

TOLOSAPUB00372
02/05/2022

TOLOSA
pp 00372-00410

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION TOLOSA

Reference: Operation E17/1221

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 2 MAY, 2022

AT 2.00PM

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.

THE COMMISSIONER: A couple of matters before we resume. Mr Leggat, you're now appearing, I understand. I've dealt with the application for leave in chambers, granting you leave to appear.

MR LEGGAT: Thank you, Chief Commissioner.

THE COMMISSIONER: Thank you. Yes, Mr Darams.

10 MR DARAMS: Yes, Chief Commissioner. We'll continue today with Mr Furlong. I have a few more brief questions. There's one administrative matter in terms of a tender and material that I wish to deal with now before I call Mr Furlong. So if perhaps I could just do that?

THE COMMISSIONER: Very good.

MR DARAMS: I tender volume 6.3 pages 173 to 362. That will become Exhibit 14.

20 THE COMMISSIONER: Yes. Very well. 6.3, those pages 173 to 362 will be admitted as Exhibit 14.

#EXH-014 - MOBILE PHONE EXTRACTION REPORTS

MR DARAMS: Volume 6.4. That will become Exhibit 15.

THE COMMISSIONER: Yes. Be marked and admitted as Exhibit 15.

30

#EXH-015 – PUBLIC INQUIRY BRIEF VOLUME 6.4

MR DARAMS: Volume 6.7 will become Exhibit 16.

THE COMMISSIONER: Yes. Volume 6.7 will be admitted, marked Exhibit 16.

40 **#EXH-016 – PUBLIC INQUIRY BRIEF VOLUME 6.7**

MR DARAMS: Volume 6.8 will become Exhibit 17.

THE COMMISSIONER: Volume 6.8 will become Exhibit 17.

#EXH-017 – PUBLIC INQUIRY BRIEF VOLUME 6.8

10 MR DARAMS: And volume 6.9, which will become Exhibit 18.

THE COMMISSIONER: Yes. I admit volume 6.9. It becomes Exhibit - - -

#EXH-018 – PUBLIC INQUIRY BRIEF VOLUME 6.9

MR DARAMS: So they're the administrative matters I needed to deal with,
Chief Commissioner. Unless there was anything further, we'd call Mr
20 Furlong back to the witness box.

THE COMMISSIONER: Yes. Thank you. Afternoon, Mr Furlong.

MR FURLONG: Good afternoon, Chief Commissioner.

THE COMMISSIONER: Thank you. Just before we recommence, I just want to make clear, Mr Furlong attends as a witness in answer to a summons of the Commission. Mr Furlong is not an affected person within the meaning of the Independent Commission Against Corruption Act. Section 31B of the Independent Commission Against Corruption Act, defines “affected person” as meaning “a person against whom substantial
10 allegations have been made in the course of or in connection with the public inquiry concerned”. Mr Furlong is not and has not been subject to any such substantial allegations to which the Act refers. As I have indicated, he attends as a witness to the Commission to give evidence on matters of fact in answer to the summons that brings him here today, just as there will be other witnesses called under summons to give evidence, and I anticipate that most if not all of them will also not be affected persons. I make that statement having regard to the fact that Mr Furlong is not legally
20 represented and I think it’s important in terms of fairness to make it clear as to the capacity in which he comes before the Commission, to assist it in its investigations in this public inquiry. Yes, Mr Darams?

MR DARAMS: May it please, Chief Commissioner. Mr Furlong, I just have a few more questions today.---Yes, Mr Darams.

Could I please ask you to have a look at once again volume 1.2, page 17? You will recall I asked you some questions last week about your additions to the Kenzler or the draft proposed motion by Councillor Kenzler, in particular about paragraph 10. I’ll just ask you to look at that again.---Yes, Mr Darams.

30 Now, could the witness then be shown volume 1.2, page 66? Now, Mr Furlong, I’m showing you the minutes of the meeting of council of 31 May, 2016 and I want to draw your attention to the actual, I mean, it’s a resolution now, that was passed but paragraph 10.---10.

And you can see that there is a difference in the drafting that you had proposed and this form, sorry, and this paragraph as it appeared in the minutes and therefore the resolution. I take from reading this one here you can see the obvious difference?---Yes, Mr Darams. It goes to what we
40 spoke about last Friday.

Yes. I'm going to ask you some questions about that now.---Sure.

So I think you - - -

MS AVERY-WILLIAMS: Sorry to interrupt. It's Ms Avery-Williams here. I can't see the document. Perhaps the screen sharing might be turned on.

THE COMMISSIONER: Okay.

10

MS AVERY-WILLIAMS: Thank you. I can see it now.

THE COMMISSIONER: Yes. Well, we'll see if we can attend to that. Mr Darams, could you find out what the problem is?

MR DARAMS: Oh, it's been dealt with now. It's just a matter of we need to push a button and we didn't push the button.

THE COMMISSIONER: All right. That's now working?

20

MR DARAMS: It's now working.

THE COMMISSIONER: Thank you. Apologies for that glitch. Yes.

MR DARAMS: You recall last week when I asked you about the potential or actual benefit or interest that I-Prosperty would have obtained if the resolution, sorry, the motion as proposed by you was passed in that terms. My recollection is you accepted that it was at least in your client's interest or they obtained a benefit if it was passed in the terms you had proposed.
30 ---Oh, I don't know that I agreed that there was a benefit, Mr Darams. I agreed that overall, taking both 9 and 10, it allowed my client's planning proposal to proceed, and in terms of 10 on its own, as I poorly wrote and was subsequently corrected, allowed for the council to deal with my intent and subsequently the actual allowed for the council to deal with the whole of the precinct, as we discussed last Friday.

30

I was going to ask you about that. Do you know how paragraph 10 in the actual resolution, how it came to be in those terms? Is this a further request by you or were these words added by someone else, and if they were added
40 by someone else, can you tell us, from your recollection, do you know who did that?---I was looking at this very thing over the weekend, Mr Darams,

40

and my recollection is not 100 per cent clear, but on the night obviously either when I was addressing the council or subsequent to me addressing the council, Mr McNamara, as the director of planning, Mr Sawyer, or indeed another councillor may have suggested that my intent or the intent of what I proposed was better served in, in this form, which is exactly what we discussed last Friday, that I was trying to ensure that the planning proposal would go ahead as a whole precinct, primarily because the original resolution of the council back in 2015 said if you don't have all the land, you don't go ahead. So Mr McNamara's advice to I-Prosperity that, sorry,
10 he couldn't process the planning proposal because we didn't have all the land at the time. So, this was a way of the council saying, "Okay. We acknowledge you don't have all the land. You may be trying to purchase it but we're going to deal with this thing as a precinct and let the owner know."

Given at the time I-Prosperity were trying to purchase 1 Marquet Street, this resolution in these terms, did that provide a benefit to I-Prosperity?---No, Mr Darams, it probably provided a greater benefit to the neighbour in, in those sort of, I mean, commercial negotiations for sales were not my bag.
20 But this would give the owner of the land some understanding that they were not going to be left as piggy in the middle or, so that they could say, well, if you want to buy my land, my land's going to be provided with the same level of developability that your land is going to be.

In terms of the version, are you able to do this, in terms of the version of paragraph or clause 10 that you drafted compared to this clause here, was – is it your evidence that both have the same effect or is one more beneficial to I-Prosperity than the other?---I don't know that they both had the same effect. I, I respect the advice from the Chief Commissioner that my version
30 created or potentially created a concern with the council getting involved in a property issue. I agree that this is a better worded version to achieve a total consideration as a precinct than me, than, than mine. It didn't, certainly my intended clause 10 and this one didn't really benefit anybody but, in my opinion, the owner of number 1 because they then knew that the council was going to include them in the planning proposal.

As I understood your evidence before, your position was that this was only or was merely confirming what had been resolved some years before, that is this whole, my words, whole-of-site sort of assessment.---Well, it, how can I
40 put it? The 2015 resolution of the council was still on the books. It was still valid. It still had to be complied with by council staff. So in order, leaving

aside, let's just assume clause 9 was in play and we were dealt with the same way, we still had the problem that the council's only or last resolution on this land was that if you don't have all five or all six, whatever it was, you can't go ahead. So in order for us to be considered in totality, not necessarily just to get done tomorrow, the staff needed another resolution of the council, which was my intent but poorly worded, so that our land could proceed, even though at that stage I-Prosperty didn't own 1 Marquet.

