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PUBLIC
HEARING

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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 WEDNESDAY 28 MARCH 2012

AT 2.25PM

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. Yes, Mr Young.

MR YOUNG: Commissioner, as I came in the tribunal I was handed a document by Ms Shum. I don't represent her, I represent Mr, Mr Au, but it's something I thought should be brought to the attention of the Commission. It just goes to the state of her health at present.

10 ASSISTANT COMMISSIONER: Yes, that's noted. Ms Shum, can you come back to the witness box, please. And I understand we have a new interpreter.

THE INTERPRETER: Yes.

ASSISTANT COMMISSIONER: Your name, please.

THE INTERPRETER: My name is Theresa Lee. Ms Lee, you'll have to take an oath or affirmation.

20 THE INTERPRETER: Oath, please.

<THERESA LEE, sworn

[2:25pm]

ASSISTANT COMMISSIONER: Thank you. Please be seated.

THE INTERPRETER: Thank you.

MR LYNCH: Ms Shum, pardon me, the first visit from the officers from the ICAC on 11 August occurred were you aware before that date that there was an investigation by the ICAC that involved your brother, Jack?

THE INTERPRETER: What's the brother's name?

10 MR LYNCH: Jack?---I did not know.

Commissioner, I think formally I should apply to have the suppression order in respect of the private hearing in relation to Mr Jack Au lifted. I'm not proposing at this stage to distribute that transcript, but in order for me to make reference to it I think I need you to consider lifting that suppression order.

ASSISTANT COMMISSIONER: Yes, well I lift the suppression order to the extent that Mr Lynch may refer to that evidence.

20

MR LYNCH: Thank you. Did your brother tell you on the same day that you were visited by the ICAC officer on 11 August, 2011 that he too had visited the ICAC in relation to a matter that same day?---No.

When did you first learn that your brother was the subject of an investigation by the ICAC?---On the day when, on the day when I met with the ICAC.

30

The first day, that is 11 August?---I can't remember the date.

Was it the first day that you were visited by an ICAC officer?---He rang me up earlier but when I cannot remember.

All right. Was it on or about 15 August, 2011, shortly before you signed the statement that's at page 259?---He rang me up and asked me to go and see him.

I'm sorry?---He rang me up and asked me to go and see him.

40 The ICAC officer asked you to go and see him?---(NO AUDIBLE REPLY)

And did you do so?---He ask me and I went.

Where did you go?---I can't remember.

To this building?---I really can't remember.

You said that the document you described as the invoice, excuse me a moment, at page 216 was saved by you on your computer is that true?
---Yes.

And how did you save it? Did you press save and put it in a file?---Yes.

Is that what you do with all the documents so that you have a permanent record on the computer of them?---I can't remember now.

10 All right. And the computer you saved the document on, is the computer that you provided to Mr Berry in September 2011, is that right?

THE INTERPRETER: Please hang on, what's the name again?

MR LYNCH: Mr Berry.

THE INTERPRETER: Mr Berry, on which date?

MR LYNCH: On 7 September, 2011?---I can't remember now.
20

Did you not tell Mr Berry on 7 September that the computer on which you retained AA1 documents was the computer which he took away with him from your premises in Ashfield?---I can't remember.

Well, I suggest to you that at the visit you produced the hard copy of the document at page 216 and you told Mr Berry that you created the document, that's true, isn't it?---Yes.

30 And he asked you what computer did you create the document on and you indicated the computer which he ultimately took away with him for analysis. That's true, isn't it?---Yes, correct.

Did you have any other computer, any other computers available in your business at that time?---I can't quite remember but the computers always went (not transcribable)

40 All right. But were you truthful when you identified the computer which you say the document was created on in the conversation with Mr Berry in September last year?---I can't remember what he asked me at that time.

All right. Well, I suggest to you he asked you which computer did you create the document on and you said this one and pointed to a computer which was the one that he took away with him. That is true, is it not?
---I can't remember, it's such a long time ago.

You told the - some Commission investigators in February of this year that you had no other computers available to you as at February 2010. Is that correct?---Yes.

And was that true?---True.

Have you considered what the Commissioner invited you to consider over the luncheon adjournment about your earlier answers in relation to the validity of this invoice at page 216?

THE INTERPRETER: About the validity of the document did you say?

10 MR LYNCH: About the validity of the document at page 216 which is open before you?

THE INTERPRETER: When you say validity it means whether is valid or not?

MR LYNCH: Whether it reflects truly its contents?---Yes.

20 And do you wish to change any of the evidence you gave earlier before lunch about this document?---I can't quite remember what I said in the morning.

All right. I'll ask you again, is this – was this document at page 216 created on 2 February, 2010 or after that time?---I can't remember, but as the date indicated here says 2 February, so I thought it was 2 February.

