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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 9 MAY, 2022

AT 10.00AM

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: Yes. Mr Darams, are you ready to proceed?

MR DARAMS: Yes. We'll proceed this morning, Chief Commissioner, by calling the first witness, Mr Kent Walton.

THE COMMISSIONER: Yes. Is Mr Walton there, please? Good morning, Mr Walton. Just take a seat there for a moment and we'll deal with some formal matters before we get started.

10 MR WALTON: Sure.

MR DARAMS: Mr Walton is represented.

THE COMMISSIONER: Yes, thank you.

MS ALDERSON: Thank you, Chief Commissioner. Jaye Alderson, A-l-d-e-r-s-o-n, for Mr Walton. Thank you.

20 THE COMMISSIONER: Yes, Ms Alderson. If I haven't already granted you leave, I confirm that I grant you leave to appear.

MS ALDERSON: Thank you, Chief Commissioner.

THE COMMISSIONER: Thank you. Ms Alderson, is there any applications you want to make in relation to Mr Walton?

MS ALDERSON: Yes, Chief Commissioner. I've explained the effect of section 37 to Mr Walton and he would like to take advantage of that.

30 THE COMMISSIONER: Right, thank you.

MS ALDERSON: Thank you.

THE COMMISSIONER: Mr Walton, if you wouldn't mind standing. Do you take an oath or an affirmation to give evidence?

MR WALTON: The oath is fine.

40 THE COMMISSIONER: Oath. If you wouldn't mind standing, there's a Bible there. My associate will administer the oath.

THE COMMISSIONER: Thank you, Mr Walton. Just state your full name? Just put your full name on the record.---Sure. Mr Kent Walton.

Thank you. Mr Walton, I understand from Ms Alderson, who appears for you, that you wish to take advantage of the provisions of section 38, that is to say to give evidence under objection, as you're entitled to under the Act.
10 Is that right?---I do, yes.

Okay. You appreciate, of course, that though a declaration is made, all answers must be answered truthfully.---Yes.

And if you're required to produce any item or document then you must do so.---Okay.

No doubt it has been explained to you but just to be sure about it, the effect of the objection to give evidence is that the question, of course, must still be
20 answered, or the document produced, but the effect is that the evidence you give cannot be used in other proceedings in the future against you such as, be it criminal, civil or other proceedings. But there is an exception to that, and that is to say if a witness commits an offence under the Independent Commission Against Corruption Act, such as giving wilfully false evidence, then in a prosecution for an offence, the evidence can be used in that situation. You understand what I'm saying?---I understand, Chief Commissioner, yes.

Thank you. Pursuant to section 38 of the Independent Commission Against
30 Corruption Act, I declare that all answers given in this public inquiry by Mr Walton and all documents and things produced by him, if any, during the course of this public inquiry are to be regarded as having been given or produced on objection. That being the case, there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

**DIRECTION AS TO OBJECTIONS BY WITNESS: PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST
40 CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN IN THIS PUBLIC INQUIRY BY MR WALTON AND ALL**

DOCUMENTS AND THINGS PRODUCED BY HIM, IF ANY, DURING THE COURSE OF THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. THAT BEING THE CASE, THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

10 THE COMMISSIONER: Yes, Mr Darams.

MR DARAMS: Mr Walton, I just want to start by obtaining some background information about yourself. So can I begin with asking you do you have any professional qualifications?---Yes, I do. I have a Bachelor of Commerce majoring in land economy.

And what's your current role or occupation?---I'm currently a stay-at-home dad, not, not employed.

20 How long have you been doing that role?---For approximately two years.

THE COMMISSIONER: Sorry? I missed that. What's the position?---Not employed. I'm a stay-at-home dad.

I see. Right.---Yeah.

Thank you.

30 MR DARAMS: Perhaps a difficult job, one would have thought?---Can be at times, for sure.

THE COMMISSIONER: It can be hard work.---Yeah.

MR DARAMS: From experience, I know that. Could I ask you before you commenced your role as a stay-at-home dad, were you employed by the Canada Bay Council?---Yes, I was.

40 How long had you been employed by the council in total?---Yeah. Just over 10 years. I commenced in July 2009, and ended my employment there in December 2019.

Were you employed by any council before 2009?---Yes, I was.

Can you tell us which council that was?---Yeah, that was Kogarah Council.

How long were you employed at the Kogarah Council for?---Approximately 10 years, from August 2000 to June 2019.

Sorry? You said "2019". Did you mean - - -?---Sorry. 2009.

10 2009?---Yeah. Sorry.

Before Kogarah Council, were you employed by any other council or were you at university or something like that?---University, yeah.

So you got your professional qualifications at university, you went to the Kogarah Council, worked there for about 10 years, then left there and went to Canada Bay Council?---Roughly, yeah.

20 Can you tell us what position you had at the Canada Bay Council?---Yeah, my position was Manager of Buildings and Property.

Did you have that position throughout the entirety of your employment?---I had the same responsibilities. It was described differently when I first started. It might have been Manager of Property Services, but basically the same functions.

30 What were those functions and responsibilities?---So I led a team of people to manage the property portfolio of Canada Bay Council, so that included property management, project management, leasing, licensing, disposals, acquisitions, relatively small or minor construction works, security, venue hire, those type of things.

Who did you report to in that position?---Originally, the Director of Corporate Services. Council had a restructure. Somewhere along the way around, between 2014 and '16-ish, I reported to the Director of Technical Services from that point onwards.

40 Just in relation to the Director of Corporate Services, who was that?---Yeah. Mr Bruce Cook.

Mr Cook. So from your commencement in 2009 till about 2014, maybe 2016, you reported to Mr Cook?---Correct.

You then started reporting to the Director of Technical Services?
---Technical Services and Operations, yes.

Was that Mr Osland?---Correct. Yes, it was.

10 So from about 2014 to 2016, somewhere in that period?---Yeah. Not 100 per cent clear but, yeah, around, probably around '15, '16, yes.

Did you continue to report to Mr Osland for the rest of your employment?
---No. There was a further restructure and, sorry, it wasn't, yeah, it was further restructure but that, that and that role was filled by another person, another Director of City Services and Assets at the time was the, was the title.

Sorry? Say that again?---City Services and Assets.

20 Do you recall when that occurred, that further restructure?---Around 2018, 2017, '18.

2017/2018.---Usually aligned with election, the election cycle.

Now, just going back to one of the things that you indicated was a part of your responsibilities, this was the disposal and acquisition of property.
---Yes.

30 Just focusing on the disposal aspect of that function, were there occasions where you handled the disposal of property on behalf of the council during the period 2009 to 2019?---Correct. Yeah, if I didn't directly handle it, I oversaw it.

How many occasions or how many times did you do that?---It wasn't a lot, to be honest. Probably three or four times.

What about the acquisition part of your function? How many times did you do that?---Again, not a substantial amount. Around five.

Five times. One of the disposal transactions you were involved in was in relation to the disposal of council property at 231 Victoria Road, is that right?---That's correct, yes.

Is it the case that prior to that property being disposed, the council had tried to purchase another property located next door at 227 Victoria Road?
---That's also correct, yes.

10 Were you involved in those attempts to purchase 227 Victoria Road?---I was.

Could I just – I want to ask you about some documents. Could I ask the witness be shown volume 4H.

THE COMMISSIONER: These documents will come up on the screen in front of you.---No problem.

20 MR DARAMS: Page 75. Mr Walton are you able to tell from this page whether you've seen this document before?---Yes, I have.

Can you tell us what it is?---It's the cover page for an evaluation report that would have engaged a valuer to undertake at the time.