10 Doesn't that mean, then, that the effect of this resolution was to the benefit of I-Prosperty? Because it's effectively saying, even though your client didn't own 1 Marquet Street, that its planning proposal, which it had submitted some days, six days earlier or seven days earlier, which didn't include 1 Marquet Street, would actually be assessed on the basis that it did include 1 Marquet Street?---Oh, yes.

That's the effect of that, ultimately?---Yes, yes.

20 If that had not been in there, that resolution, what I'm trying to understand is that your client's planning proposal, which didn't include 1 Marquet Street, wouldn't it follow from what Mr McNamara had indicated some days earlier that that planning proposal would not have proceeded, it wouldn't have been accepted, is that right? Or there's a risk it wouldn't have been accepted by council.---There, there's a risk that it would not have proceeded. But Mr Darams, if you have number 9 and you don't have number 10, then you have a circumstance where if the council proceeds with number 9, it says we're going to deal with this matter in the same manner we're looking after the DCP, et cetera. And the very next point the council would have made was "But we're not going to go on with it." So they would almost laugh at one another.

30 Sorry, I don't quite follow that.---Well, point 9, Mr Darams, says that in terms of the new, well, the planning proposal that Billbergia were going to have to reapply for, point 7(a) through (c), (a) through (e) I think it is, can't see the previous page, but sets out the criteria that the council would use to assess that planning proposal. So point 9, as we've discussed, says, well, okay, let's apply those same criteria to the planning proposal lodged on behalf of I-Prosperty. That, that number 9 is at odds still with the 2015 resolution that says any ultimate planning proposal must have all the land in it. So either I-Prosperty had to have all the land or the council needed to
40 resolve that it would, notwithstanding the applicant, the owner hadn't

applied, it would include one 1 Marquet as if it was in the overall precinct. That's all it does.

Does this inclusion of this resolution, we talked about the timing of your client's application, does the inclusion of this resolution help in the overall timing of that application?---Oh, notionally, Mr Darams, because otherwise we would have to wait either with the owner advising council that it was happy to proceed, happy to have the planning proposal proceed in relation to its land or I-Prosperity would have to purchase it. Considering it was kind
10 of a suggestion, or the way I understood it the other day, that this provided a, a fairly rapid benefit in time. It didn't really, and in fact the application took over five years to deal with, so there wasn't any great time benefit overall, it just allowed the thing to go ahead. It was still in its first week.

Yeah. But in terms of the overall time the application took, that's looking with the benefit of hindsight.---Oh, true.

But at the time that this was made - - -?---Oh, sure.

20 Yeah.---It, it allowed the council to proceed with the assessment, yes.

Yeah. Proceed with the assessment as if, could I suggest this, I'm just working through, as if I-Prosperity was actually successful in obtaining the land?---Oh no, to proceed anyway.

Yeah, I see.---It didn't need, it didn't have any impact or requirement for purchase but the council was aware that I-Prosperity was trying to purchase.

30 Yeah. If I-Prosperity then, if this resolution, sorry, if this clause hadn't been included in the resolution in those terms and I-Prosperity subsequently purchased 1 Marquet Street and wanted to include that land in its planning proposal, would that have required I-Prosperity to put in an amended planning proposal?---Oh - - -

Without this clause being here?---Yeah. No, I understand your question. We would most likely, yes, in a, in a sense, because at this stage the planning proposal is not much more than a letter and a whole bunch of reports attached. So we would have written to, spoken to Mr McNamara, but written to the general manager and asked that our planning proposal be
40 extended to include the neighbouring land. But this way we didn't have to.

Yes. So that's a, I don't want to use the term benefit, but something in your client's interest.---Yeah.

By having that in there your client didn't then have to - - -?---We didn't have to write a letter.

10 Didn't have to write a letter. But in terms of the process the council would then have to adopt in relation to, or follow in relation to that, let's say, amended planning proposal, was there a further time saving in that respect?
---Oh, may have marginally been but the, the council would most likely have said to us "You need to change your paperwork" and (a) to include that block of land but (b) to ensure that the inclusion of that block of land didn't have any negative impact on the criteria. You know, we'd have to address that block under the criteria that point seven deals with.

I see. Now, I just want to, the final part of my questioning, Mr Furlong. I just want to ask you some questions about the telephone calls that were played Friday afternoon.---Sure.

20 Now, we played some calls in relation to conversations between you and Mr Chidiac and you and Mr Tsirekas in the period December 2018 to June 2019. You recollect that time period?---Yeah.

You accepted last week that you had spoken to both Mr Chidiac and Mr Tsirekas in the period before December 2018.---Yes.

30 But I think the general gist of your evidence, and this is not any criticism at all, that you couldn't really recollect the conversations that you had with those two individuals in that period of time. I'm right about all of that.
What I wanted to ask you, Mr Furlong, is was the nature of the conversations that you had with Mr Chidiac and Mr Tsirekas of a similar type to those that were is closed or set out in the conversations we played on Friday afternoon?---Generally, Mr Darams, yes.

40 Yeah. So I just wanted to make sure there wasn't a point in time from 2016 to 2019 where the, from your recollection, the nature of the things that you were discussing or the type of conversations you had on the one hand with Mr Chidiac and Mr Tsirekas on the other hand changed in any particular way?---No, I don't think so, Mr Darams. And I, I think, as I've said on Friday or Thursday, I can't remember, my conversations with Mr Chidiac were more about, if you like, accessing the mayor or not being able to

access the mayor and, you know, not about Mr Chidiac contacting people instead of me contacting, say, Mr McNamara or someone like that. And my conversations with the mayor were about primarily, well, I'm having trouble getting access or getting this particular person to respond.

Well, they're all the questions I had for Mr Furlong at the present time.

10 THE COMMISSIONER: Mr Darams, I understand that it's not possible for me to release Mr Furlong from his summons at the moment by reason of the fact that there may be matters arising that may need his further evidence. Is that the case?

MR DARAMS: That is correct. We've also received some requests from, at least Mr Tsirekas' representative and Mr Chidiac at some stage to possibly cross-examine Mr Furlong and that will occasion the need, as well.

20 THE COMMISSIONER: Yes. That's right. Well, then I think any application for cross-examination of Mr Furlong can await the outcome as to when he may be recalled.

MR DARAMS: Yes. I think that's appropriate, Chief Commissioner.

30 THE COMMISSIONER: Yes. Very well. Well, that's what I propose to do. So, Mr Furlong, I can't discharge you from your summons but, as you heard me say, it may be that you will probably be required to return at some point in the future, that's not in the next week or so but at some point, and therefore I can't discharge the summons. You'll be notified by the Commission, anyway, as to when you may be required and arrangements will be made to try and fit in with your personal situation as much as possible.---Chief Commissioner, I'm sorry but I'm not quite understanding why. I thought I was here to answer all of the Commission's questions and I've tried to do that. If there are more questions, ask me while I'm here.

40 Mr Furlong, it's a reasonable question to ask, but it has to do with the way in which a public inquiry functions. Sometimes witnesses have to come back two, sometimes three times. It's in the nature of the inquiry. It's not as if it all can be wrapped up today, unfortunately.---So, Chief Commissioner, is there any idea of what a time span might be? Apart from running my own business, I also have another, another life.

No, I can't assist you at the moment but Commission officers will talk to you to try and discuss both the Commission's requirements, your situation - - -?---Sure.

- - - and try and work out and give you as much notice as possible, work out an arrangement that has the least impact on your other activities.---Thank you, Chief Commissioner.

Thank you. Thanks, Mr Furlong. You're free to go today.---Thank you.

10

THE WITNESS STOOD DOWN

[2.29pm]

THE COMMISSIONER: Yes, Mr Darams.

MR DARAMS: Yes. I propose now to call Ms Narelle Butler.

