$1,500 per annum, do you see that?---Yes.

Can you explain how you would have got it so wrong?---(NO AUDIBLE  
REPLY)

40

If you're going to say pressure from Gattellari just say it quickly so we can  
move on?---I stick with that, that's exactly what happened.

All right. You see this, this valuation would never have been obtained had  
Mr Heard not insisted upon. Isn't that right?---It would never have been  
obtained?---I, no, I, I disagree with that. I believe we both agreed on getting  
that because it did seem to be a bit low.

But look at page - - -?---And I needed - - -

Look at page 217, Mr Heard's letter to the New South Wales Aboriginal Land Council, paragraph 3 and tell the Commissioner if you dispute the accuracy of that statement. Do you dispute it?---I need to read it first. Yes.

You dispute it?---No, I, no, I don't dispute it, I've read it.

10 It was Mr Heard's idea that this be obtained and without his advice it would never have been obtained and you would have just pushed through the deals with Gattellari at the favourable rates, wouldn't you?---No.

All right. For the - - -?---Like I said, it had to go to the State Land Council before it got approved.

But you see are you saying now that you were duping Gattellari?---Can you rephrase that?

20 Were you laying to Gattellari or fooling Gattellari?---I didn't like, I disagreed with his, the valuation of his actual deal that he wanted, proposed but he was very angry because nothing had happened to the previous, there was no outcomes to the previous proposed deal. He wasn't very nice to be around I can tell you that.

Well, you went into business with him, didn't you?---Sorry?

You went into partnership with him after this, didn't you?---Further down the track, yes.

30 Right. So the person, and I think you might have intimated that you suffered some fear of, of your person around him and he's not a nice person to be around, you went into a business partnership with him, that same person?---Not at this time - - -

I see?--- - - - when he was trying to put these deals through.

All right. Well, just have a look at page 211. I don't want to labour this but this is, if you look at it Lot 889 Corunna Lake. You agreed 2,500, the valuer said it should be 10,100. Do you see that?---Yes.

40 Look at page 212. This is Lot 921, Fullers Beach. You agreed to 12,000 per annum, the valuer said it should be \$30,000 per annum. Do you see that?---Yes, I see that.

You know that the Aboriginal Land Council rejected these leases?---Yes.

And then you tried to renew business with Gattellari again, didn't you?  
---What do you mean by that?

What I mean by that is you then still attempted to a renew a business relationship with Gattellari and Waterview Developments, didn't you?  
---Depends on where you, what you're talking, when, what period are you talking about?

Straightaway afterwards. Have a look at page 224. Sorry, to put it in perspective I'll show you this. Page 217 is Mr Heard's letter to the Land Council, the New South Wales Land Council?---Ah hmm.

10 Page 219 is the New South Wales Aboriginal Land Council letter effectively rejecting the agreement, and that's dated 21 April, 2008. Do you see that?  
---Yes.

Now, after that you went straight back in to deal with Waterview and Gattellari again, didn't you?---Yes.

20 Have a look at page 224 for example. And the way that these things run, I want to show you the bottom of the page first. You'll see that there's an email from Vanessa to Malcolm Heard dated 30 July, 2008. Do you see that?---(NO AUDIBLE REPLY)

Just at the foot of page 224. At the moment I'm just asking you if you see the email. Do you see it?---Yes.

And it's regarding Waterview?---Yes.

30 And if you look at the top of page 225, Wagonga Local Council, presumably that's you, have had a meeting with Gattellari and Waterview. All right. Do you see that?---Yes.

Now, in the interim, bearing in mind the New South Wales Aboriginal Land Council has rejected the proposal yet again, what did you do regarding transparency of process, did you ask for expressions of interest?---I did talk about it but um- - -

Did you do anything about it?---No, Heard McEwan legal, we were both discussing that's what we should do next.

40 And you didn't do it?---No.

Why not?---As you can see, Gattellari was very persistent.

No, no, no. You see you had duties not to Gattellari but to not only the 15 members who attend meetings at Wagonga but the 110 or so members who either live there or have got a personal or family historical and cultural association with that land. That's the, they're the people to whom you owed your duty. Is that right?---Yes.

You betrayed that duty, didn't you?---I guess I did, yeah.

You betrayed that because you were looking for financial gain for yourself  
- - -?---No.

- - -or for members of your family. Isn't that right?---No.

In any event we can see at 225 you've gone straight back in to deal with  
Gattellari, not having gone through any transparency of process et cetera.  
10 Do you see that?---Yes.

And you've given Mr Heard some yet further instructions to draw up leases  
in favour of Waterview?---Yes.

Isn't that right?---Yes.

Down to the point that we can see at page 230 an extraordinary meeting  
which was called effectively just to approve these leases to Waterview.  
Isn't that right?---I, I don't know. That's, it's only an attendance sheet, I  
20 don't know what- - -

Well, have a look at page- - -?---I can't say it's right because I can't  
remember.

Well page 229 I'm sure will help you remember. You can see that this is an  
advertisement in the Narooma News on 6 August and that there's an  
advertisement with the Wagonga Local Aboriginal Land Council had met  
on 18<sup>th</sup> and the items, there were only five, the items of substance were  
these leases. Is that right?---Yes.  
30

You would have called that meeting and would have put that ad in the  
paper?---The chairperson calls meetings.

All right. Okay. Well that was your mother. Is that right?---I think so.

Now if we have a look at page 230 we'll see who was present at the  
meeting. Nearly all of them are close members of your family. Is that  
right?---Yes.

40 And if we go to 231 there's a motion put, said to be carried unanimously  
and that disposes in favour of Waterview Developments the property we call  
Fullers Beach. Do you see that?---Yes.

The motion was put by your brother-in-law. Is that so?---Yes.

Seconded by your partner?---Yes.

Motion 2 is page 232, it deals with lot 889. It was put by your sister?---Yes.

Is Gary Daly related to you?---No.

Page 232 is the other property. That was the business on the night?---Sorry?

That was the business that night?---232.

That's the record of that meeting?---And 233?

10 Yes. Were you aware that Gattellari or the Medich Group or somebody associated with them had been paying money to your father?---No.

What about payments to Ken Foster, were you aware of that?---No.

Could I ask you about the lease to Walkun Mara Aquaculture Pty Limited? ---Yes.

That was a long term lease granted to a company?---Yes.

20 It was granted in 2002?---Yes.

When you became chairperson in 2007 it was drawn to your attention by some administrators that no rent had ever been paid by that company in respect of that lease?---Yes.

What did you do to chase up the rent?---Wrote a letter to I think it was the chairperson I think at the time was Ronald Gordon Mason.

That's your brother?---Yes.

30

All right. Well okay, a letter that's no doubt going to sting him, it drew to his attention that there's been no rent. Did you demand the rent?---Yes.

And no doubt you followed that through and collected it on behalf of the members of Wagonga Council. Is that so?---Yes.

You collected the rent?---No, we tried to collect the rent but they didn't have any money so we terminated the lease.

40 Well are you sure you terminated the lease? Is that right?---Yes.

So did you do anything to try to secure anything which was owed over those six years by those tenants to Wagonga beyond writing the letter to your brother?---I don't remember. I don't remember.

Beyond writing a letter to your brother could I suggest you didn't do a thing between yourself as coordinator and your mother as chairperson to recover that money on behalf of the people Wagonga. Is that fair?---Yes.

Why not?---I don't know.

Well could it have been that the person to whom you were writing the letter was your brother?---It had nothing to do with that.

I can show you the letter, you signed it?---Yes, I know.

10 When you say you had nothing to do with it, you had everything to do with it?---No, no, I didn't say I had nothing to do with that letter, I'm saying that I don't know what I didn't pursue it. I don't remember whether I did or not. We were intending to, but - - -

It just slipped your mind?---It was a bit, a bit of a conflict of interest for me to - - -

Yes, no doubt?--- - - - to deal with that.

20 Well I want to go to another conflict of interest. Did you enter an oyster lease at one stage?---Yes.

Did you enter into it in business with Lucky Gattellari?---Yes.

Can we see anywhere in any of the papers of the Wagonga Land Council that you revealed that fact to the Wagonga Land Council?---No.

Why not?---Because it was a, a separate issue.

30 Well, just think about it for a moment. You did this at a time when the Land Council was still proposing to enter 99-year leases with Waterview Developments, with Gattellari as the guarantor, is that right?---Guarantor.

Oh, well, forget about that. At the time you were dealing with Waterview you knew that Gattellari was part of that?---Yes.

He was the person carrying out the negotiations?---Yes.

40 You were secretly entering into negotiations with him regarding an oyster lease business, isn't that right?---No, no.

Well - - ?---It wasn't secretly.

It wasn't secret?---No, of course not.

Did you reveal to anybody, did you reveal by telling the people of Wagonga that you were concurrently in business dealings with Gattellari?---No.

Why not?---Because I thought it was, it's a, it was a personal thing.

But surely you see the potential for a conflict of interest?---I do now.

Oh, come on, you must have seen it then, don't you think?---No, otherwise I wouldn't have done it.

Well, I've described it as a business transaction but in truth it wasn't that at all, was it?---It was a business transaction.

10 All right. So what was the name of the oyster lease?---Emandem Enterprises Pty Limited.

Now could you tell the Commissioner how many tasty oysters have ever been produced from that oyster lease?---None.

Right. It's not a very good business, is it?---No.

And yet a lot of money was put into it by Gattellari, wasn't it?---Yes.

