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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC  
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION TOLOSA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 6 MAY, 2022

AT 2.00PM

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THE COMMISSIONER: Yes, Mr Darams.

MR DARAMS: Could the witness be shown volume 6.5, page 153. So Mr Kinsella, I was taking to you this message on the top of the page just before the luncheon adjournment. Do you remember that?---Yep.

10 These are messages between you and Mr Chidiac on the WhatsApp message application. Remember me telling you that?---Yep.

So, I just want to ask you whether you can help us. So here's a message you sent to Mr Chidiac, there seemed to be two possible alternatives. The first is that you've composed a message to send to Mr Chidiac to give or pass on in some way to Mr Tsirekas, do you accept that as a possibility?---Possibly.

Alternatively, what you're doing is giving Mr Chidiac a copy or providing Mr Chidiac with a copy of a message you've already sent to Mr Tsirekas or  
20 you proposed to send to Mr Tsirekas, that's another alternative?---It could be.

Now, can you tell us which of those alternatives it is or if there is some other alternative, please tell us what it is?---I don't know.

Or just going back to this period of time in February, 2019, what was your, and when I say "your" I mean you and Billbergia's relationship with Mr Chidiac about?---I think we explained the relationship before.

30 Well, this isn't about purchasing properties in Rhodes East, do you accept that?---I accept that.

It's not about negotiating a joint venture or an introduction of joint venture to Prolet, correct?---No.

So what's it about? In terms of Billbergia's relationship with Mr Chidiac?  
---If you read it.

Why are you sending this to Mr Chidiac?---Again, venting.  
40

THE COMMISSIONER: Sorry, what did you say?---Venting, sir.

I can't hear.---Venting, sir.

"I don't think so"?

MR CHESHIRE: "Venting", I think he said.

MR DARAMS: Venting to Mr Chidiac?---Yes, sir.

10 But why are you venting to Mr Chidiac in particular?---No reason.

There must be a reason Mr Kinsella?---No, not that I can think of.

No, no, you identify Mr Chidiac of people to vent to but there must be some reason you can give us as to why you were venting with Mr Chidiac. What's his relationship with Billbergia, what's his relationship with Mr Tsirekas that you appear to be venting to Mr Chidiac over?---No idea.

No idea?---No.

20

You're not able to assist us?---No.

THE COMMISSIONER: Does Mr Chidiac have a relationship with Mr Tsirekas? And if so, for how long do you understand he's had a relationship?---There probably is a relationship there, like - - -

What do you base that on?---Do I - yeah, that's exactly right.

Sorry?---What do I base that?

30

From your own observations?---Probably, yes. Sorry - - -

You're indicating yes?---Yes, sir. Yes, sir.

Yes, yes. So based on what you've either seen and/or heard, that is seeing the two men together, you've come to your understanding that they have a relationship?---That's probably the case, sir.

40 And how do you describe that relationship, is it a business relationship, social, friendship or what is it?---Oh, perhaps social, perhaps political, I don't know.

Sorry?---Perhaps social, perhaps political.

A social and political type relationship?---Perhaps one or the other or both, don't know.

One or the other, that's been your impression anyway, is it?---Yeah, possibly.

10 Is that right?---Yeah.

MR DARAMS: Now, I want to try and see whether this assists you by showing you some further text messages. Can we please go to page 155. These are messages from 24 February. Just draw your attention to the second from the bottom. "Sorry, Angelo, for giving you too much stress, I know you're training for Kokoda." Just pausing there, you knew at this time in February 2019 that Mr Tsirekas had, up to that point in time, from time to time, walked the Kokoda Trail?---Yes.

20 Yes. Back to this message. Looking at it again, is this your message to Mr Tsirekas?---Now, do I remember sending it, no, but is it possibly, if you say it came from my phone, then it's probably mine.

Just so we are clear and to be fair to you, Mr Kinsella, this is another message between you and Mr Chidiac on your, which has been extracted from Mr Chidiac's phone.---I'm not sure how that would have (not transcribable) I don't know why I would address one and send to another but anyway, I don't know.

30 Sorry?---I don't recall this at all but I like the message.

Sorry, you like the message?---Yes, because it talks about our great heroes.

THE COMMISSIONER: What were you apologising for when you said - - -?---I, I have no idea, sir.

- - - "Sorry, Angelo, for giving you too much stress"? What were you referring to there?---I don't know, I actually don't.

40 MR DARAMS: So - - - ?---I don't know how I could have given him stress but I must have somehow.

Going back to these alternatives I put to you before. So, one alternative is that you're drafting a message which you've sent to Mr Chidiac to send or give to Mr Tsirekas, do you accept that, that's the alternative?---Sorry, say that again. I'm trying to read and my head is all over the place, sorry.