Is it the case that your brother has requested that you create this document with a date of 2 February when it was created after that time?---I feel that it is not so, I think is not so.

30 Did you create this document after 2 February of your own initiative when discovering that your brother was the subject of some inquiry about his role in Ms Liang's DA?---No.

Can you look at page 223 in the bundle before you. Was it normal for pest inspection reports done by your brother to attract a fee of \$400 per inspection?---In fact sometimes \$400 are charged, sometimes a fee of \$350, sometimes a fee of \$300.

40 And sometimes a fee of \$200 or \$165 in 2010. Is that right?

THE INTERPRETER: 200 or - did you say 200 or 165?

MR LYNCH: Yes?---Yes.

Why the, why the difference?---Because with customers, with some customers, it all depend on the market, with Chinese people if - Chinese business people, if they bargain with you then we will give them a discount.

Well, of the documents that you produced from page 217 to 223 samples of invoices sent to clients, none of them charged \$400 did they?---Yes but, but what I said about the \$400 is our current fee.

Well, do you discount the fee from something before you send out the invoice?---Yes.

You don't say that on any of the invoices other than the one at page 216?
---Because the others are different.

10

Why are they different? I'm sorry?---I just do it one by one. Because that one is building consultant the others were, were, the others were pest control or building and pest report.

Did you issue a receipt for the payment that you claim you received from your brother on 15 January, 2010 for \$2,500?---I can't remember.

20

If you received a payment on 15 January why would you not issue a receipt on or about that date?---Because I waited for everything together before I do it together.

How did you know that there would be further money paid?---Because engineer project was not completed yet, only some part of it was done.

What engineer project?---Jack told me that project, only part of the project was done.

When did he tell you that?---I can't remember now.

30

Did he tell you that he had told Ms Sue how much she needed to pay for his work or your company's work?

THE INTERPRETER: Ms Sue is it? Ms Sue?

MR LYNCH: Ms Sue.

THE INTERPRETER: Did he tell you that he has told Ms Sue - - -

40

MR LYNCH: Ms Sue how much she would have to pay for the project?
---He told me it would be approximately \$6,000, but there will be a discount.

And when did he tell you that?---I can't remember.

And did he tell you that he had told Ms Sue that she was expected to pay \$6,000 subject to a discount?---Yes.

So that Ms Sue was informed by your brother of the total cost for the work that he'd done on behalf of your company. Is that what he told you?---I don't know.

You say that your brother is paid a wage of \$300 a week plus bonuses. Is that right?

THE INTERPRETER: 300 - - -

10 MR LYNCH: \$300 a week.

THE INTERPRETER: - - - a week wage.

MR LYNCH: And bonuses, just \$300 a week and bonuses?---It is so now.

I beg your pardon?---It is so now.

20 Was it so in 2010?---I can't quite remember now, but he actually get the vehicle, the petrol and purchase allowances, it will be approximately that figure.

What's his salary each week?---I can't remember now.

Twenty dollar a week sound about right to you?---In fact the company would give him a lot of things, for (not transcribable) going to the functions, for meeting money and also buying things.

30 Was his salary \$20 a week in 2010 from AA1 Building Pest Solutions Pty Limited?---I can't remember.

You were in charge of the financial affairs of the company at that time weren't you?---Yes but it is such a long time ago I can't remember.

All right. But he's currently being paid \$300 a week in bonuses is he now? ---Yes.

40 And in 2010 did you, did the company pay you a salary of work you did? ---In fact if the, if the money, the company has been able to make money, in other words making a profit, then they will pay me a salary otherwise they will not.

How much did they pay you in 2010, the company that is?---I can't remember now.

What about 2009?---Also can't remember.

You said in your statement dated 11 August, 2011 that you provided statements and invoices to Herman Chang, your accountant, who does the

BAS certificates and all of the tax relating to the company. In your earlier evidence you said you only provide a total amount of receipts to your accountant. Which, which is the fact? Do you provides copies of the invoices to your account or do you only provide the total amount?---The total amount.

Why did you say in your statement at paragraph 13 at page 262, “I provide statements and invoices to Herman Chang, our accountant, who does the BAS certificates and all of the tax”?---I can’t remember now.

10

Finally, Ms Shum, I’ll give you a final opportunity to consider this question. What I’m suggesting to you is that the document at page 216 is a fake?
---No.

20

That’s all I have, Commissioner. Excuse me. There are two statements of a forensic expert Ms Bronwyn Barker who is a forensic officer from the Commission who’s analysed the computer as well as a number of other computers which reflect that the document at page 216 has not been saved on the computer that was provided by Ms Shum on 7 September to ICAC officers or on some other computers that were analysed which were obtained as I understand it from Mr Au himself.

ASSISTANT COMMISSIONER: Well I think Ms Shum should be given an opportunity to respond to that if she can. It should be put to her.

