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PUBLIC
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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION BARROW

Reference: Operation E10/0395

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 27 MARCH 2012

AT 10.05 AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

ASSISTANT COMMISSIONER: Thank you. Please be seated. This is a public inquiry being conducted by the Independent Commission Against Corruption for the purpose of investigating an allegation that Councillor Jack Au of Auburn City Council accepted payments from a developer, Ms Shu Xian Liang in return for providing assistance with her development application for a shop at 1-5 Harrow Road, Auburn.

10 The general scope and purpose of this inquiry will be further outlined in the opening statement of Counsel Assisting, Mr Mark Lynch and I would now ask him to deliver his opening statement.

MR LYNCH: If you please, Commissioner. Mr Jack Shui Lung Au is a serving councillor and sometime deputy mayor on the Auburn City Council. He's been a councillor since 2004. It's alleged that he accepted payments from a developer, Ms Shu Liang, who had lodged a Development Application to Auburn Council in September of 2009. Mr Au, it's alleged organised several meetings between two Auburn Council planning officers, Mark Brisby and Glenn Francis, himself and the developer in light of the developers desire to try and expedite a determination of her application.

20

You will hear evidence that Mr Mark Brisby, the director of Planning and Environment at the Council was sent an email from the developer, Ms Liang at 10.52am on 3 March, 2010 which said in full, "Dear Mark, I'm inquiring about shop 9 and 10 Harrow Road, Auburn as I know you have been helping me a lot such as the first time you did an overtime for me around the time of New Years. I paid \$4,500 to Jack for three of you, \$1,000 each for that day afternoon overtime. And the fifteen hundred dollars for the Construction Certificate fee. So please know I did all the jobs required of me by the Council as well as any reports, so I would like to know how long I have to wait, as I know somebody is holding the file and I've been waiting from before Christmas to now. Thank you, best regards, Shu Liang."

30

Mr Brisby promptly forwarded that email upon its receipt to the General Manager of Auburn Council with a copy to Mr Glenn Francis, the other planning officer involved in the application. The email from Liang asserts in terms that she paid the sum of \$4,500 to Mr Au for three of you, \$1,000 each for that day afternoon overtime and the fifteen hundred dollars for the Construction Certificate fee.

40 You will hear evidence from Mrs Brisby and Francis that no monies were ever paid to them. They will say that they are employed by the Council under contract, they are not paid overtime. At no time did they receive any monies personally from Mr Au or any developer on account of overtime or anything else. Their income is of course paid directly by the Council, not by applicants for development. There is no suggestion that either of Mr Brisby or Mr Francis have engaged in corrupt conduct.

It's not uncommon for Auburn City Councillors to liaise from time to time with senior Council planning officers in relation to or on behalf of applicants for development. It's part of their role as councillors in local government to assist residents and ratepayers in their dealings with Council staff. When done conventionally that activity raises no cause for concern. The Auburn Council protocol acknowledges that "the role of the councillor is an elected person to represent the interests of residents and ratepayers and to facilitate communications between the community and the Council.

- 10 The facilitation by councillors of meetings where the developer, Council officers and councillors attend is not unorthodox. If, however, Mr Au received payment as a councillor from the developer in return for facilitating such meetings issues arise as to whether such conduct is corrupt within the provisions of the Act. Many Development Applications are finally determined by the Council's planning officers without any need for referral to the councillor. Where councillors become involved in determining applications there's provision for disclosures by them of any pecuniary or other interest in respect to any such applications they may have to consider.
- 20 At all relevant times the Development Application by Ms Liang was not referred for determination to - by councillors and was in the normal course as at 3 March, 2010 likely to be determined by Council planning staff under the direction and management of Mr Brisby and Mr Francis.

It's anticipated that the payment in cash of \$4,500 by Ms Liang to Mr Au will not be in dispute. It's alleged by Ms Liang that on one day during a meal she had with Mr Au she made the payment in four separate envelopes, three of which each contained \$1,000 and one held fifteen hundred dollars at a restaurant in Auburn some time prior to Chinese New Year in 2010. Chinese New Year in 2010 fell on 14 February.

- 30 The primary issues likely to arise in this inquiry will be why the payment was made, when it was made and in what circumstances. It will be alleged that Mrs Liang told Mr Au that she was paying the cash to him as a reward. Her evidence it's expected will be that she wanted her application not to be delayed but she told Mr Au she wanted to thank him and the two Council officers for doing her a favour. She intended that Mr Au, Mr Brisby and Mr Francis each received \$1,000. The separate envelope containing fifteen hundred dollars was according to evidence anticipated from Ms Liang for Mr Au to arrange for the payment of a Construction Certificate in relation to
- 40 the development.

You will also hear evidence it's expected that Mr Au was employed by a company AA1 Building Pest Solutions Pty Limited. That employer offers building and pest inspection services to property owners. One issue for consideration, Commissioner, is what if any work was legitimately performed by Mr Au on behalf of his employer in respect to Ms Liang's building at shop 9 and 10, 1-5 Harrow Road, Auburn as opposed to the work performed in his public role as a councillor. Contrary to Ms Liang's

allegations that she told Mr Au she paid the money to him as a reward for doing her a favour, it's expected Mr Au will claim that he did some building or pest control work as employee of the company for which he works.

Mr Au's sister, Ms May Shum is the sole director and shareholder of the company which apparently employs Mr Au. On its face, the invoice, if it be an invoice, asserts that Mr Au conducted what are described as site visits to the premises and charged a fee per visit for building and pest consultation fees.

10

It's anticipated that the developer will allege that she never received any invoice and never received any receipt for the \$4,500 she paid to Mr Au. There is an issue as to the validity of that copy invoice and whether or not it reflects the matters implied by it.

There's also a record of a large number of telephone calls between Mr Au and the developer in the period September 2009 to February 2010 the content of which will be explored.

20

Evidence will be lead to the effect that Mr Au requested and usually attended the meetings with Council officers and sometimes Ms Liang and/or her architect from early February 2010 Mr Au was intervening on behalf of the developer to try and resolve an apparent delay in the determination of the application by the Council staff.

30

The primary focus of this inquiry will be firstly, on whether Ms Liang paid the money to Mr Au with the intention that the payment by her would induce some acceleration for the determination her application by the Council. If that is established than a further issue arises as to whether she has engaged in corrupt conduct in terms of Section 7 subsection 2 and 8 subsection 1 of the Act.

The other focus will be whether Mr Au improperly accepted a payment from the developer as a reward for setting up meetings with Council staff or whether there was some legitimate basis for the receipt by him of the \$4,500 paid in cash by the developer.

40

A corruption prevention issue may also arise in respect to Councillors who also work for a living in some capacity where they may become involved in development applications providing private services, such as those of an architect or tradesmen or consultant of some kind to the applicant. It may be that where such scenarios occur there should be an obligation on Councillors to make transparent the existence of any private business relationships with applicants whenever a Councillor liaises with Council staff in his or her public role as a Councillor as distinct from as a private service provider in respect of such applications. Alternatively, it might be thought that where a Councillor has a private commercial relationship with a

developer he or she should not act at the same time in the Councillors public role even to the extent of liaising with Council staff.

It's expected that you will receive evidence from some seven witnesses the first of whom is Mr Jack Au.

ASSISTANT COMMISSIONER: Thank you Mr Lynch. We'll take a brief adjournment after which I will take applications for leave to appear. Thank you.

10

SHORT ADJOURNMENT

[10.19am]

ASSISTANT COMMISSIONER: Thank you. Please be seated. Yes, are there applications for leave to appear?

MR YOUNG: Yes, may it please the Commission, my name is Young, initials JR. I seek leave to appear on behalf of Mr Jack Au.

20

ASSISTANT COMMISSIONER: Yes, Mr Young, you're given leave to appear for Mr Au.

MR HOUGHTON: Commissioner, my name is Houghton, (not transcribable) Houghton. I seek leave to appear on behalf of Auburn Council and also tomorrow on behalf of Mr Francis and Mr Brisby.

ASSISTANT COMMISSIONER: Yes, Mr Houghton, you are given leave to appear. Are there any other applications for leave? If not we'll call Mr Jack Au, will you come forward please. Take a seat.

30

MR AU: Yeah, thank you, Commissioner.

ASSISTANT COMMISSIONER: Now Mr Au - - -

MR AU: Yes.

ASSISTANT COMMISSIONER: - - - you require an interpreter?

MR AU: Is good just in case on technical terms I may not fully understand. Is good just in case.

40

ASSISTANT COMMISSIONER: Yes. As I understand you've been a councillor for some years.

MR AU: Yes.

ASSISTANT COMMISSIONER: You have a reasonable knowledge of the English language.

MR AU: Yes. But some, like legal technical terms I may not understand.

ASSISTANT COMMISSIONER: Yes, well I understand that an interpreter is available.

MR AU: Yes, yes, he's just outside.

10

MR LYNCH: Yes, there is an interpreter available. He's outside the hearing room at the moment, your Honour, Commissioner I should say.

ASSISTANT COMMISSIONER: I think somebody's getting him, I think.

MR McILWAINE: Sorry, Commissioner, McIlwaine has just arrived. I was just outside when appears were made. I seek leave to appear for Ms Liang.

20

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

MR McILWAINE: There is a difficulty about interpreters, Commissioner. There's only one interpreter. Ms Liang, who I think is an affected person also requires assistance of an interpreter and can't understand the proceedings without that assistance. I understand this interpreter, my conversations with him, understood he was here to interpret for Ms Liang.

30

ASSISTANT COMMISSIONER: Well in view of what Mr Au has said, perhaps the interpreter can sit with Ms Liang and be called upon if need be. I know it's going to create a bit of a problem, but I don't see what else to do without further delay. So what do you say Mr Au, are you happy to proceed on the basis that you will call for assistance if it's necessary?

MR AU: Yes, it's okay, yeah, Commissioner, yes.

ASSISTANT COMMISSIONER: Yes. Well yes, unless anybody objects, I'd ask the interpreter to sit with, perhaps I'll just swear you in first generally. Could you just state your name, please.

40

THE INTERPRETER: Pak Wang Lee.

ASSISTANT COMMISSIONER: And do you want to be sworn or affirmed?

THE INTERPRETER: Sworn, oath, oath, sorry.

ASSISTANT COMMISSIONER: Yes. And what, sorry, what language are you translating?

THE INTERPRETER: I think I'm supposed to do Cantonese.

ASSISTANT COMMISSIONER: Cantonese.

THE INTERPRETER: Yeah, or maybe Mandarin, I'm not sure.

10 ASSISTANT COMMISSIONER: Okay.

<PAK WANG LEE, sworn

[10:28am]

ASSISTANT COMMISSIONER: Thank you. Well if you could sit with Ms Liang at this stage. Thank you. Yes, now, sorry, Mr Au - - -

20 MR AU: Yes, Commissioner, yes.

ASSISTANT COMMISSIONER: - - - you are, you have been called here to give evidence. You are required to answer all of the questions asked of you.

MR AU: Yes.

30 ASSISTANT COMMISSIONER: You may seek a declaration under section 38 of our Act the effect of which is nothing that you say can be used against you in future proceedings.

MR AU: Ah hmm.

ASSISTANT COMMISSIONER: Do you wish to seek an order in those terms?

MR YOUNG: That order is sought.

40 ASSISTANT COMMISSIONER: Thank you. Mr Au, the effect of this order is that no evidence you give here can be used against you in any future civil, criminal or disciplinary proceedings. The only exception is if it's found that you have breached our Act by giving false or misleading evidence or in some other way - - -

MR AU: Ah hmm.