20 And in fact you've been here while evidence was being given by Mr Lockley that he was able to trace payments into Emandem Pty Limited in the order of \$125,000. Is that right, you were here?---I think so, I think it was that, the amount.

And you've no reason to dispute that amount do you?---No.

So when we talk about this business transaction you had with Gattellari you don't dispute that \$125,000 was paid in?---Yeah, I don't dispute that.

30 And you have given your evidence that not even one oyster has ever been produced?---That's right.

Has a spat ever been purchased for example?--- No.

Right. And a spat, for the uninitiated, is the - - -?---Yes.

- - - is effectively the foetal condition of an oyster from which an oyster grows?---Yes.

40 Is that so?---Yes.

So with the \$125,000 what business assets were purchased?---It wasn't much.

Could I summarise by saying this: nothing. That's, that'd be fair, wouldn't it?---No.

The reason why you wanted to secure the purchase or the moneys from Gattellari was to get your brother Ronald Mason Junior out of trouble in respect of a judgment which had been entered against him by the Indigenous Business Association, is that right?---No.

Can I show you a document?---Thank you.

Do you know anything about this? The first page is the - - -?---No.

10 You don't know anything about it?---It's the first time I've seen it.

All right. Well, that's, that's different to knowing anything about it you see. If you turn over the second page you'll see that ATSIC had sued your brother, do you see that?---Yes.

And if you look at the pleadings which are on page 1 and 2 your brother was carrying on an oyster farming business under the name of Punkella Shellfish, did you know about that?---No.

20 You didn't know that your brother was carrying on an oyster business? ---Yes, but I didn't know the name of it.

Just to make it clear the money, the \$125,000 largely went to buy your brother's business?---Yes.

And of that it largely went to pay off his debt, is that right?---Yes.

You knew all about this, didn't you?---No, I didn't.

30 All right. I tender the document which is a pleading and judgement in respect of Ronald Mason Junior.

ASSISTANT COMMISSIONER: Yes. That judgement and pleading document will be Exhibit 10.

**#EXHIBIT 10 - ORDER OR JUDGMENT AGAINST RONALD MASON JUNIOR**

40

MR WATSON: Could the witness be shown Exhibit 8. Have, have you seen this before, this, this large report from Mr Lockley?---Yes.

A copy of it was provided to your lawyer. Did you get to look at it?---Yes.

Well, you know that in the report by Mr Lockley there are two parts to it, there's a text and then there are annexures behind tabs?---The first part are you talking about?

Yes, there's the first part, which is his statement as it were?---Yes.

Look at page 28 of that statement. You would have been interested in this because there's a new heading about a quarter of the way down the page which refers to deposits to Emandem bank account. Do you see that?  
---(NO AUDIBLE REPLY)

10 Page 28 of- - -?---Yes.

And did you read this before or do you need to read it now?---No, I have read it, yeah.

You have read it before?---Yes.

Well, have you got any complaint about it?---No.

20 Any complaint in the sense that you suggest that anything that Mr Lockley has said is less than completely accurate?---Sorry, can you repeat that?

Have you got any complaint to make about it in the sense that anything that Mr Lockley has said is not accurate?---No.

So we can look here and understand this is where the money came from and this is where the money went?---Yes.

Page 29 there's a paragraph 73 which incorporates a table?---Yep.

30 One of the items there is on 6 April, 2010. It was a deposit into the account made from an account of Ron Medich. Do you see that?---Yes.

How did that come about?---I had no control of how, what, where the money was coming from, it was ah, Mr Gattellari.

Tell me this. You knew Mr Medich was one of the people involved with Waterview?---No.

You didn't?---No, not at, no.

40 You knew that Mr Medich was one of the people involved with the dealings with the Land Council, didn't you?---Yes.

After all, some of the documents signed by you are addressed to The Medich Group?---Yes.

Could I take you through to paragraph 78. Did you read this part of Mr Lockley's report?---Yes.

Did you look at annexure 46?---Yes, I did.

Well, would you have a look at it again now?---So what annexure is it?

46?---46.

These you know are a list of sums which Mr Lockley says that there's evidence you withdrew them from the accounts of Emandem Enterprises Pty Limited. You know Mr Lockley says that?---Yes.

10

And this was just all personal expenditure by you isn't it?---Yes.

Right. I don't need to go into the detail, this is just nothing to do with the business whatsoever, it's just part of expenditure by you?---Yes.

In other words the monies which were being deposited by Gattellari into Emandem were not treated as related to the business, but treated by you as though you could use them for your own private reasons. Is that right?---No.

20 Well do we have to go through it? I mean many of them are on the same date, for example, the Narooma Sports Club. It's obvious that you are playing a card machine or one of the other attractions at the club. It's private expenditure isn't it?---Yes.

It's got nothing to do with the growing oysters?---No.

You're agreeing with me?---Yes.

30 The point I'm trying to make is this, is that you treated the money as though it was just private money which you could do with as you wished?---No.

Well how could you then spend, as Mr Lockley calculates \$28,000 at places like South Sydney Juniors, the Maroubra Club, the Dalmeny Bowling Club, the Narooma Golf Club, et cetera, et cetera, et cetera if you didn't regard it as your own private money?---It wasn't all my private money.

Who else, whose money was it?---The company's.

40 Well you're not treating it as though it's a company entry are you when you're punting it through a card machine at the Narooma Golf Club?---No.

So can we just get down to this, you were treating it as though it was money free for you to spend as you so wish, including gambling it away. Correct?---No.

I don't understand that?---I dispute some of these actual references.

Sorry, I rather felt before that we'd been through that but - - -?---No, you said \$28,000 - - -

- - - now you're saying there's a dispute?---It's actually 26,000 it states here. But in some of these transactions that you're saying that I used personally it wasn't used for personal purposes.

All right. Tell us one?---The Kingfisher.

10 Right. Well what's that?---That was used for something for the, the oyster lease.

What?---Sorry?

What?---How do you put, like little, there's little things, mugs that you put on boat motors to clean them.

All right. Okay. There's \$116 which you say was used for the business. Next?---And Flexirent.

20

Yes. That's - - -?---That was on the 6<sup>th</sup> of the 5<sup>th</sup>, 2010.

Yes, that's \$25?---Yes.

What was that?---That was renting a laptop.

A laptop?---Yes.

30

For the business of the oyster business?---Yes, for the business, yes.

Where there wasn't even a spat, even one spat purchased. What did you need to keep track of on a laptop? No doubt it had a lot of megabytes in it? ---It was at the initial start up.

Right?---And also Bill Rose - - -

Right?--- - - - here at 17/6/2010.

40

Yes?---He received \$3,000.

Why?---We purchased oyster trays, plastic oyster trays.

When you say we, this is through - - -?---The company.

Rightio. Okay. There's \$3,000. Anything else?---Yes, Mitre 10, the 28<sup>th</sup> of the 6<sup>th</sup>.

Mitre 10. Sorry?---Mitre 10 - - -

Yes?--- - - - on 28 June.

That's \$183?---Yes, that was tools and equipment for the oyster lease.

All right. Anything else?---No.

10 Well that leaves at least \$22,000 which seems to have been blown at South Sydney Juniors or the Dalmeny Bowling Club et cetera. That \$22,000 you just took out did you for the purposes of the business and punt it through a card machine at the Dalmeny Bowling Club?---No.

What did you think you were doing when you took the money out of company accounts and punted it through a card machine at the Dalmeny Bowling Club?---I was just using it as a loan from the business.

A loan?---Yes.

20 This is another one of these loans where you don't ever make a repayment is it?---Yes, I do make a repayment.

Oh, really? Have you been repaying this money to Emandem?---No.

To whom, to Mr Gattellari, do you send it out to Long Bay?---I said no, that I haven't been.

Oh, sorry, you haven't been repaying it?---That's right.

30 So it's another one of these loans where you, it's a loan but you don't have to repay it?---No.

Well, what sort of loan is it? You've never repaid it?---When the business was to get up and running, then we were, when the money came in, the profits came in, it didn't go to me, it was going to go back in, that's how I was going to pay it back.

40 Well, at the very least you now concede that it was a grave error of judgement while concurrently dealing as coordinator or CEO of Wagonga to be in business with Gattellari. Do you?---Yes.

Could I go further and suggest that the decision which you made in favour of Gattellari were inexplicably favourable to him. Would you accept that? ---Yes.

And when one looks at them, were correspondingly disastrously disadvantageous to Wagonga and its people?---Yes.

Could I suggest to you that in no small part were you influenced by the fact that you were in business with Gattellari and able to draw heavily upon an account of Emandem Enterprises Pty Limited while ever he was onside with you?---Can you say that again, sorry?

10 When you were making decisions as CEO of Wagonga, inexplicably favourable to Gattellari and disastrously unfavourable to the Wagonga people, you were influenced, weren't you, by the fact that while Gattellari was putting money into Emandem you had a ready source of income?---No.

Not at all?---No.

I put to you you're lying and that- - -?---No, I'm not lying.

- - -in fact you did this, you made these decisions in favour of Gattellari and Waterview because you were influenced by that money you were receiving? ---No.

20 Now, while you have Exhibit 8 in front of you, would you turn to page 27. We see that there's a section on that page which is headed Number 7, Deposits into Vanessa Mason's Personal Bank Account. Do you see that? ---Yes.