MR LYNCH: Yes, yes, I should give her that opportunity.

THE INTERPRETER: Do you want to repeat that, sir, please?

30

MR LYNCH: Yes. Ms Shum, I want you to assume that a computer expert has analysed the computer which provided to Ms Berry on 7 September in which you had identified as the one on which you created the document which is at page 216 and her report says there was no such document saved on that computer. I should give you an opportunity to offer any explanation as to why that might be in view of your earlier evidence that you saved the document on that computer?---I can’t remember.

40

ASSISTANT COMMISSIONER: You’re not being asked to remember, you’re being asked to explain. You said you saved this invoice on that computer and this computer expert says it’s not on that computer. Do you have any explanation for that?---Possible, maybe times the computer has gone out of order that I would use other computers.

What other computers?---Borrowing a computer from a friend.

Is that what you say you did for this invoice?---I can’t remember.

Ms Shum, it appears to me that you're not even attempting to be truthful in your evidence. This is a serious matter and you can't just come along and say anything that pops into your head. Now did you or did you not create the invoice at page 216 on the computer you gave to the investigators?---I can't remember.

Can you produce any business records of any kind that support any of the information contained in the invoice on page 216?---No, no.

10 And as I understand your previous evidence in relation to the missing diaries, do you suggest that your mother has somehow destroyed or taken those diaries?---No, not what my mother has done.

ASSISTANT COMMISSIONER: Well, you have suggested in some of your evidence that your mother may be responsible for the diaries being missing.

THE INTERPRETER: Being destroyed, did you say destroyed?

20 ASSISTANT COMMISSIONER: Destroyed or taken I believe she said in her statement.

THE WITNESS: Because my mother has a mental problem so sometimes she may do things that you can't understand.

So you are suggesting that your mother may be responsible for the diaries being missing?---Possible.

30 Yes, thank you. Yes, Mr Lynch.

MR LYNCH: That's pure speculation, Ms Shum, isn't it? Nothing more than speculation?---Yes.

I have nothing further.

ASSISTANT COMMISSIONER: Yes. Have you tendered those, the statements.

40 MR LYNCH: Yes, I do.

ASSISTANT COMMISSIONER: Yes. Yes, the two statements of Bronwyn Barker dated - - -

THE INTERPRETER: Bronwyn Barco is it?

ASSISTANT COMMISSIONER: Barker.

THE INTERPRETER: Barker.

ASSISTANT COMMISSIONER: B-A-R-K-E-R, two statements of Bronwyn Barker dated 15 March, 2012 and 26 March, 2012 will be Exhibit 5.

**#EXHIBIT 5 - TWO STATEMENTS OF BRONWYN BARKER
DATED 15 MARCH 2012 AND 26 MARCH 2012**

10 ASSISTANT COMMISSIONER: Thank you. Yes. Does anybody seek leave to examine Ms Shum?

MR YOUNG: Just briefly, I do, yes.

ASSISTANT COMMISSIONER: Yes, Mr Young.

MR YOUNG: Ms Shum, you were asked some questions on the subject of GST. Now, is it your understand that GST has been in operation in Australia since around 2000?---Yes.

20

And you can calculate GST from any invoice by simply dividing by 11? ---Yes.

And would normally any services that were provided by AA1 Building Pest Solutions be subject to GST?---Yes.

And for example if you look at the tax invoice on page 217 that has an amount of \$330 there, it doesn't say anything about GST but - - -

30 THE INTERPRETER: Hang on, let me, let her turn to that page first. Yeah, it is on, she is on page 217 now.

MR YOUNG: 217. You see there a payment 330?---Yes.

And that would be subject to GST, \$30?---Yes.

Now, you never went out on building inspections did you?---Yes.

40 So would you be reliant on information provided by your brother as to what should go into invoices?---Yes.

Now, are you able to read English?---Not very good.

All right. Well you have the book open there at page 204 and if you go through there to page 215 you see this is described as a record of service of a section 22 notice by the investigator - - -

THE INTERPRETER: Oh, hang on, hang on, described as record of service
- - -

MR YOUNG: It's at the top of the document, it's at the top of the
document on 204. You see there you – it says it's a record of a service of a
section 22 notice by the investigator Simon Berry on you at Ashfield on 7
September, 2011. Now do you see a little over halfway down the page you
said to Mr Berry, "I think if you had interpreter it much better." And do you
see that Mr Berry said a little bit further down, "All I want to do is to give
10 you this document. O.K."?---I can see that.

All right. Now notwithstanding that did Mr Berry then proceed to ask you a
whole series of questions that one sees over the next 12 pages in the English
language?---Yes, yes.

Yes, I have nothing further.

MR McILWAINE: I have some questions, Commissioner.