When you say "at the time", do you mean at about this time, in June 2012?
---Yes.

Was this for the purposes of the consideration by the council of acquiring 227 Victoria Road?---I don't believe so at the time, no.

30 Could I just ask you to have a look at page 78. Just want to draw your attention to the instructions there.---Yes.

So firstly, does that assist you now with the reason or the purpose the valuation was being sought?---Yes, it does.

So this seems to suggest that you were seeking the valuation for the purpose of council seeking to negotiate the purchase of 227 Victoria Road, is that right?---That's correct, yes.

40 It's the case, isn't it, that the council wasn't or didn't end up purchasing 227 Victoria Road at about this time in 2012?---Yes, it did not.

It's also the case, isn't it, that you, on behalf of the council, sought a further valuation in about August 2014. Do you remember that?---I do remember that one, yes.

Could the witness please be shown page 87? Again, just by reason of looking at this document, are you able to tell us whether this was the further valuation that was obtained by council?---Yes, it is.

10 Could the witness be shown page 90. Just want to draw your attention to the instructions. Mr Walton, does that accord with your recollection of the circumstances at about August 2014?---It does, yes.

So, seems to be that around this time in 2014 the council again sought to purchase, or was looking to purchase, 227 Victoria Road. Is that correct? ---Yes.

20 Were you involved in the decision to consider purchasing 227 Victoria Road?---I was, Mr Darams, yes. In roughly 2011 I wrote a property strategy for the council, which included this property in it. The property strategy had short-term and long-term recommendations for either development or acquisition or disposal of the subject properties. I mean, this, this property is, in this case, the property for 231 Victoria Road, they've included amalgamation with the adjoining site, being 227 Victoria Road. So there was probably, approximately four evaluations obtained by myself across the period of my employment at Canada Bay with regard to both properties, 231 and 227. They were - - -

30 Just focusing on, at this stage, the potential acquisition of 227 Victoria Road, did you, or do you know whether council actually opened up or started negotiations with the then owner 227 Victoria Road?---Through the, an agent, yes, I believe that the, obviously in this case, the valuation was obtained, which gave us an indication of indicative market value at the time and an offer would have been made. I, I don't recall whether that was in writing or verbal conversations with the agent.

Were you involved on behalf of the council such that you were the person having those conversations with the agent?---I would have been, yes.

Do you recall the name of the agent at all?---The adjoining property had two agents. I can't exactly recall at this time who was the agent. There was an initial agent and then the following agent was Mr Frank Colacicco.

So Mr Colacicco was the agent, sorry, was Mr Colacicco one of those agents that you dealt with in terms of the potential acquisition by the council or do you say that Mr Colacicco was involved at a later time?---He was one of those agents involved in the proposed acquisition of the property.

10 Just so I'm clear, when you say "proposed acquisition" you mean council's proposed acquisition of 227?---Correct.

You had conversations or negotiations with Mr Colacicco on behalf of the landowner?---Yes.

Do you know – we know and you know that the council didn't ultimately acquire 227, that's right?---Yes.

20 Is there a reason why council didn't acquire 227?---So from, based on the valuation, the market advice provided in that document, we would have made an offer within that range or ballpark given from the valuation. My recollection is that the offer was not accepted. The expectations of the owner were higher than the valuation provided by council and therefore the, the offer was not accepted.

Right. So just in terms – I think you said "would have made an offer." Do you recollect that an offer was actually made and that information that came back to you was that the offer wasn't sufficient for the - - -?---That's my recollection, yes.

30

Yep. I want to move forward in time and asking now some questions about the negotiations that ultimately led to the acquisition of 231, that is the council's land, by a person called Mr Bartolotta or companies associated with him, okay?---Yes.

40 Do you recall when those negotiations commenced?---Not specifically but based on that valuation report, sometime within the next – there was definitely an issue in relation to the speed of the transaction at that adjoining property, 227, took place. There was, from recollection, there was some probate issues with, with the transaction. So it would have been sometime

after that valuation and council's original offer. So I'm guessing around 2015.

Right. Could I just have the witness be shown volume 4.2, page 198? Just want you to look at this email, Mr Walton, and then I'm going to ask you some questions when you - - -?---Sure. Can I have the document be scrolled up?

10 Of course. Do you recall this email now or just you don't have any recollection of sending it now?---No, I recall it.

It appears that at least by May 2015 the council had started negotiations or discussions with Mr Bartolotta about Mr Bartolotta's purchase of 231 Victoria Road. That's correct, isn't it?---It seems to be pending but, yes, that's correct.

20 Do you recall whether those negotiations occurred much before May, started much before 2015 or was it around about that time?---Around about that time I'd say, yes.

Could I just ask you to have a look at the third bullet point.---Mmm.

You refer in there to a, I'll just call it direct dealing process document. ---Yes.

Were you at this time familiar with those documents on behalf of the council?---I had prepared those documents in consultation with council solicitors at the time and also in accordance with the ICAC guidelines.

30 Sure. So when you say you had prepared them, what I was asking you, before this point in time had you been involved in the preparation of such a document for a previous, I assume, disposal of property?---Yes, I had.

That's how we understand that evidence?---Yes.

40 Could you tell us what that document does or what the intent behind that document is?---The intent is, in situations where there's only one adjoining owner, or the property is landlocked, it allows the company to, I guess, deviate from normal processes of going to public auction to achieve the fairest and best value for the land. So where there is no other owners, sorry, only one other owner or the land is landlocked to that one other owner, it

allows council to go through a process of achieving a fair outcome for disposal of the land.

And is the direct dealing, is the nub of that that council decides to deal exclusively with one of the owners or multiple owners of one of the properties that might be affected? And what I mean by that, you referred to being landlocked or there only being one owner. Is that the consequence of that process?---Specifically this document was only to be dealt with when there was one adjoining owner.

10

Yeah.---Or one, yes, one, one owner.

That obviously was the circumstance in this case, was it?---That's correct. The adjoining property, 227, forms an unusual lot configuration and surrounds council's land at 231 completely, except from the public road, being Victoria Road.

I might come and ask you a bit later on about some more questions about the direct dealing document.---Sure.

20

But if I refer to direct dealing document, that's what I'm referring to later on, Mr Walton, okay?---Understood.

Now, you've sent this email to Mr Bartolotta that – I just want to ask you, at this time, that is June 2015 when you sent the email, was it your understanding that the person you were negotiating with was Mr Bartolotta? Or did you understand that he was negotiating for himself but also on behalf of any other persons?---No, I understood that Mr Bartolotta was the owner of the adjoining land and that was the person I was negotiating with. The only person I was negotiating with.

30

Do I take it from that evidence that Mr Bartolotta did not tell you that he was also negotiating on behalf of Mr Colacicco?---He did not.

Chief Commissioner, I need to seek a suppression order in respect of the next person I refer to.

THE COMMISSIONER: Yes, that's right.

40 MR DARAMS: Mr [REDACTED].

THE COMMISSIONER: Mr?

MR DARAMS: [REDACTED]. On the name.

THE COMMISSIONER: I make a direction pursuant to the provisions of section 112 of the Independent Commission Against Corruption Act that it is in the public interest to protect against publication the name or the person referred to in evidence, [REDACTED]. Accordingly, there is to be no publication of that name. The only exception is as may be necessary by
10 Commission officers for statutory purposes.

**SUPPRESSION ORDER: I MAKE A DIRECTION PURSUANT TO THE PROVISIONS OF SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT THAT IT IS IN THE PUBLIC INTEREST TO PROTECT AGAINST PUBLICATION THE NAME OR THE PERSON REFERRED TO IN EVIDENCE, [REDACTED] [REDACTED]. ACCORDINGLY, THERE IS TO BE NO PUBLICATION OF THAT NAME. THE ONLY EXCEPTION IS AS
20 MAY BE NECESSARY BY COMMISSION OFFICERS FOR STATUTORY PURPOSES.**

THE COMMISSIONER: Yes.