THE COMMISSIONER: Yes. All right.

20

MR DARAMS: Ms Butler is here.

THE COMMISSIONER: Is Ms Butler there?

MR DARAMS: Yeah, she is. I think she's outside the hearing room.

THE COMMISSIONER: All right. If somebody could bring her in, please? Ms Butler, if you wouldn't mind just put your things down and get comfortable there.

30

MS BUTLER: Thank you.

THE COMMISSIONER: And I'll ask you to stand in a moment, so that we can have either the oath or the affirmation administered to you. What do you elect, to give evidence on oath or affirmation?

MS BUTLER: The oath's fine, thank you.

THE COMMISSIONER: Oath. Thank you. There's a Bible there, I think.
40 If you wouldn't mind standing, my associate will administer that oath.

THE COMMISSIONER: Yes, thank you. Mr Darams, Counsel Assisting, will ask you some questions.

MR DARAMS: Now, would you please state your full name.---My full name is Narelle Patricia Butler.

10 Now, Ms Butler, you were previously employed by the Canada Bay Council, is that correct?---Yes, it is.

Can you tell us the period of time that you were employed by Canada Bay Council?---I was originally employed from July 2006, and from May 2008 I was in a position of Manager Statutory Planning Services until I resigned from council in October 2019.

Are you employed by, are you currently in employment at the moment?---I am currently employed.

20

With another council?---No, I don't work as a town planner at the moment at all.

In terms of your professional qualifications, do you – I take it you've got professional qualifications.---Yes, I do, Mr Darams.

What are they?---I have an Associate Diploma in Town and Country Planning, Graduate Diploma in Heritage Studies, and I also have qualifications in education, which is the career I'm working in at the moment.

30

Before you commenced employment at Canada Bay Council in 2006, were you employed in a town planning capacity at any other council?---Yes, I've worked in local government from approximately the beginning of 1982 right up until October 2019 in various planning roles with other councils.

So could you just briefly outline that period of time from 1982 up to 2006, because you've give us that period of time.---Oh, okay. I originally worked for Bankstown Council as a trainee planner. That was from 1982 – I started as an administration person, then I moved into a trainee planner role while I was doing my planning studies. And then I worked Ryde Council, Ashfield

40

Council, Canterbury Council. I worked at a few councils before I started at Canada Bay.

Just before I proceed any further, Chief Commissioner, I apologise for this, I think I overlooked asking the witness about section 38.

THE COMMISSIONER: Yes, very well. Ms Butler, just in reference to provisions in the Independent Commission Against Corruption Act in respect of the giving of evidence. As you're not legally represented, I will
10 just outline to you what the provisions are and the circumstances in which you may, if you wish, give evidence under objection and the purpose of doing that. Under the Act, the witness is entitled to object to giving evidence, and the purpose of doing that under the Act is to offer a form of protection – that is to say that the evidence given in this Commission can't
20 be used in the future in other proceedings in the future, be they criminal, civil or other disciplinary proceedings and the like. There is one exception to that, and that is evidence given even under objection can still be used in future proceedings for an offence under the Independent Commission Against Corruption Act. A common example of an offence is the offence of
30 perjury. That is, if a witness gives wilfully false evidence, they can be prosecuted and the evidence can be used in that case. But otherwise the protection under the Act is that the evidence of the witness can't be used in any other proceedings. The witness, therefore, is entitled to object in order to obtain that protection by giving evidence under objection. The witness must of course give truthful evidence whether they object or not. The Commission is entitled to make a declaration that all evidence is to be taken as given on objection to save a witness objecting to each question. So the question is whether you elect to give evidence under objection. You are
40 entitled to do so, I'm just informing you of your rights, that's all. And it's a matter for you, if you wish to give evidence under objection then, as I say, the Act entitles you to do that.---Okay. No, I'm, I'm fine giving evidence without that objection.

All right. If at any point any question is put to you and you want to revise your opinion about that, you just indicate that to me and we can come back to this question of giving evidence on objection. As I emphasise, it's an entitlement or a right that the Act gives every witness, to object if they wish for the reasons I have stated.---Okay. Thank you, Commissioner. I
40 understand.

But you may raise it at any point if you wish again.---Okay, thank you.

All right, thank you.

MR DARAMS: Now, Ms Butler, as I understand your evidence, you were the Manager of Statutory Planning at Canada Bay Council, was that from 2008?---Yes. So from May 2008 until I resigned in October 2019.

10 Did you did you act in any other position during that period of time of your employment at the council?---Yes. I would occasionally act as the Director of Planning and Environment during that time.

In the position of Manager of Statutory Planning, who did you report to? What was the position and who held that position?---Oh, okay. So, I reported directly to the Director of Planning and Environment. At the time that was, or for the entirety of my manager role at the council, that was Mr Tony McNamara.

20 So if Mr McNamara was on leave or was absent for some reason and someone had to act in his role, was that an occasion that you might act in his role?---Yeah, yes. The procedure was generally that we would rotate the acting position between myself and the two other managers within the department, which would be the Manager of Strategic Planning and the Manager of Enforcement and Environmental Health.

30 Yes, I see. Now, in terms of your role as Manager of Statutory Planning, can you just outline what your duties and responsibilities were in that role? ---Yes, certainly. I, I managed a team of approximately 14 people, the majority of whom were statutory planners or development assessment planners, and our role was primarily the assessment of development applications and associated planning applications under the Environmental Planning and Assessment Act.

So did that encompass not only the assessment of development applications but also planning proposals or was that another department?---No. Planning proposals were assessed by the Strategic Planning Team.

40 Did your role of Manager of Statutory Planning have any responsibility or involvement in the negotiation of voluntary planning agreements or was that within - - -?---No, that was completely separated from our role because of the fact that we would often end up assessing a development application or being involved in the administration of assessing a development application

that may have come, arisen from that VPA or where that VPA accompanied the development application. So we were separated out from that. Those negotiations were generally carried out, from my understanding, by the general manager, who at the time was Gary Sawyer, and Mr McNamara.

Now, did you understand that in terms of the negotiation of those, I'll call it the VPAs, did councillors have any role to play in the negotiation of those agreements?---No, no. Not to my understanding. We had a policy, a voluntary planning agreement policy that was drafted by one of our legal firms and was adopted by council but that, under that policy those negotiations didn't involve councillors to my knowledge.

Can you recall the name of the policy?---It was section 93F agreement policy and I believe it might have drafted by a firm of, always peer reviewed and drafted by a firm, I think it was Lindsay Taylor Lawyers at the time.

Can you recall when that policy came into existence, about an approximate time?---Approximately, I think it might have been the early 2000s, I'm not quite sure, sorry.

Was that policy in existence from the time it was implemented, to the best of your knowledge, until that time that you ceased employment?---Yes. It had been reviewed I think a couple of times but, yes, it was in existence all of that period.

Just in terms of the involvement or lack of involvement of councillors in the negotiation of VPAs, sorry, is it your recollection that that was something that was outlined or detailed in the policy or something prohibited by the policy?---I can't recall whether the policy directly prohibited the involvement of councillors but my understanding of the policy would have been that it would have excluded them, I would have thought, but unless I had a copy of the policy in front of me and had a look at it, I'm sorry, I can't really recall. I never knew councillors to be involved in those negotiations from what my understanding of it was, sorry.

THE COMMISSIONER: Sorry. I missed your last statement. The last bit of your answer was what?---I said that as far as I understood the way the policy was implemented, I certainly never knew of any councillors being involved in those negotiations from my understanding of the process.

40

MR DARAMS: Now, you've given some evidence that you were previously employed by the Canterbury Council. Is that correct?---Yes. I was a Canterbury Council employee, now you're testing my memory here. I think it would have been from about 1989 until approximately 1994, somewhere around that mark? And I went off, I actually resigned from council and then recommenced employment with the council after my son was born.

10 Yes. Now, did you during any period of time that you worked at Canterbury Council did you have the occasion to work with or associate with Mr Tsirekas?---I certainly knew Mr Tsirekas as a council officer during that period, yes.

Did you work with him at all during that period of time?---I didn't work directly with him, no. He worked in a different department to mine.