10 So one alternative is you're drafting messages that are intended to be for Mr Tsirekas. They're addressed in effect to Mr Tsirekas, you're directing them to him. You send it to Mr Chidiac so Mr Chidiac can provide them to Mr Tsirekas?---I have no idea if that's the case. I, I don't know what things were sent through or whatever. I have no idea.

Alternatively, you could be forwarding on or providing a copy of a message you've already sent to Mr Tsirekas or you propose to send to Mr Tsirekas to Mr Chidiac.---No, I have no idea.

20 No idea. And you can't help us with, as the Chief Commissioner asked you, about giving Mr Tsirekas too much stress, that's right?---Yeah. I don't know if I, if I gave him stress but perhaps I did.

But because you were quick to say you liked keeping the tradition alive, you accept that the sentiments in that text are your sentiments and that is you're apologising for something, for giving too much stress, you also wrote the other text in there about keeping the tradition alive, you're owning that text, correct?---I, I have, I have no recollection of this text, text at all, sir.

30 Is this the type of thing that you've said before in respect of Mr Tsirekas about keeping traditions alive in relation to Kokoda?---Well, in my mind I respect the country enormously and I, I certainly respect our veterans that served on the Kokoda Trail so that's something I would concur with anyway.

But that would be something you've expressed before, is that right?---It was something I would concur with, that we should respect the fallen of our great country.

THE COMMISSIONER: At the time of these emails, you regarded yourself as a friend of Mr Tsirekas?---I, I (not transcribable)

40 I can't hear you.---What, what would you regard as friendship, sir?

It's the ordinary, common meaning of that word.---Because for one person the world is their friend and for other people nobody is their friend. So, it's somewhere in between that - - -

Yeah. Now, I'll ask – yes. Thank you for that. Thank you for that contribution. Now answer my question.---Yes, sir.

Did you have a friendship with Mr Tsirekas at the time of these emails?

---Did I know Mr Tsirekas? A, a friendship - - -

10

No, I didn't ask you whether you knew him. You obviously did know him. I'm just simply making the enquiry, did you regard yourself as having a friendly relationship, a friendship with Mr Tsirekas when you talked about things like Kokoda Trail and all the rest of it?---Okay. In everyone we deal with we try to have a friendly relationship, sir.

No, no, no, no, no. I'm not talking about everyone.---I, I - - -

20 Mr Kinsella, on one view of it your evasive answers can be construed as your trying to protect yourself or you're trying to mislead the Commission or both. Now, that may be a wrong impression but I'm just giving you every opportunity to answer questions so that we know and can work out in due course whether you are obstructing us or whether you're helping us. Do you understand?---I understand.

It's very important to the Commission to know where you're coming from. ---Right.

30 If you're being frank and open to the Commission, or on the other hand whether you're being very guarded with the Commission. You understand?---Yes, sir.

I don't think I can put it any plainer than that.---Okay.

But you do understand what I just said?---I do understand, sir.

40 Right. Let's try again. I'm enquiring about this period of the emails. You'll see on the screen, it's 24 February, 2009. My simple question is this, as at that date, did you have a friendship relationship with Mr Tsirekas?---I don't believe so.

You don't. How would you describe your relationship at that date?---The same as probably any other councillor or council staff.

No, no, no, no, no, no, no, no, no. Just tell me.---Okay.

How do you say - - -?---I knew of him – sorry. I shouldn't, shouldn't have cut you off there, sir.

10 How do you describe your relationship with Mr Tsirekas as at 24 February, 2019, the date of the emails?---He was the Mayor of Canada Bay I believed and we liked to treat him in a courteous, friendly manner. That's probably the way I would put it.

I'm talking about your relationship with the man. Do you understand what I'm saying? What was your relationship with the man?---Relationship, we didn't have a relationship, sir.

20 Mr Darams, you continue. I'm clearly not going to get anywhere with this witness at the moment on that line of questions.

MR DARAMS: Yes. Now, can I ask you now to focus on the last message on the page there? Just read it to yourself. This is one starting, "Angelo, our vision for Rhodes"?---Yeah. "Our vision for Rhodes should be an ordinary" ---

No. Don't read it out. Just read it to yourself, please.---Okay.

Was that Billbergia's vision for Rhodes?---Yeah, probably would be. Yeah.

30 So did again - - -?---Creating communities.

Again, this starts off, "Angelo, our vision"?---That's right.