MR DARAMS: Mr Walton, did Mr Bartolotta tell you that he was also negotiating on behalf of Mr [REDACTED]?---He did not, no.

Now, I also infer from that evidence that, excuse me, Mr Bartolotta did not
30 tell you at that time in June 2015 that he was in or was contemplating some partnership involving those two individuals?---That was never discussed, no.

Did you ever become aware that Mr Bartolotta was negotiating for the purchase of 231 on behalf of himself and those two other individuals? Did you ever become aware of that at any particular time?---Not while I was employed by council, no.

When did you become aware of that?---Only in recent conversations with
40 the Commission.

So in the context of these proceedings?---Correct.

Moving forward a little bit in time, as of May 2016, did you know who Mr [REDACTED] was?---I knew of him, I didn't really know of him, no.

When you say you "knew of him" what were the circumstances that you came to know of him?---I believe he may have been involved in an inquiry at the time with the ICAC or around those, around that time.

10 I see. In terms of Mr Colacicco, you had some dealings with him previously, that is back in 2014, do we take it?---Yeah. He was a local agent. I was in the Property Team for council. We had various different, you know, path crossings, I guess, in relation to things we were doing.

That's what I was going to ask you about. Other than the negotiations that you had had with him on behalf of the then owner of 227 Victoria Road, had you had any other dealings with him in your role at the council?---I never actually had any dealings with him as such, no.

20 But you knew because of who he was, that he was a real estate agent in the area?---Yes. Things like we would go out to EOI for a leasing agent or for someone to dispose of a property for us and, and he would be one of those parties, but never actually had any dealing with him.

Now, at some stage, excuse me, you on behalf of council – sorry. At some stage, council received an offer or the first offer to purchase 231 by Mr Bartolotta. Do you remember receiving or do you remember council receiving that offer?---Generally, yes.

30 Was that, do you recall whether that offer was directed to you or whether it was directed to someone else at the time?---The usual proceedings would have been to direct the general manager. In this case, if I'd had dealings with Mr Bartolotta, it may have come to me directly. I can't be certain of the, whether, it was either those two, but - - -

THE COMMISSIONER: The general manager at that time being Gary Sawyer?---Mr Gary Sawyer, yes. Correct.

MR DARAMS: Could the witness be shown volume 4.2, page 234? Now,
40 Mr Walton, this is a letter on the letterhead of Royale Limousines. Did you

understand that to be a company associated with Mr Bartolotta?---I did.
That was what his business card was when I first received it.

Had he provided you with a copy of his business card, had he?---I believe so, yeah.

Do you understand this to be the, what I might refer to as, the first offer by Mr Bartolotta for the purchase of the property?---Yes.

10 In relation to the time leading up to the provision or the, well, the provision of this offer, had you had any further negotiations or discussions with Mr Bartolotta about the potential purchase? And what I mean by further, I mean subsequent to those in May/June 2015 that I took you to before?---I couldn't be certain, Mr Darams. Nothing in writing. Potentially verbal, verbal conversations about what he was willing to pay but nothing in writing from recollection.

20 Could I ask you to, sorry, could I ask that the witness be shown volume 4.2, page 233? Now, this is a diary entry or a meeting invitation to a, which appears to be on behalf of, or at least involving, Mr Bartolotta. Firstly, of you remember receiving an invitation to a meeting?---No, but that's not to say it didn't happen. It looks as, as if it did and there's no reason I wouldn't attend.

Yep. Do you now recall whether there were meetings before the offer came in or you can't recall now?---There were meetings in relation to a development scheme rather than an offer.

30 Right. Can you just tell me about – obviously you attended those meetings, is that right?---The previous meeting about the development scheme or - - -

Yeah. Let's not focus on the May/June 2015 but after that period of time you refer to some meetings about a development.---Yeah. So, I was in meetings with the Director of Planning at the time, Mr McNamara, who is mentioned in this email as well, in relation to a proposed scheme consolidating the two properties.

40 Do you recall who else was in that meeting on behalf of the council?---I, I don't. Mr McNamara was there, I believe, but I don't recall who else from the council would have been there. I don't think, it possibly would have just been he and I.

Was Mr Bartolotta in these meetings?---Yes. Mr Bartolotta, his architect.

Anyone else?---Not that I can recall.

There's a reference here to an optional attendee being Marc Triulcio.---Yes.

Do you know who that is or does that name ring any bells with you?---I do recall Mr Triulcio, yes.

10

Did he attend any of the meetings with you that you were present at?---He did. Not the, I don't recall him being there as part of the development scheme meeting, so that was more a planning conversation and, and me in the room as the council officer responsible for the land.

Right.---But I do remember meeting with Mr Triulcio and Mr Bartolotta on occasions. My recollection is that that was more in relation to the proposed acquisition of council's land, or disposal from council's side.

20 Sorry, just so I understand that. Mr Marc Triulcio was present in a meeting or meetings that you were present at in relation to the potential acquisition of the site, is that right?---That's correct.

As opposed to the meetings that you attended with Mr McNamara about the potential redevelopment of the properties?---That's correct.

[REDACTED]

30

Yes. Now, is it the case that you then, or around this time, obtained further valuations in relation to the property at, or relating to the property at 231 Victoria Road?---That's correct.

I take it this time the valuation was obtained in a slightly different context? That is, it's the context of council looking at disposing of its property as opposed to acquiring the property at 227 Victoria Road, is that right? ---That's correct, yes.

40 Is it the case you went back to the same valuer that you had sought valuations from in 2012 and 2014?---That's the case, yes.

Right. Could I ask that the witness be shown volume 4H, page 104. I just want to draw your attention to your email about a third of the way down, from yourself to Mr Ferdinands.---Yes.

Do you remember this email now, Mr Walton?---Yes, I do.

I just want to ask you, excuse me, to have a look at the fourth paragraph.
---Mmm.

10

You refer there, you say he – I take it you're referring to Mr Bartolotta.---I must be, yes.

Along with a developer that is assisting him.---Mmm.

Can you help us out as to who, if you did know, who that developer was, the name of the developer?---I must have worded that as such that Mr Triulcio had advised that he was assisting Mr Bartolotta from a development perspective. I didn't understand Mr Bartolotta to be a developer. I
20 understood him to be in the limousine business.

When you refer to the developer, were you referring to Mr Marc Triulcio?
---Yes.

Did you understand he to be a property developer, did you?---Perhaps not understood that he was. Perhaps he was introduced to me as such.

Yes.---I didn't, I don't have any knowledge or recollection that he'd done any previous developments as such, but he must have been introduced as
30 such to me in that, in that form.

Now, it's the case, is it, that you did receive a valuation from Mr Ferdinands after that request?---Yes.

Could I ask the witness be shown volume 4H, page 106. Just before you answer, be shown that document, I just want to make it clear that Mr [REDACTED]'s name is subject to a suppression order. Now, just heading back to the document at page 106 of 4H. So Mr Walton, just for my benefit, the land in the red box there, that's the property 231 Victoria Road, correct?---
40 Mostly.

Mostly.---Yeah.

So some of that land we see within the red box there, that's actually land of 227 as well, is that right?---Correct. On the right-hand side where the blue car is, about a metre or two off that boundary, is actually, as I described before, the lot configuration surrounds council's property. So I couldn't tell you exactly what it was, but there was a, a small, a small passage of land all the way to the, to the back boundary, and then the back boundary similarly, about two metres off the back boundary that enclosed council's land.