On paragraph 68, Mr Lockley was about to trace a \$1,000 deposit into your bank account. Do you see that?---Yes.

What was that for?---I don't remember.

30 Well, let's put it this way. If somebody out of the blue put \$1,000 into my account I'd wonder at least why they would do so. Why would Gattellari put \$1,000 in cash into your bank account?---I'm thinking maybe it might have been from, for the start-up of the business, of the company.

All right. So into your personal bank account. And can you trace that through any of the records of Emandem as something you put into the business?---Yeah, I could, yeah.

Well, you'd be able to do that- - -?---Ah hmm.

40 - - -in the next couple of hours I suppose because all the records are here? ---Um- - -

Well, let's put it this way. This Commission will be winding down tomorrow. No doubt you'll be able to do it by then. Is that right?---I'm thinking, I'm just, like I said, I'm not sure what that \$1,000 was for, but I'm thinking it may be from that, the start-up of the business, the ASIC application to start up the company um, that kind of thing, with my solicitor.

Have a look at paragraph 69, a further payment by a company, RIV, R-I-V, Developments Pty Limited, into your account. Why would a company called RIV Developments Pty Limited be paying \$1,420 into your bank account?---I'd say that would be the money to start up the business from Lucky Gattellari.

All right. So we can look at this and see that according to your evidence, you were receiving payments in respect of the business as early as 11 March, 2009?---Yes.

10

And so there must have been some plan with Gattellari before that. How long before that was it determined by you and Gattellari that you would enter into this business?---I don't know, I can't recall.

Could you try?---(NO AUDIBLE REPLY)

Well, it wouldn't have been a matter of seconds, it wouldn't have been a matter of days, you must have been discussing with him, I have an idea, or he says he has an idea- - -?---Yeah, um- - -

20

Were you discussing it for a year before you actually - - -?---No, no, no, no.

- - - set up the company? Six months?---No.

How long?---Oh, I think it was in early 2009.

Well, we know it's early 2009 because you're already getting money into your account in early 2009?---Yeah.

30

But how long before was it that you were discussing this with Gattellari, that you're going to set up a business?---Early 2009.

Right. Just started that year and very quickly you came to that conclusion that you would do it?---Yes.

Is that right?---Yes.

40

Okay. And just so - and I know it's repetitive, to make it clear, this was right at a point in time where you had attempted to enter into some deals with Gattellari which were inexplicably favourable to him?---Yes.

Could I show you a document?---Thank you.

I want you to assume that this is from a page of Mr Gattellari's diaries and you'll see here that there are two references to you. One is on 23 January where he says he paid cash to Vanessa. Did you receive cash from time to time from Mr Gattellari?---No.

Really, you deny that?---Only that time, yeah.

Sorry, only - - -?---Just this time by the looks of things.

Well, you've received cash once from Gattellari did you?---Mmm, yes.

And then if I ask you to look at March '09 you see that there's \$5,500 there for a trip to Queensland, that was a trip that you went on with Ursula, wasn't it?---Yes.

10

And Mr Gattellari paid for it?---Yes.

And it cost \$5,500?---I think so, yeah.

And just to make it clear, no doubt you revealed that to the people of Wagonga that Mr Gattellari was paying for a holiday that you were having with Ursula?---It wasn't a holiday.

20 Well, sorry, what was it, the trip to Queensland?---It was to attend the Indigenous Tourism Conference.

All right. Okay. So did you reveal that to the people of Wagonga that Mr Gattellari paid that sum?---I can't remember whether - - -

Well, I'm going to suggest - - -?---Yeah, I think so.

You did?---I think so - - -

30 So we could find it in the minutes - - -?--- - - -I'm not sure.

- - - if you did?---I'm not sure.

Right. Okay. Well - - -?---I can't recall.

Why, would there any good reason why you wouldn't?---Sorry?

Would there be any good reason why you wouldn't?---No.

40 I tender that document, Commissioner.

ASSISTANT COMMISSIONER: Yes. This document headed "Narooma Development" will be made Exhibit 11.

**#EXHIBIT 11 - DOCUMENT HEADED "NAROOMA DEVELOPMENT"**

MR WATSON: I just want to go back to the long-term leases with Gattellari. The reason that they did not end up coming about was because Mr Gattellari was arrested, is that right?---No.

Well, why didn't - - -?---No.

- - - they come about then?---I don't know, I - - -

10 They were signed by you in January 2009, isn't that right?---The leases?

Yes. I can show you a document if you need to, a copy of those leases signed by you?---They may have been signed but they weren't - - -

Well, Waterview never moved in did they?--- - - - executed by the State Land Council.

Well, the reason they did not proceed was because Mr Gattellari was arrested, that's what I want to suggest to you?---That's your opinion, yeah.

20 Thank you.

ASSISTANT COMMISSIONER: Yes. This will be a suitable time, Mr Watson, we'll take the morning tea adjournment.

MR WATSON: Thank you, Commissioner.

SHORT ADJOURNMENT

[11.29am]

30

ASSISTANT COMMISSIONER: Thank you. Please be seated. Yes, does anybody wish to cross-examine this witness?

MR STITZ: I do if I may, Commissioner.

ASSISTANT COMMISSIONER: Certainly.

40 MR STITZ: Madam, my name is Stitz and I appear in the interests of Mr Medich. Now Ms Mason, this oyster lease that you were just being asked about where was it intended that that was to be located?---Narooma.

Whereabouts?---Wagonga Inlet.

Sorry?---Wagonga Inlet.

Was that property owned by Wagonga?---No.

And did it ever start?---What, what do you mean did it ever - - -

Did it ever start operations?---Yes, it did.

When was that?---I don't know the date off the top of my head, but - - -

Is Emandem trading?---No, it's not.

When did it cease trading?---Probably 12 months ago.

Was that because the money from Mr Gattellari dried up?---No.

10

ASSISTANT COMMISSIONER: Well Ms Mason, I don't understand. When you say it was in operation what was it actually doing?---We were getting everything together to start it, to get equipment and to get oysters and we had to get an oyster lease itself in the water. The lease was only a shed on the water.

Yes. Yes?---Then we had to try and secure oyster leases actually in the water.

20

Which – and you never had an oyster lease in the water?---No.

So would it be fair to say that the only work ever done was, was preparatory?---Yes.

So you got some trays and that sort of thing?---Yes. And had to clean up the actual shed because it was in a bit of a state when we got it.

So you cleaned the shed and you got some trays and anything else?---No.

30

Yes. Thank you, Mr Stitz.

MR STITZ: Thank you, Commissioner. Now can I take you to volume 2, Ms Mason, and in particular page 205. This was a document Counsel Assisting has already taken you to and in particular motion number 12. Do you see that?---Yes.

Okay. Now you at that point were the chairperson?---No.

You weren't?---No.

40

All right. Was it Vivienne was the chairperson at that point?---Yes.

All right. That's your mother?---Yes.

Okay. Now you would be employed as CEO based on merit and qualifications?---Yes.

At that point in time what were your qualifications to be appointed as CEO?---I have partially completed a Bachelor in Community Management. I've worked with government agencies on and off for I'd say about 15 years. Worked with various different agencies working with community.

So you were fairly experienced?---Yeah.

All right. You knew what you were doing?---Yep.

10 You knew what was appropriate and you knew what was inappropriate?  
---Yes.

You understood the concept of a conflict of interest?---Which conflict of interest are you talking about?

A conflict of interest in general, as an ethical proposition?---Yes.

Now might the witness also have volume 1, please?---Yep.

20 And, Ms Mason, could you turn to page 249. And do you see that that document of the minutes of the Annual General Meeting, Wagonga Local Aboriginal Land Council, 24 March, 2006?---Where is that, sorry?

I'm sorry, I've taken you to the wrong page, it's 297. Right. Do you see that that is the minutes of 24 March, 2006?---Yes.

Right. And you see chairperson nomination for Vanessa Mason as chairperson and you were declared chairperson unopposed. Yes?---Yes.

30 And the same qualifications and experience that you had when you ultimately became CEO were the same qualifications and experience that you had as at 24 March, 2006, didn't you?---Yes.

Nothing changed in between?---What do you mean by nothing changed in between?

Well, you didn't get any further qualifications between- - -?---No.

40 And was it the case that you took over as chairperson from your father, Ron?---Yes.

And would I be right in thinking that you had prior thereto regularly been attending Council meetings?---Um, yeah, you could say that.

Because you wouldn't go into the position of chairperson blind, you knew what was happening inside the Council, didn't you?---Yes.

And in terms of continuity it was important that you knew what the Council was doing?---Yes.

Can you now turn to the now familiar document, page 282. Do you have that there?---Yes.

Okay. That's your letter as chairperson to your brother?---Yes.

10 Now, as has obviously been pointed out, in nowhere in that letter is there any request for payment of the rent?---Yes.

And you knew at the time of writing that letter that rent was outstanding, didn't you?---Yes.

So why didn't you ask for it?---I guess we were letting him know that um, the rent hasn't been paid firstly.

20 And so I would have thought that the logical thing then would say what are you going to do about it or please pay, but it doesn't say that at all, does it? ---No, not in that letter, no.

It doesn't say we're going to refer it to our solicitors, does it?---No.

Why not?---I don't know. I think it was because I was chairperson and we had administrators in and they were going to chase it up?---Oh, I see.

It had nothing to do with transferring the lease?---No.