40 I'm just seeing whether any of this helps you help us to understand what you're doing at this time and the nature of your relationship with Mr Chidiac. Okay. So, again, you address this to Angelo, Mr Tsirekas. Are you doing this through Mr Chidiac, the medium of Mr Chidiac or are you giving Mr Chidiac a copy of a message you might have already sent or proposed to send to Mr Tsirekas?---That's why I can't understand, like, obviously, it's clear this message is meant for Angelo because his name is

there, right? So, like, the, this message is obviously sent to Angelo 'cause that's, his name is on it.

THE COMMISSIONER: I think we can work that out for ourselves, Mr Kinsella.---That's right.

Now would you just deal with the question.---Don't know.

10 MR DARAMS: Do you recall sending this message to Mr Tsirekas?---No, sir.

Did you have, that is, was the nature of your relationship with Mr Chidiac at this time in February 2019 that Billbergia would use Mr Chidiac, in effect, as a medium to get messages to Mr Tsirekas?---I don't believe that's the case.

Right. So if that's not the case, you're here providing a copy of a message that you've sent or you propose to send to Mr Tsirekas, then?

20 MR CHESHIRE: I object, I do object. Commissioner, there is a third alternative. It's being put as if the two alternatives are all that it can be. There is a third alternative. I'm happy to say it if Your Honour's happy, sorry, Commissioner, if you're happy for me to say what it is?

THE COMMISSIONER: Just put it – all right. Thank you, Mr Cheshire.

MR CHESHIRE: Sorry, Commissioner?

30 THE COMMISSIONER: I'll ask Counsel to reformulate.

MR DARAMS: So one is your message that you've sent or propose to send to Mr Tsirekas. Correct? One is a message that you want to send or give to Mr Tsirekas through Mr Chidiac. Perhaps another alternative is that this is someone else's message, not yours, but someone else has sent a message or proposed to send a message to Mr Tsirekas and you are giving a copy to Mr Chidiac?---Don't know.

You don't know?---No. I really don't know.

THE COMMISSIONER: It's clear that you wanted to get a message in terms of these emails to Mr Tsirekas. Is that right?---It, it looks like that, sir.

And why did you want to get the messages through to Mr Tsirekas?  
---Vision, vision for the area.

Mmm?---We certainly want to make Rhodes special.

10 Any other purpose? What was the objective?---Is to make things work in Rhodes so as we could provide infrastructure.

But what's the objective of working through Mr Tsirekas? Was there something you were seeking from him that he might be able to help with?  
---Well, Mr Tsirekas is the Mayor of Canada Bay - - -

Yeah, I think I know that but, listen. Just answer my question. Do you think you were formulating these messages because you thought it might be a way of getting Mr Tsirekas to assist in some way?---It's, it's difficult to  
20 say if that's the case. It could be explaining what the situation is, not necessarily that he's going to assist in any way.

Is that a fair construction, that you were going to get the messages through to him, the ones we just saw on the screen, the emails, with a view to him being able to assist in some way?---I don't believe he would be able to assist  
- - -

Pardon?---Again, I should be, no, I should say no.

30 No. But he's the mayor of the council. Did you consider he might be in a position to assist or solve some problem that had arisen and that you were seeking to see if he would help in some way?---I believe at that stage all the planning controls were at the Department of Planning, sir.

No, I'm talking about - - -?---So I didn't think he would be able to assist.

No, this witness is being – you are being continually obstructive and evasive, Mr Kinsella. You are not doing your credibility any good at all. Now, that's a fair warning to you. I could sit here and say nothing and just  
40 make an assessment without saying anything. You are now on notice of what my view is, that you are giving me the appearance that you are being

reluctant to be forthcoming and you're being very guarded in your answers, and evasive in your answers. Now, it's better for you to demonstrate whether that is the case. At the moment that's the opinion I'm starting to form. I can't be fairer than to forecast to you what my current state is. My mind might change, of course, you might become very open and cooperative, in which case I would have to revise my assessment, which assessment's only a temporary one at the moment because you haven't finished evidence. Do you see what I'm trying to say to you?---Yes, sir.

10 I'm trying to alert you, do yourself a favour. Don't be guarded because you may be giving the impression, it may not be a correct impression, that you're being very guarded for some reason, that you're trying to suppress. Now, as I said, I hasten to add, that may be an opinion that I completely reverse once I hear your evidence. Do you understand what I am saying? ---Yes. Yes, sir.

Your credibility depends upon what you say and to a point it can depend upon the way you say it, in your appearance as a witness. Do you understand that?---Yes, sir.

20

Do you understand?---Yes, sir.

All right. Fair warning, Mr Kinsella. We're now going to advance further with questioning and hopefully we won't have to have any more exchanges of this kind. However, this is not a reprimand, it's more of a warning to you. This is the way evidence goes in hearings like this. It's based on what a witness says, it's based on the way a witness presents. Yes.