10

Sure. 227 is the, well, 227 is located on this picture to the left?---Correct.

I want to ask you if you could just be shown page 108. This is what's expressed to be the executive summary of the valuation report.---Ah hmm.

The valuation range provided in respect of the council land, I should make it clear, by Mr Ferdinand, was in the order of 2.4 million to 2.6 million. Does that recollect now with your understanding at the time?---That's how I read it, yes, Mr Darams.

20

Now, could the witness next be shown volume 4.2, page 245? I just want to draw your attention to your email, which appears to be sent by you to Mr Sawyer on 4 May.---Yes.

Just read that email to yourself at the moment.---Okay. Yes.

Do you recall sending this email or, sorry, do you recall this email now?---I don't recall it but it's clearly my writing style and with my email signature so I believe it's mine.

30

I would like to still ask you some questions about the things that you say in the email and see whether you can assist me with those, Mr Walton, okay? ---Yes.

Firstly, could I, just in relation to the first sentence, "Tony, James and I met with John Bartolotta and Marc Triulcio today about the above."---Ah hmm, yes.

Tony, that's Mr McNamara?---That's correct.

40

James is Mr Sullivan?---Correct.

Who was Mr Sullivan at the time?---Mr Sullivan was a contractor that I engaged previously to assist me with some of the matters that I mentioned before with the property strategy. So he'd been brought on to assist me progress some other development schemes and proposals of council land. And so I would ask James to come in with the meetings, particularly the, the negotiation meetings that I had with Mr Bartolotta and at times Mr Triulcio, to be a second person in the room from a council perspective, a probity perspective.

10

Do I understand from your evidence that Mr Sullivan, in effect, reported to you?---Correct.

Could I then ask you to have a look at paragraph 4 "on the basis that a direct dealing could be undertaken for this site".---Yes.

You say, "Probity adviser is okay with that." Just a couple of questions about that. When you say "direct dealing" are you referring to the process set out in the direct dealing document that I had drawn to your attention a little while ago?---Yes, I am.

20

Then you say, "Probity adviser is okay with that," I take it that you had, before sending this email, raised that possibility with the probity adviser? ---Correct. Yes.

The possibility of a direct dealing process being undertaken?---Yes.

Who was the probity adviser, do you recall?---At the time, we used a gentlemen by the name of Mitchell Morley. I couldn't be certain of the organisation's name.

30

But was Mr Morley someone who you had understood was engaged by the council for probity issues at about that time?---Either myself or James would have engaged him to do, to be involved in this matter and a number of other matters where we required probity advice.

Now, you then in the next paragraph "if you agree with this recommendation" can I just pause there? Can you tell us or help us with what recommendation you are raising with Mr Sawyer in effect seeking his agreement or non-agreement as the case might be?---To proceed on the basis the paragraph, the, the sentence before, talking about the process going

40

through a direct dealing and to begin negotiations underneath that direct dealing guidelines.

THE COMMISSIONER: So it means, in effect, it won't be generally put out on the market to the public. It will be a direct dealing with the person who's been showing interest?---Correct, Chief Commissioner, yeah. With the person who owns the adjoining property which surrounded council's, yes.

10 MR DARAMS: You then say, "I will obtain a further valuation for council's land." You then say "not based on the proposed development scheme and then negotiate"?---Yes.

Now, I'll just ask you a few questions about that. Firstly, do you recall whether you did obtain a further valuation?---I believe I would have, yes. That would have then set the starting point for negotiations.

When you say "not based on the proposed development scheme" are you able to assist us as to what you were saying there?---I can only imagine that
20 the preceding valuation was done based on the development scheme that was proposed by Mr Bartolotta.

Right. Just so I'm clear about that and I understand your evidence about that - - -?---Yes.

- - - I'd like you to see whether you can give us a bit more certainty about the evidence you've just given.---Sure.

So could I ask that you go back to the valuation. So if we can go back to 4H,
30 page 104.---Yes.

Sorry, 106. Perhaps if I could just ask you to be shown, just go through these pages and I'll stop when there's some substantive text, so you can satisfy yourself, so - - -?---Okay.

- - - go to the next page. Just have a look at that.---Yeah.

Can we go to the next page?---Yes.

40 Next page or do you need to keep going further, Mr - - -?---I'm not sure what you're looking for yet, Mr Darams, so - - -

All right. Just so I'm clear - - -?---Yes.

- - - the latter email, when I say the latter email, the email I've just taken you to, talked about a further valuation not on a proposed - - -?---Yes.

- - - my words, proposed valuation, development. And I was just - - -?---words.

10 - - - trying to explore that with you to - - -?---I understand.

- - - see whether or not this - - -?---So - - -

Go ahead.---Yep, so it seems in previous documents that you showed me that I've talked about there's been a proposed development scheme put to the council. I've also referred to the fact that that exceeds the existing planning controls. Looking at the second page I believe you showed me, there was particulars in relation to the zoning, GFA, FSR in there. The zoning didn't change. The GFA, I wouldn't have a recollection of that, and
20 the FSR at 2.21:1 is highly unusual for a council to have that as an existing FSR. So I can only imagine that that was the resulting FSR from the development scheme, rather than the existing development, the FSR for the land as per council's documentation and, and controls.

So if we go back to your email at volume 4.2, page 245, back to the second-last paragraph, do I understand this based upon your evidence, you had received the valuation from Mr Ferdinands in April 2016. That valuation was based upon the potential development that had been proposed by Mr Bartolotta, is that right?---I believe that's the case from these words, yes.
30

What you were seeking was another, well, you were suggesting getting another valuation, but in circumstances where any development of 231 would proceed in accordance with the then current planning restrictions, is that right?---Correct, the complying development.

Yep. Now, could we - - -

THE COMMISSIONER: Sorry, just when you say on the basis of a complying development - - -?---Yes.
40

- - - was it at the time of this email or this document a mixed-uses zoning?
---That's correct, yes.

It was?---It was, Commissioner.

So that would permit a commercial development involving a - - -?
---Absolutely.

10 - - - a smaller multi-level construction?---Yeah. Usually mixed use in that
sort of zone would require a ground-level retail and residential above. So
basically not a hundred per cent residential would be the difference.

So that zoning, was in the existing zoning, had been for some time, I take it,
before 4 May, 2016?---I believe so, yes.

20 And the proposal by Mr Bartolotta, whether on behalf of the group or not,
was to redevelop on the basis of the existing zoning laws?---Existing
zoning, it seems as though, from the documents I've been shown, that the
actual FSR exceeded what would have been the documented FSR within the
LEP, council's LEP for the area.

I see.---And the land specifically.

30 I see. So in order to be able to get a development on that basis, would the
LEP have to be varied or - - -?---Not necessarily. I mean, it, I'm not a
planner, but from my experience, minor deviations from, from FSR may or
may not be an issue from a planning perspective, depending on how it
exceeded it. There's things like plant room and those sort of things, again
I'm not a planner, I'm not sure if they count. It may have been accepted.
But from recollection, the documents I've been shown, the independent
planner noted some concerns that the development, the proposed scheme
exceeded existing planning controls.

Thank you.

MR DARAMS: Could I ask that Mr Walton be shown volume 4H, page
145. I'll just draw your attention to the email at the bottom of the page from
Mr Ferdinands to you on 9 May, 2016.---Yes, yes.

He says, “Hi Kent. As discussed, based on a lower GFA, in line with the LEP planning guidelines, i.e. FSR 2:1, the amended valuation range is between 2.175 to 2,400,000.”---I see.