30 Then why at item 3 are you talking about transferring the lease?---(NO AUDIBLE REPLY)

ASSISTANT COMMISSIONER: Do you recall what you meant by item 2, Ms Mason, that Wagonga had been approached by the shareholders who wanted to transfer the lease?---Yeah, I, I actually remember now, yeah. Yeah, we've had people, a few, a few of the Walkun Mara shareholders come in and saying they'd like to amend the lease.

They wanted to transfer the lease?---Yes, transferring the lease, yes.

40 To who, do you know to whom?---At that time no, I didn't know at the time.

Yes, Mr Stitz.

MR STITZ: Thank you. Now, Ms Mason, can you turn to page 290. You received that letter and I take it you read it?---Yes.

And based on your experience and qualifications it makes perfect sense to you, didn't it?---Yes.

It's written in fairly plain language?---Yeah.

And it was an important document?---Yes.

And you took it seriously?---Yes.

10 And would I be right in thinking that it merely confirmed in your mind what you knew to be the case anyway?---Yes.

Now, if you can turn to page 291 you see the third last paragraph which commences, "Further concerns", do you see that? Just read that to yourself? ---Yeah.

Have you done that?---(NO AUDIBLE REPLY)

20 You were aware of that proposed legal action, weren't you?---Yes.

That was the Council wanting to enforce its agreement with the Medich Group?---Yes.

And you were aware that - I withdraw that. Now, in pretty simple terms that letter, 13 July, 2006, told you in clear terms how you should go about conducting your business, didn't it?---Yes.

And the business we're talking about it the Wagonga Land Council?---Yes.

30 Just pardon us for a moment please, Commissioner. Just bear with me please, Ms Mason. Okay. Now, can I take you to page 348, please, Ms Mason. Right. Do you see that that's the minutes of the extraordinary meeting or extraordinary meeting on the 29 August, 2007?---Yes.

And again Counsel Assisting has already taken you to this document. You were the chairperson, you chaired the meeting?---Yes.

40 And motion 10, and you've got the unanimous consent to the lease for Lot 921 to be given. Correct?---Yes.

Now, you told Counsel Assisting that you were against that?---Yes.

You didn't support it, you told him?---That's right.

And you weren't in support of it because that conduct did not accord with the letter you'd received from the New South Wales Land Council. Correct?---Yes.

It was blatantly and obviously wrong. Correct?---Yes.

And taking your role as chairperson seriously, I assume that you'd been quite vocal about that?---Yes.

In fact I would imagine in your position that the discussion in fact may have become heated?---Yes.

You'd be saying, guys, you can't do this, wouldn't you?---I did.

10

Okay. Can you explain why it appears to have been recorded as being passed unanimously if you did that?---I don't know. Like I said, I didn't write the minutes, I didn't type the minutes.

Did you ever subsequently attempt to amend the minutes?---I don't remember that.

At the next meeting you would have approved the minutes, wouldn't you? ---I don't remember what happened at the next meeting.

20

In any event, you were vehemently against that proposition, weren't you? ---Yes.

And yet the others in attendance at the meeting in effect rolled you, didn't they?---What do you mean by rolled?

Outvoted you?---Yes.

They weren't following the vehement opinion of their chairperson?---No.

30

And remind me, were you also acting as CEO at that point?---I can't recall. I'm not sure.

All right. But in any event, they're not following the advice of the chairperson?---That's right.

And of those people in attendance at that meeting, you were by far the most qualified, weren't you?---I'm not sure.

40

How, well, can you point to anyone else there that had more experience than you?---I'm really not sure if, of everyone's qualifications at the time.

Right. Well, you were certainly aware of yours though, weren't you?---Yes.

Yeah. Well, if the Wagonga Council were about to embark on something that you knew to be terribly wrong, why didn't you resign?---I don't know.

You'd just been rolled by the meeting. You don't know?---I was, I was thinking of it.

It was obvious to you that they had, sorry?---I was thinking of it.

Mmm, but you didn't do it, did you?---No.

You just let it move forward?---Yes.

10 In fact you even attempted to progress it and accelerate it, didn't you?  
---Yes.

Notwithstanding you knew that it was terribly wrong?---Yes.

Well what were your motives for doing that?---I had no motive only that I was pressured - - -

Pressured?--- - - - by Gattellari, yes.

20 I see. Pardon me for a moment, Commissioner. Now if you can turn on page 322, please, Ms Mason?---Yes.

Now do you see that that is the Deed of Rescission?---Yes.

And on page 223, it's date 8 June, 2007?---Yes.

And on page 224 it bears your signature as chairperson?---Yes.

30 And would I be right in thinking that you signed that on 8 June, 2007, bearing in mind that that's the date that it bears?---Yes.

And you signed the Deed of Rescission because so far as you were concerned the joint venture was over?---Yes.

Because you couldn't surmount the obstacles that had been provided by that letter from the New South Wales Land Council?---Obstacles, what do you mean by that one?

40 The project was hopeless, you couldn't proceed, it was never got to get approved. Isn't that the case?---That's correct, yep.

And so to put it to bed you did the Deed of Rescission?---Yes.

So from an initial position where the Council wanted to commence proceedings against the Medich Group to enforce the agreement, it was now the position that you wanted to get out of it. Isn't that the case?---Can you just say that again?

Well from an initial position where the Wagonga Land Council wanted to commence legal proceedings against the Medich Group to enforce the joint venture, we have now arrived at a point where the Land Council wants to get out of it?---Yes, it seems that way, yeah.

I won't be long, Ms Mason, but can you just go back to page 351 again, please and I suggest to you in respect of motion 10 that you were not being truthful with the Commissioner?---No, I'm, I'm being truthful, I'm not lying about that motion.

10

I'll just make it clear, you're lying aren't you?---No, no, I'm not.

If - - -

MR HARRIS: I wonder if my friend could clarify exactly what the lie is that - - -

MR STITZ: Well, the lie - - -

20 ASSISTANT COMMISSIONER: Well, I must say, Mr Stitz, I have some difficulty knowing on what basis that you are putting that. It's obviously not something your client could have any knowledge of.

MR STITZ: I won't take it further.

ASSISTANT COMMISSIONER: Thank you.

30 MR STITZ: Emandem Enterprises Pty Limited, that was your joint venture vehicle with Mr Gattellari, wasn't it?---I don't call it a joint venture agreement, no.

That was the company that was going to run the oyster lease?---Yes.

And that was you and Mr Gattellari?---Yes.

And you were the only director?---Yes.

And you were the secretary?---Yes.

40 Thank you. I've got no further questions for the witness.

ASSISTANT COMMISSIONER: Thank you, Mr Stitz. Does anyone else seek to question this witness? Yes, Ms McGlinchey.

MS McGLINCHEY: Ms Mason, I appear for Mrs Mason. I just want to ask you a couple of questions about the proposed leases with Mr Gattellari's company which didn't proceed ultimately and that's correct, isn't it, that wasn't (not transcribable) to proceed?---Yes.

On reading the documents that we've been provided with by the Commission it's clear that there was some negotiations which included an upfront payment to the Land Council at some, at some, at some point the rent was going to be paid up front to the Land Council, is that your understanding?---Yes.

10 Have you, can you assist on how that, how that was actually going to work, was it, was the 100 per cent of the rent going to be paid up front?---Yes, oh, well, I think it was 50, I'm not quite sure but 50 per cent up front and then 50 per cent after the development was finalised.

Okay. So is it correct that for the three properties the rent, the total rent which was to be paid to the Land Council would be paid 50 per cent up front on the signing of the lease agreements?---Yes.

20 The lease agreements appear to me anyway to provide that they are conditional upon Mr Gattellari being successful in his development applications to put one residential property on each, on each piece of land. Is that your understanding?---Yes.

And is it at that point that the second part of the rent would be paid?---Yes, after the development, yeah.

After development or after development approval?---After development approval.

30 And from my reading there is a 12-month sunset clause so Mr Gattellari would be obliged to give his best efforts to get a development approved in a 12-month period?---Yes.

So is it correct to say that if he was successful in doing that the Land Council would benefit from 100 per cent of the lease of the 99-year period within 12 months of signing the lease agreements?---Yes.

40 At the very least the Land Council in a scenario with Mr Gattellari was not successful, would benefit from 50 per cent of the total amount of the rent over the three properties for 99 years, is that your understanding or have I missed something?---I'm not sure, I'm a bit not sure about that, yeah, I couldn't answer.

So was there some discussion about what benefit this amount of money could be put, what the Land Council could do with this money?---Yes. Members were very keen to get housing built, like, for its membership and also to start up any kind of employment opportunities for, employment programs for the membership.

And you may not be able to answer this, but was there some condition that Mr Gattellari would be paid back that money should he not be successful? And I was really asking that because I can't see anything in the records?  
---No.

There's not. So potentially if the leases weren't entered into, the Council would get a lot of money and Mr Gattellari would take the risk that he may not be successful?---Yes.

10 The leases would also be conditional upon approval by the Aboriginal Land Council, the State Land Council?---Yes.

And ultimately they did become involved and that approval was not given?  
---That's right.

Right. Thank you.

ASSISTANT COMMISSIONER: Thank you, Ms McGlinchey. Yes. If there's nothing else, Ms Mason, Mr Harris?  
20

MR HARRIS: If I may, thank you?

ASSISTANT COMMISSIONER: Yes, Mr Harris.

MR HARRIS: Ms Mason, if I can ask you firstly just about the Queensland trip, and I think you said that was an indigenous tourism conference?---Yes.