30 MR DARAMS: Now, Mr Kinsella, just following up from the Chief Commissioner's observations. Could I ask you to be shown volume 6.5, page 161? Now, Mr Kinsella, I want to draw your attention to the second-last balloon on the page. I would like you for the moment just to read that balloon and the last balloon.

THE COMMISSIONER: It is the one at the bottom of the screen you're asking him to read?

40 MR DARAMS: Both of the, the last two, just for some context so I can ask you some questions after that.---This first message, who is that from and to whom?

Well, I was going to put some questions to you. Have you read the first and the second message?---Yeah. I don't quite understand. But yes, sir. I've read it.

Right. So it appears that what you're doing here, again, these are the exchanges between you and Mr Chidiac. When you say the first message, that is the second one from the bottom of the page, the longer one?---That's right.

10 That appears to be a message that has been sent to you.---Yeah.

Yes. Do you accept that?---It looks like it, yeah.

You're then providing that message to Mr Chidiac because you've sent it to him on WhatsApp.---Ah hmm.

Do you accept that?---Looks like I – I can't recall this at all but I, I can see this, this message, yes, sir.

20 I know you can see the message but I'm just putting the proposition to you that this appears to be an example of you forwarding or copying – however you get it into the text, you might have typed it yourself – then sending that to Mr Chidiac, correct?---If that's the way it was sent in chronological – yes. I don't remember this at all, in fact, that writing certainly wouldn't be because I don't write like that, my wording wouldn't be like that.

Sure. Well, what I'm going, I'm going to put a proposition to you in a moment once we read the second text, that is, the one below.---Yep.

30 The one below, "Joe, can you and the leader see Joseph?" Now, there are three individuals referred to there. Joe, that's Mr Chidiac, correct?---Yeah, or it could be Joseph Jacob, I'm not sure.

Okay.---Joe, Joe would be Joe, Joe for short.

Well, let me just ask you on that, did you ever refer to Mr Chidiac as Joe?  
---Usually I call him Joseph Chidiac.

40 Sure.---I don't know if I referred to him as Joe, I couldn't say I didn't but I don't know, I could have.

Anyway, this is a message between you and Mr Chidiac?---Yes.

Then you say, “Can you,” that is the recipient of the message, “Joe, can you,” so it appears to be Mr Chidiac, “and the leader”. Now “the leader”, are you referring to Mr Tsirekas?---I really don’t know, but, yep, okay, keep going, sorry.

10 So my question was, the reference to “the leader”, that’s a reference to Mr Tsirekas?---I don’t know that it was, I don’t know who would be the leader - -

Who were you referring to – let me finish, please. Who were you referring to at this period of time in February 2019? Who would you have referred to as “the leader” in text messages with Mr Chidiac?---I don’t know if it was Andrew Ferguson. It could have been lots, it could have been different people. It could have, it could have been the mayor or it could have been Andrew Ferguson.

20 Sorry, at this time in February 2017 are you referring to Mr Ferguson - - -  
THE COMMISSIONER: 2019.

MR DARAMS: Sorry, 2019, my apologies. Is that a serious answer?---It could have been, it could certainly have been the mayor as well. It could have been either – yeah, okay. (not transcribable) answer.

I want to suggest to you that who you’re referring to is Mr Tsirekas and that’s the person you name - - - ?---That’s a possibility.

30 That’s what I’m suggesting to you, you know that is who it is.---That’s a possibility, sir.

Now, the Joseph referred to there is Mr Joseph Jacobs?---That would be right, yes.

So we’ve got that right. So the Joseph refers to Joseph Jacobs, the Joe refers to Mr Chidiac - - - ?---Possibly. Joseph would definitely be Joseph Jacob, yes.

40 Okay, so we can put that to one side. The “Joe, can you”, this is a message you type to a person we know to be Joseph Chidiac, so clearly you’re

addressing, “Joe, can you”. And it’s clearly obvious that you’re saying to Mr Chidiac can you and Mr Tsirekas see Mr Jacobs to cool him down. Why did Mr Jacobs needed cooling down?---Joseph can get very stressed when things don’t go right, so it’s just a matter, he gets very, very stressed and we were concerned for his health.

You’re saying you sent this out of a concern you had for Mr Jacob’s health?  
---That’s right.