20 Yeah. Now, just in terms of your interaction or involvement with Mr Tsirekas at Canterbury Council, are you able to outline to us the interactions you had with Mr Tsirekas, what you would interact with him in? Are you able to do that for us, please?---Certainly as far as interactions went, it was probably more of a "Hello. How are you?" sort of thing if I saw him in the, the office somewhere but I never directly worked with him, no.

Did he ever ask you for example, from time to time, to look into applications or anything that had been lodged by council?---No, not that I can recollect, no.

30 Did you ever have occasion to view or observe Mr Tsirekas' interactions with any other council staff?---Certainly with the people that he'd directly worked with, environmental health surveyors, health and building surveyors, people like that that were part of his team.

Sorry. I think we might be at cross purposes now.---I'm sorry.

I'm talking about the period of time at Canada Bay Council - - -?---My apologies.

- - - not at Canterbury Council. Sorry.---Sorry.

40 So I think I might go back to a couple of questions before when I've talked about your interactions with Mr Tsirekas and make it clear that what I'm

asking you about is when you were at Canada Bay Council and Mr Tsirekas is the mayor at Canada Bay Council.---Yes. I understand.

Yeah. So did you have any interactions with Mr Tsirekas in his capacity as mayor?---Yes.

Can you explain the nature of those interactions with Mr Tsirekas?

---Generally, the interactions would be if I attended a, a council meeting or if I attended meetings that the mayor's office may have organised with
10 people who had approached him to meet with him that either involved development applications that we were assessing or may have been inquiry, planning inquiries about a particular property. The only other interactions I would generally have with him would be phone calls but occasionally, not
20 very often, and inquiries that Mr McNamara had directed towards me that had been directed to him from the mayor's office.

So could I just pick up on that last piece of evidence. Is it the case that you understood that Mr Tsirekas might call Mr McNamara about a particular matter, Mr McNamara would direct Mr Tsirekas to you, and Mr Tsirekas
20 would then contact you, is that your understanding?---No. The mayor was not supposed to contact myself directly, so the inquiries that he may make would go through Tony McNamara as the director.

When you say he wasn't supposed to contact you directly, what was the, your basis – what was the basis of your understanding for that? Is it some policy, is it some - - -?---Yes, it was the policy of council that any mayoral inquiries or councillor inquiries in general should go through the director of each department.

30 So your understanding is that Mr Tsirekas – I'll come back to whether he contacted you directly in a moment, but otherwise Mr Tsirekas would contact, in effect, your boss.---Yes.

And your boss would then ask you to do something, is that right?---Yes. So Mr McNamara would then ask me about whatever particular development application it may have been or property inquiry that may have come through the mayor's office, and then we, I would find that information out for Mr McNamara. And generally that would occur through an email, so it would set out the details of the inquiry or the answer to the inquiry via email
40 back to Mr McNamara. And then my understanding was that that information was then relayed back to the mayor's office.

THE COMMISSIONER: Do I understand that the policy you referred to, whereby a mayor should not contact directly a staff member such as yourself, was that built on a policy of maintaining some form of separation between a mayor and staff - - -?---Yes.

- - - as distinct from the - - -?---The executive council, yes.

The executive. Yes, yes.---Yes.

10

And that separation was designed to enhance, I take it, integrity in administration, is that right?---Yes, and also to protect the staff from influence or, you know, that sort of thing, Commissioner, yes.

Thank you.

MR DARAMS: In terms of the, if I can use this description, the request coming from the mayor, how did you know it came from the mayor from your interactions with Mr McNamara? Was that because he told you or because he forwarded on an email that might have come, or an email was sent to you that said, "The mayor has issued this request or asked for this"? ---Could be all of the above, Mr Darams.

20

All of those three things?---Yes.

I see. So all of those three things had occurred from time to time during your employment?---Yes.

Now, what about any direct request from Mr Tsirekas? Do you recall that ever happening?---The only times that I recall that happening was when I was actually the acting director.

30

THE COMMISSIONER: And did that happen often or occasionally or what sort of matters were they about?---Do you mean in relation to when I was the acting director, Commissioner?

Yes.---Again, the same sorts of inquiries could come through, where the mayor's office would be asking about a development application. Or in those circumstances too it may be about strategic planning matters as well.

40

Just depended on what the question was.

Yeah.---Mmm.

Okay.

MR DARAMS: Just in terms of an inquiry about a development application, are you able to assist us now, from your recollection, as to the types of questions that might be asked? Was it about where is it at, or has someone lodged an objection or – are you able to assist us with those types of inquiries?---Yeah, it wasn't normally about whether someone had lodged
10 an objection to a development application. It would more often be about where is the application up to, are there problems with the application, why hasn't the applicant been contacted, for example, things like that.

In terms of a question about are there any problems with the application, what kinds of problems might there have been if - -?---Well, for example, had a development application had a preliminary assessment conducted by the officer, the planning officer in charge of the application. We would often set out any issues we'd identified with the application in what was commonly referred to as a 21-day letter, and those letters, once an applicant
20 had received a letter like that, they may sometimes contact the mayor's office to seek assistance with those issues, and in those circumstances, sometimes we would get enquiries from the mayor's office about what those particular issues were and, you know, what, a better explanation, I suppose, of what the problem was.

In terms of processing, for want of a better description, the applications that came in, was there an ability to process applications more quickly? I'll give you an example, for example, I'll do it in layman's terms, two applications are lodged on the same date, they go through the process, presuming that
30 they proceed generally together, was there an ability to focus on one application more than another application at a particular time?---You mean to fast-track things?

Fast-track an application?---Yeah. We did actually have a Fast-Track Assessment Team originally in our Statutory Planning Services Team and they would generally deal with the simpler applications that could potentially be processed more quickly than more complex applications. However, with the advent of complying development certificates or complying development and exempt development, we found that having a
40 Fast-Track Team was maybe not as justified as it once was because we

didn't get a lot of those, what we would refer to as, fast-track applications anymore.

I understand.

THE COMMISSIONER: Well, was that replaced with some other approach or not?---The other approach - - -

Just - - ?---Sorry, Commissioner.

10

No, you go ahead.---The other approach that we did try to implement is if there were more simple applications, we would tend to give those to maybe the less experienced planners who were just starting with us, and try and get those ones going more quickly. But generally speaking, we didn't, towards the end of my tenure as the manager, we didn't tend to have the same level of resources. We didn't have as large a team, so, and we, we were getting quite complex applications because of a lot of the, the master planned areas within Canada Bay where applications were coming forward as a result of those. So a lot of the work we were doing were quite complex applications as well, at times. So we tried to fast-track things as much as we could within our resources. But, yes, originally we did have a completely identified team for those simpler applications.

20

Just generally, in relation to not only fast-tracking requests that might have been made for a matter to be accelerated, but also in relation to other matters concerning planning or development issues, was there any policy or process that addressed, from an integrity point of view, taking steps to avoid the actuality or appearance of giving preference or favouritism to applicants, for example, who may developers?---I wouldn't, there was no written policy about that but it certainly, as far as our delegations from council went, we had to act in accordance with those delegations. So, and I was always very specific and quite forthright at times about ensuring that influence was minimised on my staff in terms of their assessment of an application, and if any staff member was ever concerned about the way they may have been approached or contacted by anybody, any member of the public or any member of council, about an application – which should not have occurred anyway – then I would always try and intercede and make sure that that, that that situation was minimised and was properly addressed to ensure that the planner felt that they were not being harassed, if you like.

30

40

Yeah. Thank you.

MR DARAMS: Were there any occasions that any of your staff were approached directly by any councillor during your, that you're aware of? ---Not that I can recall. The councillors were well versed in the code of conduct that existed for them and for staff and, no, I can't recall any occasion where any councillor directly contacted any of the planners in my team.

10 Now, I did ask you a question, I've focused on your interactions with Mr Tsirekas. Were you able to make any observations during your employment as to Mr Tsirekas' interactions with other council staff, for instance, Mr Sawyer or Mr McNamara or the like?---Well, the interactions that I saw between those council officers and Mr Tsirekas were usually always in the context of those mayoral meetings I was referring to or in situations where I was the acting director and I would attend an executive team meeting, for example, where the mayor may have been present.