You've agreed I think that it appears 5,500 was paid over by Mr Gattellari to cover that?---Yes.  
30

Did you view it as a sponsorship?---Yes.

Was that word ever used?---Yes.

All right. Now, how many people went?---Three members.

Three. You were one of the three?---Yes.

And where did you go?---To Townsville.  
40

And how long was that indigenous tourism conference at Townsville?  
---I think it went for three days or four, I'm not sure.

All right. Did people at Narooma know you were going to that?---Yes.

If I could move then to the Emandem oyster leases matter. And in the break you've had a look at some documentation. Do you remember that you looked at, if I give you the tab, Commissioner, it's Exhibit 8 and it's tab,

behind tab 43, a contract, thank you. Have a look, there's a contract there, it's unsigned and undated?---Sorry, what- - -

43, please?---43. Yes.

You were asked before just what did you acquire or Emandem Enterprises I should say, in relation to the purchase of the lease. Do you agree that there is a reference there to as well as a lease a shed and oyster farming equipment. What was the shed made of?---Brick.

10

Where is that?---On the Wagonga Inlet.

On the Wagonga Inlet. It's on a small parcel of land there, is it?---Yes.

And the Commission asked you about trays. There's a reference, you agree, if you have a look there, I don't know if you can see it, there's other items, oyster farm equipment including 150 trays. Were they in the shed or thereabouts?---They were on the property.

20

On the property. Purification tank, pumps and other miscellaneous items? ---Yes.

Did you do any work, physical work yourself?---Yes.

All right, then. You mentioned earlier, what sort of work did you do? ---Assisted with the clean-up of the property.

Why was it necessary to clean up?---'Cause it was in a pretty, pretty bad way, it was- - -

30

All right. What are the trays?---The trays were, that were left there, they were made of timber, they were dipped in tar and they were completely useless to the, to the business, so we had, had to get rid of them and that's when we bought the, well, every oyster farmer now uses plastics.

Right. Did you acquire plastic trays?---Yes.

And you said you assisted with the clean-up there. Who are you assisting? ---I got a contractor in.

40

Was that paid?---Yes.

You've heard references here today, there was for example a sum of \$3,000 was mentioned?---Yes.

Did that cover some of that?---No, that paid for plastic trays.

All right. That was for the trays itself?---Yes.

All right?---New trays.

And you still, you still own that or Emandem you said no longer exists. What's happened with the lease at the moment?---It's actually not being used. I've applied for a voluntary administration of the business.

10 All right. The purchase price on that unsigned, undated contract there talks about 82,500 and there's a balance there of 74,250. Do you see that?---Yes.

And if you have a look please just to clarify, tab – behind tab 41, no 40 I'm sorry?---Yes.

You see there a sum of \$76,352.72 on 1 September, 2009 on Emandem Enterprises account. Correct?---Yes.

Do you agree that's money that had originally come via Mr Gattellari or sources connected with him?---Yes.

20 All right. It says four bank cheques. How did that happen? How did it come that there were four bank cheques drawn that day?---When we got the final contracts done the, the, my solicitor received details from the other, the purchasees - - -

The vendors?---The vendors.

That's your brother?---Yes.

30 Your brother's solicitor?---His solicitors, my solicitor, they sent through to my solicitor that there were to be four bank cheques to be made out to four different entities and the amounts.

Now that was to complete the purchase in the lease wasn't it that those four bank cheques were drawn? Is that right?---There were, yes, yes, that's right. Yes.

All right. And there was one cheque of about \$60,000 from your recollection wasn't there?---Yes.

40 Who was that to?---IBA, Indigenous Business Australia.

All right. And that became I understand was a debt that your brother, the vendor had?---Yes, we realised then. Yes.

Was that the first time you realised the serious indebtedness?---Yes, yes.

All right. Thank you. Thank you.

ASSISTANT COMMISSIONER: Thank you Mr Harris. Yes, Mr Watson, may this witness be excused now?

MR WATSON: Yes, thank you, Commissioner.

ASSISTANT COMMISSIONER: Yes, thank you Ms Mason, you are now excused from further attendance.

10 **THE WITNESS EXCUSED**

**[12:28pm]**

MR WATSON: I call Ken Foster.

MR HALSTEAD: Commissioner, Mr Foster will be seeking a declaration and I understand that he requested an affirmation.

20 ASSISTANT COMMISSIONER: Thank you. Yes, Mr Foster, you've been called here to give evidence and you are required to answer all of the questions asked of you. Your counsel has indicated that you're seeking a declaration under section 38 of our Act. The affect of that is that nothing you say here can be used against you in any civil, criminal or disciplinary proceedings, however, it may be used if it's found you've breached our Act by providing false or misleading information or in some other way. Do you understand the effect of this order?

MR FOSTER: I do, yep.

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

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

ASSISTANT COMMISSIONER: The witness will be affirmed. Thank you.

ASSISTANT COMMISSIONER: Yes, thank you Mr Watson.

MR WATSON: Is your name Kenneth John Foster?---It is.

And Mr Foster were you born on 19 July, 1957?---I was.

10 Mr Foster, before you became the coordinator at Wagonga you already knew Lucky Gattellari?---No.

Not before then?---No.

You didn't meet him for example while you were at La Perouse?---I told you last time I was here that I did bump into him when I walked out the door.

20 Beg yours?---I bumped into him walking out the door. He was coming in the building and I was going out.

At La Perouse?---Yep.

So you had met him before you went down to Wagonga?---Yeah, but you couldn't just say like, you know, like showing him where to go, was an actual meeting.

So you had met him before you went down to Wagonga?---In passing.

30 Right. When you went down to Wagonga you needed to get accommodation, didn't you?---Yeah.

And when you went down to Wagonga you needed to rent a flat, didn't you? ---Yes, I did.

When you went down to Wagonga to rent a flat did you go to a real estate agent?---I did.

40 Did you go to Whale Coast Realty?---Yes.

Was Whale Coast Realty at that time in Narooma?---Yes.

Did you speak to a man, a real estate agent?---Yeah.

And was his name Bill Nancarrow, do you recall?---Yeah, yeah, I agree, yeah.

And did he tell you that they had a property at number 5 Angle Street in Narooma, it was a home unit and it was furnished because it was a holiday apartment?---The first place I rented down there was a, a flat behind the hotel.

For \$220 per week?---I can't remember the rent.

And so did you get this apartment or, or flat very soon after you got the job at Wagonga?---No.

10

How soon after you got the job at Wagonga did you get the flat?---A couple of weeks.

All right. So about two weeks after you started at Wagonga you got the flat?---A bit longer than two weeks.

All right. A bit longer than two weeks. Do you mean three weeks? ---Maybe about three, four weeks.

20

All right. So in that period of three or four weeks before you got the flat where were you living?---I was staying with relatives.

Right. And who were they?---Glenis Kelly.

Glenis Kelly?---Yeah.

So you were with Glenis Kelly until you got the place of your own?---Yes.

30

When you went to take the lease on the flat behind the pub - - -?---Mmm.

- - - did you go back to Whale Coast Realty?---Yes.

Did you go there with Lucky Gattellari?---No.

You say you didn't?---No.

Really?---Yes.

40

Did you ever go to Whale Coast, Whale Coast Realty with Lucky Gattellari? ---I can't remember but I know - - -

Well, come on, try?--- - - - I know when I first went to the real estate I went in with old Bill 'cause we was at the pub together.

Right. Okay. Well, you have been here through the hearing haven't you or - - -?---No.

- - - have you heard what's gone on?---No.

Did you know that there was a man called Phillip Potter who came and gave evidence?---No.

Did you know that the man came along and said my name's Phillip Potter and I'm the proprietor of Whale Coast Realty?---I don't know Phillip Potter.

10 All right. Well, this man I want you to know came along here and he said I was there one day when Ken Foster came in with Lucky Gattellari and Ron Medich?---No.

No, you deny this?---Yes.

He says that you came in there and what it was, what you were doing was paying the rent for the apartment behind the pub?---I never went into that shop with Ron Medich.

20 All right. And he says that, well, are you denying you went in there with Gattellari?---I don't, I can't remember but, you know, like I walked around Gattellari while he was in town.

He said that he was watching when a sum of \$1,100 was paid over, being an upfront rental payment on the flat of five weeks. Can you remember making a payment like that?---No, I don't.

All right. He says that while you were there you introduced him to Lucky Gattellari but it didn't matter anyway, he already knew Lucky Gattellari because he was a boxing fan?---Well, I don't know.

30 Well, he says that you were in there with Lucky Gattellari and that the money to pay for the rent was paid over by Gattellari?---Well, I can't remember that, your Honour.

Do you think that Gattellari paid your rent at the Whale Coast Realty, the flat behind the pub?---I can't remember that.

40 Can you do me a favour, Mr Foster, can you try because it's a pretty significant thing?---Well, I can tell you that he never, I never had any - I went in, into the real estate with old Bill, I can't remember his name, he, he's now since passed on.

Stop, I'm not asking you to recall just anything. I'm asking a specific thing?---Well, you asked me, you asked me what and I'm telling you.

Did Gattellari pay your rent for you?---I, I, I don't think so.

You do not think so - - ?---No.

- - - or you know not?---Well, I know not.

Well, the thing is that Mr Potter came along and said that he saw it happen, saw it with his own eyes?---Oh.

So you just say Potter's wrong?---Well, I'd, I'd have to.