10 So going back to the proposition of leader, at this time in February 2019, were you in conversations or discussions with Mr Jacob and Mr Ferguson and Mr Chidiac, were you?---I would have spoken to all those people - - -

No, no, in relation to something that they had an interest together. So Mr Jacob on the one hand and Mr Chidiac and Mr Ferguson, are you?---I’m going to refer to Mr Ferguson as a leader because he is a leader, right? But I  
- - -

20 Sorry - - - ?---It’s not necessarily – I didn’t say that is referring to Mr Ferguson, I’m saying it may have been. I see him as a leader in the area, as one of the top people.

That’s what I’m asking. Sorry, you’re giving me these possibilities, possibilities, that’s why I’m trying to test this possibility. Is it really Mr Ferguson or is it really, as I’m suggesting to you, a reference to Mr Tsirekas – just please let me finish – because putting yourself back there at this time, you’ve got, you’ve identified Mr Jacobs, you’ve identified Mr Chidiac. Were you at this period of time, in relation to the matter referred to in the preceding text, to give you context, were you having these meetings or  
30 discussions involving Mr Chidiac and Mr Ferguson so that you would engage Mr Ferguson and Mr Chidiac to somehow go and see Mr Jacobs? That doesn’t seem likely, does it?---It’s, it’s, it’s a possibility, but your scenario may be more possible, yes.

My scenario is more probable and more likely given what you knew at this time in February 2019?---Possibly.

THE COMMISSIONER: Possibly? Probably - - -?---Probably, I would (not transcribable)

40

- - - I thought you were prepared to accept?---Thank you. Let's go probably.

MR DARAMS: Now, going back, just picking up something the Chief Commissioner asked you about your relationship with Mr Tsirekas, you did have a relationship such that you sought to contact Mr Tsirekas from time to time to get him to assist you in relation to planning matters that you had before Canada Bay Council, didn't you?---We had meetings in the office and the council were, staff and Mr Tsirekas was there on some occasions,  
10 yes.

Well, did you ever reach out to him in relation to see whether he could assist you in relation to the voluntary planning agreement that Billbergia had over some of the land in the Station Precinct area?---We, we, we may have actually reached out to him to explain that to him - - -

To explain?---What we were doing.

Right. Now, could the witness be played file number 502 which is at, the  
20 extract is at volume 6.10 page 38.

**AUDIO RECORDING PLAYED**

**[2.33pm]**

MR DARAMS: So I asked you a question earlier this morning about whether you had Mr Tsirekas' mobile number or phone number and my recollection is you kind of weren't too sure about it - - -?---I wasn't sure, but I obviously got, either had or got his number for this.  
30

So as of 10 January, 2018, you had it. Correct?---Yeah, if, if this is made from my phone (not transcribable) but, yeah. I, I, I could have, I could have asked someone else for this one, but I probably had it, probably had it.

Yeah. Now, just back to this message you left Mr Tsirekas, don't worry about the "happy New Year" stuff, but in relation to the voluntary planning agreement, can you assist us now as to what you were wanting to talk to Mr Tsirekas about?---Yeah. Again, it, it could be several things but what it possibly was about is the leisure centre was a very big item for the people in  
40 Canada Bay and, and Rhodes. And leisure centre changed from having different activities in it, from having swimming pools and other activities to

more towards basketball and other things. But the local community, and for our marketing plans for the apartments we were selling in and around there, we had swimming pools and everything in it because that's what was approved, that's what the council gave us a contract to construct and that wasn't what was going there anymore. Or it, it could have been just the, discussed but I'm not sure of the timing, what that was at the time but at that, that time we'd got a lot of publicity about Billbergia not putting in the swimming pools as had been supposed to have been done but it wasn't us, it was actually the council but, but we were getting a lot of flak over it.

10

Well, let me come at it another way. Could I ask that the witness be shown volume 3.5, page 43? Just take your time to familiarise yourself with that, Mr Kinsella.---Yep.

Now, Urbis were acting on behalf or providing advice to Billbergia, is that correct?---That's right.

Now, I just want to, if you can be shown the next page. By all means look at this if you need to.---Yeah. There's too many planning stuff here.

20

Sure. There are more pages in this document. I don't believe for the questions I'm going to ask you, you need to look at them but if you do, as a matter of fairness, I'm happy to take you, but I want to take you to the last page, page 47. See it's signed off by Mr Sawyer?---Oh, Gary Sawyer, yeah, yeah.

30

Mr Sawyer. So Mr Sawyer signs it off. This letter is dated 2 January, 2018. If we go back to page 43, do you recall in the text message you left for Mr Tsirekas on 10 January, 2018 you referred to a letter from Mr Sawyer, you said possibly from Tony, I think you said Gary, possibly from Tony, I, I want to suggest to you that this the correspondence you're referring to. Does that accord with your recollection now?---Yeah. Because there was a Tony and a Gary there, the general manager obviously was Gary Sawyer and the person that was over planning was Tony McNamara.