ASSISTANT COMMISSIONER: - - - in which case the evidence could be used. Do you understand the effect of that order?

MR AU: I understand, Commissioner.

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.

10

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.

20

MR AU: Yes.

ASSISTANT COMMISSIONER: Mr Au, you're required to - - -

MR AU: Yes.

ASSISTANT COMMISSIONER: - - - take an oath or make an affirmation to tell the truth.

30

MR AU: Yeah, I take an oath, yeah, yeah, thank you.

ASSISTANT COMMISSIONER: Okay.

ASSISTANT COMMISSIONER: Thank you. Please be seated. Before we start, Mr Lynch, I think that we should try to get another interpreter. This process will probably work fine for the time being but I do think as soon as possible we should try to get another interpreter in because it's not ideal.

MR LYNCH: Yes.

10

ASSISTANT COMMISSIONER: So perhaps those assisting you can work on that.

MR LYNCH: We will address that, Commissioner.

ASSISTANT COMMISSIONER: Thank you.

What's your full name, sir?---Ah, Jack Shui Lung Au.

20

Thank you. And what's your current address?---Ah, I got two. One is 54 Cardigan, Auburn and, and the office address 29 Chandos Street, Ashfield.

What's your occupation?---I'm a licensed builder and licensed pest controller.

Are you also a councillor on the Auburn - - -?---Yes, I'm a councillor too, yes, yes.

30

Are you or have you been the deputy mayor of Auburn Council?---Yes, for, for two years.

Are you currently the deputy mayor?---No, no, I'm a councillor at the moment.

When did you cease the role as deputy mayor?---I think probably last year.

When did you commence the role as deputy mayor?---I commenced the role in the second, let's see, probably 2009 and then, and then 2011.

40

Were there two separate periods - - -?---Two separate period, yes.

- - - as deputy mayor?---Yes, yes, two separate.

When in 2009 did you commence the duty as deputy mayor?---Yes.

When in 2009?---That is September.

And you were deputy mayor for a year from September 2009 until about August 2010?---Yes, just for one year, that, that time.

And you resumed the role of deputy mayor when, Mr Au?---Sorry, say again.

ASSISTANT COMMISSIONER: Mr Au, I'm sorry, could you not move into the microphone?---Oh, sorry, sorry.

10 It causes problems?---Sorry.

Just sit back and talk normally?---Yes. Okay, yes. Sorry.

MR LYNCH: When did your second stint as deputy mayor start?---That is, I think it's 2011.

And was that also for a year?---For a year, yes.

20 And when did it finish?---Finishes, usually from September to August.

Okay. And you said your occupation is that of a builder and pest controller. Are you employed by someone or are you self-employed?---No, I'm employed by a company.

What's the name of that company?---AA1 Building Pest Solutions Pty Limited.

AA1 Building Pest Solutions - - -?---Building Pest Solutions Pty Limited.

30 - - - Pty Limited?---Yeah, Pty Limited, yeah.

Is that your current employer?---Not now, the company been closed down and then they, they got a new company now.

Is that not your current employer, AA1 Building Pest Solutions?---AAI no, no longer now.

40 And what's - who is your current employed?---Called Ace Building Pest Solutions, A-C-E.

That's the business name. What's the name of the company behind that? ---That is called AATC Pty Limited trading as Ace Building Pest Solutions.

Thank you?---Yeah, thank you.

When did you commence employment with Ace Building Best Solutions? ---Probably a few, let me see ah, a few months ago, I can't remember exactly, yeah, probably a few months ago.

What's your role, what's your position with Ace Building Best Solutions?
---Yeah, I, I'm the, the licensed builder and licensed pest, pest controller. I am doing the inspection, I'm doing some consultancy work and also doing some pest control.

Are you the general manager of the company?---I, well, there, as, as a manager is just pretty much doing like three kind of jobs.

10 I'm sorry?---Yeah, I'm a manager there.

Are there any other employees in the company?---No.

You're the only employee - - -?---Yeah, I'm the only employee, yes.

- - - of Ace Building - - -?---Yes.

- - - Pest Solutions?---Yes, ah hmm.

20 And taking you back to when you were employed by AA1 Building Pest Solutions Pty Limited - - -?---Yes.

- - - what was your position with that company?---Again I, I, I was the manager.

And were you the only employee of the company?---Ah, yes.

Who, who owned the company?---May Shum.

30 Is that your sister?---Yes.

And does she also own the company AATC Pty Limited?---Yes.

Is she the sole director of both companies?---She bought the company from, from there, all right, so at the moment yeah, she, she is the, the sole owner.

Was there another company that you were involved in called AAA Building and Pest Solutions Pty Limited?---That's a long time ago. That's, that's probably yes, I, I forget how long ago it is, it's a long while back.

40

Were you employed by AAA Building and Pest Solutions Pty Limited prior to being employed by AA1 Building Pest Solutions Pty Limited?---Yes, yes, yes, Mr Lynch, yes.

In the same capacity?---Yeah, in the same capacity as a manager.

And were you the only employee of that company?---Yeah, yeah, I'm the only employee of that company, yes.

Did you hold shares in any of the three companies which employed you?
---Ah, I, I, let's see, for Ace I don't have any shares and for ah, oh, we,
usually when, when ah, May Shum bought the company AATC Pty
Limited, that time I, I got a bigger share but I sold it eventually because I
just only be employee and, and for the AAA I, I don't have any shares and
also AA1 I don't have any share.

10 Who controls the finances of - - -?---Ah, May Shum.

- - - the three companies?---May Shum.

Your sister?---Yes.

And what's her role with the company?---Ah, she, she's a director of the
company and the sole owner of the company.

Right. And you say she controls the finances?---Yes.

20 Does she work full-time with the business?---Yeah, yes, she is coordinate
pretty much everything, when people call the company, like what kind of
thing need to be done, either the inspection or consulting, consultancy work
or pest control and then she relay the message to me and so I just act
accordingly.

30 Has anything changed in the way you operate the business with your - or as
an employee of your sister's company between the three different
companies as they changed over the years?---Ah, pretty much, yeah, pretty
much the same just she got the call and then just relay the message to me
and then I just contact the client and organise a time and then just go there
to do the job.

And the jobs you do include pest inspection?---Yeah, pest inspection, yes.

40 And when you do you pest inspection that's on the request of a property
owner or a solicitor or a real estate agent, is that how it works?---Yes, yes,
sometimes from solicitor, sometimes for the, from the agent and yeah,
sometimes from the client, yes, they, sometimes they, after they know me
then they just approach me direct.

Right. Anyone else request you to do such work in pest control
inspections?---Yes, as I mentioned solicitors, agents, sometimes maybe
some bank manager if they, they have doubt about releasing the loan to
client and, and the property could have some sort of pest problem, they may
contact me to do the pest report for them.

When you do pest reports for clients, I take it you go out and inspect the
premises?---Yes.

And is it your practice invariably to prepare a written report for the clients identifying any problems or the absence of problems as result of your inspection?---Again, depends on the client, if the client mention about okay, you tell me I understand, then I don't, I don't given them a written report. If they say, oh I need something in writing then I write report to them.

10 Are you telling the Commission that sometimes you do a pest inspect but you don't report other than verbally - - -?---Yes.

- - -about the results of your inspection?---Ah yes sometimes they are verbal and sometimes is in written again, is up to the client if the client request a verbal enough, then I do a verbal one and they say, oh I need a written one as a record then I have to write something for the client.

Why are the pest inspections usually done, on your understanding?---Sorry, (not transcribable)

20 Why do your clients usually inspect a pest inspection to be undertaken, as you understand it?---A number of reasons. If in say a restaurant business they, or the Council could check them, any pest issue and usually they may just call me to see how to deal with those problems. If they are buying a property and they're not sure whether there's any termite problem, fungi problem or bores problem, then again, they will contact me or my company and they ask me to go out to look for the property just what kind of advice I can give.

30 And you keep records of the verbal advice of inspections when you don't give a written report?---I write it down in my diary.

What do you write in your diary about the results of the verbal reports you give back to your clients in your verbal reports only?---If, just say, okay, they check any pest problem, I go to check it, if there's no (not transcribable) all right and I just put down there's no termite or nothing, all right, if there is a termite problem I will write it down, all right, there's termite problem and um, you see you engage me or, you better treat the termite for me then I treat it for them.

40 Do you give them a written report when you undertake treatment beyond the inspection?---Again, it depends on the client, if they request a written one then I write a written one. If they say, oh, you treat the problem for me, I'm okay, all right, so in that case I just treat it and then without any – in writing.

How much do you charge your clients in 2010 for a written report for a pest inspection?---Um, if for a new property over new, I charge one inspection, four hundred for inspection.

\$400?---For, per inspection.

Is that what you charged in 2010?---Um, yeah, it's about that amount.

What about 2009?---Probably again, depends on the client, if the client request negotiate a bit, I may drop the price a bit so again, it's plus or minus four hundred per inspection.

10 Do you determine the fee you will charge or do your clients determine the fee?---Usually I, I will tell them all right, and how much per inspection I charge or if they already engage my service before they already know, all right, there will be a charge so they already understood than in that case I just go to treat it for them or give them advice and then they pay me accordingly.

Is it the fact that you decide how much you will charge the clients rather than the clients deciding?---Usually it's I will decide all right, and also if again, depends if the clients got some experience I inspect it before and they pretty much understood, all right, there would be a charge approximately how much per inspection.

20 Do you tell your clients how much you will charge them before you do the work?---Again, depends if the client engage me before and I already done it before and they know per inspection I charge around four hundred per inspection. And usually the client understood, all right, after I done it and they just pay me accordingly.

30 But is it always the case that you make your clients aware of the charge that you will make for the job either because you've charged them a similar amount before in another earlier job or because you tell them how much you will charge?---Um, usually is um, if they I've done the job before or for the same client and they understand it's four hundred per inspection. So usually in their mind they already understood. So after I done the job they just pay me accordingly.

40 Would it be a rare case where you don't inform the client one way or the other of how much you will charge them for the work you do?---Um, this client, usually I engage the service before I treat, I serve them before and they've got an idea. I'm the inspector I can treat the problem and then in their mind they've already got an idea there will be a charge, approximately how much, they're aware of that.

Leaving aside the category of clients who you've worked for before who know roughly how much you charge, do you always inform the other group of clients for whom you've never done work before about what your charges will be?---Yeah, if I've never done that before, all right, I will mention to them, like, say, that's inspection and four hundred per inspection and usually I will, I will mention that to them.

And do you employ the same practice, that is, to inform your clients of how much your work will cost when you do work other than pest control work?
---Yes, we will, if the client hasn't engaged my services before I will tell them, I just say, a termite treatment roughly for this kind of treatment it will cost you, how much.

When you're doing building work for clients do you employ the same practice as you employ with pest control work - - -?---Yes.

10 - - -that is you tell the clients how much you will charge for the work you're proposing to do unless they have previously been your client so that they've got a good idea you think, as to what you charge?---Yes, if they're old client, they've got an idea already around four hundred per inspection, they've got a fair idea. So every time I go there they already understood there's a payment attached for inspection.

But if they're a new client, you tell them what you will charge. Is that so?
---Yes, if a new client, yeah, I will tell them how much when inspection will be charged.