10 I’ll just show you the next page so you get the rest of the email. Now, if we can go back to the preceding page. So is this what happens? You write to Mr Sawyer on 4 May, indicate that what you’re proposing to do, if Mr Sawyer agrees, is to go back and – well, do two things. One, commence a direct dealing, engage in a direct dealing process with Mr Bartolotta. Is that right?---Valuation first, but yes. Yep. Sure, yep, I understand.

Get a further valuation.---Yep.

But the valuation being based upon the current, I’ll call them restrictions, but the current LEP planning restrictions.---Yes.

Because the previous valuation, the April valuation was based upon the proposed development, which had an increased FSR.---Yes.

20 When I say “increased”, outside what the current restriction was in the LEP?---Correct.

You then go back to Mr Ferdinands, say to him “Can we get another valuation?” but this time base it upon a development complying with the current planning restrictions?---That’s correct.

So the amended range comes back between 2.175 million and 2.4 million. ---Yes.

30 I just want to ask you, you send this on to Mr Sullivan and then Mr Sullivan responds to you on 10 May, 2016. He says, “Seems reasonable to me. If you reduce the profit from 25 to 20 per cent, there is another 400K in total to play with.” Can you just – do you understand what he’s talking about there?---I do, yep.

40 Can you tell us what he was talking about there?---Sure. So it was part of a development feasibility, which is perhaps the, the method that the valuer used to reach his conclusion. There can be variables in there. Construction costs are reasonably known at the time, you know, there’s construction cost guides that, that, that provide those amounts for, you know, four to six levels of mixed use, et cetera. One of the variables potentially is, is a profit

margin in there. Developers might vary from anywhere, depending on what sort of development it is, from anywhere from 10 to 15 per cent, which is unlikely, to anywhere to 30 per cent. So James has obviously reviewed the valuation and the valuer has, what seems to be, included a profit margin of 25 per cent. James has suggested if it was reduced to 20 per cent, there's also another \$40,000, \$400,000 worth of value in there that could be potentially negotiated on council's benefit, to council's benefit.

10 So, just can you assist me with this, would that 400,000 potential, would that be over and above, or did you understand it would be over and above the 2.175 to 2.4 or is it related to those figures somehow?---I understood that that would be over and above the figures provided by the valuer.

So the range would then be between 2.575 and 2.8 million?---Yes.

That's what you understood it to be? If, in fact, the developer's margin was not 25 per cent but 20 per cent?---Correct.

20 Okay. Just on that email, I just want to ask you some questions about your email to Mr Sullivan in reply at the top of the page. You say, "That's good to know. You then say, "I think we should get back to them later this week to discuss." You say, "I'm not fussed if we don't reach agreement in the first meeting."---Mmm.

Can I ask you this, just as at that time, that is 10 May, was there any, as far as you understood, any pressing need or requirement for council to conclude a sale of the property quickly?---There was none.

30 Right.

THE COMMISSIONER: Just before we move on, you did say before what position Mr Sullivan held. What was his position again? He reported to you, I understand.---Yeah, so he was a specialist consultant, I guess, in relation to property matters, and so he assisted me greatly with development feasibility schemes for other mixed-use developments we were proposing in at-grade car parks that council owned, and other matters where he could be of benefit to me. These property strategy matters were matters I dealt with as well as managing, managing a property team. So I didn't necessarily have the time to progress and do some of the background research I needed to, to, to move things along in relation to our developments or those sort of matters, so Mr Sullivan was engaged to assist me with those.

40

And although he held all those qualifications and that was his field, he was not a valuer, was he?---He was not a valuer, no.

So for the purposes of this matter, the valuation, was that, of Mr Ferdinands set out on page 145 at the bottom there, 2.1 to 2.4, that was the valuation on the basis he was asked to value the land?---That's correct.

Right. Okay.

10

MR DARAMS: Just going back to your email, Mr Walton.---Yes.

You say you're not fussed if you don't reach agreement in the first meeting.---Mmm.

Then you say, "I think the parties' views are a long way apart on value at this stage."---Yes.

20 Are you able to assist us with that? What view did you have at the time about the value of the parties?---Yeah, you know, some of the documents you've previously shown showed the initial offer of \$1.8 million. You know, we've sought our valuation compliant with the planning controls at 2.17 to 2.4. There's obviously a reasonable gap there. And as I state, and as I mentioned before, there was no urgency from council's perspective to dispose of the land. We're in no hurry. So a negotiation tactic is to – there's no need for, would be no need for council officers to rush in and, and accept a value underneath the valuation provided in this case, as the lands consolidated provide a marriage value that's much greater than themselves in isolation. So there's, there's a perceived greater value there. And as
30 James mentions further, there's amounts that could be adjusted to benefit the council from the negotiation perspective to achieve a better outcome from the council's perspective.

Just like the council valuation that you had received in April 2016 based upon a floor space ratio that exceeded the current control in the LEP, did you understand the offer of 1.8 million was also similarly made on the basis of the proposed development, that is the increased floor space ratio, or you didn't know that?---I couldn't be certain without reviewing the documents that you showed me again. I did consider that amount to be a low-ball offer.
40 As it, you know, again as a normal negotiation tactic.

Right. So when you say you considered it a low ball, you thought there was probably a little bit more room to move on the other side, so to speak?
---Most definitely.

Just so I'm clear on that, if we can ask you to go back to volume 4.2, page 234. So this is the offer, the first offer that came in, the 1.8 million. If we can go to the next page? That seems to suggest that the offer of 1.8 million was on the basis of a floor space ratio of 2.31:1 that is exceeding the current restriction in the LEP. That's right?---That's correct.

10

So at this stage, when I say "this stage" your email to Mr Sullivan or the emails between you and Mr Sullivan on 9 and 10 May, you have an offer on the table of 1.8 million, which was an offer in terms of a floor space ratio that exceeded the current restrictions?---Mmm.

20

The valuation that the council had received at that floor space ratio was the April 2016 valuation range. Correct?---The floor space is differing between this letter and the, the, the original council valuation. The original council valuation, from recollection of reading documents previously shown to me, was 2.21. This says 2.31, so it's further enhanced.

So one can extrapolate it if the earlier valuation that the council had received was done on the 2.31, it's likely that the valuation received from the valuer would have exceeded the 2.4 to 2.6 range?---That's correct.

Okay. Now if we go back to, bear with me one moment. Could I ask that the witness be shown volume 4H, page 153? I just want to draw your attention to, the email commences at the bottom of the page.---Sure.

30

So there's an email from Mr Sullivan to you on 10 May at 12.49pm. The body of the email appears on the next page, so can I please take you to that? He starts off – I'll let you read it.---Thank you. Thank you.

Do you remember this email now?---Not specifically, but it seems to follow the course of events.

40

In this body of the email, there are some black text and some blue text, so the first blue text is in that first full paragraph under Conducts Negotiations Fairly and Transparently?---Yeah.

Likewise in relation to the sale price there's some blue text.---Yes.

Now, is this text that you added to the email after you received it?---It seems likely but I'm shown the, the next page, the original page, I might be able to confirm that's the case.

Sure. Yeah. Just before I do all of that, is that a type of approach you had adopted from time to time? That is, someone sends you an email, you respond to it, you might add some text into it in a different colour to indicate changes?---Particularly a team member of mine, yes.

10

Yep. So if I could ask you to go to - - -

THE COMMISSIONER: Can I just understand the context of what we see on the screen is a draft of a proposal, at that stage, to be sent to Mr Bartolucci, is that right?---Mr Bartolotta, that's correct. Yes.

Mr Bartolotta.---Yes.