Yes. So just, as I said, if you need to look at more of the letter, please do it, but I just want to suggest to you, you referred to the letter with Mr Tsirekas, this is the letter that - - ?---Is that the letter (not transcribable) okay.

40

That's what I'm suggesting to you.---I, I don't know. I don't know, sir.

You don't know. Okay.---'Cause these, these planning letters happen, go out the whole time, they're always - - -

I see. Well - - -?--- - - - (not transcribable) usually consultants. I, I don't even, I wouldn't have even seen this letter.

Okay. Well, let me just try and work with that as well. So if I could ask you now to be shown page 41? So just towards the middle of the page, there's an email from Mr Donaldson to Mr McGarry - - -?---Yeah.

10

- - - Billbergia. You know who Mr McGarry is?---Of course. Of course.

Now, Mr Donaldson refers in the subject to the letter from council and then you can see in the first paragraph, he's saying, "Bill, we received the attached letter from council," and you identify some concerns, well, sorry, I shouldn't say that. He just identifies key concerns of the council?---Yeah. Yeah.

20 If we can go to the next page. Just scroll that out a little bit. Signed off by Mr Donaldson?---Yeah.

You see that? Then if we go back to page 41. Now, Mr McGarry at the top of the page, he says "John". He then says, "Let's read this a couple of times and devise a strategy. Obviously, the mayor has no influence on the council officers. He's a toothless tiger." Now, just before we go on, what was Mr McGarry's role at this stage? So when I say "this stage" January 2018? ---Probably, development manager.

30 In terms of, sorry, development manager. How long had he been employed by Billbergia?---Bill was with us, I don't know, 15 years.

Longstanding - - -?---He's construction, generally, 'cause he's actually a, a constructor - - -

Longstanding employee of Billbergia?---That's right.

Did he have some responsibility for Billbergia's development in Station Precinct West?---Yeah, he would have been working on that.

40 Yeah. So can you assist us as to where he refers to this influence of the mayor on council officers? Can you tell us - - -

MR CHESHIRE: It says “no influence”.

MR DARAMS: Yes. Where he says, “Obviously, the mayor has no influence on the council officers” - - -?---Yeah.

- - - are you able to assist us, well, firstly, whether you had had any conversations with Mr McGarry around this time about any influence or lack of influence one way or the other that Mr Tsirekas might have on council officers?---No.

No. Are you able to assist as to why, based on your dealings with Mr McGarry, why he might have referred to Mr Tsirekas in those terms?---No idea.

No idea. Had you ever heard Mr McGarry refer to Mr Tsirekas as a “toothless tiger”?---No.

No. Going back at this period of time, that is, January 2018, did you on behalf of Billbergia want or hope that Mr Tsirekas could have some influence on council officers?---No, ‘cause I, I don’t know what his view on any of, any of our stuff was.

So my question was did you at this time on behalf of Billbergia want or hope that Mr Tsirekas could have some influence on council officers, in particular, in relation to planning matters involving Station Precinct West? ---Positive or negative?

Well, positive - - -?---Well, you, you would like positive, yeah, you’re quite right there. Listen, no, I, I wasn’t depending on (not transcribable). Everything goes through council staff. Of course, we show stuff to councillors but everything, we have to be able to persuade council staff that what we have is the right thing for the area - - -

Sorry? You have to be able to persuade council staff?---Staff, yeah.

Were you trying to foster a relationship with Mr Tsirekas to help you, that is use Mr Tsirekas to help you, Billbergia, persuade council staff one way or the other?---What we would do if we get the opportunity, which we do with presentations whatever to councillors, that we’d try to show them the vision

that Billbergia would have for an area, in that case you would probably say, it's, what, you'd say there's merit in it.

Were you, on behalf of Billbergia, trying to foster a relationship, at least at this point in time, with Mr Tsirekas in order to have him assist Billbergia trying to persuade council officers?---I don't believe we did that.

Now, if we can go to page 40. I'll draw your attention to the bottom of the page. You see Mr McGarry did send that text, sorry, that email to you on 9  
10 January, do you see that? Bottom of the page Mr Kinsella?---Yep, Bill McGarry.

So Mr McGarry sends you the email where he's made some comments about Mr Tsirekas?---Where's that, on this email?

Yes, so what I'm saying to you or telling you, and I can show you, Mr Kinsella, to be fair. If you look at the bottom of the page, it's got from Bill McGarry to John Kinsella, 9 January.---Yep. Yep.

20 The body of that email message is what I just took you to on page 41, do you want to go back there just to - - - ?---Hang on, that's fine.