20

And when you do a verbal report only, not a written report in relation to a pest control inspection, how much do you charge for the verbal report?
---Again I charge four hundred and just in case, we negotiate a bit, then I may, oh well you only ask this (not transcribable) and so I may drop a bit and again, depends whether the client negotiate or not, if they know is the usual fee's around four hundred per inspection.

So it doesn't make any difference in the charge you make whether the report is written or verbal?---Ah yes, it doesn't.

30

Your written reports usually run to more than 20 pages for a pest control report don't they?---Yes, about that, depends on how complicated the case.

They usually contain a great deal of detailed information about moisture in the property - - -?---Yes.

- - -the presence of termites - - -?---Yes.

40 - - -whether you can find or gain access to difficult parts of the premises.---
Yes.

It's a comprehensive report of every room in the property as a rule, is it not?---Yes, I will give them, actually I got two role to play, one is duty of care, I have to check carefully and also the other is duty to warn I have to warn them if there's some issue you have to pay attention to.

What do information do you provide to your clients when only a verbal report is given?---Um, it's again, depends on the case, and um, if there's a

case that got say, they've got some sort of pest issue so I will explain to them, all right, okay, you've got some pest issue and because it's like this areas (not transcribable) and so I treat a lot of German Cockroach so, I will explain again, case by case depends on the situation.

You mentioned you had a diary that you record the results of inspections. Do you retain your diaries for previous years?---Usually I, I – after that, yes I keep the present diary, all right and, and the old one is usually I, I don't, I don't retain it.

10

Do you have your diary for 2010?---I, I couldn't find it.

Do you have your diary for 2009?---No, I couldn't find it, yes.

Do you have your diary - - -?---That's many years ago, right, so I got a current one.

Do you have your diary for 2011?---2011, I could look for it, I got the current one.

20

Is that the 2011 diary or is that the 2012 diary?---That's 2012. That this year, the current year.

Is your evidence that you don't retain any of the diaries prior to 2012?---Yeah, because the diary is very bulky and so usually I don't, I don't retain it, is really bulky.

Do you ever have clients coming back do you say, and you gave me a verbal report but I don't remember what you said - - -?---Yes.

30

- - - can you remind me what the results of the pest inspection were about? Does that ever happen from your experience?---Very rare. If they ask me to go back again, all right, I, I, yeah, I can organise a trip to go there and then just refresh myself what exactly, just say, a year or a couple of year ago, what exactly is the problem. And then I'm happy to make a trip there and of course they would be charged that. I say I make a trip especially, if you identify the problem again there will be some charges there.

40 How many pest inspections can you estimate you did last year in 2011, calendar year 2011?---Just in my mind difficult to, to remember every, yeah, I simply, usually in, in a week all right, I do, again depends how busy it is.

Well on average how many per week would you do pest inspections? ---Probably maybe roughly, maybe just roughly two. Again depends, in summertime I get a bit more, all right. And so anything – or really quiet I may have none, all right. So, so anything probably from, from zero right to if summertime I, we got (not transcribable) I would be more busy. So maybe from zero to five, again depends on whether is summertime or

wintertime and also is, again depends on, on the restaurant, the restaurant usually is as required by the Council and the government the restaurant may do a little bit frequently.

10 With restaurants, I take it you'd always do a written report because they're required for purposes of gaining approval or satisfying health authorities, for example that the restaurant is free of pests. Is that right?---Yes, yes. Either, see the Council require that, they say after you've done it, all right, you have to write me the report, put on your license and also put down what kind of, of pesticide I use. So in that case as requested I will write them a report. I have to give it to the Council.

So there'd be no verbal reports to any of your business clients I take it when you do a pest inspection?---If the Council, if the client request to write one, all right, I will write one to them. They say, just go there and then just give me summarise, verbally is okay, then I just do a verbal one.

20 Well is it the fact that your business clients always ask for a written report when you do a pest inspection?---Again it depends, right, is some do, some don't.

It's either the fact Mr Au - - -?---Sorry?

It's either the fact or it's not the fact. What's your answer to my question? ---Some client they ask, some do not.

30 So not all business clients request a written report when you do a pest inspection for their business premises. Is that correct?---Correct, yes. Not everyone ask for that.

Who retains the business records for firstly AA1 Building Pest Solutions Pty Limited when it was operating?---I usually put it in my diary.

Is that the only business record that the company retains what is in your diary about what you charged, what you received?---If the client call direct to the company, then the company they have some record. If they client call me direct and then I have the record.

40 All right. If, if you charge a client a fee - - -?---Yes.

- - - and the client pays a fee - - -?---Yes.

- - - do you inform your employer, the company, did you in 2009 and 2010 - - -?---Yes.

- - - inform the company of the fact of that payment?---Yes. I will, after I got the payment I will go back to the company, I say this, the money, all

right is either a building report, a pest report or consultancy work, that's the money I got. And then I give it to the company.

And what record is made of that to your knowledge by the company of which you're the manager?---It's the practice they will write it down in their diary that I receive like maybe 300 or 500 or whatever.

10 When you say they who do you mean?---The company, I mean, sorry, the company.

You mean your sister?---Yes, my sister.

She's the only other person - - -?---Yes.

- - - associated with the company apart from you?---Yes.

So you tell your sister what?---Yes.

20 When you receive payment for a job - - -?---Yes, yes.

- - - any job - - -?---Yes.

- - - you tell your sister what?---I just mention about this is the money I get from some, say from a consultancy or building inspection or pest inspection and then I give her the money and then she put in the diary.

She puts it in her diary?---In her diary, sorry, yes, yes.

30 And do you know where her diaries are?---No, I keep mine, she keep hers.

I'm asking you about hers?---Yes.

Do you know where she keeps her diaries in which she records payments made by you to her?---She always put her diary on the desk.

You understand the importance of recording all income receipts - - -?---Yes.

- - - for tax purposes?---Yes.

40 And GST purposes?---Yes.

And to identify what deductions might be - - -?---Yes.

- - - appropriate to make on behalf of the business?---Yes. So she keep all the record about the money coming in and, yes, on her diary.

And for how long does she retain those records do you know?---I really don't know.

Does she pass the records on to an accountant to prepare tax returns for example on behalf of the company?---Yes, I believe that's her usual way every year, right, is ask the accountant to do all the taxation thing.

All right. What was the form of the diary that she held in 2009 and 2010? What sort of diary was it? Was it a red book, a black book, was it a notebook?---Is a, I recall I think a black book. Looks like black in colour.

10 And you would see it on a regular basis, you would see her making entries in the red book - - -?---Yes, yes.

- - - whenever you informed her that - - -?---Yes, when I - - -

- - - you'd received a payment which you passed on to her?---Yeah, sorry, when I give her the money and pretty much immediately, all right, and she just put the money, yeah, on to the diary, how much receive, so yes, yes, I, sometimes, well most of the time I just give her money when, when, unless I have to rush out all right, then I don't see her to write out. If I give the
20 money and then usually pull out the diary and then writing down how much receive on the day.

Did you always give her money which you received for jobs?---Yes, because she own the company. I, I, I'm working for the company.

Right. What salary did you receive for working for the company?---I, I got this salary plus allowance.

30 What was the salary?---The salary is very low, all right, it is, I usually get maybe just a thousand but plus allowance, whatever, like the car - - -

A thousand per what period?---Ah, probably per year but I got, I got allowance, the allowance including the car.

Let's leave aside the allowances for the moment?---Yes, ah hmm.

The salary you receive from AA1 Building Pest Solutions Pty Limited - - -? ---Yes.

40 - - - for the financial year ending 30 June, 2010 - - -?---Yes.

- - - was in what amount, Mr Au?---I recall probably just, just 1,000.

\$1,000 salary?---Yes, yes, yes.

And was it the same for the financial year ending 30 June, 2011?---I, I can't remember, yeah, it is, the, the salary is pretty low, all right, is - - -

I'm not asking you whether it was low. I'm asking you whether the salary was the same for the financial year ending June 2011?---I can't remember now, all right, it is, again is, could be, could be around that amount.

\$1,000 - - -?---Yeah, probably around - - -

- - - or thereabouts?--- - - - around that amount, yes, right.

10 All right. And for the financial year ending 30 June, 2009 - - -?---Yeah.

- - - what salary did you receive from the company you were working for then?---To my memory it is probably around that amount.

\$1,000 approximately?---Yeah, about that, yes, oh, yes.

Were you employed by any other company apart from the building pest solutions company, either AAA or AA1 or AATC Pty Limited?---Ah, ah, no, no, no, it is, I got allowance from, from the Council.

20 I'll come to the allowance in a minute?---Token, yes.

But were you employed by anyone else apart from one or other of those three companies in addition to your role as a councillor on the Council? ---Yeah, it is, I'm, yeah, I am employed by the company.

Is that your only employer is my question?---Sometimes I do some consultancy work, all right, it is for some construction site.

30 So it's not your only employer, is that what you say?---In that sense so like some, some other company sometimes engage my service.

Right. When were you last engaged by a company independently of AA1 or AATC?---I, I cannot, sometimes I go to construction site, all right, and - - -

When did you last go to a construction site to do such consultancy work independently of the company that employs you?---Last time, let me see, yeah, some, some while back, I, I can't remember exactly when, when was that.

40 2012?---2012 I, I, yeah, I done some, all right, but that's for the company, that's not privately.

Was in 2012 this independent consultancy work I'm asking you?---2012, no, I, I don't - yeah, I cannot recall I got, do any independent consultant.

Did you do any in 2011?---Ah, could be.

The calendar year 2011, did you do any independent consultancy work independent of the company that employs you?---I've gone to a construction site but probably the money I got I paid back to the company, is, is still under the company banner.

10 In 2011 did you do any independent consultancy work independent of the company who employed you?---Yes, could be I, I done, yeah, I've done some, all right, but just, yeah, sometimes I, I go to the construction site, all right, is, yeah, mainly is, is either I do it for the company, most of the time do it for the company except they engage me to do it for themself.

What I'm asking you, Mr Au - - -?---Yes.

- - - is whether or not in the year 2011 - - -?---Yes.

- - - you did any of this consultancy work independently of AA1 or AATC Pty Limited?---I have no memory of that.

20 And in - in the calendar year 2010 did you do any such work?---I have no memory of that.

What about the calendar year 2009? Did you do any such work independent of your employer?---Yeah, I, so far I cannot remember everything, sorry.

30 Well, when's the last time you remember doing independent consultancy work as distinct from work on behalf of your employer?---There is a, there is a company, I, I - they asked me to do privately, there is a company, I, I forget the name of the company. That's a while back, it is not more recently.

You forget the name of the company, was that your evidence?---Sorry?

Did you say you forget the name of the company for which you did this independent consultancy work?---Yes. I, I recall that's some time ago, yes, I, I've done some service, consultancy work for yeah, for, for a company.

40 And was that building work or pest control work?---That is mainly building work, mainly, some I give some sort of pest advice too because I'm a licensed pest controller too.

But you can't remember the name of the company or when you last did it? ---Yeah, I, I - - -

Is that right?---I cannot, yeah, sorry, I cannot.

Do you keep records of that independent consultancy work you do for your own tax purposes amongst other things?---Yes, I, I will relay the message to the, to the accountant handling the account.

Who's the accountant who handles your personal tax affairs?---Accountant is, is Herman Chang & Co.

The same accountant that handles your employer company's affairs - - -?
---Yes, that's right, yes.