Right. Where did you get the money to pay for the rent?---From me wages.

10 Right. Who, who was paying you wages?---The Wagonga Land Council.

I see. But after a while you moved out of the flat behind the pub?---Yes.

And you moved into a house?---Well, that was fixed up by Bill because the ah, the flat was only ah, temporary accommodation.

You know, if you just say yes or no it would be a lot easier?---Well, you want me to- - -

20 You moved into a house. Yes or no?---You want me to tell you exactly what happened so I'm telling you.

No, I'm not asking you what happened. Did you move into a house? Yes or no?---Yes.

And when you moved into the house, did you have to pay rent on that as well?---Yes.

30 Now, have you been made aware that an accountant, Mr Lockley, prepared a report looking at various bank accounts?---I have seen that.

Yeah. You've seen the report, have you?---Yes.

Did, could the witness be shown Exhibit 8. Did you know that Mr Lockley looked specifically at payments on rent at the house?---(NO AUDIBLE REPLY)

Did you know that?---No.

40 Well, have a look at this Exhibit 8 which you have before you?---Yeah.

In the front there's a statement by Mr Lockley and I want you to turn to page 26. On page 26 you'll see a heading, Additional Benefit to Ken Foster. Do you see that, have you got that?---(NO AUDIBLE REPLY)

Page 26?---(NO AUDIBLE REPLY)

I'll tell you what, Mr Foster, it's on the screen, on the little screen in front of you. See there it says, Additional Benefit to Ken Foster?---Yeah.

And you'll see that there's a paragraph 65 where Mr Lockley says that he identified two payments in Gattellari's records being rent paid on your behalf. That's what he says at paragraph 65. Do you see that?---Yep.

10 Now, if you look at paragraph 66, what he says is that he then traced two deposits made by Gattellari and he traced them into the account of Whale Coast Realty?---Mmm.

Do you see that?---Yep.

And what he did was, he traced that into the account and he produced a document which covered it. Now, if you go to tab 37, that'll be shown to you now. It's on the screen but it's very tiny?---Oh, I can't see that.

20 The copy you have before you in paper is a summary of what Mr Lockley found. He found that records that Gattellari had showed two deposits which were described as being, "Rent for KJ." I should have asked you, you're KJ, aren't you?---Yeah.

"Rent for KJ", and that they were deposited into a particular account. Then Mr Lockley traced the money out of Mr Gattellari's account, if you turn over at annexure 37- - -?---I'll just- - -

- - -he traced it into the account of Whale Coast Realty?---Mmm. I'll look at that.

30 The Whale Coast Realty had a company name, Coverdisk Pty Limited. If you turn to the next page you'll see a deposit slip from the National Bank for \$1,530 to Coverdisk Pty Limited. I want you to assume that that is Whale Coast Realty. And you'll see on the back photocopied below it's from the account of Gattellari. Can you explain any of this, why Mr Gattellari's paying money into Whale Coast Realty?---I can't. I don't remember it happening either.

Right. You don't remember it happening?---No.

40 No. Well, did you pay your own rent?---Yes, I did.

Well- - -?---You'll see a receipt if you go back with my name on it.

All right. Well, what I'm trying to show you here is that there are pretty compelling records that Mr Gattellari on two occasions, and this isn't the flat, this is the house- - -?---Yeah.

- - -paid \$2,530 being rent on your behalf. Can you explain that?---No, I can't.

Well let's put it this way, does it come as a surprise to you that I'm showing you this?---Well, yeah, of course it does.

Just a shock?---Oh, I didn't know he was doing that.

10 Well the real estate agents must be dishonest too because they must have got the payments from you as well and pocketed them?---Say that again.

Well the real estate agents must have been paid twice according to you?--- Well, like I just saw a receipt there with my name on it, but - - -

Well answer my question?--- - - - and I had receipts that already pay meself?

Well that's right?---So my, my business.

20 The dirty, cheating real estate agents must have been getting the money twice were they?---Well I don't know.

Well you just wouldn't know what people would sink to would you?---Well - - -

You're joking with us aren't you Mr Foster?---No, I'm not.

30 You know full well you went into the Whale Coast Realty with Gattellari and Medich and Gattellari paid you the cash to pay your own rent and on other occasions Gattellari deposited the money into the account?---I might have (not transcribable) with Gattellari but I never met Medich down there.

But you took money from Gattellari to pay your rent didn't you?---I took money from him for work I done for him, that's all.

You took money for work that's all. Well just answer my question, you took money from him which was - - -?---I got paid for work that I done. And that was on the funeral fund.

40 We'll see hold on, we've just got to get this straight. Are you saying that Gattellari paid your rent because of work you'd done on the funeral fund? ---He might have, I, look you're going back seven years now, I don't remember.

Well let's give it a try Mr Foster. What I want to know is this did, are you saying that Gattellari did or did not pay your rent?---I don't remember.

Oh come on, let's try. It's the sort of thing you've got to remember isn't it?

---Well you're talking seven years ago.

So that's going to be your answer, I don't remember?---No, that's, that's what - - -

Look let's put it this way, I've just shown you some records which - - -?---I saw that, yeah.

10 They seem pretty compelling don't they?---(NO AUDIBLE REPLY)

And I've told you about Mr Potter, I mean I don't think anybody's going to suggest he's a dishonest man?---Who was that?

He remembers you and he remembers the day?---Well and you're saying - - -

So can you explain that?--- - - - I'm a dishonest man and he's not.

20 Well actually I am, Mr Foster. I want to make that clear?---Is that, is that because of the colour?

Well absolutely not and you should never have said that to me, Mr Foster? ---Well - - -

Of all people. Now Mr Foster can I just say to you what I'm suggesting to you is that there is this man called Potter, he says, I remember I saw them with my own eyes, I even knew who Lucky Gattellari was?---Yeah, but that's, he could have seen us walking down the road.

30 All right?---'Cause the office is straight across the corner.

All right. Well anyway you went off to work at Wagonga. Did you have any qualifications for that job?---Well I, I went down there, I didn't actually apply for the job at the Land Council on its own, I applied for two jobs.

Thank you for that. I'm going to ask my question again. Did you have any qualifications for that job?---Well I think I did.

40 What were they Mr Foster?---I don't know.

Well you thought you did. Are you saying that you cannot now remember like you couldn't remember whether Gattellari paid your rent, you can't remember your qualifications?---Well when you ask me for qualifications what qualifications do I need to have?

Did you have any accounting skills?---I done a preliminary course in it.

All right. There we are. There's one. Did you have bookkeeping skills?

---Not really.

Record keeping skills?---A little bit.

Well tell us what were the skills that you brought that would lead the Wagonga Land Council to appoint you as their paid coordinator? What did you bring to the job?---I don't know, ideas.

You had ideas?---Yeah.

10

We'll come back to that. Apart from ideas what did you bring to that job, that paid job?---Well I'd been a manager in an organisation for a couple of years.

Right. What was that?---It was the Aboriginal Health Service.

The what?---A health service.

A health service?---Mmm.

20

Right. Well I'm – that's good. I'm asking what skills did you bring to Wagonga?---Well I'd worked as a manager with the organisation for six years.

What skills did you bring to Wagonga? I'm not asking you your life history?---Well I didn't have any written certificates if you can, you know, if that's what you're asking.

30

Are you related to the Mason family?---Only by marriage if you could call it that.

Did you do your job at Wagonga or did you just collect the money?---I done me job there.

Did you do a good job or a poor job?---Oh, I think I done a reasonably good job.

Did you leave under a cloud?---No.

40

Right. Why did you leave?---I wanted to come back home to town, to Sydney.

All right?---I had a grand-daughter to come home too.

Did you leave owing, by the way, rent due?---I don't think so.

Don't think so. Could the witness be shown Exhibit 1, volume 1, page 199. It'll come up on the screen for your, Mr Foster, and I have a feeling that that might be better for you. You left Wagonga in February 2006, is that right?  
---No.

Oh, sorry, when did you leave?---I'm pretty sure it was at the end of or between September and October of 2005.

10 All right. Well, I'm going to suggest to you that we've got a record which suggests that you left in February 2006. Are you in a position to contest that?---No.

Rightio. Well, have a look at this document, it's page 199 and it's called a Coordinator's Report and you'll see that it introduces the coordinator's position. It says the previous coordinator and trainee left their positions with a few day's notice then two administrators, Wayne Martin and Lynne Marlow, took over your job. Were you aware of this?---Who was that?

20 Wayne Martin and Lynne Marlow, do you know them?---I know Wayne.

All right?---He's a painter.

He's a painter?---Yeah.

30 Right. Okay. You'll see that it says that the terms of the reference were to look at some things which had happened and then about one third of the way down the page it says the Land Council, and that's Wagonga, had been given notice of breach for the following and there are five items which are failure to do certain things, do you see that?---Yeah.

They were things which were all within your responsibility was coordinator, weren't they?---Well, we had a bookkeeper that come in and done it.

Well, just have a look at it. He says - - -?---Yeah, I can see what you're saying there.

Yeah?---Failure to submit, failure to submit (not transcribable) report.

40 Pretty, pretty bad breaches which occurred while you were there as coordinator, do you see?---I don't, I don't see that as being my, me being at fault there because we had the staff from the New South Wales Land Council to give us the (not transcribable) reports and stuff like that.

Well, so you'd say oh, well, that's, it wasn't my job, those things?---Well, it, it, it was to work in coordination with the State Land Council.