20 ASSISTANT COMMISSIONER: Sorry Mr McIlwaine. Ms Shum, I don't
really understand this. If you don't speak English how did you type this
invoice at page 216?---In fact my listening ability is very bad, but typing it
is better.

So you can write English quite well?---So and so.

Well you can write building and pest consultation fees, site visits, client
paid the amount two times as follows, you wrote all that did you?---In fact
that has been done a long time ago, that was done by my daughter and I just
30 copy and paste.

Sorry? This invoice was done by your daughter?---No.

THE INTERPRETER: She is gesturing that those words in the box were
done by her and those words underneath were done by my daughter a long
time ago.

40 ASSISTANT COMMISSIONER: Sorry, what words in the box? Is she
looking at page 216?

THE INTERPRETER: 217.

ASSISTANT COMMISSIONER: Could she look at page 216, please. You
said you typed this?---Yes.

I am saying there are phrases on there that show good command of the
English language including the careful use of the phrase building and pest

consultation fees?---Because these words that are need to be used frequently.

Site visit. Do you use that in any of these other documents?---Site visits.
No.

Well, did somebody dictate this to you?---No.

You just typed it up yourself?---Yes.

10

Yes. All right.

MR LYNCH: There's just one matter that's arising. I'm sorry (not transcribable)

ASSISTANT COMMISSIONER: Mr McIlwaine wants to ask some questions first.

20

MR McILWAINE: Yes, Commissioner. Could the witness be given a piece of paper and a pen then could she close the folder in front of her. Has she been provided that? Ms Shum, could you write out in English the English word consultation. If that document could be handed to me. Perhaps it could be shown to the Commissioner.

ASSISTANT COMMISSIONER: It's good handwriting.

MR McILWAINE: Ms Shum, do you have any recollection at all in regard to your brother's dealing with Ms Shue?---None.

30

Sorry?---None.

None. None whatsoever, is that correct?---Really none.

Well, can you tell the Commissioner if there's anything at all you can remember about your brother's dealing with Ms Shue, whether it's in relation to the work he did or any payments you made?

THE INTERPRETER: Payments that he - she made?

40

MR McILWAINE: She made to your brother?---I think he only said that he did a project for \$6,000 but I only received \$4,500 so I only treat it as though there was a discount in relation to the \$4,500.

Ms Shum, would you forget the documents you've seen today, sitting there in the witness box today do you have a recollection of your brother telling you that he did the job for \$6,000 and discounted it?---I can't remember.

So do you recall that conversation or not?

MR YOUNG: I object to that. I mean she just said that she doesn't.

ASSISTANT COMMISSIONER: She's not your client Mr Young.

MR YOUNG: I accept that, but I mean it's still, it's still a question of fairness to a witness.

10 ASSISTANT COMMISSIONER: I do not think it is unfair in any way to test what this witness has to say. Go ahead Mr McIlwaine.

THE INTERPRETER: Can you put the question again, please.

MR McILWAINE: Certainly. Do you have a recollection today sitting in the witness box of your brother telling you that the work – he had done work for Ms Shue to the cost of \$6,000 but he was discounting it to \$4,500?---I can't remember.

20 Do you have a recollection of your brother giving you cash monies and informing that they came from work he had done for Ms Shue?---I can't remember.

Do you have – you've been shown a number of times today a document which has been described as an invoice at 216, sitting there today do you have a recollection of preparing that document?---It was created by me.

No, if you could listen to my question. Do you have a recollection in your mind today of creating that document?---I can't quite remember now.

30 Well do you have any recollection at all of creating that document?--- Because there were so many customers it's very hard for me to remember.

Is it the case you have no recollection of creating that document?---I can't remember.

Well with respect I think you can answer this question yes or no. Do you have a recollection sitting here today of creating that document, yes or no? ---I can't remember.

40 No, I'd ask the witness be directed, Commissioner.

ASSISTANT COMMISSIONER: Yes. Could you answer the question yes or no?---I really don't, can't remember. How, what can I say?

You're being asked you either remember creating the document or you don't?---I really can't remember.

That's not an answer. Do you have a memory of creating that document yes or no?---I can't remember. Even if you ask me to remember, there's no way I can remember.

Well to me that seems to be saying you don't remember creating it?---I really can't remember.

Mr McIlwaine, I - - -

10 MR McILWAINE: Thank you, Commissioner, I'll move on to a different aspect.

So you can't remember creating that, all right. If you go to the document at page 216.

THE INTERPRETER: Do you want her to open up the document now?

MR McILWAINE: Yes, please. Do you see that?---(NO AUDIBLE REPLY)

20

And you told the Commission you really can't remember anything about this document, that's correct?---(NO AUDIBLE REPLY)

You see the last, second and third last line you've got 15 January, 2010, \$2,500 and then 2 February, 2010 \$2,000, you see that?---Yes, I can see that.