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

10 So would you expect Mr Chang would have records of details of all of the income you received from the independent consultancy work as well as the income you received from AA1 or AATC Pty Limited?---Yes, I believe yeah, he, he got the record, yes.

Because you provided such information to him?---Yes, I give information to, to that accountant.

20 In what form do you give it?---Sometimes it is in, in, in probably I pass everything to the company and the company again forward it to, to them, I mean for, for the accountant.

They give you an invoice or a statement attached to the payment that you receive always do they?---Again it is some time could be without, without invoice or just a verbal one, this is like, like this amount is for that consultancy work.

30 Well, what do you give to your accountant which identifies the income you've received in this capacity as an independent building consultant?
---I, I pass everything to the, the owner of the company and I say this is independent thing, all right, and, and again the company will pass all the information to the accountant.

I'm sorry, is the Commissioner to - - -?---I will pass everything to the company.

The company that employs you are you referring to?---Yeah, that's right, yes, and then I just, just mention that this is an independent thing, all right, and then, and then just pass it to the, to the accountant.

40 Why pass your private income to your sister's company?---I, I pass the information to, to the - because I'm very busy and I just go to the company, I say oh, can you pass this to the accountant, all right, for the taxation purpose.

Do you employ your sister in your private consultancy role do you?---No, no, no, no, I don't, I don't use, she employ me.

AA1 Building Pest Solutions first came into registration on 28 October, 2009 did it not?---I can't remember the day now, yes, I can't remember the day now.

And it was voluntarily deregistered on the 1 June 2011, was it not?---Again, I cannot remember, I cannot remember the day now.

You don't remember?---Yes, mate.

10 What caused your employer to change its status, do you know?---Yeah, I don't know, it's up to the company.

Up to your sister?---Yes, mate.

And do you guide your sister in how she operates the company or does she guide you as her employer?---If professional things such as regarding the building and pest, I explain to her but other things, she's the boss.

20 What about financial things?---Again, financial issue, she control it. Every time I've done a job I just give the money to the company and she just handles it accordingly.

Have you not been responsible or authorised to conduct the financial accounts for one of the companies?---No, usually I, I don't handle the financial part.

You don't handle the financial part?---I do not handle the financial part.

30 But you say that whenever you receive money you give it to your sister to record in her red diary - - -?---Sorry, black diary, not red one.

It's a black diary, not a red diary.---Probably (not transcribable) I guess, yes.

I beg your pardon?---Yeah, could be a black one, I recall a black one probably not red.

40 In any event, whenever you receive money in whatever capacity either as an employee of the company your sister runs or the companies that your sister has run or in any other capacity, you give the money to your sister to provide records so that your accountant can prepare the appropriate financial records for both the company and for your personally. Is that the case?---Yes, I give everything to the company and the company forward to accountant.

Simply as a favour for you on your behalf, is that your private work, is that the case?---Yes, right, yes.

And you explained to the Commission about how you do your pest inspection work.---Yes.

Does the building work that you do operate in the same way, firstly, when you receive requests from clients to undertake building work, what sorts of building work do you undertake for clients since 2009 firstly?---I'm a licensed builder, whatever relating to the building I can give advice and such as say whether people can demolish the wall or where's the best place to locate the toilet or where's the best place to locate the wine bar or
10 where's the best place to locate the sushi bar and um, and also to partition it all right, as to whether it's I can partition it that way or the other way. And so that's because there's a fire regulation and people cannot just partition wherever they like and there's some sort or regulation regarding that. So I give all kinds of advice to the client if necessary.

Do you do building work?---Yes - - -

In the sense of constructing or engaging contractors such as carpenters, tilers, electricians, do you supervise building work for your clients?---Yes,
20 right, if just say, if a person say I'm owner builder I don't know much about building so can you guide me how to attract the tender, how to handle the tender and, and like how to deal with the footing or the timber truss so I give some professional advice accordingly as requested by the client.

So is the fact that you merely give advice rather than do the building work?
---Very rare I physically do it, usually I give advice and then they usually they will organise, just say they want it to be review and I can organise some sort of brick layer to lay the brick for them. Usually, the role is a manager and um, I organise to things and then people just come in and then
30 do it.

Your role is usually restricted to giving advice, is that the case?---Um, yeah, giving advice and also, yeah, building advice, the pest advice and also it's some technical things all right, just say the plumbing, where's the best way to handle because plumbing's very expensive so usually I advise them if you have some wet area make sure it must be very close to the sewerage system otherwise it will be very costly. So I advise them the cost, what is the most economical way to handle it.

40 When you provide building advice do you provide it in writing to your clients?---Again, depends on the client. If they say, verbally is okay so I give them the verbal one - - -

But sometimes you provide written building advice to clients?---Ah yes, if, as requested.

And sometimes you give verbal building advice, is that so?---Yes, yes, that's right.

How many times in the year 2010 would you have given, would you have given either kind of building advice, written or verbal?---Um - - -

How many jobs per week on average would you have in the year 2010?
---It vary from week to week, all right, just say from zero to three/four, depend, depends on the week. I don't have - - -

How many in the year?---Sorry.

10

Can you estimate how many building advice jobs or building jobs that you did in the year 2010?---I really have to count it. Sometimes really busy may be no building inspection for the whole week. Sometimes may be busy I got three or four so really depends on the week.

Do you have any idea how many jobs you did of that kind, building as distinct from pest inspection in 2010?---Roughly from zero to three or four a week. It really depends on the week.

20

So in a year it might be from zero to 200?---Let's see, you're talking about 200 if 50 weeks like, um, yeah, it's may not be that many, again, depends on the year too.

Do you have any idea how many such jobs you did in 2010 or in the calendar year 2009?---Um, as I mentioned from zero to three or four a week all right so if I do say two a week so may be, may be you're ranging around 100, something like.

30

But you provide records – I withdraw that. Do you always charge for that work?---Yes, to the inspection, yes there's charge there.

All right. And do you always inform the client in advance of how much it's likely to charge, how much you're likely to charge?---As I mention before, if it's an old client, they already know, all right, so just call me and just do the inspection for me. Then they - - -

Is it the same arrangement for building work as you describe for pest inspection work?---Yes, that's right, yes.

40

How much money did you generate on behalf of your company by doing, by giving building advice in the year 2009?---Um, I cannot remember the figure now, it's - - -

Who would know the answer to that question?---Probably the accountant should have the record, the accountant.

You're the only person who generates income for the companies that you work for?---Yes.

Is that right?---Yes.

Your sister doesn't generate income, she merely owns the business and does some of the administrative work. Is that right?---Yes, yes, right, yes.

So you're the only person who generates income for AA1 or for AATC, is that correct?---Yes.

- 10 And you always inform your sister who, on your understanding, retains records of every payment that you have received?---Yes.

So your sister should be able to identify the income received for the past three years?---Yes, yes, she, she should have the record on, on her diary, yes.

Have you ever been self-employed Mr Au?---No, I always working for, yeah, I always working for company.

- 20 Is that the case for as long as you can remember?---When we many, many years back, yeah maybe I (not transcribable) for a while up (not transcribable) work for the company.

When you last self-employed?---That is a long while back, is maybe (not transcribable) year, maybe year 2000 or something like that. A long time ago.

About 2000?---Yeah.

- 30 More than ten years ago. Is that - - -?---Yeah, is, is a long time ago, yes.

What income do you receive as a councillor? What allowance do you receive as a councillor?---A bit over 10,000 per year, yeah.

And you were saying earlier before I interrupted you that you receive from your employer some allowances including provision of a car?---Yes.

- 40 Is that right?---Yeah. The car, the car repair, the petrol and, and also whatever like the chemical I buy and the tools, like if I need to attend some function for the company and again the function, the company pay, pay for that.

Pays for the attendance - - -?---Yeah, that's right.

- - - at function?---Yes, maybe charge it to - - -

Do you mean a dinner or a party or a convention, that type of thing?---Yeah, that's right. Yeah, that's the Lion's Club, I was a Lion's Club president and

so sometimes they come and they say okay, yes, I (not transcribable) to you and maybe you go there all right, and the company pay for the expenses. So sometimes I (not transcribable) for the company and the company pay for all those fees.

10 All right. In 2009 and 2010 did you receive any income other than the payment of allowances as you've described, the \$1,000 approximately in salary and your councillor's allowance from the Council? Do you have other income?---Yes, I got a property together with my wife. I got some rental there.

Which property is that?---That one in Ashfield.

What's the address of that property?---That is 26/147 Liverpool Road. That's a two bedroom unit.

I'm sorry, what's the address?---I think it's 26/147 Liverpool Road at Ashfield.

20 Unit 26 number 147 Liverpool Road, Ashfield?---Yes. Yeah, that's right.

Is that what you said?---Yeah, that's right, yes.

And you receive rent?---Yes, I receive rental.

Half of the rent from that property that's leased. Is that right?---Yes, yes, I got the rental there, yes.

30 How much rent do you receive that's your share?---I really cannot, I cannot remember the details. I need to check from the accountant, I cannot remember the details.

You said you, you own that property with your wife?---Yes.

You and wife live together?---No. At the moment my wife is in Hong Kong.

40 Are you, are you separated in any way apart from physically? Is your marriage still ongoing?---Yeah, the marriage still ongoing, we just, she's in Hong Kong at the moment with her son and I'm here.

And do you receive that income from the rent personally in cash or into a bank account or through a real estate agent?---No, through, through a, yeah, through a real estate agent, yes.

Who's the real estate agent?---The one is, they call it Sydney Residential, Sydney Residential.

Whereabouts are they located?---They locate in, in the eastern suburb, I think probably Kingsford.

Right. Do you know the name of the person with whom you do business in relation to the property that's under management?---Yeah, I forget her name, we get a change of property manager every now and then so, so I can't, I can't - - -

10 Do you know any of the names?---I know the one handling the (not transcribable) there's a lady called Helen. And, and the property manager, they change every now and then, so, so I can't remember the, the name of the property manager.

And how much income do you receive in rent from the leasing of that property?---I really cannot remember exactly. Is not much, just maybe just maybe a few thousand.

20 A few thousand a week, a month, a year?---No, no, that's, that's for a year, right, because you still, I'm still paying for it, right, so we haven't really totally own, is still, is still a mortgage there.

All right. So do you receive any other income apart from the income you receive from the rent – I'll withdraw that. Is the income you receive as rent greater or less than the interest payments you pay on the loan for that property?---I, I cannot remember. Yeah, I believe I got some, just a few thousand rental income I guess.

30 Is the property negatively geared so that the outgoing payments exceed the income?---Up to this stage I'm not sure. I have to talk to the accountant.

You don't know how much rent each week is charged for the, for the premises?---The rental we're talking about, yeah, not much 200 and something I guess.

Two hundred and something per week. Is that your evidence?---Yeah, that's right, yes.

40 Were you authorised to operate accounts for the company AATC Pty Limited?---Sorry, will you again?

Yes. Were you authorised to operate the bank accounts and financial account AATC Pty Limited?---What is - - -

Ace Building was the business name - - -?---ACE - - -

- - - operated by AATC Pty Limited was it not?---Yes. Well is because the company sometimes may be, is, May Shum is not around, all right, then she always ask me to signing for her.

So you were authorised - - -?---Yes.

10 - - - to operate the financial accounts of AATC Pty Limited?---Yes. But very rare I sign a cheque. Most of the time is signed by the owner and just in case she's away for whatever reason she authorise me, you sign it it's urgent, then I sign it.

You could deposit monies and withdraw monies for the account operated by the company or - - -?---No, I never done that.