20 I see. You did mention attending or observing interactions at council meetings. Was it a part of your role as the Manager of Statutory Planning to attend council meetings?---I would attend council meetings as requested by Mr McNamara if there were development applications on an agenda, for example, that he thought it would be of assistance if I was there to answer any questions or to assist him with inquiries that might come forward from councillors during the meeting.

30 So it wasn't, and I use it loosely, a condition of your employment that you attend each and every council meeting if you were able to attend? It was more an ad hoc system. Is that right?---I generally did attend a lot of them but it wasn't a condition of my employment that I must attend them, no.

Do I understand your evidence to be that you attended if you were asked by Mr McNamara to attend, but if you weren't asked by Mr McNamara to attend, you might attend a council meeting or you wouldn't?---Yeah. So generally speaking, if he didn't believe it was, it was of benefit to have me there at the council meeting, then he would not ask me to come, no.

40 Now, what about in terms of any other observations you were able to make during your employment as to how Mr Tsirekas interacted with council staff more generally? Were you able to make any observations based upon your employment?---Beyond the executive team, you mean, of council?

Yes.---Well, as I mentioned before, the councillors were not supposed to contact council staff below the director level. So, no, there wasn't a lot of interaction that I would ever see between Mr Tsirekas and certainly the planners in my team. Certainly, Mr Tsirekas knew all the, most of the managers within council. And if he saw us, you know, within the building, it's, you know, say "hello" and, yes.

10 Yeah. Just going back to your attendance at council meetings in the period, I'll focus it here, 2015 to 2019, that period of time there, were you able to observe the process that council adopted in terms of motions coming before council and then being adopted as resolutions and how they might be formulated?---Well, in relation to development applications, those sorts of motions would only generally come forward if a councillor was seeking to better understand a development application recommended condition or they wanted to add sort of conditions that might arise out of objectors addressing council, for example. And a councillor might seek to change the wording of a condition, for example, or add a condition in that they thought better addressed the concerns of the objector, for example. And those
20 motions would generally, the councillor would generally write that suggestion or they might ask for some guidance in how to construct the condition, for example, to make it, you know, legally robust if it was included in a development consent.

Now, I want to ask the witness to be shown volume 1.2, page 9. Sorry, is this 1.2, page 9? I think that's page 1. Just want to ask you if you could please read the email from Mr Kenzler to the email address All Councillors.---Yes, I've read that.

30 Yes. If I could just then ask you to be shown the next page. Just have you familiarise yourself with that.---I have seen that. I have seen that. That's Councillor Kenzler's draft motion, yes?

That's correct.---Yes.

Could I then just ask you to see, be shown the next page as well.---Yes.

40 Yes. Perhaps if we could go back to page 9 now. So what we – you see here, we've got Mr Kenzler sending to All Councillors plus Mr Sawyer and Mr McNamara what is a proposed motion for an item at the following council meeting the following night involving Billbergia's planning proposal.---Proposal, yes, yeah.

This process here of councillors sending to other councillors proposed motions, is that something that you had been aware of or come across during your employment at Canada Bay Council?---I can't say that I would have seen it very often but, yes, I do recall seeing it occasionally. Councillor Kenzler, when he did draft a motion like this, would generally send it to All Councillors if he wanted input from any other person. But generally speaking they would seek the, they would seek the advice of council staff if they were concerned about how to word a motion or how to
10 get what they wanted to put forward into a format that was understandable, I suppose.

Were you ever approached – I'd say probably not directly, but if you were approached directly you can tell me that, but were you ever via the approach through, say, Mr McNamara, were you ever approached to assist with the drafting of a motion or a proposed resolution that you can recall?
---I can, the only times I can recall that would be during the course of a council meeting in the circumstances that I previously described, where a councillor may have sought to include a condition, for example, or change
20 the wording of a condition to better address concerns that may have been raised by an objector, for example. Something similar to that.

So when you're sitting there at the council meeting, at the night someone's raised an issue and the councillors said, well, can you help us draft something to deal with that?---Yes, something like that. Or they, you know, agreed amongst themselves that that would be a good addition or condition to put on a consent, and so we would assist with drafting the wording of that condition during the course of the council meeting.

30 In terms of whether or not this circumstance that's outlined here, Mr Kenzler sending it to the councillors and Mr Sawyer and Mr McNamara as well, were you aware of that happening before from any conversation you might have with Mr McNamara to that effect?---I can't recall specific occasions where that would have happened, but, yes, it may well have happened. I, I obviously didn't see this email, and I don't recall Tony McNamara or Gary Sawyer asking me about that particular motion or asking for any advice on it. And, in any case, if they did want advice on that sort of a motion, they may well have approached the strategic planning staff for that assistance, given that it involved the planning proposal for
40 Billbergia.

And if I can just go to page 11 for the moment. Could I ask you just to look at those paragraphs.---7, 8 and 9 you're referring to?

Just focus on 7 and 8.---Okay. Yes.

Now, based on your experience and when I say "experience" I mean, all of your working experience, are you able to, if I was to ask you some questions in a moment about the effect of this proposed motion that became a resolution, explain to us what that meant for this particular planning
10 proposal in terms of the process and the benefits one way or the other? Are you able to explain that to us?---Well, this motion came about after, if I recall correctly, council had resolved at the previous council meeting to refuse the planning proposal.

Yes.---And so I must say, when I did see it on the night, I thought it was a very lengthy and complicated motion that wasn't what you would normally see in a, a recommendation or a motion put forward by a councillor.

THE COMMISSIONER: Can I ask you do you recall what the basis of the
20 refusal of the previous planning proposal was or not?---From memory, the reasons related primarily to the fact that a lot of strategic planning work, master planning, had gone into assessing the planning proposal from Billbergia or, or in, I should say, sorry, a lot of background work had gone into the whole of the Rhodes peninsula planning up to that point and that the planning proposal they were putting forward was inconsistent with most of that master planning or most of the strategic work that had gone into that, the, the Rhodes peninsula.

What do you call it, a masterplan or what was it?---Well, it was a master
30 plan but the, the, a lot of, like, consultancy work had gone into it from Professor John Toon to Conybeare Morrison, a whole raft of - - -

These were consultants to council?---Yes, that had, you know, done a lot of work on formulating the development controls for certain parts of the Station Precinct, in particular, in this case, and that Billbergia's planning proposal was inconsistent with a lot of that work.

Right. Thank you.

MR DARAMS: Now, if we can just go back to page 9. You can see from the top email that Mr Tsirekas has forwarded Mr Kenzler's email to Mr Furlong - - -?---Yes.

- - - on 31 May, 2016. Now, I just want to ask you a few questions about this. Now, firstly, do you know who Mr Furlong is?---Yes, I do.

Did you know who Mr Furlong was at 31 May, 2016?---Yes, I did.

10 Yeah. And did you understand what his role was at that time?---At this time, Mr Furlong was the planning consultant on behalf of I-Prosperity.

Did you have any, in your position as manager, statutory planning, did you have any involvement in I-Prosperity's planning proposal?---No.

So you understood at this time Mr Furlong was, well, I'll say a consultant to I-Prosperity at that stage. Is that right?---Yes.

20 Are you able to express any view about the probity or the probity of Mr Tsirekas or the reason why Mr Tsirekas might forward that email on to Mr Furlong?---I can only assume that that was done to allow Mr Furlong to have a look at Councillor Kenzler's draft motion.

Could you think of any, based on your experience, any reason why that would be an appropriate step for Mr Tsirekas to take?---No. I would consider that very inappropriate.

30 Are you able to assist us or explain why you would view it as being inappropriate?---Well, Mr Furlong was acting for a company that had submitted a planning proposal to council. He was not another councillor, he was not a council officer. He was a private member of the public who was working as a planning consultant and I would never have thought that appropriate to send what is essentially an internal document to a, a person outside council.

40 Are you aware, just focusing on your period of time at Canada Bay Council, are you aware of whether this circumstance had happened on any other occasion? That is a councillor forwarding onto an external party a proposed motion from another councillor?---Not that I can recall, no.