30 Now, you were asked earlier today by Counsel Assisting as to, as to why those two different amounts appeared on those two different days and your response was "He told me that only part of the project was done". Do you remember giving that evidence?---I can't remember.

You can't remember telling the Commission that today?---After so many things, how can I remember so many things?

So can you remember your brother telling you that payment came in two parts because only part of the project was done?---Yes.

40 What, you can remember him saying that, is that your evidence?---Yes.

If you can remember your brother saying to you at the time that the reason for the two separate payments but only part of the project was done, how can it be that you could this Commission you have no recollection about the creation of this document. Can you explain that?---Oh, because so many things are put here in front of me I feel very confused.

Well, I'm asking you now do you still maintain that you remember your brother telling you that?---He, he told me \$6,000 was the payment but there was a discount.

And he also you say told you that payment came in two parts because the job hadn't been finished. Is that your evidence?---Yes.

So do you have some memory of your brother telling you that Sue Liang had given you money for some work?

10

THE INTERPRETER: Shue, Shue Liang did you say, Shue Liang?

MR LYNCH: Sue Liang.

THE INTERPRETER: Shue, yeah, yeah - - -

MR LYNCH: Liang.

THE INTERPRETER: Liang.

20

THE WITNESS: In fact there were so many customers why would I remember the customer's name?

MR McILWAINE: Just answer this question. Do you have a memory of your brother telling you anything at all about the person Sue Liang and the business premises Harrow Road giving him money for consultancy?---I can't remember.

30

So do I take it by that answer you have no memory of him telling you anything about that. Is that correct?---Yes.

Is that a truthful answer?---When I look at these, she was pointing to the documents on her, when I can see these then I remember, if I don't, if I can't see these then I can't remember.

Okay. Having looked at all the documents today do you now say you have a memory of your brother telling you things about the work he'd done for Ms Liang. Is that your evidence?---I look at the invoice, is very hard for me to remember.

40

All right. If you could turn to page 262 of the document in front of you. In fairness, go back sorry, to page 259. Do you have that in front of you?---
(NO AUDIBLE REPLY)

Do you agree that's a statement you made to an ICAC officer on 15 August? Correct?---I see but its more bigger.

And if you now turn to page 262, paragraph 13, you say this – it’s recorded there I should say, “I can’t recall if Jack gave me money from Sue Liang prior to Chinese New Year, 2010 as it is a long time ago.” Is that truthful evidence?---Is truthful.

10 And if you go to paragraph 15, you say this, “I do not know Sue Liang from Auburn. I can’t remember if Jack has even given me money to bank or record from a client at Harrow Road in Auburn. Jack has not spoken to me about anything to do with Sue Liang or the ICAC investigation.” Was that truthful?---Truthful.

Was that truthful evidence?---Yes.

Could you tell the Commission what it is that has caused you to remember that your brother told you that only part of the project in relation to Ms Liang was done and that’s why there were two separate payments?---He did not tell me about this incident and also he didn’t tell me things about Sue.

20 Nothing further, Commissioner.

ASSISTANT COMMISSIONER: Thank you. Yes. Did you have anything else, Mr Lynch?

MR LYNCH: There’s nothing further.

ASSISTANT COMMISSIONER: No. All right. Ms Shum, you are now excused from further attendance.

30 THE INTERPRETER: Your Honour, do I stay or what?

ASSISTANT COMMISSIONER: No, you may both leave, thank you.

THE INTERPRETER: Oh, okay, thank you.

THE WITNESS EXCUSED

[3.31pm]

40 MR LYNCH: Commissioner, I suppose in fairness to the witness that document I showed her (not transcribable)

ASSISTANT COMMISSIONER: Oh, yes, I’m sorry, I meant to tender the handwritten consultation by Ms Shum as Exhibit 6.

#EXHIBIT 6 - HANDWRITTEN NOTE “CONSULTATION”

MR YOUNG: Yes. Could I also ask that the document I handed up, the medical document be tendered.

ASSISTANT COMMISSIONER: The medical document to me has no relevance to these proceedings unless you can persuade me that it does.

MR YOUNG: Right. Yes.

10 ASSISTANT COMMISSIONER: It's got nothing to do, in my view, with the validity of her evidence. She's got hypertension.

MR YOUNG: And on medication but - - -

ASSISTANT COMMISSIONER: Well, there's nothing at all to indicate that any of that would affect her evidence in any way so I am not willing to make that an exhibit.

MR LYNCH: Perhaps it might be marked for identification, Commissioner.

20 ASSISTANT COMMISSIONER: Yes. It'll be marked MFI 1.

#MFI 1 - MEDICAL CERTIFICATE FOR MAY SHUM DATED 21 MARCH 2012

MR LYNCH: The next witness is Mr Mark Brisby.