You were authorised to do that?---I authorise to sign the cheque just in case, right, if, if the owner is away or whatever reason is urgent then she will authorise me, you sign this particular cheque, all right, because it's urgent. And she, she wasn't around. Otherwise I don't, I don't do anything about the account.

20 Now the company AATC Ace Pest Solutions was active from December of 2009 was it not?---I think she bought the company probably around that time, yeah.

And AA1 Building Pest Solutions Pty Limited was still operating at that time was it not?---Yes. It was operating and then she, she bought - - -

So which one employed you as at – as from December 2009?---2009, that is AA1, I recall AA1 employ me in 2009.

30 When, when did Ace Pest Solutions start employing you?---Yes.

When?---After, after the company closed down, the AA1 closed down, all right and then May Shum mention about all right, is, now there's a new company, so - - -

When was that Mr Au?---I cannot remember the exact day is, unless you just come to tell me AA1 now close it down and then there will be a new company you still get the employment. I cannot recall the day.

40 Or the month, or the year?---I cannot remember the day.

Did you get wage slips from your company when you were paid your salary?---No, she just give me, give me the money.

In cash or by some other means?---Mostly, in cash.

Your sister gave you the \$1,000 a year in cash?---Yes.

Given at one time or spread out over the year?---Usually spread out a few times.

So how would you know if you received it or not?---Usually I put on my diary, say okay, I receive \$300, I put down receive \$300 on the diary and up towards the end, it add up to a thousand, so that's right.

10 Did you keep a record of the expenses that you incurred for your car, for functions, for pest equipment and products?---Again, I put it in the diary but just say okay, I have to buy a tool, a ladder or whatever, I put in diary, I need to just say buy whatever the chemical or the tools or the petrol, right there's some of a – and also your petrol you got some receipt. Yeah, in some case we got a receipt, all right, just say I go to Bunning's to buy some tools and then I got a receipt and, the chemical I go to the shop to buy some chemical. Again, they give me a receipt. In some case there'll be receipt attached.

20 And you declare those allowances as part of the benefits you receive in your tax returns, do you?---Yes, because the company carve up all those expenses including a car, the car to be repaired, the chemical, the tools, attending function for the company, all those and so on, all right and the company say they cover that.

But what records do you provide the company of those allowances?---Um, I say okay if I, I got to Bunning to buy something, I just give them the receipt that is a thing I bought or to chemical shop, there's a chemical I bought - - -

30 You provide your sister with the receipts for all of the expenses for petrol, chemicals, function attendance costs and so forth?---Yes, yes - - -

You provide the receipts to your sister to validate that, that claim you make is one for which you're entitled, is that right?---Yes, yes, right, except in some case, just say in charity ball and they may not issue me a receipt, just okay this charity ball is \$100 so I just pay \$100 and you return, I just go back and talk to May Shum - - -

40 Do you pay by cheque to demonstrate that you in fact have paid?---Um, I pay sometime cheque, sometime cash because some function they prefer to have cash, so in that case if that charity ball may be \$100 they say I prefer cash then I just from my pocket I just pay \$100 and then um, go back to May Shum like this charity ball I pay \$100 for it, all right. So she just put on the record that's \$100 for the charity ball.

ASSISTANT COMMISSIONER: Excuse me. I think this might be a convenient time to take the morning break. Does that suit you?

MR LYNCH: Yes.

ASSISTANT COMMISSIONER: Thank you. We'll adjourn for fifteen minutes at this time.

THE WITNESS: Thank you Commissioner.

SHORT ADJOURNMENT

[11.34am]

10 ASSISTANT COMMISSIONER: Thank you, please be seated. Yes, Mr Lynch.

MR LYNCH: Thank you, Commissioner.

Mr Au, did you receive a notice to attend and produce documents to the Commission - - -?---Yes.

- - - earlier this month?---Yes, I did, yes.

20 And did that notice seek production of your - a copy of your tax return for the 2009/2010 financial year?---Yes, it is submitted.

You did not produce that document did you?---I, I did. I, I pass it to the solicitor Karen and, and she say she will pass it to the Commission.

I see.

ASSISTANT COMMISSIONER: Who do you say you passed it to?
---The solicitor Karen.

30 Karen who?---Karen - - -

MR LYNCH: Is that Karen McGlinchey?

ASSISTANT COMMISSIONER: Karen McGlinchey?

MR HOUGHTON: McGlinchey (not transcribable)?---Yeah, McGlinchey, yeah, yeah, McGlinchey.

40 MR LYNCH: Is she instruct you or - - -

MR HOUGHTON: No, she doesn't. She does not instruct me but I did have a conversation with, with the gentleman instructing Mr Lynch earlier in the week and I was told that the documents had been received by the Commission and that as far as they were concerned that the summons had been complied with so that I didn't seek any further compliance from Mr Au as a result of being told that.

ASSISTANT COMMISSIONER: Thank you.

MR LYNCH: I withdraw my suggestion, Mr Au, for the moment - - -?
---Thank you.

- - - and we'll clarify that, Commissioner. Are you a shareholder of the company AATC Pty Limited?---Used to be but not now, I sold the share now.

- 10 When did you sell the shares?---That is when, when May Shum bought the, the, the company I said better just to avoid the conflict of interest so I say okay, I just sell the shares. I just work for the company.

I'm sorry, I didn't, I didn't hear your answer?---Oh, sorry. When, when May Shum mention to me that she's going to buy the AATC Pty Limited I asked - well, I just - if that's the case I would like to, to sell the shares, all right, to minimise all those so, any conflict, I just would like to work for the company but not be a partner of the company.

- 20 When you say minimise the conflict, what do you mean?---If I am a shareholders I have some say in the company but if I'm not shareholder I don't have any say in the company.

But you're the manager of the company and its only employee are you not? Yeah, if I'm in the, a shareholder I got, I can voice my voices but if I'm only the employee I, I can act as employee not, not a shareholder.

- 30 Well, you were a shareholder in December 2009 when the company was first registered, were you not?---Yeah, at the first beginning I, I was a shareholder but later on I, I just sold the shares.

I see. And at the first meeting of the company it was resolved to accept you as the person who was given power to open, close and operate accounts for that company, is that right?---Ah, at, at that time, yes.

And did that remain the position?---No, no, no. I, I sold my shares, all right so - - -

- 40 I'm not asking you about the shares now so much, Mr Au, I'm asking you whether it continued to be the case after December 2009 that you were given power to open, close and operate accounts within that company?
---Yeah, I was given power but I, I don't, unless the owner May Shum ask me to act otherwise I just don't, just in case some emergency pop up, all right, and, and she was unable to sign the cheque, maybe she, she, she is not in Sydney or whatever the reason may be, then when she authorise me then I do it, usually I, I don't touch it.

Going back to AA1 Building Pest Solutions Pty Limited - - -?---Yes.

- - - were you the boss of that company?---Ah, I was the manager.

Who was the boss?---The boss is May Shum.

Your sister?---Yes.

10 And she would direct you in relation to what charges you should make would she, from time to time?---The, the charges is I, I talked to May Shum, all right, like usually the market rate is like that so usually I relay the message to May Shum and then we, after that we, we set a price together.

I see. So you would consult her about what was the acceptable price to charge for particular jobs?---Ah, yes. In addition to that because I, I am the member of HIA and, and used to be MBA, Master Builders Association, and so I get some certain information from the Master Builder Association and also the Housing Industry Association so roughly like the market or I charge around that, that kind of price so I discuss with May Shum and then we agree on, on the amount.

20

What, what do you mean the current price?---Current price just say its one inspection and it is - or one consultation, usually charge like 400 per inspection or per consultation.

30 Does the Housing Industry Association recommend a fee of \$400 per site visit to be charged does it?---I - after I talk to a number of builders in HIA and they say they charge probably, probably between \$400 to \$500 or per inspection so I say oh, well, that's the case, all right, so after a lot, a number of consultation with other builders doing the same business then I come up with an amount, like 400 per inspection.

So it's not the Housing Industry Association that proposes that rate, it's your discussions with other builders, is that the fact?---Yeah, I discuss with other builders. Usually is (not transcribable) will ask the, the builders, you better talk to your, your members to see currently in the market how much each builder charge then you can get some sort of reference.

Do you know if your sister got paid a salary by the company?---I, I - - -

40 AA1 Building Pest - - -?---Yeah, naturally yeah, she, she would get paid but how much I don't know. It, it's not my business.

When did you first meet, meet Shu Xian Liang?---That is probably I guess is early 2009, that time actually is - there, there is a property in Lidcombe.

No, when, when did you first meet her?---I guess maybe 2009, early 2009 I guess, maybe 2009 some time, all right is - - -

And how did you come to meet her?---I meet her because is an agent call me to do an inspection and at that time is Shu is planning to buy the property in Lidcombe and then agent say, oh you're inspector, how about you go there to do an inspection for the prospective buyer.

An inspection for what purpose?---For the purpose of whether there's like building issues or any pest issues and, and then to give her all the information and then she decide whether she should buy the property or not.

10 So is this a, a building and pest inspection assessment that you were requested to undertake of a property at Lidcombe?---Ah, yes.

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

Where in Lidcombe?---I cannot recall the address now. Is so long ago, yeah, I cannot recall the address.

20 And is it a property, property that you understood Ms Liang was considering buying?---Yes, that time I, yes, I, I got the information she thinking to buy the property, but she's not sure were there any like building issues or any pest issues. So, so I, I was engaged to do inspection and then just tell her what exactly the problem is, yes.

All right. Prior to that you didn't know Ms Liang?---Prior to that no, no memory, no, no, I don't think so.

30 All right. Did you meet her personally or did you speak to her on the phone?---At that time she was also on the property, all right. I can, actually is verbally explained all right, the - - -

Sorry, did you meet her personally or did you speak to her only on the phone at that time?---I meet her personally on, on the property.

And when was that in 2009?---I forget which (not transcribable) probably, I guess probably would be early 2009, early or mid, I can't remember the day now.

40 Did you inform her how much it would cost for you to do a building and a pest inspection?---Yeah, that time I mention to her is to do the inspection I charge 400 for inspection.

And did you provide a written report to her?---That time is so long ago, I can't recall is verbal one or written one. Sometime if the client request a verbal one I give them the verbal one. If they say, oh I would like some sort of record - - -

Can you remember what was the arrangement with Ms Liang?---Yeah, there was arrangement with Liang to go to the property and then meet at certain

time. And then I drive there and then start to do inspection and explain to her what kind of building issue or pest or - - -

You told her it would cost \$400?---Yeah, for the inspection, yes.

All right. And did you issue an invoice to her for payment of the \$400 after it?---I cannot remember now, is, usually if the client request a receipt then I give them a receipt. If they don't - - -

10 Did you give her a bill for \$400?---I have no memory.

Did she pay you \$400?---Yeah, she pay me cash \$400, yes.

When was that?---Sorry?

When was that?---That is in 2009.

When in 2009?---When, after I done the inspection.

20 And did you see her after you did the inspection in early 2009 and after she paid you the \$400?---After that, yes, all right, after that is, I, at that time I was the president of Lions Club. And, and then she mention about is like well Lions Club is charity, I say, yes, is charity. And she said, oh well I, I would like to do some charity. I say, oh that's fantastic. All right. And then she come in to join the charity ball and then she has one table and buy some raffles, two things, all right, I still appreciate that - - -

When was the charity ball that you're referring to?---The charity ball, that's in late 2009.