All right. Even if you look at item 3 which is failure to submit to the New South Wales Council financial statements so the New South Wales Land

Council is responsible for Wagonga failing to submit to it financial statements, is that what you say?---Well, we was under a funding, a funding formula that they designed so, you know, the, the State Land Council through its I think southern, I think they call it the southern branch was responsible for a lot of the financial paperwork.

Oh, I see. So it's all the New South Wales Land Council's fault?---I'm not saying that but a lot of the paperwork was held up by them so - - -

10 For example, no doubt - - -?--- - - - you know, it was a two-way street plus we had an accountant there.

No doubt it was due to the New South Wales Land Council that an annual general meeting of Wagonga would be held each year for example, they had to do it, not you?---Well, it's not my duty to organise meetings or AGM's.

Yeah, but it's strange, it's strange that these people, these coordinators, Marlow and Martin, they thought it was their duty. Can you explain that? ---Well, I don't know if they think it's their duty to do - - -

20

Well, just have a look at some - - -?--- - - - to hold an annual general meeting it's - - -

Have a look at some of the other things they list. Look under item 3, previous administration. Just simple things, just matters of tidiness that they had to clean up. Were they fault, you were the coordinator?---(NO AUDIBLE REPLY)

30

Were they your fault?---No. They're not, yeah, they're not my fault I thought.

The New South Wales Land Council should have been coming in and locking your gate?---No, no, no, no, no. The common seal, you know, it, it, it's practically the secretary.

All right. Okay. Not your fault. None of this is your fault?---Well - - -

40

Well, have a look at the next page, page 200. If you have a look down the bottom there's a reference to vehicles. The yellow ute was not insured. Was that your fault?---(NO AUDIBLE REPLY)

Not your fault I suppose, New South Wales Land Council should have got the ute- - -?---No.

- - -registered?---No.

Was it your fault or not?---The vehicle being, not being insured?

Yeah? It wasn't registered either if you look at the fourth item?---Well, it was whilst I was there.

Well, they're saying it wasn't actually?---Well, it's, it's most probably ran out of rego and run out of insurance after I've left.

Oh, I see. Right. So that was your responsibility?---For a while, yes.

You weren't doing your job at all, were you?---Yes, I was.

10

But you said you- - -?---The vehicle was registered and insured whilst I was there.

All right. You had ideas, you're an ideas man?---Yeah.

All right. Could I just have a look at one of the ideas that you had or it seems that you had. Do you remember the joint venture which was proposed with The Medich Group?---(NO AUDIBLE REPLY)

20

Do you remember that?---Yes.

Have a look at Exhibit 1, volume 1, page 58. Again it will be shown on the screen. See this is titled Coordinator's Report, April/May 2005?---(NO AUDIBLE REPLY)

Do you see that?---(NO AUDIBLE REPLY)

This is your report, isn't it?---Where is it, yeah, well, let me see.

30

This is your report, isn't it?---(NO AUDIBLE REPLY)

This is your report, isn't it?---Yeah, well, I've got to read it to make sure it is mine, you know, I'm, I'm not that quick a reader.

Well, I don't think you do actually, Coordinator's Report, April/May 2005. You were the coordinator, weren't you?---What period did you say?

40

It says up the top, Coordinator's Report, April to May 2005?---I don't, I didn't, I don't think I started down here in April, but that could be right, but I don't think I started down here.

We've got evidence that you started there in February or at least before this date. Are you in a position to dispute it?---(NO AUDIBLE REPLY)

Are you in a position to dispute it?---Yep.

You can? What can, how do you dispute it, by your recollection?---(NO AUDIBLE REPLY)

What are you doing?---I'm reading the report here. Do you want me to read it or- - -

No---?- - -do you want me to answer it?

No, I'm asking, is this or is this not your report?---Well, I'd say part of it is.

You don't think it is?---It's like, my signature's not on it so- - -

10

Okay, well- - -?---Like, if it was my report, that's why I want to read it, to make sure it is mine.

Well, I'll tell you the bit I want you to read, it's on page 59 and it's under the heading, Land Development, Joint Venture?---Yeah.

Is that your report?---Part of it could be.

Oh, come on. It's a Coordinator's Report?---Yeah.

20

Are you saying that this was a committee of coordinators?---You're talking about seven years ago now, I'm trying to read it. I'm reading the first page. Do you want, I've got to go through it to, to agree that it's my report. Can I read it first?

ASSISTANT COMMISSIONER: Mr Watson's asked you to read the part on page 59 about the land development. Do you see that part?---Yep, yep.

Can you read that part?---I, I, I'm trying to.

30

MR WATSON: Tell me when you've finished reading it?---Yeah. Yeah, all right, I agree it's my report.

That's your report?---Yeah.

You start off by saying your understanding is limited. Do you see that? ---Yep.

40 Now, I want to ask you bit by bit about your report. If you produce a report like this did you intend it to be honest?---Well, I said my, my, my, my understanding of it is limited.

Sorry, stop for a second. Are you incapable of answering yes or no? What do you not understand about this question. If you prepared such a report did you intend it to be accurate?---Yeah.

Did you intend it to be honest?---Yes.

Did you intend it to provide information of a reliable kind which could be read by other people?---Yes, I did.

Did you intend it to be information of a reliable kind which could be read and relied upon by the membership of Wagonga?---I did.

10 All right. Let's have a look at what you said. You say, I believe the chairman, secretary and treasurer have handled the negotiations with the Ron Medich Group quite well. What were you told about those negotiations?

---Well, the solicitor Eddie Neumann, told me that they'd done a pretty good job.

Yeah, really?---So - - -

That's what you base that upon?---Yes.

20 All right. Look at the next one. The intricacies need deciphering and the executive has shown due diligence. Do you see that?---Yep.

Are you're basing that upon again, Eddie Neumann?---On what Eddie Neumann has told me.

Right. And now, the next paragraph, without sounding too biased, credit must be given for striving to get a satisfactory and economical outcome. What did you understand was the economical outcome?---Well, I thought that they could by the joint venture they could may be do other things within the community, for the community.

30 Well, did you understand that the joint venture had been analysed in a way that it could be shown to bring about a profit?---Well, according to Eddie Neumann, yes.

Well, according to Eddie Neumann?---Yeah, well I've got to rely on their legal opinion.

All right. So Eddie Neumann was advising them on the economics of that deal, is that what you're saying?---Yeah.

40 You're making that up aren't you?---No.

Did you ever have a look at the valuations?---No.

Did you ever have a look any financial information which told you how much it would cost Wagonga to enter the deal?---No, I didn't but I was able to take the word of the solicitor.

Did you ever have a look at any information which analysed the kind of profit which Wagonga might be expecting - - -?---Well, I'm not an analyst so I wouldn't do it.

- - -let me finish. Did you ever see information that analysed the amount of profit that Wagonga might enjoy?---No.

No?---No.

10 Did you ever see any accountants report about it?---No.

Real Estate agent's report about it?---No.

A town planners report about it?---No.

What were you then basing your opinion, this honest, accurate, reliable opinion, what were you basing your opinion that it would be satisfactory and economical outcome for Wagonga?---On the opinion of the solicitor.

20 All right. Could I ask you while you were there as co-ordinator, that was the time that this project was nursed through, through Wagonga?---Say that again.

While you were there as co-ordinator were the key months during which the joint venture was put through the Wagonga Council. Is that right?---It was already signed before I got there.

30 Well, again, we've got evidence that it was signed in May 2005 and we've got evidence, it conflicts a little, that you had been co-ordinator may be from February but at least by April?---Well, you've got that wrong too because I didn't start there till June.

Well, may be your memory is as bad as you suggest but I will just say to you now we've got hard evidence which includes, for example, page 57 that by the date of the chairman's report here that, on the second last paragraph? ---March or June that year, I've already said that.

March or June.---Yeah.

40 All right. Well, you see during that time 2005/2006 while you were at Wagonga - - -?---But I'm still - - -

Are you denying you were at Wagonga in 2005 or 2006?---I'm just, I'm just going to clarify it I'm not sure whether it was 2005 or 2006, you know, I'm going based on when me granddaughter was born.

All right. Okay. Well, it's necessary then for me to show you some further documents. Would you look at Exhibit 1, Volume 1 page 196.---Where am I at now?

It's on the screen. You can see it on the screen, you can see that this is a payment voucher issued by Wagonga dated February 2006. Do you see that?---Yeah.

10 Do you see it's a termination payment figure?---In February.

Do you see that?---Yep.

Turn over the page. It suggests in the third line that the anniversary of your employment was 23 February, 2005. That's one document which suggests you were employed then, for the purposes of calculation of a payment?  
---Well- - -

20 Then if you turn over again, page 198, there's a cheque which is drawn in your favour for \$2,000. Now, do you accept now you were at Wagonga in 2005 through to February 2006?---Well, I, I, it's written there so I can't deny it, can I.

Well, I'm sure you could think of a way, Mr Foster, if you think long enough, but are you willing to accept for the purpose of my next questions that you were at Wagonga during 2005/2006?---Yes, I do.

30 Now, do you accept that while you were there, that was the period during which the joint venture with the Ron Medich Group was put together and resolved, a critical time?---I deny that.

You deny it?---It was already signed before I got there.

All right. Well, we have evidence that it was signed in May, 9 May, 2005. If that's right, you were already at Wagonga, weren't you?---I don't think I was there.