30 ASSISTANT COMMISSIONER: Yes. Mr Brisby. If you just take a seat, Mr Brisby. Mr Houghton, will your client be seeking a section 38 declaration?

MR HOUGHTON: I think (not transcribable) Commission consistent with the (not transcribable) all witnesses.

40 ASSISTANT COMMISSIONER: Mr Brisby, I am going to make a section 38 declaration, the effect of which is that nothing you say here can be used against you in any future civil, criminal or disciplinary proceedings unless it is found that you have breached the Act in some way. Do you understand the effect of this order?

MR BRISBY: Yes, I do.

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 this witness 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.

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 THIS WITNESS DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

ASSISTANT COMMISSIONER: Mr Brisby, you're required to take an oath or make an affirmation to tell the truth.

20 MR BRISBY: I'll take a oath, yeah.

ASSISTANT COMMISSIONER: Thank you.

ASSISTANT COMMISSIONER: Yes, Mr Lynch.

MR LYNCH: Thank you.

Is your full name Mark Brisby?---That's correct.

10 You're the Director of Planning and Environment at the Auburn Council?
---That's correct.

And you were so in 2009 and 2010?---Yes.

You've prepared a statement dated 25 October, 2010 which is Exhibit 1 in these proceedings?---That's correct.

Are the contents of that statement true and correct?---That's correct.

20 I'll just ask you a few things, Mr Brisby. Did Mr Au ever inform you that he had been engaged by the applicant Sue Liang to assist her in relation to any part of the development at Harrow Road?---No.

At what stage does a Construction Certificate for a Development Application of the kind made by Ms Liang issue?---It follows Development Application approval and allows the commencement of the construction relating to that development approval.

30 All right. Prior to that is commencement of the development permissible?
---No.

Where there has been a deferred commencement what does that indicate so far as this application is concerned, subject to some conditions being complied with I think?---That's primarily correct. It grants approval subject to compliance with a certain number of conditions. It gives the applicant some certainty.

40 And it's a tentative approval of the application subject to meeting the conditions that are specified?---That's correct.

Is that how it works?---Yes.

At paragraph 12 of your statement do you have a copy it, Exhibit 1? I think it's on the screen before you?---Yes, I have.

You say at 3.30 on 10 February, 2010 you attended a meeting with Addison, a consultant of Ms Liang at the council offices. Also present were Glenn Francis and Councillor Jack Au. At this meeting we discussed resolving

issues with the application. What were the issues that were discussed? Are you able to say?---I don't have the exact details, no.

And what was the ultimate outcome of the application?---The application received defer commencement approval which eventually was satisfied and an operable consent issued.

10 So the conditions that were imposed subject to the deferred commencement or along with the deferred commencement approval were ultimately met and the application was approved. Is that so?---That's correct.

Now it's normal practice is it not from time to time for councillors to intervene on behalf of applicants to development?---I wouldn't use the word intervene but to represent constituents and applicants, that's correct.

And it's normal or it's not uncommon for councillors to request meetings with yourself and Mr Francis on behalf of members of the electorate?---Yes.

20 In order to facilitate some discussion between the applicant and you in relation to the development?---Yes.

In this case there was a variation to the development proposed at some stage whereby the request was made for the restaurant and sushi bar proposed to operate 24 hours a day, that proposal was conveyed to you was it for the first time by Mr Au in an email to you dated 31 January, at page 50?---I don't have that in front of me. If I can - - -
I wonder if, if Exhibit, a copy of Exhibit 1 could be provided. I think it's up on the screen?---Thank you.

30 Is that a common part of the role engaged by a councillor on behalf of an applicant to convey a request that the development be the subject from – the subject of 24 hour operation?---Yes.

It's not uncommon for variations to the original application to be made?---
Through the Development – the Act allows for modifications for applications to be through the formal process, yes.

40 But is it conventional for councillors to make the applications for variation on behalf of the applicant?---They do not make applications on behalf of applicants, no.

Well how did you understand this email at page 50 on 31 January, the applicant asks if the restaurant and sushi can operate 24 hours because the soundproof design is good for that?---I take that as to seek advice to how they could proceed.

I see. Was Council ever alerted to the fact that building work had commenced on the site prior to the satisfaction of the deferred commencement conditions?---Yes.

Was there any response to that information by council?---I'm sorry can you clarify.

10 Yeah. What happened after council was alerted to the fact that building had commenced on the site prior to when it should have I take it?---Sounds like the Council's Compliance Service Unit Staff would seek stop work orders and so that the work ceased, I understand that occurred and the (not transcribable) process through the development application brings that back into line.

Thank you.

20 ASSISTANT COMMISSIONER: Mr Brisby, I'm sorry it's your evidence that it's not unusual for councillors to actually make applications for extension of time and for changes to the DA on behalf of applicants?---No, that's not what I said, no.