20 And this was being sent, was it, to Mr Morley?---Oh, no, this email is from Mr Sullivan to me with the proposed text.

Right. I see, Sullivan.---From me to then send on if, if I'm satisfied.

Yes, thank you.

MR DARAMS: So if we go to page 153. I'll draw your attention to your email later on that day to Mr Sullivan. The last sentence you say, "See below some mark ups re. the draft correspondence."---Yes.

30 So we get Mr Sullivan, who reports to you, he drafts a proposed response to Mr Bartolotta, when I say response, response to his first offer.---Yep.

You review it, you make some suggested amendments to the draft email or draft correspondence.---Yes.

You do that in blue and you respond – you do that by way of responding to Mr Sullivan and you include your amendments or proposed amendments in blue?---In the comments, yes.

40 Then one of the things you appeared to query was the proposed offer price. Mr Sullivan had drafted it on the basis of 2.34 million.---Ah hmm.

You then put a comment “I thought we agreed we’d counteroffer at 2.25 million. Where does the 2.34 million come from?” I take it from this that you and Mr Sullivan had had some conversation or discussion about the amount of the offer council would put to Mr Bartolotta in reply, is that right?---Most likely, yes.

10 Yep. Just while we’re here, the settlement date of six months from exchange, are you able to assist us with how that period of time was arrived at? And what I mean by that was, was there a discussion between you and Mr Sullivan or you and someone else about the settlement period, or was there a policy or some position within council at that time that a six-month settlement would be the period allowed in relation to disposals?---No policy as such. Reflecting on the previous documents I’ve been shown I believe that was part of the initial offer put to us by Mr Bartolotta, put to the council by Mr Bartolotta. I can only imagine he would have been seeking that time frame to allow him to progress his situation, potentially finances, whatever the case may have been. You know, three months or 42 days is the standard settlement time frame. So six months, while being generous, is not
20 unreasonable in this sort of situation with these, with these sort of values but there was no policy in place, no.

All right.

THE COMMISSIONER: We might take the morning tea adjournment at this point.

MR DARAMS: Yes.

30 THE COMMISSIONER: So, Mr Kent, we’re going to adjourn and we’ll resume after morning tea, about quarter to 12.00. I’ll adjourn.

SHORT ADJOURNMENT

[11.29am]

THE COMMISSIONER: Yes, Mr Darams.

40 MR DARAMS: Yes. Mr Walton, just before the adjournment I was taking you to some correspondence between yourself and Mr Sullivan and asking you some questions about some annotations and amendments. So if we

could go back to volume 4H, page 154. I'll draw your attention to the settlement period of six months from exchange.---Ah hmm.

Now, in one of your answers to me before the adjournment you referred to the possibility that the six-month settlement period was in the offer from Mr Bartolotta. Do you recall that?---Yes.

10 Perhaps if the witness could be shown volume 4.2, page 234 again. Just have a look at that page for me, Mr Walton. Then when you're ready I'll have you shown the next page. Are you ready?---Yes.

Next page, please. So there doesn't seem to be a settlement period referred to in that offer from Mr Bartolotta. Would you accept that?---I do accept that, yeah.

Do you recall whether you had any conversation or discussion as part of your negotiations with Mr Bartolotta where the six-month settlement period was discussed?---I don't recall unfortunately, no.

20 So just if we go back, please, to 4H, page 154. So we know that what occurred was Mr Sullivan prepared a draft for you to, in effect, consider. That is a draft counteroffer. That's right?---Yeah.

It appears that Mr Sullivan included the six-month settlement period in his draft.---Yes.

Can you recall now whether there was any conversation or discussion between you and Mr Sullivan about including that period of time?---I can't recall, no.

30 Right. I think I understood your evidence before the adjournment, there was no, as far as you understood, no policy within council that you were aware of that said on these disposals of property council required, needed, wanted a settlement period of six months, is that right?---That's correct. There's no policy.

Before this disposal, or before this matter, as I understood your evidence, you have been involved in some disposals of property before that. Is that right?---Correct, yes.

40

Can you remember in those circumstances or those matters what the settlement period was?---I cannot no, sorry.

No. So if we work on the assumption that the settlement of six months was included, can we work on the assumption that you, at that period of time, viewed the settlement period of six months as being a reasonable or appropriate period of settlement?---Yes. Not unreasonable.

Not unreasonable?---Yeah.

10

If we do go back to page 152 of volume 4H, sorry, 153, my apologies, yes. Just in relation to this chain of emails, it looks like Mr Sullivan has tried to start the bid on behalf of the council at a higher figure than you and he had discussed, is that right?---That looks correct.

20

Right. In a sense that he's having a bit of a try-on with you about the figure?---Not necessarily. Reading the, the, the email from him to me on 10 May, it seems like he's got justification behind it. And to explain that, the (not transcribable) there is council's GIS, Geographic Information System, so we had aerial or cadastre layer views, and once we clicked on a site, it would bring up essential information about that site, including its land area. Unfortunately, there's often discrepancies between that and what a deposited plan, which is the ultimate legal definition of what a land area is for a property, it seems as though Mr Sullivan has used the (not transcribable) there which is our GIS systems area, which I can take it from my email above is, differs from what the deposited plan notes does originally in, in the former measurement of 17.25 purchase equal to 4.3, 436.3 square metres, so a slight discrepancy there. And I understand from that email correspondence that's how Mr Sullivan has looked to increase the counteroffer value.

30

I see. Right. So Mr Sullivan suggests in the draft email to you a higher offer price, you query it, he gives you a justification, you check that, then you come back and say, no, I've checked that, and I take it that checking of it then reinforced in your mind that the amount you and he had originally discussed was the amount that should be included in the counteroffer. Is that right?---That's correct. I saw no reason to vary it.

40

Could I ask that the witness then be shown volume 4.2, page 246? Just read this, Mr Walton.---Yes.

Could I ask that you be shown the next page?---Yes.

If we go back to page 246, do you understand this to be the final version of the counteroffer sent on behalf of council?---I do.

Yeah. I just want to ask you some questions about this, if I may. Firstly, if I could just ask you about the paragraph that says “for the purpose of the valuation” that paragraph there.---Yes.

10 Then are you referring there to both the April 2016 valuation and then the latter valuation?---Yes.

Yes. Then if we go down to the next sentence or paragraph. It said, “Guided by the valuation, council officer following counterproposal”?
---Yes.

Just so I understand, the counterproposal was based upon what I might call that amended valuation from Mr Ferdinands which you asked him to prepare, based upon a complying development application. Is that right?
20 ---That’s correct. The amount is the midpoint between the range valuation, roughly.

The 2.1 to 2.4 million.---Correct.

Could I then just ask you to go over the page. I just want to ask you about this paragraph. “The counteroffer is made without consideration of the proposed concept prepared by Dickson Rothschild. Council confirms it has no interest in acquiring affordable housing on this site.” Are you able to assist us with that last sentence about the affordable housing? Was that
30 some part of some discussion or negotiation?---Yeah, must have been part of the development scheme or conversations during that, during those meetings. Council did have an affordable housing portfolio in the order of around 24 units at the time, I think 26 by the time I’d left the organisation. So council had declared an interest in acquiring affordable housing in proposed developments, and at this stage the determination’s been made that it’s not interested in that being involved within the offer or transaction.

I see. Just going back to page 246. There’s a number of what I might refer to as terms in the offer, or the counteroffer, from the council. One is the,
40 obviously, the sale price of 2.25 million, that’s right?---Yep.

One is the settlement period six months from exchange.---Yes.

Now, I take it that when you determined to send this offer to Mr Bartolotta, you formed the view that that offer was a reasonable position to advance on behalf of council, is that right?---I did, yes.