That's fine. And then - - - ?---This other one was it sent after or before.

No, it was sent afterwards. You forwarded on, you, you, see you, John Kinsella?---Yep.

You forward on 9 January 10.55pm you send to Mr Tsirekas, you forward what Mr McGarry has sent to you. Do you see that?---Yes.  
30

On one view, you're meant to say something to Mr Tsirekas in that email when you forward it on but you didn't do it for some reason.---No.

So then if you go above that, there's another forward message later that same evening from you to Mr Tsirekas again?---Mmm.

Then you include in your message that text that starts, "Mr Mayor, this is bullshit, excuse the French. Is the council serious about getting some reasonable development on Marquet Street?"---Yep.  
40

Do you remember sending this message to Mr Tsirekas?---I vaguely remember it.

Okay. When you say you vaguely remember it, excuse me. So it appears that what we've got is the council staff, the general manager writing to Billbergia in relation to its planning proposal or aspects of it. Then one of your employees has some comments or observations about that. He forwards it to you. You then forward it to Mr Tsirekas. Can you assist us as to why you were sending this to Mr Tsirekas?---Underlying things are the different topics there. That Murray Donaldson thing had to do with the VPA on (not transcribable) affordable housing. This is more to do with what we call, what we hope to be building C, which is Marquet Street. And basically on Marquet Street it was never caught up in the planning. And I remember having a meeting with, I believe it was Paul Dewar on that site.

Sorry, Mr Kinsella.---Sorry, sorry, yep.

You might have - - -?---I shouldn't - - -

20 You might have misunderstood my question. I started by outlining what appeared to be the chronology of what occurred. You then get a message from Mr McGarry, your long-standing employee, where he's made some observations about Mr Tsirekas. He also makes some observations about the content of the correspondence. You then forward that to Mr Tsirekas with this, that is, the email that he sent to you, Mr McGarry. You forward it to Mr Tsirekas with this paragraph about something being a bullshit excuse from the council. Why were you sending this to Mr Tsirekas? What were you hoping to get from Mr Tsirekas?

30 MR LEGGAT: I object to that. It doesn't say "a bullshit excuse from the council". It reads, "Mr Mayor, this is bullshit, excuse the French."

MR DARAMS: Sorry, no, you are quite right. You are quite right.

THE COMMISSIONER: Just reformulate it. Reformulate it.

MR DARAMS: So you forward the message where you say. "Mr Mayor, this is bullshit, excuse the French. Is the council serious?" Now, why are you doing that?---Well, the mayor is the top person in council and we obviously thought what has come out of it was bullshit.

Sure, you've expressed your view about it but why don't you respond back to Mr Sawyer?---I'm sure we did that too.

But why are you sending this in particular, that is that seems to be an internal private email between Mr McGarry and you, to Mr Tsirekas?---I don't know, sir. I, I don't have a computer, I've never sat at a computer in my life. The only thing I've ever sent a couple of emails over would be my mobile phone. So there's no internal computer or anything in this. This, this, like, if I sent an email, I could only have been from my mobile phone.

10

THE COMMISSIONER: Mr Kinsella, in writing to the mayor, as you did on 9 January, and it's about a week after you got Mr Sawyer's letter, were you writing to him in the hope that in some way he would have been able to have a discussion with you and perhaps see what could be done to assist? ---Yeah. That's probably, that would be fair to say.

Yeah. And what was it that you were hoping he might be able to do? ---Probably, yeah, I won't go into history because we, we couldn't, it takes too long.

20

No, I just want you to answer - - -?---To, to really look at things, maybe to look at, look at things.

Just to review what's happened?---Yeah, yeah.

In the hope that something, from your point of view, more constructive could come out of it. Is that right?---That's right.

30 You're nodding but that doesn't record on the transcript. Are you saying yes, you're agreeing?---Oh, yes, I am.

Yes, thank you. Yes, very well.

MR DARAMS: Just to close this off, Mr Kinsella, could I ask that you be shown volume 6.10, page 38 again? I don't need you to be played the message you left on Mr Tsirekas's phone but noting the email that you sent to Mr Tsirekas on 9 January, 11.40 or 11.50, late in the evening, the following morning you leave a message on Mr Tsirekas's phone.---Yep.

40 What I want to suggest to you is that what you were contacting Mr Tsirekas about was that letter that had been received on the, or sent by the council,

dated 2 January, 2018?---Yeah. I, I, obviously this all happened at the same time. It, it may be relevant to the, whatever came from council that we weren't happy with.