30

I beg your pardon?---Late 2009.

Late 2009?---Yeah, late 2009, yes.

Are you talking September/October/November?---Yeah, probably, yeah, yeah, usually we (not transcribable) November, yeah, somewhere November, sometimes did it early, sometimes did it late.

This is a Lions Club - - -?---Charity ball.

40

- - - charity ball?---Yes.

Which Lions club, which branch?---Lions Club of Sydney North West.

Lions Club of Sydney - - -?---North West.

- - - North West?---Yes.

All right. Of which you were the president you say?---Yeah. At that time I was the president, yes.

All right. Are you still the president?---No. At the moment I am the honorary president because the other president isn't present at the moment.

Okay. Between the time you first met Ms Liang - - -?---Yes.

10 - - - and you did the inspection of the property she was considering buying at Lidcombe - - -?---Yes.

- - - and the Lions Club charity ball did you have contact with her?---I cannot remember. The main thing is the, she say she would like to do some charity and that she come to contribute some money to the charity.

20 I'm asking you in between those two occasions did you have any contact with Ms Liang after the inspection of the Lidcombe property and prior to the charity ball or the discussion about the charity ball?---Could be, could be some phone calls, yeah, could be some phone calls. I can't really remember, it was so long ago.

What were the phone calls about?---Yeah, could be some phone calls, all right, is regarding the charity ball.

Did you have any other contact with her apart from that in that period?---In that period, no, no, no, not, no memory for that. No memory for that, sorry.

And you say she attended the charity ball?---Yes.

30 She paid for a table - - -?---Yes.

- - - of guests?---Yes.

How much did she pay?---That one is, I forget how much, a few hundred dollar but I cannot remember exact, exact amount.

40 Two hundred or 2,000?---No, no, is usually maybe one person we charge around maybe around 50 per head. If you have ten you're talking about 500 something like that.

So how many people at a table?---Usually is around ten.

Did she pay you – to your knowledge did she donate \$2,000 to the Lions Club North West?---She donate \$2,000 to Lions, I forget how much, she donate some money to Lions Club.

In addition to paying for a table?---Yes.

And when did you next have contact with Ms Liang after the charity ball?
---After the charity ball, yes she, she mention to some, yeah, she, she
contact me and mentioning (not transcribable) some sort of (not
transcribable) application to run this karaoke and restaurant. That is, I
forget the date and she mention about something like that.

She mentioned to you that she was pursuing a Development Application to
run a bar or a karaoke bar?---Yeah, yeah, run a something, a restaurant,
karaoke, two things.

10

Right. But the proposal was to run a business?---To run a business, yes.

All right. Not, not a residential proposal?---No, at that time, no.

And did you receive money from her subsequently?---For the inspection
part - - -

No, no, did you receive money from her?---Yes, just for the inspection.

20

How much money did you receive from her?---In - - -

- - - apart from the \$400 that you said was paid early in 2009?---I, we have
discussion about, right, is the - - -

No. I'm just asking you how much money you received from her? What
amount?---There was two payment for the building and pest inspection.
The first one is 2,000 and the second one is 2,000, add up to be 4,000 in
total.

30

Is that the only money you've ever received from Ms Liang apart from the
\$400 paid in respect of the Lidcombe property in early 2009?---That's for
myself, but Lions Club go to Lions Club account.

Did she give the money to you personally or did she write a cheque in
favour of the Lions Club when she made the donation to the Lions Club
Charity Ball?---I cannot recall whether cheque or cash but on the night I just
pass it to the treasurer and so I haven't touched it and the money go direct to
the treasurer and um - - -

40

So she paid it, made a donation to the Lions Club?---Yes.

You don't know whether it was in cash or cheque?---I cannot remember.

You handled it but passed it onto the Treasurer of the Lions Club?---I pass it
to the treasurer immediately on the night.

Apart from the \$400 you received in early 2009 for the building and pest
inspection at the Lidcombe property, have you received any other money

from Ms Liang other than this \$4,000 you've identified?---Oh, no other amount, just is 2,000 and 2,000 is for the building and pest inspection.

Have you received any other money ever from her apart from the four hundred in 2009, the Lions Club Donation which was not for you was passed on, and this \$4,000.---Yes.

Have you received any other money from her?---No, no.

10 Did you receive the money in a cheque or in cash or in some other way?
---That 2,000 and 2,000 that was in cash in an envelope.

Both payments made in cash by her?---Yes, in an envelope.

Where were they made Mr Au?---Sorry?

Where was the first payment you said made?---When?

20 Where, at what location?---The location I guess somewhere in Auburn I cannot remember the exact location and I still recall - - -

Was it a milk bar, was it an office, was it a park? Where was the money paid to you?---Um, it's somewhere in Auburn I cannot remember the exact location and I still recall when she paid me the first 2,000 she mentioned about thank you for all over time because I have discussed - - -

I'm just asking you for the money where the money was paid, not what the conversation was, I'll come to it shortly if I may.---Yes, um - - -

30 Whereabouts in Auburn can you recall where the payment was made?---I cannot recall exactly where, where exactly in Auburn, yes, somewhere - - -

You remember it was, you remember it was in Auburn?---Yes, I remember it was in Auburn, yes, it's um - - -

Was it in a building or in the open air, are you able to say?---Yeah, I cannot recall like where I get the first 2,000 it's, it's somewhere in Auburn because - - -

40 Was it at your office?---No, not in office.

Was it at her premises?---No, I don't think.

Was it at a restaurant?---Ah, I don't think so, it's um, I cannot remember where is um, and, and must be somewhere in Auburn because - - -

Was anyone else present when the first payment was made?---No, no person present, it's, she just come to me and just tell me thank you for all over time

and because I give advice regarding the petition, the toilet, the sushi bar, the wine bar - - -

I'll come to all of that Mr Au but if you just answer my questions for the moment we might move along a bit more quickly.---Yes.

You can't remember where the first payment was made?---No, I can't remember.

10 Do you remember where the second payment was made?---Um, again, the second payment, again, it, it's in Auburn and um, yeah it's in Auburn.

Where in Auburn?---Um, um, probably (not transcribable) it's the second payment probably it's um, to my memory is between the police station and the Auburn Council.

In the street somewhere?---Yes, that is in the foyer.

In the foyer?---Yes.

20

Of where?---In between police station and Auburn Council.

I'm sorry, I'm not familiar with that location.---The Auburn Council is one building and then police another building and in between there's a foyer there and um - - -

There's a void did you say?---It's open hall, right and um, she pay me money there, second 2,000.

30 How was it paid?---Cash, in an envelope.

In one envelope or more than one?---Yes, one envelope, yes.

And how was the first lot of money paid?---Again, the first also 2,000 in one envelope.

Did you look at the envelope, look at the contents of the envelope when she gave it to you?---Ah, she just said, thank you and I just put it in the pocket.

40 When was the first payment made, when?---The first was in late 2009, in late 2009.

Can you be any more specific as to the month or the day?---Um, I cannot remember exactly, it's to my memory it's in late 2009.

November, December, October?---I cannot remember which day, must be sometime in late 2009.

Right, and when was the second payment made?---The second payment is early 2010.

Can you be any more specific as to when the second payment was made? ---It's in early 2010.

Does that mean January, the first week in January, February, March?---I guess probably in January.

- 10 Do you remember any conversation that took place between and Ms Liang when she paid you the first payment?---Yes, I recall, she say that for all the overtime and um, I say, "Oh, okay, it's my pleasure," because I give her advice regarding the building part, the petition.

I'm just asking about the conversation, restrict yourself if you would in your answer to any conversation you remember that took place?---She say thank you for all the over time. I just say, "Oh, it's my pleasure to act as a consultant."

- 20 Was there any further conversation?---No, that's to my memory, I just recall she say thank you for all over time. I said I'm happy to act as a building inspector or consultant.

- Had you had any discussions prior to the first payment as to whether she should pay you any money?---We haven't discussed about the amount early, all right, but she did, we have conversation between the applicant and myself regarding, we're talking about whether one shop she bought it and the other shop she lease it and in between there's a wall there and she asked is it okay to remove it and also is the location the toilet, the male toilet,
30 female toilet - - -

Is the conversation you're describing about money or is this some other conversation?---No, no, that is the conversation prior to the 2,000.

Was it about money?---Not about money - - -

- Did you have any conversation about money is really my question?---No, that's not about, may be the building advice and the pest advice over the
40 phone.

I'll come to those conversations in a minute Mr Au but is it your recollection that there was no discussion between you and Ms Liang about money prior to her handing you this envelope in late 2009 which without looking at it you subsequently realised contained \$2,000. Is that what happened?---Yes, yes, she say this some money, thank you for all over time. All right. And then I said being a building inspector/consultant, is my pleasure and then I just put it in my pocket. So that is the first (not transcribable) first 2,000.

Subsequently when you, subsequently you discovered how much was in the envelope. Is that right?---Yeah, eventually I found that it's 2,000, yes.

And you told your sister that you'd been paid \$2,000 in late 2009?---Yes.

And between the first payment and the second payment - - -?---Yes.

10 - - - did you have any discussion with Ms Liang about money?---Ah - - -

About money payable to you?---Not, not with money but other - - -

I'm just asking you about money for the moment?---Not, not, not talking about money, no.

No conversation about money?---Not money.

And the second occasion, in early 2010 - - -?---Yes.

20 - - - at the foyer between the police station and the Council chambers - - -?
---Yes.

- - - she gave you another envelope did she?---Yes.

Just one envelope?---One envelope, yes.

And did you look at what was contained in it - - -?---Ah, no - - -

30 - - - prior to - - -?---No, she just say thank you, all right, and then I just put it in, put it in the pocket.

She didn't say anything other than thank you?---Right, she just say thank you, all right, is, and then I just put in the envelope, all right, I think is, is regarding the building and pest advice.

She didn't say what it was for, she just said thank you?---Yes.

And gave you the envelope?---Yes.

40 And when you discovered the amount that she gave you - - -?---Yes.

- - - after the first payment - - -?---Yes.

- - - were you satisfied that it was a sufficient amount?---Yes. I, I do the calculation like 400 per inspection, I gone there more than 10 times, all right. I, I have discussion with the, the one helping her, that's by the name of Addison Wu and naturally we walking up and down, all right, and then tried to resolve all right the noise issue and then we have a discussion with

the, the location of the sushi bar and so we, we - I've gone there more than 10 times, I say oh, well, yeah, so it is 400 for one time or more than 10 time probably 4,000, all right, 2,000 plus 2,000 is about right so I thought - - -

But after the first payment you'd only received 2,000 you say?---The first, yeah, the first payment is 2,000, yeah, that's right.

10 My question was did you consider the 2,000 when you discovered what was in the first envelope sufficient?---2,000 for so many inspection is not sufficient.

Right?---All right.

20 Did you speak to Ms Liang and say the payment you have given me is insufficient for all the work I've done for you or anything like that?---I haven't specially mentioned that, all right. It is - but since I've done the inspection for her before, that's 400 per inspection and so she did mention about, all right, because she's paying for the project, costing her money, all right, so oh, maybe she's a bit tight, all right, so, okay, all right, in that case I, I just have 2,000 first and then later on she's very nice, she say okay, I, I, well just go, go to the train there, the police station in Auburn she say okay, that, that is thank you for that.