All right. Okay?---I'm, I'm still disputing that I was there.

40 ASSISTANT COMMISSIONER: I'm sorry, Mr Foster, you just accepted - - -?---Yeah, I know, I know, but, but- - -

- - -a few minutes ago that you were there- - -?---Yep.

- - -from February '05 to February '06?---No, I'm saying on that to February 2006 business, that's what come up on the screen- - -

Yes---?- - -but I'm still ah, I'm still unsure about the actual date that I started there and I'm, I'm a 100 per cent positively I know that the joint

venture was signed and finished up before I got there. That's what I'm trying to say, is that it was signed before I got to Narooma, 'cause the first job I applied for, miss- - -

MR WATSON: No, please, if you're going to- - -?- - -was- - -

10 - - -have those, have those as inner thinking, not outer thinking. I'll just ask you some further questions, Mr Foster. Mr Foster, you were there during the time that the valuations were obtained over the properties, weren't you?  
---Yes.

You were there at the time that there were negotiations with The Medich Group over fine tuning the joint venture?---Ah, I'd have been there but I wasn't involved in any discussions about it.

All right. Okay. You were there during the period that the matters were referred by Wagonga to its lawyer, Eddie Neumann?---Yes.

20 You spoke to Eddie Neumann about the joint venture?---When he come to town, yes.

You were involved in trying to put together the necessary documentation to make sure that the joint venture would be approved by the New South Wales Aboriginal Land Council?---Ah, I'm not sure.

If you have a look at Exhibit 1, volume 1, page 171, it'll come up on the screen?---There's no numbers.

30 It'll come up on the screen, don't worry about it. Actually I should have probably shown you page 169 first off. There's a reference to a meeting on 17 August, 2005 and there's an agenda?---Yep.

And if you go for example to page 170 there's a motion been put that the minutes of the last meeting be read and then there's this record. "Ken Foster explained to the members the new guidelines under the new Section 40D." Do you see that?---Yep.

40 And then at that same meeting, on page 171, just after halfway down it says, "Members noted that Lucky Gattellari had attended Wagonga." Do you see that?---(NO AUDIBLE REPLY)

Do you see all of that?---Yeah.

Members thank Lucky for coming to the Council meeting?---Yep.

And then you'll see a motion at the foot of the page, that Ron Mason and Ken Foster be authorised delegates to deal with the representatives from the joint venture. Do you see that?---Mmm.

Do you see that?---Yep.

Now Mr Foster do you accept that you were negotiating with Gattellari and the Medich Group?---No.

No. What was this just somebody wasting time and ink putting that motion that you be authorised as a delegate - - -?---Yea, I, I can see that, yeah.

10 What's that about then?---Well - - -

Mr Foster were you being paid money by Gattellari or the Medich Group at the same time that you were working at Wagonga?---No.

You deny that do you?---Well the only money he was paying me was for working the funeral fund.

20 I'm going to ask you to think again about what I said to you earlier on. If you can answer a question yes or no, because it could be confusing. Are you saying that you were or you were not paid money by Gattellari or any member of the Medich Group while you worked at Wagonga?---Well I, I will say yes I was.

Right. You've got a reason for saying that do you?---Yeah.

You were working full time at Wagonga?---Yes.

30 You said you were doing your job not just going through the motions? ---Yes.

And you were being paid a handsome salary down there for doing it?---Well I'd say so.

So you were working for Wagonga but you were also being paid by Gattellari or someone from the Medich Group. Is that right?---Can I explain that?

Yes?---That was to draw up the proposal for the funeral fund.

40 Right. That's, that's an out and out lie isn't it?---Oh well it was a shell, I drew a shell structure so the funeral fund could work.

All right. Now Mr Foster how much were you paid for drawing the shell of the funeral fund?---I don't remember.

Oh go on, give it a go. Was it \$1 million or was it \$1,000?---It wouldn't have been nowhere near that.

Nowhere a 1,000 or nowhere a million?---Nowhere near what you're suggesting but it was a payment for me - - -

How much then?--- - - - to draw up a couple of plans.

How much were you paid? Was it a matter of hundreds?---I can't remember. It was \$200 when I do it or he'd pay me over, you know, a couple of weeks for doing it.

10 Let's just get it straight. Are you telling the Commission that the only money that you were paid by Gattellari or somebody associated with the Medich Group was about \$200?---No, I'm not saying that.

Well what are you saying?---He paid me for a couple of, he paid me to draw a plan, but it was over a couple of weeks that I done it.

I want to know in terms first of all of money. It must have been a sum which sticks in your mind in broad terms. Was it a few hundred or a few thousand?---Well it might have (not transcribable) a few hundred a week to draw the - - -  
20

A few hundred a week?---Yeah, 200 or something a week.

So he was paying you 200 a week for how many weeks?---No, not every week. Only when I worked on the plan.

Well for - 200 a week for how many weeks?---Look it didn't go on that long. It was me just drawing the plan, you know, for, for the funeral fund and for the employment programme.  
30

All right. Well when you say not many weeks was it 30 weeks, 40 weeks, two weeks?---Well it was off and on. It was off and on for about five or six weeks.

Five or six weeks. I thought you said it - - -?---You know, it might be one week this month and another week another month. It was never consistent.

Right. Five or six weeks 200 a week. Is that right?---Yeah, something like that.

40 Well that would be \$1,000 or \$1200 does that sound right?---Yeah about that, yeah.

How were you being paid?---Oh when he'd come to town he'd pay me in cash.

What just 200 at a time?---Or, or he might have put \$100 in me bank, \$200 in me bank.

All right. How many times did he pay you in cash? How many times did he put money in your bank?---Well I can't remember. Like I said it's seven years ago.

No, but try. This is very important?---I can't, honestly I can't.

10 I'm going to tell you something right now, at the end of these proceedings I'm going to be making submissions to the Commission about whether or not you should be believed as a person having taken an affirmation was trying to tell the truth?---I'm telling you the truth.

And unless you try to remember something I'll be submitting that you're not. And I'd suggest at the moment you are not trying Mr Foster?---Well look I'm telling you it was over a couple of months and I don't know whether it was 200 this week or when I'd see him, you know. I'm just, I'm trying to be honest. It's six years ago. He might come to town one week and pay me to do up a plan. Right. And then he might, I mightn't see him for a month and he'd get me to do another bit of work on the fund and on the employment programme.

20

Before I asked you in response to your answers whether you thought that five or six weeks of work was right and you said yes and I said - and that \$1,000 to \$1,200 was right and you said yes. Do you backtrack from that at all?---No, what I'm saying is that it could be \$200 to do a bit of paperwork here on, on the funeral fund and then another week he might get me to work on the employment programme.

30

So you are backtracking from the five to six - - -?---No, I, I, I'm just answering your questions the way you're asking me.

Is it right that in your best estimate it was five to six weeks' work and \$1,000 to \$1,200?---It could have been longer. It could have been longer.

It could have been longer. All right. So you are backtracking?---No, I ain't., I'm just saying I don't remember, it's seven years ago.

40

Right. When we started with this it started at \$200 and I thought started at two weeks, it's grown to five or six weeks and its grown to - - -?---No, no.

- - - \$1,000 to \$1,200 and now it could be more. How much is the most it could have been?---You never give me a chance to explain meself 'cause you keep hitting me with the questions. I'm saying that he might come down one week, expect me to do a bit of paperwork that week, he mightn't come down for a another month, expect, want me to do another bit of work on it so, you know, when, when you're, I'm trying to think, like I said, that it's only one, he come down in a week give me \$200 for that week for doing that work, right. I'm not saying it, it was a week, it could have been a couple of weeks but that's how it worked out.

Oh, sorry, I've just noticed the time, I hadn't noticed.

ASSISTANT COMMISSIONER: Yes. Mr Watson, it might be a good time to adjourn. Mr Foster, I'd like you to think over the lunchtime about your evidence?---Yeah.

10 I'd like to remind you that providing false or misleading information to this Commission is a very serious offence. It's punishable by up to five years' imprisonment so I'd like you to think - - -?---I don't - - -  
- - - very carefully about your evidence that, that you've given and that you are to give because this is a serious matter?---I know, I know.

MR STITZ: In fact, Commissioner, just before you adjourn could I bring paragraph 9 of Exhibit 6 to the attention of the Commission?

ASSISTANT COMMISSIONER: Yes. Paragraph 9?

20 MR STITZ: Yes, your Honour ah, Commissioner.

ASSISTANT COMMISSIONER: Yes. Yes.

MR STITZ: It just impacts on the questions that Counsel Assisting is asking this witness.

ASSISTANT COMMISSIONER: In terms of the time that he was present?

MR STITZ: Yes.

30 ASSISTANT COMMISSIONER: Yes, thank you.

MR STITZ: It seems to, it seems to somewhat accord with what he was saying in fairness.

ASSISTANT COMMISSIONER: Yes. Well, there's a lot of other documents that - - -

40 MR STITZ: Yes, I'm aware of that and I'm just bringing that to the attention of the Commission.

ASSISTANT COMMISSIONER: Obviously, yes. Well, I think his evidence was there was a period where he was staying with relatives prior to taking on any rental accommodation but yes, I'm sure Counsel Assisting will note that. We'll resume at 2.15 and I might just indicate that we'll sit till 4.15 unless somebody objects to that course. Thank you.

**LUNCHEON ADJOURNMENT**

**[1.13pm]**