Well, that's what – I'm putting that proposition to you, given that I've taken you through the correspondence, I've taken you through the email correspondence where Mr McGarry makes some comments to you in respect of the correspondence that had been received on 2 January, 2018. You then email the mayor, Mr Tsirekas and make some observations about the status of the affairs, for want of a – well, quite a vanilla explanation about it all. You then contact him the next morning and leave a message on his phone. We're all talking about, you're talking about this correspondence.---Yeah. That, that's fair enough.

Yeah, okay. Do you ever, sorry, do you recall having a conversation with Mr Tsirekas after this where you did have the opportunity to talk to him about the letter that had been received by the council?---I, I don't recall having the conversation but it's possible we did but I, I don't recall talking to him about it.

Sure, but in terms of your experience in your dealings with Mr Tsirekas during the time that you've known him, if you were to leave a message of this kind with him, was it your experience that he would return your call or deal with it with you?---I don't believe I left any messages to be honest, so I suppose it's hard to say there'd be a, a line in terms that he'd come back to me. But I don't know that he came back to me. I don't know that the staff – but, like, at the same time this would be happening, we'd also have the office town planner trying to get in touch with council, we'd also be trying to get more meetings to try and salvage something out of the, the work that had already been done and things where all the issues were and trying to work through those issues with council.

Just going back to the correspondence from the council and the observations of Mr McGarry, this appears to be a fair description of it all. The council had written something that at least Mr McGarry had an issue with? Do you accept that?---Yeah, obviously.

He had expressed his issues in writing to you.---Yep.

You forwarded those issues to Mr Tsirekas.---That's right.

You wanted to speak to Mr Tsirekas about them.---Yeah, it certainly looks like that from the message.

Yep. In wanting to speak to Mr Tsirekas about it, you were hoping to use the relationship that you and Billbergia had fostered or developed with Mr Tsirekas to this point in time to assist Billbergia with the issues that it had in relation to the council staff's response.---Well, what I would say, no matter who was there as mayor at the time, in this instance that's what we would have done. If it was you mayor, we would have called you as well.

10

Yeah, but just focus back at this period of time with the relationship you had developed on behalf of Billbergia with Mr Tsirekas. You were hoping to use that relationship to help you, Billbergia, resolve the issues or deal with the issues that you had seen from that correspondence from the council staff.---Probably what we would have used is to get a, try and get a meeting with the staff and, and perhaps higher up to see where the problems were and is there somewhere we can manage it.

Well, Mr Sawyer's the general manager of the council.---Yeah.

20

So you could have or - - -?---We probably did. We probably did call him.

Let me just finish. You could have if you were that concerned. You could have written back to Mr Sawyer. You could have had your employees write to Mr Sawyer. You could have Mr Donaldson write to Mr Sawyer.---We probably did.

THE COMMISSIONER: I think you said that after the letter from Mr Sawyer you saw the possibility of having some constructive discussions with the mayor, Mr Tsirekas.---Yeah, I think that's fair enough.

30

To see if the matters that had been raised by Mr Sawyer in his letter could be negotiated in some way to - - -?---Well, certainly - - -

- - - no, to perhaps take a different view of the Rhodes planning proposal number 2 than that they had expressed in the letter. Is that fair?---That's fair enough.

Okay.

40

MR DARAMS: Chief Commissioner, I note the time.

THE COMMISSIONER: Yep, very well. Mr Kinsella, we have to adjourn this afternoon at 3.00. It's almost that now. I propose to resume on Monday at 10.00am.

MR DARAMS: Now, Chief Commissioner, just in terms of availability, I have been informed by Mr Cheshire that he has some issues on Monday in relation to the return. It might be that we stand Mr Kinsella down so that we can make an appropriate arrangement for his availability.

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THE COMMISSIONER: All right. We'll see if we can accommodate Mr Cheshire. Mr Cheshire, what's your position?

MR CHESHIRE: Commissioner, I'm grateful to Mr Darams and yourself. Monday and Tuesday I have a problem, but Wednesday or Thursday or Friday is fine.

THE COMMISSIONER: All right.

20 MR DARAMS: We can make some accommodation in that respect.

THE COMMISSIONER: We can accommodate that? Very well, Mr Cheshire.

MR CHESHIRE: Thank you very much.

THE COMMISSIONER: Mr Kinsella, I change what I said in light of what's been said. We won't require you back on Monday or Tuesday of next week. We will require you on Wednesday, 10.00am.---On Wednesday, okay.

30

All right? Mr Cheshire is available on Wednesday, I'm told.---(not transcribable)

Very good. Very well, then I'll adjourn.

**THE WITNESS STOOD DOWN [3.00pm]**

40 **AT 3.00PM THE MATTER WAS ADJOURNED ACCORDINGLY [3.00pm]**