30 Well, after the first payment was made by her you had no reason to think that she would give you any more money, did you?---Because she did mention about it's applying in court, applying the DA cost her a lot of money, all right, so she's a bit tight, all right, she, she indicate that. I say okay, if that's the case, all right, is - I haven't really asked for more at that time, all right, because she mention about it's a bit tight because it cost her a lot of money.

When did she mention she was a bit tight?---That ah - - -

When she paid you the first 2,000?---That is over the, the conversation, all right and - - -

Was it when she paid you the first 2,000 that she said she was a bit tight? ---That is before that.

40 Before that?---Just before that, yes.

So did you have some expectation that she would pay you more than 2,000 although nothing was said about such payment?---Yeah. Nothing was said, all right, I say well, you, if it's a bit tight there's no point to ask for more so, so that's why I just let it lay there, all right, and hopefully give, all right, she is running a profitable business and that time she can pay a bit more but I haven't really approached for that.

You never asked her to pay your regular fee of \$400 per visit?---I haven't specially asked her, all right, yes, but she is aware that I charge for inspection, it's 400 per inspection.

Yet she'd only paid you \$2,000?---Yes, right, because before that (not transcribable) conversation she mentioned it's a bit, a bit tight, I say okay, understood.

10 But you said that you did more than 10 visits. When was the first visit and to where?---In - probably the first one probably in September.

I beg your pardon?---September.

September of - - -?---2009.

- - - 2009 - - -?---Just September.

- - - you visited the premises at shop 9 and 10 of 1-5 Harrow Road, did you?
---Yes, I - yeah, yes, I gone to look at the shop.

20

Why did you go there?---Sorry?

Why did you go there?---Because she mention about she, she understand, all right, I, I'm a, I'm a licensed builder and licensed pest controller, all right, and so, so go there to give some sort of advice.

30 She said to you, I know you're a licensed builder so go to my shop and give me some advice, is that what you say?---Not specifically because I've done - actually she, she know my, I'm a licensed builder and pest controller when, when I done the first job for her in, in Lidcombe and so she's aware I'm a - - -

No, what did she say to you, Mr Au, when - prior to your going to the shop in September of 2009?---Ah - - -

40 What did she ask you to do if anything?---She asked me to come to look at the site, all right, and then to see - she bought one shop, all right, she lease another one, whether that wall can be demolished and, and also just where I should locate the toilet and, and the wine bar, sushi bar and also is it all right to partition some of the rooms for karaoke.

This is a conversation you had with her, is it - - -?---Yeah.

- - - prior to the visit?---Ah, yes.

Over the phone or in person?---I think I, when I was on the site, all right we, we, we discuss on the site.

So you and she both attended at the site - - -?---Yes.

- - - some time in September 2009 - - -?---Yes, ah hmm.

- - - after she had requested you to give advice or did she request you to give advice when you both turned up at the site?---She ask me for advice about, about the - - -

10 At the site or prior to meeting there?---Ah, prior to the site she asked me to go there, all right, to look at the, the two shop, ah, it's 9 and 10.

She asked you over the phone or in person?---It could be, could be just verbally just come to the shop, verbally just come to the shop to see like what, what kind of thing I need to do, whether this wall can be demolished, whether it is structural wall.

20 So do you mean you came to her shop without being asked to?---Yes, I, I went to yeah, yeah, the shop 9 and 10, all right, and then give, give her the building advice.

I'm sorry, I'm just trying to clarify why would you go to her shop prior to anyone asking you to do so?---She asked me to go to the shop to look at the shop.

When did she ask you to do that?---Oh, that's - I forget whether, a day or two ago, all right, and asked me to come to the shop, all right, so I, I went there and then there's a wall between the two shop, all right, whether this is structural - - -

30 I'm just not asking you about the wall for the moment?---Mmm.

I'm just asking you how you ended up at the shop. Did she phone you and say please meet me at the shop, I need some advice or what did she say? ---She - I forgot whether it is, is, it is face to face or over the phone, all right, and just go to give some sort of advice so, so I just pop in there, all right, and then explain the situation, the building, how, how to do this and do that.

40 Well, can you specify with some greater precision what she asked you to do at this meeting you say occurred?---She asked about there's a wall between the shop 9 and shop 10 and whether this wall can be demolished, whether it is structural wall and also is the location of the, the toilet, there's male toilet and female toilet, the, the wine bar, the sushi bar and, and the partition, all right, the public rooms for karaoke, all those like, like advice.

She asked you about all of those things at this first visit in September 2009, is that right?---Yes.

And did you provide her with advice in respect to all of those issues at this meeting in September?---Yes. Yes, I give, giver her advice.

Just let me ask the question, please?---Yes.

In September, 2009 did you provide her with verbal advice about all of those issues you've just identified?---Yes, I give her verbal advice.

10 All right. And did you send her a bill for \$400 for that advice?---No, no.

Did you ever send her a bill?---No, I haven't. Because she got experience, I do inspection for career and there will be money attached there. Every inspection all right, is that's money there.

20 What made you think there would be money attached rather than seeking your advice as a friend for example?---Because I done a inspection for her before that cost \$400 and then she aware I, I can do that kind of job, I'm licensed builder, I'm licensed pest controller, so she's aware that the inspection, I do it for career.

She's aware that this request for advice would lead to an expectation by you of a payment of \$400. Is that your evidence?---Per inspection.

I beg your pardon?---Per inspection, \$400 per inspection.

Per inspection?---Yes, right, yeah.

30 When was the second inspection that you say occurred?---I go there more than ten times. I cannot recall - - -

I'm just asking you about the second inspection?---The second probably some time in September, probably could be some time in, in October. It could be some time in October.

Have you got any record of when the inspections occurred?---Usually I write it down in my diary.

But you don't have your diary?---I don't have my diary any more.

40 Have you destroyed your diary?---Sorry.

Have you destroyed your diary?---I look for it, I, I couldn't find it at the moment.

So you've not destroyed it?---No, no, no. I have to look for it, yeah.

And what prompted you to make the second visit to the site?---Because she doesn't understand much about the construction part - - -

No, no, did she ask you to go there a second time or did you go there of your own initiative?---Well I go there, yes, just see, follow up to what exactly all right, is going on there.

Mr Au, you said to the Commission that you had been asked to provide some advice - - -?---Yes.

- - - about a range of issues?---Ah hmm.

10

You provided all of that advice - - -?---Yes.

- - - at the first visit. My question is what prompted you to go there a second time? Did she ask you to go back a second time or not?---She, she got assistance all right, called Addison Wu and Addison Wu call me, all right, he's just come to the site, right. And then we, we discuss the details and such as the, the noise problem, the location of sushi bar - - -

Leaving aside what you discussed for the moment - - -?---Yes.

20

- - - is it your evidence that Addison Wu, Ms Liang's architect requested you to go there on the second occasion?---Yes, to my memory.

And how did you come to know Addison Wu was involved in the plans?
---The applicant Shu, did mention about she, she got an architect helping here and, and by the name of Addison Wu.

30

And had a Development Application been lodged at this stage to your knowledge prior to Addison Wu contacting you?---Could be, could be just, just not (not transcribable)

I beg your pardon?---Could have just, just not to, to the Council.

Did someone tell you that a DA had been lodged with the Council?---Yeah, is, yeah, that's some sort of information, I'm not sure get from the applicant Shu or from Addison Wu, they mention a DA has been lodged.

Was your involvement in discussions you had with Ms Liang or Addison Wu - - -?---Yes.

40

- - - did that have anything to do with the DA?---Is mainly the building and the pest advice, is not to do with the Council. All right. The Planning Department, they do, they assess the planning, the DA. I'm not in a position to do that.

Did your – the work you say you did for Ms Liang - - -?---Yes.

- - - did that have anything to do with the Development Application she had lodged?---It is purely the building and pest advice, is nothing to do with the Council DA.

And what did Addison Wu ask you to do in this conversation that you referred to that led to your second visit to the site?---Regarding the, the noise problem and the location of the sushi bar, all those like usual we have discussion. You have to walk up and down the building to discuss those issues.

10

So he asked you to do something about a noise problem?---Ah hmm.

And something about the location of the sushi bar. Is that right?---Yes. Yes.

Did he ask you about – to do anything about anything else?---We, we go through the shop 9 and shop 10, all right. And we have - - -

20 No, no, prior to you going there on the second occasion did Mr Wu ask you to participate or advise on anything other than those two matters?---We have a brief discussion about like the toilet, the wine bar, partition, those things, we have a brief discussion about that.

And he was asking your advice was he about - - -?---Yes.

- - - how to design the plans - - -?---Yes.

30 - - - to support the development?---Yes. Mainly is, because we try to do something is cost effective and I'm licensed builder so I advise them (not transcribable) like the wet area is this way, probably you will save money. And - - -

So did Mr Wu or Ms Liang send you a copy of the plans?---No. Is Addison Wu did mention about what he's thinking, all right, and then so I, I make comment on that and give them some - - -

40 And he didn't show you show any plans?---He just verbally all right, mention all right, well is in his mind, all right, is he thinking about do things like that. So I, on the information he give to me, I give my professional advice accordingly.

And what was your professional advice that was given on this second occasion?---Just, just say okay, do wet area such as the toilet, the wine bar, sushi bar, those things, all right, have to really look at the sewerage system because those are the, you have to work on that, yep, and because if you have one thing in one corner and the other thing in the other corner, it will be really costly. And so the location wise try to be on the same side and

easy to connect with the sewerage system. So those advice I give it, yeah, to, to them.

Addison Wu was an architect to your knowledge?---Yes, yes.

Do you think he wouldn't be aware of those rather obvious site locations of wet areas?---Yeah, he's, he's architect, all right. Yes, but like sometimes physically how to do it, all right, is, I don't know how much knowledge he has. So, so it's good to have a discussion about that.

10

Is there any record of what you said at this second site visit? Did you make any records of the advice you gave to Mr Wu?---I put, yeah, I put those things on, on a diary and like, like what kind, what kind of things discussed, the sushi bar, the noise - - -

You made a record of them in your diary did you?---Yeah, I make something on the diary, some sort of record there.

20

And did you explain to Mr Wu that you would expect payment of a fee for the advice that you provided him?---I, I did not specifically ask because I base on the logic that I done the inspection (not transcribable) for her before and I charge a fee for that. That's my career so I just base on that kind of assumption all right, and she will pay me later on.

Normally in business payment of a fee for a service usually takes place after a bill issues, do you agree with that?---Um, again depends on the client. Some client, all right, they say I don't need the invoice, all right - - -

30

Did Ms Liang ever say she doesn't need an invoice?---She hasn't asked any receipt.

Did she ever say she didn't require an invoice?---She hasn't asked for it.

Did she ever say, she did not require one, that is a different question to whether she asked for one or not?---Oh, she not specific, not required but she did not ask for it.

40

Did you have any conversation with an Addison Wu about payment for advice you provided to him as you say?---No because Addison is not the boss, is not the applicant so usually I don't discuss money with other people, only the, I don't discuss, all right.

But with Mrs Liang you never had any discussion about money apart from the initial \$400 fee for the pest inspection in early February. Is that right? ---Yes, I just base on assumption the applicant (not transcribable) understand, all right, I do this for career so um, the inspection I need to get money from inspection.

Was there a third visit to the site?---Um, I really am sorry, so long ago, I cannot remember every single visit now, it's so long ago.

Was there a third visit?---Yes, there's roughly I guess probably out to be over ten visits. Sometimes I drive there, pop in or I just see everything is okay or not.