Well, that's what this (not transcribable) from Mr Au seems to be doing?---No. As, as I stated to Mr Lynch I, I take that as the councillor just seeking advice on behalf of the applicant as to how that can occur which is through the development application process. That's not taken as the application before me.

30 I know he's not making the application for himself but he's conveying on behalf of the applicant to request that consideration be given as to whether it can operate 24 hours and an extension of two weeks. I'm just asking whether that - do you get those sorts of emails from councillors on a regular basis?---Well, I wouldn't use the word regular but it does occur where they seek advice on behalf of applicants on how things should proceed.

The councillor is seeking advice on behalf of the applicant as to how the applicant should proceed?---Yeah. The answer which would be that they needed to lodge a section 96 application to modify the development application.

40 Thank you. Yes, Mr Lynch.

MR LYNCH: Just in relation to the work that had started at the site prior to commencement, do you know how council altered to, to that - the existence of such work?---I'm not aware today, no.

At page 52 there's an email from Mr Au dated the 5 February, 2010 that's copied to you, Mr Francis, Mr Au himself, Mr Burgess and councillors which is expressing some dissatisfaction seems on behalf of the applicant as

to suggest that in proper procedure, I withdraw that. As to suggest a delay occurring in relation to the development, what involvement do the other councillors have in relation to your and Mr Francis's consideration of the development application?---In this one there was no other councillors involved, no.

So can, can you understand why the, the email was forwarded to the councillors, did they have any involvement in the matter?---I, I couldn't answer that, no.

10

And in the email above that which is a response from Mr Burgess to you he notes the section 96 is on public exhibition, "Can you confirm the other info (not transcribable) to be in the system is in the system, seems to me Jack has an expectation, your people are there to attend to him and his clients immediately." Did you - was that the first indication you had that Ms Liang might have been a client of Mr Au?---I, I probably couldn't comment on the general manager's use of the term client to be honest.

20

All right. Well, assuming, I withdraw that. The general manager notes that once you confirm the information issue we'll draft a reply to Jack and all councillors. Is that because Mr Au's email below, below it was copied to all councillors?---I would assume that the general manager's request included that as there was a cc to the elected body as a whole, yes.

Right. But the elected body had no involvement whatever at that stage in the consideration of the application?---Not with myself, no.

30

Well, the application was to be considered by you and your division within the Council bureaucracy and not by a Council sitting in session, is that right?---That's correct.

40

Now, at page 55, at the foot of the page, there's a reference to the bottom paragraph, it says, "The Construction Certificate cannot proceed until the consent is made operational and the proposed amendments are submitted and approved." How does the issue of a Construction Certificate happen? Is it, does it not issue until everything has been effected?---Construction, that's correct, the Construction Certificate would be issued upon full compliance with the conditions of the Development Approval.

It's the final permission authorising building to take place once everything else is satisfied?---Yes, that's correct.

Does one pay a fee initially for applying for a Construction Certificate as an applicant?---That's correct, yes.

But that doesn't mean the Construction Certificate issues at the time you pay the fee I take it?---No.

At page 58 there's another email from Mr Au to you and Glenn Francis which says, "In order to sort out all the barriers I suggest to set up a meeting to discuss all relevant issues to speed up the process." Was the process for consideration of this application continuing at the normal pace or was there any delay apart from the two weeks where some documents were misplaced?---I would consider it as a normal part of the assessment process, yes.

10 So speeding it up meant what to you?---Resolving the outstanding issues.

Did it not suggest it should be done at a rate faster than normal?---Not in relation to my normal communications with Councillor Au, no.

It's just the choice of language used that led you to think that it was just a normal request to deal with things in the normal course, is it?---I'd, I'd take it as a request to resolve the outstanding issues and communicate them to the applicant.

20 And I think that there were a series of meetings held at the request of Mr Au in relation to this application with you or Mr Francis or both of you, is that right?---That's correct.

How many?---I'd have to refer to my statement.

30 Excuse me a moment. Excuse me. The Development Application was lodged on 24 September, 2009 and I'll ask you to assume that Mr Au requested a meeting on 14 October which took place on that day, requested another meeting on 7 December, 2009, a further meeting on 16 December, 2009 and the email communications that I've taken to you and a further meeting at the request of Mr Au on 10 February, 2010. Is that unusual, the, to have such a number of meetings requested by a councillor on behalf of an applicant?--- I wouldn't say unusual. It's a normal practice of the elected members to represent constituents. Probably say a little bit, a little higher number of meetings to resolve this application, yes.

And who is Hamida Kanj?---At the time Council's internal ombudsman.

40 All right. You confirm that upon receipt of the email dated 3 March, 2010 from Ms Liang, you promptly forwarded that email to the general manager. Is that so?---Yes.