10 Yeah. Obviously asking you to consider some hypothetical scenarios, but if – would there have been any effect or, in your mind, on the price that council was prepared to sell the land at if in fact you had known that a settlement period of greater than six months was sought?---Yes, most definitely.

20 Okay. Can you tell us how that would have affected the price that you would have proposed on behalf of council?---Yeah. So as discussed previously, six months was roughly twice what the standard settlement terms are. Usually three months or 42 days. Six months is not unreasonable and I believe there must have been some conversation about extending that throughout the meetings. Anything greater than six months, the market was hot, so to speak, at the time. Anything greater than that would have required a revaluation of the land to take into account more recent sales, and to reflect the fact that the market was moving considerably upwards at that time.

So when you say the market was hot, that's what you mean, the price, sort of the property market within this area in Sydney, is that right - - -?
---Correct.

30 - - - was, what, increasing, as far as you understood, at that time?---Yeah, at least 15 per cent per annum, perhaps even 20 per cent.

THE COMMISSIONER: That includes for commercial type properties, I take it?---It does, yeah. The majority of this site would have been consumed by residential property, so that includes commercial to a lesser degree than residential.

MR DARAMS: So perhaps putting it rather simplistically. If Mr Bartolotta had said something to the effect to you, "Look, I need an 18-month settlement period" - - -?---Yes.

40 - - - you would have, can we assume that the price that you would have proposed on behalf of council would have exceeded – I'll come to whether

you would have got a valuation, but we can take it it would have exceeded the 2.25 million?---Yes.

Do we understand your evidence that if it had been disclosed to you that an 18-month settlement period was being sought, is it the case that you would have sought a valuation to take into account that period of time as well?

---Yes, it would have made some adjustment to, to this, the agreed price or provided some basis for an indexation of that amount to escalate based on a known stat, statistic, of some description. You know, potentially, you
10 know, RP Data is a well-known source. It may have been a line to, you know, RP Data increases in the suburb from X time to Y time based on the settlement.

So that if settlement occurred by, or extended past a particular date, there would have been an increase in the price payable by Mr Bartolotta to take into account the appreciation in the property value at that stage. Is that - - -
?---That's correct, yes.

That's a relatively simplistic way of describing it, but that's an accurate
20 description?---Yep.

I want to now ask you about another correspondence. Could the witness be shown volume 4H, page 158? This is an email you sent to Mr Osland in reply to an email that he sent you on 19 May. What I want to do is focus on your response in the second paragraph. So you understood Mr Osland was referring to the progress in relation to the sale of 231 Victoria Road?---I did, yes.

Your response is "Re Victoria Road, we have provided written counteroffer
30 to their 1.8 million this week." So that's the counteroffer of 17 May, 2016?
---That's the original offer from John Bartolotta of 1.8.

Yes, sorry. Where you say "we have provided a written counteroffer", you're referring to 17 May, 2016 correspondence?---I believe so, yes.

Then you identify that the offer of 2.25 million. Then I just want to focus on this last sentence. "I believe from here we will meet face-to-face and, as we discussed, anything greater than 2 million would be a good outcome for us." So, I want to ask a few questions about this here. So, there's some
40 reference to a discussion or conversation between you and Mr Osland. Do you remember or recollect that conversation now?---I don't know.

Then you say that “Anything greater than 2 million would be a good outcome for us.” When you say “us” you’re obviously referring to the council.---Correct.

Are you able to assist us as to what was forming your view at that time as to whether, in effect, anything above 2 million would be a good outcome for the council?---No, I cannot recall.

10 Right. Now, one question I did want to ask you though is that if an offer anything above 2 million or between the 2 million and your counteroffer of 2.25 million, your counteroffer on behalf of the council, if that had come in somewhere in between there and at six-month settlement, would that be reflected in a good outcome for the union based up what you’ve said here?
---Based on the words in this email, that would seem to be the case.

I guess what I want to ask you is do you recall now, it seems to be, that what you were suggesting there would be a good outcome was based upon the terms of the offer or the parameters of the offer that you had sent on behalf
20 of the council on 17 May?---Yes.

So that whether an amount received above 2 million would be a good outcome would also be dependent upon the settlement period though, wouldn’t it?---Most definitely.

THE COMMISSIONER: If an offer came in, you had a valuation of – sorry. I’ll start again. So the valuation you had was 2.25, as you said in the email. If an offer came in lower than that but between 2.2 and, say, 2 million - - -?---Yeah.

30 - - - do I take it that the process would be that you wouldn’t make decision just off your own bat, to say “we’ll take it”. That would go back for consultation?---There’d be certainly discussions with, the, other than myself make a decision on that. That’s correct. So that would, those discussions would most likely happen initially, with, with James, who I’d been consulting with closely to - - -

With who?---James Sullivan, who I’d been consulting with closely on this matter, and then either through my director, John Osland, or through the
40 general manager, Gary Sawyer.

So go up to Mr McNamara?---Mr McNamara wasn't in my chain of command, yeah.

Sorry. Well, who would it go to? Who's the director or was?---Mr John Osland. He was my director at the time.

Yes.

10 MR DARAMS: Now, do you recall taking a period of leave on or about, commencing on or about 20 May, 2016?---Yes, I do.

Now, I just want to ask you to be shown volume 4H, page 166. I just want to just ask you about the email you sent to Mr Sullivan, copied in to Mr Roberts and Mr Osland.---Yes.

20 Now, what appears to have happened is you've received an email from Mr Bartolotta on 20 May at 7.02 in the morning. You've then, it appears that you've forwarded that on later that evening to Mr Sullivan and Mr Roberts or copying Mr Roberts and Mr Osland. Do you see that?---I do.

Just, firstly, who was Mr Roberts?---Mr Roberts was the coordinator of the team, so basically 2IC of the team.

So in terms of the scheme, sorry, the structure of the team, and what team are you referring to?---The Buildings and Property Team.

The Buildings and Property Team. You're, at the head of that, you report in to a director, Mr Osland, at this stage?---Correct.

30 You've engaged Mr Sullivan as a contractor?---Yes.

He reports in to you?---Yes.

Mr Roberts effectively your 2IC?---Correct.

He obviously reports in to you?---Correct.

40 All of you ultimately reporting in to Mr Osland, then Mr Sawyer?---That's correct.

Can I ask you to then be shown an email which is at page 163? Was it your practice in May 2016 to set up an out of office if you knew you were going to be out of office for a period of time?---Yes, it was.

So this appears to be an out-of-office message that Mr Bartolotta has received from your email account on 20 May, 2016?---Yes.

So the message you obviously had entered into your computer before, you're referring to directing any matters to Mr Roberts. Is that right?
10 ---That's correct.

Did that include any issues about the sale of 231? Was he the person to be included in those?---No, it's a broadbrush response, I guess, an automatic reply, yes.

If I could go back to page 166. Just going back to 20 May, 2016, did you know at the time that you took the leave or were proposing to take the leave how long you might have been off work?---I don't recall. It was unexpected leave, from recollection, for a duration of one to two weeks at the most. It
20 wasn't planned, like I said. I took the leave with very short notice. Mr Roberts had been the 2IC there for quite a long time and was capable of stepping in to cover the acting role during any leave that I took, and did at all occasions.

But you don't recall now whether you knew at the time whether you would be off for, say, one week or six weeks or anything along those lines?---I knew it wasn't going to be an extended period of leave. It was, it was unplanned, like I said, for a short duration to step away from the job for a while. I was dissatisfied with, with the organisation generally.
30

So just in relation to this email, you've forwarded the email that you'd received from Mr Bartolotta to both – well, directly to Mr Sullivan but copying in Mr Roberts and Mr Osland. Was there a particular reason why you forwarded the email from Mr Bartolotta to Mr Sullivan?---I believe I'm asking Mr Sullivan to prepare a council report in there.