Do you recall attending the council meeting on 31 May, 2016?---I do recall it, yes.

Now, I just wanted to ask you a few more questions about this. So if the witness could be shown page 17, please. You can see from this, Ms Butler, that this document here is the proposed motion from Mr Kenzler, paragraph or clause, do you refer to them as paragraphs or clauses?---Clauses, I would refer to them as.

10 Clauses 7 and 8 consistent with the version I just showed you. I want to draw your attention now to clause 9 and clause 10, if you could just read those for the moment.---Yes, I'm, I was aware that that was an addition to councillor Kenzler's motion that referred to, oh well, there, there was a reference in the general manager's report of that night that referred to the submission of the planning proposal by I-Prosperity and that appears to have been picked up here but worded to include I-Prosperity's land in the planning proposal.

20 Yes. I want to come and ask you some questions about those additional clauses in a moment and the consequences or the effect from the planning process involving I-Prosperity's land, but I just want to ask you some questions before that about the way that these amendments or additional paragraphs may have come before council. So - - -?---Okay.

If the witness could be shown page 15. So this is an email from Mr Furlong to Mr Tsirekas on 31 May in the afternoon and the evidence we've obtained is that paragraphs 9 and 10 that you just viewed were drafted by Mr Furlong and added to the proposed motion and sent back to Mr Tsirekas by way of this email.---Yes.

30 And the first question I had, were you aware that that had taken place?---No.

Are you able to advise or give us any evidence as to whether, or commenting on the probity of that occurring?---Again, I would say that that was very inappropriate for a private planning consultant to forward a draft, amend a motion of a councillor to include additional information like that and forward it back to the mayor.

40 THE COMMISSIONER: How can that then trigger or bring about issues for the planning proposal process?---Well, when it's considered that, that,

my understanding is that the I-Prosperity planning proposal had only been lodged about four days before the meeting or six days before the meeting.

Yes.---And that the Billbergia planning proposal that they were seeking to piggyback on the back of, if you like, had been subject to quite a lot of review and assessment – by the strategic planning staff, I mean – in the drafting of their report recommending refusal of that proposal. And really I-Prosperity’s planning proposal was, had not been subjected to the same scrutiny.

10

Yes. It did appear, as you put it, that when the amended draft resolution issue was, in effect, putting, as it were, bringing two different projects together in the one proposal that had initially been addressed only at Billbergia’s proposal - - -?---Yes.

- - - which, as you say, had developed over a considerable period of time, I gather, is that right?---Certainly. And from my reading of the report that was put up to the meeting before this one, on the 17th of May, it was quite a detailed report that had gone through Billbergia’s planning proposal in some detail and had actually recommended that it be refused. To include a second planning proposal from a different proponent with, days before, after it had been lodged to council - - -

20

In respect of different parcels of land.---Exactly. Then I don’t see how you could have pulled that into the same proposal, being the Billbergia one.

MR DARAMS: Could I just ask you about that in a little bit more detail. Can we please go to page 17. Could I ask you to look at proposed clause 9. Now, based on your experience, including your experience at that time with Canada Bay Council, would the inclusion of or the passing of a resolution in that effect, would that have provided some benefit to I-Prosperity given – well, firstly, would it provide some benefit to I-Prosperity?---Well, certainly in terms of I-Prosperity, their planning proposal being expedited, if you like, and also in terms of it not being subject to the same assessment that the strategic planning staff had already done with the Billbergia proposal, then, yes, I would have called that a benefit to I-Prosperity.

30

Can you just explain to us why you – you seem to have made, not critical of you, you seem to have made some assumptions that if that was passed in that term, then those consequences would have followed. That is the, it wouldn’t have been assessed by the staff and it was going to be expedited.

40

Can you explain to us why that's the case, just looking at that?---Well, that clause talks about extending it to include that planning proposal, so including an I-Prosperity planning proposal. So what it suggests to me is that I-Prosperity is getting the benefit of all the work that's gone beforehand in relation to Billbergia's planning proposal. Bearing in mind too that that planning proposal was recommended for refusal by the strategic planning staff. We now have a motion or a resolution of council which is basically overturning that recommendation for refusal and seeking to proceed and pulling I-Prosperity into that, given that it was only, their planning proposal
10 was only lodged, what, three or four working days before this council meeting occurred.

So in terms of expedition, you referred to that as being another benefit, are you able to give us some sort of assessment as to how much time I-Prosperity saved or gained or benefited from in relation to this resolution?
---I couldn't put an exact time frame around it but certainly I know that that the Billbergia planning proposal had taken quite a few, quite a few weeks or months to, to work through with the strategic planning staff. So, yes, I, I might, I would say that I-Prosperity basically jumped the queue, if you like,
20 in terms of that amount of assessment work that would have gone into looking at their planning proposal and formulating a recommendation as to whether it should or should not be supported even,

THE COMMISSIONER: As you said, as counsel has put to you, jumping the queue as you put it here, is certainly, in terms of time, a very expedited jumping of the queue if the I-Prosperity proposal had only been lodged some days before, and it's being now added to another proposal which was of comparatively long standing.---Yes.

30 I would call that fast-tracking.---Absolutely.

Can I just ask, when you look at clause 9 to search for the rationale for why this could come about, as I understand, and you correct me if I'm wrong, in clause 9 the only fact referred to which is said to be the rationale, if you like, in effect, or the reason to expedite so quickly, is in the second sentence where it says "in consideration of the location of that land".---Yes.

There doesn't seem to be any other matter or fact or reason expressed as to why it's jumped the queue or it's been expedited to such an extent so far as
40 trying to understand why was this approach being taken. Are you able to comment on that?---I would agree with you, Commissioner, that that seems

to be one of the few, or few words in this clause that gives you some explanation as to why it was considered appropriate to do that.

Well, would the mere fact of the location of the land, that's the I-Prosperity land adjacent to the Billbergia land, in the ordinary course of due process explain why it would be expedited and added to Billbergia application? That is location but nothing else.---Well, if that was the only reason why that was being offered, I would have thought that was an insufficient reason to do that. I, I don't, but again, as I said to you, the only other thing that
10 seems to have been put into the clause is talking about the planning merits of it considered in terms of compliance with the principles of the master plan. But that should have occurred as part of the strategic planning staff assessment of the planning proposal by I-Prosperity in any case. So, no, I agree with you, I think the rationale there is the fact that it was adjacent to Billbergia's land.

Thank you.

MR DARAMS: Now, I just want you to also note for the moment the terms
20 of clause 10 or proposed clause 10. Just read that to yourself.---Yes.

Now, are you able to assist us, based upon your recollection of what occurred on the evening of this meeting how the, or if this proposed motion, is it put up on any screen or is it provided in terms or do you recall whether this was, this motion in these terms was provided to you or any of the other councillors or how does it come about that this might end up being passed as a resolution in these terms?---If a, a counter-motion, if you like, is put, is put forward by a councillor, then they would put this up on the screen, similar to the screens you have in the room here, to allow, and the
30 councillors also all had monitors on their desks in front of them, as did the executive at the front of the council chambers, so you, you could read it on the screen like that. But that would be the only way that I would imagine it was circulated to the rest of the councillors.

So there would be someone in the meeting room who would operate the computer to cast it onto the screens and in the room, is that right?---Yes. There would generally be an administration assistant, who was responsible for taking the minutes, who would put up whatever documentation they were asked to display on the screen.

40

So in the meeting would someone – is this the process? Someone, if they wanted something displayed on the screen, they would hand the document up to the administrator, and they would, what, they would type it up or they would project it?---Usually it, it, well, in this case with a document like this, I would say that that had been pre-prepared and forwarded to the – usually the admin assistants were the general manager’s PAs, or the mayor’s PAs would sometimes do the role as well, but they would be given or sent a Word document, I would have thought, and that’s how this was brought up on the screen. So it was either emailed to them so that they could bring it up
10 on the screen in the council’s computer system.