And was it thereafter referred to the ICAC?---That's my understanding, yes.

Yes, I have nothing further of Mr Brisby.

ASSISTANT COMMISSIONER: Yes, thank you. Does anybody seek to examine?

MR YOUNG: I do, yes. I'll be fairly (not transcribable) Commissioner.

ASSISTANT COMMISSIONER: Yes.

MR YOUNG: Mr Brisby, the fact that the documents went missing for a period was – do you regard that as an appropriate matter for the attention of Council? The fact that there was this error, administrative error albeit one that was ultimately rectified but that was an appropriate matter for a councillor to bring to the attention of other councillors was it not?---I
10 wouldn't think it was unusual on behalf of the constituent, no.

But in terms of one councillor notifying other councillors is something that was within the, the area of the, the responsibility of council, it was appropriate for a councillor to notify other councillors about that wasn't it? ---I couldn't answer that. That'd be a question for Councillor Au.

All right. Now do you agree that it was as a result of Mr Au's representations that the documents were in fact discovered to have been attached to the wrong file?---Sorry, could you - - -
20

Yes. It was because Mr Au communicated with the council officers that the, that the error was discovered. Is that correct?---That's correct.

And what Mr Au did, would you agree, was that he brought to the attention of Council an email to him of the – this is at page 53 – from Mr Addis Wu and in that Mr Wu said that amended plans had been lodged and it also referred to advice given by Councillor Au in relation to the amendment with the sushi bar. So that was, that was all provided to you?---I understand from the email trail that Councillor Au had forwarded Addison's email direct to
30 myself and Mr Francis.

Now on 5 February a letter was sent to the applicant advising her that the deferred commencement conditions had not been satisfied. If you look at page 60 you'll see, you'll see that, page 60 around about the middle of the page. Do you see their letter to deferred commencement applicant on 5 February?---I understand that may have been an attachment, yeah.

Now was that letter advising that the deferred commencement conditions had not been satisfied, was that based on the wrong information? In other
40 words was that based upon the information that did not have the, the material that had been submitted and had gone to the, the wrong file?---I couldn't answer that at the moment because I don't have the details of the timing of the letter and the submission of the details.

Certainly on the 10 February there was a, a meeting which was held to, to resolve or discuss what were the, the outstanding issues at that time?--- That's correct.

Now do you know if - it says there that Addison the consultant to Ms Liang was there, do you know whether Ms Liang herself was, was, was present?
---My records indicate that she wasn't present.

But certainly it was, was for the purpose of discussing her application and the, the matters up to that point?---That's correct.

10 And that would have included you advising Mr, Mr Wu, Mr Addison Wu of the fact of the, the error that had happened with the, with the documents that had been submitted on behalf of the, the applicant?---I don't have the detail of the discussion from that meeting other than to, to quantify that we're talking about the outstanding issues to proceed to an approval.

All right. Now you know that the, the documents that the - the document which came from Ms Liang claim - this is on 3 March, claims that, that \$1000 had been paid for an afternoon of overtime. Now had anything that you done up to the time of the 3 - the 3 March could possibly be described as overtime?---No.

20 And as you say - as you say in this statement there was nothing that you had done which was in the slightest out, out of the ordinary in relation to the - to Ms Liang's or the processing of this application?---That's correct.

As it happened I think 3 March was in fact the same date as the, as the, as the approval was given, is that, is that correct?---I don't have that detail so I couldn't confirm either way I'm sorry.

Yes, that's, that the cross-examination.

30 ASSISTANT COMMISSIONER: Does anyone else seek to question this witness? Yes. Well, thank you for your attendance - - -?---Thanks, Commissioner.

- - - Mr Brisby, you're now excused.

THE WITNESS EXCUSED

[3.59pm]

40 MR LYNCH: Commissioner, I was proposing to call Mr Francis but in view of Mr Brisby's evidence I don't think that's necessary unless any of my learned friends wish to cross-examine Mr Francis then we can avoid that.

ASSISTANT COMMISSIONER: Yes.

MR LYNCH: The other witness who was proposed in respect of statements included in Exhibit 4 is the architect, Addison, Mr - I think his formal name

is Mr Hseigh, H-S-I-E-I-G-H. He's not available and I understand none of my friends requires him to be cross-examined and his material is before you. In that light what's proposed to complete the evidence is to recall Mr Au and in view of the time I wonder if its practical to do that tomorrow.

ASSISTANT COMMISSIONER: Yes. We'll adjourn but that does mean we may be finished by lunchtime tomorrow?

MR LYNCH: I would think so, yes.

10

ASSISTANT COMMISSIONER: Yes. We will resume at 10 o'clock tomorrow.

**AT 4.00 PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.00PM]**