I'm just asking you about each specific visit that you made?---No, I cannot recall every single visit, sorry, it's so long ago in 2009.

10

How do you know there were ten or more than ten?---Just because that, the time I put on my diary.

You don't have your diary?---Sorry?

You don't have our diary?---No I don't.

ASSISTANT COMMISSIONER: As I understood your earlier evidence you don't keep the diaries.---Usually I don't, I, I record it in the diary it's like, like how many jobs I have per day - - -

20

Yes, I know all that. If you could just listen to the question and answer it. ---Yes.

As I understood your earlier evidence you don't keep your diaries.---Mmm.

Keep them, retain them?---No, I don't retain them, yes that's true, yes right.

You throw them away do you?---Yeah, yeah, after year I just, I just throw it away because it very bulky.

30

I beg your pardon?---Very bulky sorry, the diary is very bulky, yeah that's right.

They're very bulky, you can't keep them because they're bulky?---Yeah, I don't keep after a year, I just keep the new one.

MR LYNCH: So you destroy or dispose of the 2009 diary shortly after, in early 2010 is that what happened?---I cannot remember the day now right but usually I don't keep after a year, I keep a new one and then I just put aside the used one.

40

You don't know when you disposed of your 2009 diary, is that your position?---No, I cannot remember.

When were you first asked to explain yourself in relation to this investigation by the ICAC?---There was a private hearing before - - -

When were you first asked to explain anything about this investigation?
---When I first - - -

When was that, this year, last year?---Let me see now, um, I see that is a few months ago one day ICAC staff call me, that time, I'm going to attend a citizenship and they say I need to talk to you all right and then - - -

It was a few months ago - - -?---Yeah, a few months.

10 - - -the first time you were asked to explain anything about your role in this investigation?---Yes.

And between a few months ago and the end of 2009 did you ever look at your 2009 diary to ascertain how many visits you made to Mrs Liang's shop?---Just to my memory roughly over ten times, I don't have the - - -

Did you look at your diary, was my question?---No, I did not.

20 So you're guessing are you not when you - - -?---I just to my memory - - -

Let me ask the question please.---Yes.

Are you guessing when you say there were more than ten visits?---To my memory it's more than ten times but I don't have the specific day.

You don't remember the third visit, what prompted the third visit?---No, I don't. I cannot remember specifics, sorry.

30 Do you remember what happened at the third visit if there was one?---No, I cannot remember details. Sometimes a long one, sometimes a short one, sometimes I just pop in to see everything looks okay, all right. So sometimes a long one, sometimes a short one, so - - -

Do you remember, do you remember what prompted you visiting a fourth time?---I just sort of a follow up the case all right, on the site, so I just pop in - - -

40 Did anyone ask you to attend on the fourth time or the third time or any of the other times?---I have discussion every now and then with the applicants (not transcribable) or the architect Addison Wu every now and then, all right and so I can't really remember specific, all right, it's, it's some time just come to the site it's okay so I just go to the site.

Mr Au, do you appreciate the importance of giving honest answers to the Commission?---Yes.

Do you remember any conversations, firstly, with Ms Liang after the second visit which prompted you to visit subsequently?---Um, when I go there is um - - -

Do you remember any conversations where you were asked to go there with Ms Liang after the second time?---Um, I was either asked by Addison or the applicant Shu to see, come to the site to see what's going on there. But I cannot remember the specifics.

10 What about the fourth, five, sixth, seventh, eighth, ninth or tenth visits, do you remember anything about them?---Sometimes a short one, I just pop in to see looks everything okay, all right - - -

Do you remember anything about the particular visits that you say you made to the site?---Ah, the, I have an in-depth conversation with Addison Wu, all right, is just about the noise and the sushi bar, those things, all right and follow up on that and that is, because that time we had to go up and down through the stairs to investigate what's the best way, all right, to do it. So that time I spent quite a long time there.

20

There was no building work going on I take it because the DA had yet to be approved, is that right?---Yes, but they still doing some sort of partition thing because it's (not transcribable) I remember is some sort of defer, defer approval so theoretically it's approved but with conditions.

And when did you learn that there was a deferred approval?---Um, the, the Addison or Shu asked me to follow that up to see what is the latest regarding that DA application so I communicate with the planning staff and eventually I found out that it is approved with deferred commencement, with conditions there it's through the, the email.

30

You were actively involved in advocating on behalf of Mrs Liang to Mr Brisby and Mr Francis in trying to speed up their consideration of the DA, were you not?---No, no, the reason in the email, all right, the last time (not transcribable) how come I put down speed up. The only reason is because somebody additional document is because of the computer link error is the staff mentioned about they haven't got it. So that is a lost time there. That's the only reason I asked them in order to make up the lost time, speed up a bit because the document was lost and I asked them to do a bit of investigation, eventually, the document was found and then the computer error was rectify and then they can continue to assess the DA and then keep the applicant informed of the latest situation. That is the only reason for ask them to speed up.

40

Can I show you this document please?---Yes.

And this is a statement, Commissioner, of Mr Mark Brisby appearing at pages 44 to 100 which has been distributed to my learned friends. Have you

had the opportunity to read this statement, Mr Au?---Is it the, the whole thing, sorry?

Mr Brisby?---Is it the front page, which, which page is that? Is it, is it attached with this one?

Have you had the opportunity - have you had the opportunity read Mr Mark Brisby's statement?---No, I haven't, haven't got, yeah, can I read it now?

10 Can I take you to - - -?---Yes.

- - - paragraph 2 - - -?---Yes.

- - - page 45 in the top right-hand corner?---Yes.

It says "At about 5.00pm on 14 October, 2009 I attended a meeting with Ms Liang at the - - -?---Yes.

- - - Council offices"?---Yes.

20

"This meeting was requested by Councillor Jack Au"?---Okay.

That's true, is it not?---Ah, yes.

Also present at the meeting were Glenn Francis and yourself?---Yes.

That's correct?---Yes.

30

Would you go to paragraph 4 please?---Yes.

Were you - did you request a meeting which took place on 16 December with Ms Liang and Mr Brisby and Mr Francis and yourself?---Yes, that, that is the normal thing I do, all right, organise meetings.

I'm just asking you whether you agree with the statement made in that paragraph by Mr Brisby?---Are you talking about paragraph 4?

Correct?---Okay. Okay, yes.

40 Now, look at paragraph 5?---Yes.

After the meeting that you had with Mr Brisby concerning Ms Liang's DA - - -?---Yes.

- - - did you also have another meeting that day, that same afternoon in relation to another applicant?---Yeah, originally I believe I, I don't have the specifics, all right, but if its written like that I believe, yeah, I organised,

organised a lot of meeting, all right, is between the planner and the residents.

Okay. You see paragraph 6, it says "On 18 January, 2010 - - -?---Yes.

- - - further material which is the subject of the deferred commencement was received by Auburn Council"?---Ah hmm.

10 "I was not aware that due to a computer error this was not realised until 3 February"?---Yes, that - - -

That, is that a delay that you were referring to?---Yes, that's the delay, yeah, that's right, yes.

Thank you. Could you read paragraph 7 to yourself please?---Yes.

Can you also look at page 50 - - -?---50.

20 In the same bundle?---Yes.

At the top of page 50 an email from you to Mr - - -?---Yes.

- - - Francis copied to Mr Brisby?---Yes.

Setting out, inquiring on behalf of Ms Liang when the - when she can get the Construction Certificate?---Yes, ah hmm.

30 And also asking if the restaurant and sushi bar can operate 24 hours day - - -?---Yes.

- - - because the soundproof design is good for that?---Ah hmm.

You were advocating on her behalf, were you not - - -?---Yes, she asked me - - -

40 - - - to support approval of the development application?---Actually, she asked me to follow that up, all right, its on her advice, asked whether when she can get a CC and also is whether she can operate 24 hours. Right. So is, is on her request so I write it.

Was the payment she made to you to cover that work which you did in your role as a councillor?---No, no, no, not for this.

This was for - - -?---The payment is not for this. No, no, no. Is for the building and pest, is not for coordinate the meeting, not for follow up the case, no, no, that's not for that, no.

All right. Can you go back to paragraph 8 on page 46. It refers to an email received on 5 February, 2010 from you - - -?---Yes.

- - - which related to some missing documents?---Yes.

And the email is at page 52, annexure B. Can you look at page 52?---Yeah, 52, yes.

10 Is that an email you sent to Mr Brisby, Mr Francis, Mr Burgess and all of the councillors - - -?---Ah hmm.

- - - on 5 February, 2010?---52, which paragraph are you talking about?

Page 52, the bottom email?---The bottom email, I see. Yes, is, we got the document missing, all right. And they mention about the document going in but the staff say haven't got it because it come, (not transcribable) computer error and - - -

20 You, your email is requesting John Burgess, the General Manager of the Council - - -?---Yes, yes.

- - - Mark Brisby and Glenn Francis to investigate - - -?---Yes.

- - - where some missing documents have gone?---Yes, yes.

On behalf of Ms Liang. Correct?---Yes, yes. Because, yes.

30 And you, and you say at the bottom of that email, we have to help the business people to employ people in our area but they have faced a lot of difficulties - - -?---Yes.

- - - in applying to set up a business?---Yes.

Time is money?---Yes.

All unnecessary delay costs the applicant a lot of money?---Yes.

40 I expect an urgent reply to fix the case?---Yes. Yeah, because there's a delay and, and the applicant did complain, how come the, the document going in but the staff say never receive, eventually found out because a computer error. So that cause a bit of lost time so that's the reason why I say have to really have a bit more efficient and effective, all right, because the lost time is really cost the applicant money because one shop is owned by her, the other shop she lease it, she pay the rent over that. So really, that is the reason I write this.

You were advocating on her behalf to have the Council try and sort out what you considered were unnecessary delays by the Council in determining her

application. Is that fair?---Yes. Yeah, she ask me to, what happened to the additional document and eventually, Glenn Francis, the manger explain to me because a computer error. So, so there was an error there and the error was eventually rectified, all right, and then they can continue to asses the DA. All right. So if I don't ask for investigation the document could be lost forever.

10 Well you not only asked for an explanation, you say you expect an urgent reply to fix the case?---Yeah, to fix the case is get the document out. That is what I mean, all right, because the document was missing and naturally the applicant say they pay the money, all right and then they submit the additional information and with a receipt and then the staff say they haven't got it, all right, because of – actually eventually I got an email from Glenn Francis indicating there's computer error. So - - -

All right. Do you think that's an appropriate way to correspond with the Council planning officers in relation to an applicants DA?---Because, all right, because the document was lost, all right - - -

20 Do you think it's an appropriate way to communicate with the Council officers who were supposed to be considering the application?
---To me I just ask for the investigation, all right, what happened to the lost document. I think it's appropriate.

I note the time, Commissioner.

ASSISTANT COMMISSIONER: Yes. I note the time.

30 MR LYNCH: There's just one matter which I might deal with if I may.

ASSISTANT COMMISSIONER: Yes.

MR LYNCH: Why did you send this email, copy it to the councillors as well as Mr Burgess and Brisby and Francis?---I just - that it's open, transparent, all right, I have nothing to hide, all right, so that's why I let the other councillors know, all right, I am doing a job for the applicant and, and, and the resident. It is a bridge between the community and the Council, that's my role as a councillor.

40 If that's a convenient time.

ASSISTANT COMMISSIONER: Yes. We'll adjourn at this time until 2.00pm.

LUNCHEON ADJOURNMENT

[1.02pm]