So the question I have is do you recollect this motion in these terms going up on the screen during the council meeting that evening?---I’m sorry, Mr Darams, I can’t recall whether that did occur or not. I’m just assuming that it did because that’s what would normally happen.

Perhaps the next question I was going to ask you, would it have been, for something of this detail, the normal process that council adopted, based on your experience, would have been to display this on the screen in the
20 council chamber or council meeting room?---Yes, to allow all councillors to read it and understand it, and the council staff who may not have seen it before as well. And members of the public as well, they’re in the gallery, would have seen it on the screen if it was put up there too.

Just before I move off this page here, just in terms of clause 10, have you in your experience before seen a resolution to that effect or of that kind previously?---Be perfectly honest with you, I’ve never seen a resolution of council like this before at all. There was a lot of detail in it. And it’s not, the wording of it is not, like, directing things to occur, directing outcomes to
30 be achieved, directing staff to do particular things or delegating council’s functions to a staff member to do particular things. So it’s a very unusual motion in my opinion. And in relation to clause 10 in particular, I find that a very difficult wording to actually understand what council was intending by it.

THE COMMISSIONER: Sorry, I didn’t catch the last bit.---Sorry, I was saying that the wording of clause 10, it’s difficult to understand what the intent of that is or what they meant by that.

40 Yes, so – yes. Can you understand whether council would normally be concerned to, by resolution, initiate an inquiry with a landowner, such as

clause 10 refers to, in the context of a developer's application to develop five neighbouring lots? In other words, can you conceive how council would be motivated or would want to undertake this form of inquiry in paragraph 10?---No. I'm not quite sure why they would want to write to the owner of a property seeking their formal advice as what they intend for their land. I, I'm, I'm sorry. I was, I was at a bit of a loss to understand what that clause actually was about.

10 There's been some evidence that if the developer, in this case I-Prosperity, didn't or was unable to acquire lot 1 of Marquet Street to make up the block of six, adding Marquet Street number 1 to the five lots already held, then the possibility could be that the proposal could be developed even though the landowner has held out and doesn't want to sell. Do you see any - - -?---I understand what you mean by that and that they were trying to maybe take a more holistic approach or precinct approach to including all of those allotments of land - - -

20 But is that a matter for council to inquire - - -?---No, I would, well, I don't think it would be appropriate for council to request formal advice from a landowner in that respect.

Why do you say that?---Because obviously if someone has not already or a landowner is already not seen to try to participate in the process, then I don't believe it would be council's position to, to be seen to be trying to instigate their involvement in it when they may have already clearly chosen not to.

30 So in a situation like this, it's really up to the developer to make it happen if it can?---Exactly. And they certainly had ample opportunity, from my understanding of, of what happened through the Rhodes master planning process to be involved, had they chosen to.

Right.

MR DARAMS: But when you say that, Ms Butler, you mean the owner of that 1 Marquet Street?---1 Marquet Street, yes.

40 I want to now show you the minutes of the meeting of that evening and so can I ask that you be shown volume 1.2, page 66? Now, Ms Butler, you might recognise (c), (d), (e), (f) and 8 as being part of the proposed motion, including the amended motion from Mr Furlong?---Yes.

I'll come back to clause 9 in a moment. But I just want to draw your attention to clause 10.---Yes. I can see the difference in the wording between the previous document you've shown me and now this one.

Yes. So I want to ask you some questions about the difference in wording and whether or not the difference in wording provided any greater or different benefit if it provided a benefit to I-Prosperity, okay. So, firstly, on that, did or could you see that this resolution provided any benefit to I-Prosperity?---In relation to clause 10 you're referring to?

10

Yes.---Well, in relation to that property now being included in the investigation and planning proposal for the, for their site, for their site.

So at this stage, I-Prosperity didn't own 1 Marquet Street - - -?---No, no, no. I understand that. Well, if they were ever to then go and acquire 1 Marquet Street, they certainly had a resolution of council that that property would be included in the investigation and the planning proposal.

20 Does that, based on your experience, did that provide any additional time saving for I-Prosperity in terms of its planning proposal?---Well, certainly having the benefit of this resolution of council would, would be a time-saving process, I would have thought, yes.

30 If this hadn't been passed in these terms and then noting that it had already lodged its planning proposal some seven days earlier, then I-Prosperity acquired 1 Marquet Street in the future, if it wanted to include that land in its planning proposal would it have required a further amended planning proposal to be submitted by I-Prosperity?---Yes, I would have thought they would need to amend the planning proposal to include additional properties in it but this is like council basically inviting that to occur, if I can put it that way, because they've already made the decision that that property will be included in the investigation and the planning proposal.

40 So in that sense do they get the benefit of that assessment being undertaken before they had purchased the property?---Yeah. Well, in, in a way council is, it's vetted its powers in relation to the fact that it's, it's made that decision without having any of the benefit of that assessment before it when I did. So it's just determined that they're going include this property in it regardless.

In terms of the then owner of 1 Marquet Street, was this any detriment, any benefit to that owner of that property at that time or is it - - -?---I, I, I don't know, I couldn't say. I wouldn't have, I, I would imagine that if, if they were in negotiations, as it were, with I-Prosperity at the time, then this may have benefited them in terms of maybe the value of their property.

Noting the difference between the draft of the motion that Mr Furlong returned to Mr Tsirekas and the minutes of the resolution actually passed, can you recall now, and you probably can't, but can you recall now which
10 one was, if it was displayed on the screen, which was one was displayed on the screen?---(NO AUDIBLE REPLY)

You don't remember?---No, sorry, I can't recall.

Do you recall whether the, I'll call it the original but I'll call it the amended resolution or motion by Mr Furlong, whether that was projected on the screen and then there was discussion around clause 10 that might have eventuated in these amendments occurring?---I don't recall that, no.

20 No. Can you recall any debate or discussion about the subject in clause 10 at all?---I, I seem to recall that there was some debate around the matter because obviously Councillor Kenzler would not have been pleased to see this in here I would imagine, or pleased to see his motion amended. But I can't exactly recall, I'm sorry, it was a long time ago.

I appreciate all that. In terms of Mr Kenzler not being happy that his motion was amended, are you saying that based upon your recollection that he said something at the meeting or based upon something else?---Well, I, I know that he voted against it from what I've seen in the council minutes, but from
30 my recollection on the evening, I'm, I'm sorry, I can't recall the exact detail.

I see. Just going back to Mr Tsirekas' conduct when he was the mayor when you were employed at the council. Did you ever regard Mr Tsirekas operating as if the, or come to regard it as operating as if it was Mr Tsirekas' own little fiefdom or something to that effect?---I may have used those words in the past, yes.

Can you explain to us why you had used those words and why you were of that view?---Well, Mr Tsirekas had conducted his, well he used his office
40 space as an opportunity for people to come and meet with him but there was, he had developed a certain culture, I suppose, and an expectation

amongst members of the development industry in particular, who were seeking to either do development in Canada Bay or who had actually lodged applications with us to do development, that his door was open if you like, and that they could come and talk to him, they could contact him to seek a meeting with him, that, that he would have council staff assist with that process as well. So that, you know, if there was information that we could provide about how the development application was progressing, for example, or what the issues were with that application, in my opinion and the way that I thought it was appropriate to conduct my role and the role of my team was that that should not occur, that we should be left to do our development assessment work without influence or without being feeling like we were being pressured to progress things more quickly than they may have otherwise been.

THE COMMISSIONER: Could I ask you, in relation to those sort of meetings with developers that you've spoken of that Mr Tsirekas would be engaged in, are you able to say whether such meetings were the subject of minutes or, if not minutes, a record of some kind?---No.

20 Not.---In my experience, no. They were never, there were never minutes taken of those meetings. We would sometimes, you know, if we had to go and get information or find out something or we agreed to do that, then we might just take a note of what we had to do. But other than that, there were no minutes taken of those meetings when I was in attendance, that I'm aware of.

Yes.---I think Mr McNamara started to take notes of those meetings a bit later on in my tenure as the manager.

30 Meetings that he attended?---With the mayor, yes.

Yes. But in relation to other meetings that you've spoken of that Mr Tsirekas had undertaken with developers, was Mr McNamara always present or was some of these meetings conducted simply between Mr Tsirekas and developer representatives or what was the situation?---I could only comment on the meetings that I knew that Mr McNamara was present at, and he did predominantly attend the meetings that I, that he would ask me for information about. I would be aware that he was going to that meeting, and that's why he was asking me to get that information for him, or I would be present at the meeting myself.

I thought you said in some circumstances there were no records kept of such meetings.---That's true.

So are you talking about meetings at which Mr Tsirekas and Mr McNamara were always present or was Mr McNamara present for some but not others? What was the situation?---Well, I couldn't, I can only speak about the meetings that I was aware of. So if they related to planning matters that were development application matters, then Mr McNamara would advise me that he was going to a meeting with the mayor and that he needed certain
10 information to assist with the inquiry that was being discussed.

I see.---Mmm.

Thank you.

MR DARAMS: I was going to ask you, you've just given some evidence about the way that Mr Tsirekas would operate out of his office, and I just wanted to confirm that, are you saying that's based upon your direct involvement in some of these meetings but also through some of the
20 conversations you had with Mr McNamara, who might have asked you to get some information in relation to a development application so that Mr McNamara might be able to share that information in the meeting with Mr Tsirekas?---Both.

Both.---Both cases, yes.

Were you able to observe whether any other councillors did that same type of or engaged in that type of behaviour as well during your period of employment?---The only councillor during my term of employment who
30 had an office was the mayor.

Right.---On council's premises. Whether, whether councillors met people in other locations, they may well have but I wasn't, was never present during any of those.

In terms of you being asked by Mr McNamara to obtain information in relation, for example, to a development application, you've given some evidence that those requests sometimes came from, were on behalf of the mayor, Mr Tsirekas. Were you asked similar or made similar requests on
40 behalf of other councillors through Mr McNamara?---Yes, certainly, other

councillors would ask questions about development applications through the director.

Were they a similar type of question or request as to the ones that Mr Tsirekas would ask you?---Yeah, yes, sometimes they would be similar in terms of, you know, there, “There appears to be a delay with the processing of this application, can you give me some more information about what the issue is,” or things like that, so sometimes they would be similar, yes.

- 10 In terms of the frequency, though, are you able to assist us as to whether the majority of the requests of the type that came through Mr McNamara to you came from Mr Tsirekas or was it about even from Mr Tsirekas and other councillors?---Definitely, the vast majority of those inquiries came from the mayor’s office, yes.

- Now, we understand or we know that there was a period of time when Mr Tsirekas was not the mayor, between 2016 and 2017. Were you able to observe whether there was any change in practice or change in approach during that period of time with the person who took over as mayor?---Yes, 20 that was Councillor Helen McCaffrey became the mayor during that period of time and Councillor McCaffrey very rarely had meetings with, I, I don’t recall her having a meeting with a developer during that time in council, in the, the mayor’s office, I mean. She, Helen McCaffrey would sit with the executive team on a regular basis and just go through any matters that she had questions about or wanted to discuss or, or that she wanted some direction on, things like that. But, no, it certainly was a very different period for council staff in relation to the operation of the mayor, yes, the mayor’s functions, I mean.

- 30 THE COMMISSIONER: Is it right that Ms McCaffrey, who became mayor later, had been active in local government for many years?---She had been a councillor on Canada Bay Council for the duration of my tenure as an employee of Canada Bay Council, yes.

She was a very experienced - - -?---She was very experienced, yes.

- - - lady in local government, council work?---Yes, I wouldn’t say local government, council work but in the role as a councillor, yes.

- 40 Councillor. I’m sorry. Yes.---Yeah.

And was she well regarded?---The staff regarded her very highly, yes.

And did you?---I did, yes.

Right. Thank you.

MR DARAMS: Can I just ask you, did you have any involvement in your role in assessing the Billbergia planning proposal?---Not in terms of assessing the planning proposal, no. We did administer the assessment of the development application that fell out of that planning proposal but that was done by an independent planning consultant in accordance with that VPA policy I was referring to earlier.

Did you have any, I take it, given your evidence previously, you had no direct involvement in the negotiation of the VPA with Billbergia, is that right?---No.

Were you aware of the terms of the Billbergia VPA, like, what was being proposed or what was being given by Billbergia?---My understanding was that they were offering a property in Oulton Avenue, I think it was, at Rhodes for affordable housing, somewhere in the mark of 250 or something, affordable housing units, I believe.

THE COMMISSIONER: Mr Darams, can I just interrupt for a moment? Are you able to estimate approximately how long you might be with - - -

MR DARAMS: I think I'll briefly conclude - - -

THE COMMISSIONER: I'm sorry?

MR DARAMS: I think I'll briefly conclude Ms Butler and finish her today.

THE COMMISSIONER: I see. All right. All right. I have to finish at 4 o'clock but - - -

MR DARAMS: I'll conclude before then.

THE COMMISSIONER: You press on, yes, all right.

MR DARAMS: Yep. I just want to ask you one question, whether you're able to provide any comment about whether a planning agreement that

offered money and a heliostat to offset the impact of greater height and floor space would represent an example of making an unacceptable development acceptable?---I was aware of the offer of the heliostat and the heliostat became a reality. There was a lot of discussion amongst the planning staff at the time that we thought it was not an appropriate solution for the overshadowing that the building would cause to the town square.

And in terms of that discussion or the views of the planning staff, was that something that the staff were able to express with those who were
10 negotiating the agreement?---Certainly in terms of Tony McNamara's involvement in any of those negotiations. Yes, I think he was well aware that the staff thought that, or the development assessment staff at least thought the heliostat was, yeah, an inappropriate solution.

And in terms of any – did you view that it was an inappropriate solution?
---Yes.

Can you tell us why you thought it was an inappropriate solution?---I think it's there for all and sundry to see out there now. I think it's, it's a very
20 unfortunate addition to a very significantly tall building.

When you say unfortunate, do you mean in terms of aesthetics or in terms of the effect or the consequences of the heliostat, or the - - -?---Both. I think the, the, the architectural effect of it, the, the use of it as a solution to an overshadowing problem that was created through the planning proposal itself and the application, was not an appropriate way to solve that problem and I think that it is, well, in my opinion it's an eyesore.

Were you aware whether there were any other solutions that were being
30 discussed to deal with the problem?---Well, the only other solution was to reduce the height of the building so that it didn't cause the overshadowing that it did.

Just bear with me one moment. No further questions, thank you.

THE COMMISSIONER: Now, is there any application for anyone for leave to cross-examine the witness? Yes, Mr Leggat.

MR LEGGAT: May it please, Chief Commissioner, I make that
40 application, thank you.

THE COMMISSIONER: Very well. Ms Butler, it's a question of making arrangements now for you to return, I'm afraid to say. How are you placed tomorrow or have you got commitments already in place, in which case I think it's reasonable that you should be allowed to be heard on if there are problems that you have by returning tomorrow then we'll look for another date.---No, fortunately my employer is aware of, of what I've been asked to do in terms of giving evidence at ICAC, so they're, they know I've been summonsed and that, yes.

10 Yes, all right.---Yeah.

Thank you. Well, I think the proposal will be that you do return tomorrow at 10 o'clock. Does that occasion any difficulties for you?---No, I will be here.

All right. Mr Leggat, in relation to your application to cross-examine, are you able overnight to provide a document which indicates the subject area or areas that you wish to cross-examine the witness and some estimate of time, if you would?

20

MR LEGGAT: Yes, I certainly will provide that. Thank you.

THE COMMISSIONER: And if you could send that through to Counsel Assisting before we resume at 10 o'clock, that would facilitate arrangements.

MR LEGGAT: That will be done. Thank you, Chief Commissioner.

30 THE COMMISSIONER: Thank you. Is there any other application or is that it? Very good. Very well. Well, thank you Ms Butler. We'll adjourn now and return tomorrow at 10 o'clock.---Thank you.

Thank you. I'll adjourn.

THE WITNESS STOOD DOWN [3.55pm]

40 **AT 3.55PM THE MATTER WAS ADJOURNED ACCORDINGLY**
[3.55pm]