So that's in relation to Waterview Street/Kings Road, is that right?---That's correct.

40 But what about in relation to the 231 Victoria Road? Was there any particular reason that this was being forwarded to Mr Sullivan? Let me

come at it another way. Were you giving this to Mr Sullivan to say, “Look, this has come from Mr Bartolotta. If there’s any questions while I’m on leave, you’re going to, you can deal with it”?---I think potentially. He was another contact point for Mr Bartolotta. It was also for his information to understand that’s what his response had been following my email from 11 May.

10 Yep. Did you make any – so Mr Bartolotta sends the message to you, “Hi, Kent. Received your counteroffer, thank you. Do you have any time today to discuss and finalise?” Did you ever have a conversation with Mr Bartolotta on 20 May?---Look, I don’t recall, Mr Darams. I, I would not have contacted him. As you’ve shown me, I was on leave at the time. Didn’t mean I didn’t process things, but I wouldn’t have contacted Mr Bartolotta, looking at the time frames between my original email and his response. So would not have seen an urgency in contacting him.

20 Well, I was going to ask you that question. And I’ve asked you before whether there was any urgency on behalf of the council as far as you were aware, but I’ll ask you again, but pointing at this period of time, so on or from 20 May, 2016, were you aware of any reason why there was any pressing need for council to finalise the proposed sale of this land?---No.

Was there anything that you knew of, as at 20 May, that meant that the continuation of the negotiations with Mr Bartolotta, including potentially the finalisation of them, why they couldn’t have waited until you returned from your leave?---There was no need.

30 Was it your expectation that when you went on leave you would, in effect, pick up the negotiations for the sale of 231 once you returned?---Yes.

THE COMMISSIONER: You were the person who had carriage of this matter, the sale, in terms of negotiations and in-house dealing with what had to be done to prepare for negotiations and so, is that right?---That’s correct, Chief Commissioner, yes.

40 MR DARAMS: Now, do you recall that you returned from leave or about the 31 May, 2016?---I couldn’t be exact, Mr Darams, but like I said, my recollection was about a week, a week to a week and a half, maybe two weeks at the most.

THE COMMISSIONER: I think you can put it to him on an assumption that you've got some document there which would - - -

MR DARAMS: I was just going to take him that now, yeah. Could the witness be shown volume 4H, page 177? So I'll just draw your attention to, it appears to be there's an exchange between you and Ms, is it, Yo or Yeo? ---Yes.

10 Well, on 31 May, that appears to indicate that you're back at work as at least 31 May?---It does, yes.

Yeah. That would accord with your recollection of the period of time being sort of a week or a little bit longer than a week?---That's correct, yes.

Right. Now, could I ask the witness to be shown volume 4H, page 182? Are you familiar with this document, Mr Walton?---Yes, I am.

20 Yes. This is the direct dealing document as I've been describing it. Is that right?---That's correct.

Irrespective of the sale of 231 Victoria Road?---That's correct.

Could I ask the witness be shown page 186? It appears that you, well firstly, is that your signature under the reference to your name, Kent Walton?---Yes, it is.

30 It appears that you signed that on 31 May, 2016. Was that your, I assume, that your habit was to date, well, when you were asked to date you date on the date that you signed the document?---That's correct.

Right. And do you – oh, that doesn't matter. So I take it that one of the first or one of the things you did on your first day that you returned is to sign the direct dealing document on behalf of the council, countersign it?---It seems to be the case, yes.

Yep. Now, you've come to know that Mr Osland prepared a report in relation to the sale of 231 Victoria Road, a report to council whilst you were on leave, that's right?---That's correct.

THE COMMISSIONER: Just looking at this for the moment, I'm sorry to interrupt. It appears you sign it on the day you returned, it appears, according to the - - -?---Yes. Seems like the case.

It has previously been signed off on behalf of council on 18 May, '16 by Mr Sawyer.---Yeah, yes.

According to this document. Yes, okay. Thank you.

10 MR DARAMS: Could I ask you, you signed it on 31 May, 2016. Do you recall whether at the time you signed the direct dealing document you were aware that in fact a report had been prepared by Mr Osland for council whilst you were on leave?---I could not be certain but it, it's my view that I would have signed a document if I had been aware at the time of the report to council.

Just in relation to the direct dealing document, are you able to just give us a understanding as to what the direction dealing process meant in terms of the dealing with the property? I mean, you've endorsed it, Mr Sawyer's
20 endorsed it. What's the relevance of you endorsing the direct dealing document?---As the main officer in charge or main negotiating party on behalf of the council.

By way of signing the document, do you agree to be bound by the terms, for want of a better description, set out in the document?---That's correct, yes.

Now, just ask you to be shown the document at page, volume 4.2, page 250. Now, you've seen this document before. This was Mr Osland's report to council in relation to the sale of 231 Victoria Road, that's right?---Yes.

30 Do you recall how long after you returned from work, sorry, returned to work on 31 May you saw this document?---A matter of one to two days at the most.

Yes. Now, did it – when – is that when you first, when you saw the document, is that when you first became aware that in fact Mr Osland had prepared a report to council or did someone tell you about that before you viewed the document?---I believe I found the document or the resolution
40 itself first, rather than someone telling me about it.

So when you say you believe you found the document or the resolution, when you say resolution, are you, what are you referring to, what resolution?---So the document, the council report has a recommendation at the back. The council may or may not resolve in accordance with that recommendation or form their own, sorry, or form their own recommendation which becomes the resolution. In the document management system you, they were separated. So there'd be a separation between the resolutions for all the council reports versus the council reports. But one and the same.

10

Right. So you, at some stage after your return on 31 May, whether it was on 31 May or thereafter, you found out that there was a resolution of council, is that right?---Resolution and report, yes, correct.

Right. What did you do after that?---My recollection's not clear. I believe I would have been in contact with Mr Osland about that. However, I'm not a hundred per cent clear.

20 Were you surprised when you learned that, or found out that Mr Osland had prepared a report to council in relation to the sale of this property?---Very surprised.

Can you tell us why you were surprised?---Mr Osland hadn't been involved in any of the negotiations. I'd kept Mr Osland up to date, as I would at our regular catch-up meetings. However, he'd played no part in the negotiations and had no reason to prepare a council report on the matter.

30 I take it from that evidence you hadn't asked Mr Osland to progress the negotiations with Mr Bartolotta in your absence?---I had not.

You hadn't asked Mr Osland to, in effect, take over the conduct of the negotiations on behalf of the council?---I did not.

Do you know whether it was Mr Osland who decided to progress the negotiations and prepare a report in your absence? Do you know whether it was he who decided that?---I only know from the initials that it's been prepared on behalf of him. I don't know who, who actually made the decisions, no.

40 Did you ever have a conversation with him where you might have asked him that information?---I believe I would have. I, I don't have any

recollection about that conversation as such. I'm sure I would have raised it with him and asked him the question as to why.

THE COMMISSIONER: You had earlier said that there'd been no particular urgency to wrap up the sale quickly on this property.---Yes.

Was that another factor that operated to, as a, to occasion you to be perhaps surprised by what had happened?---Yes.

10 That the sale had actually been made in your absence?---Yes, reflecting on the previous documents I was shown, you know, we put a counteroffer to Mr Bartolotta, and I believe the most recent contact from Mr Bartolotta had, and from myself, had made mention of a face-to-face meeting to then further progress, and that was either while I was just on leave or prior to that time. So I was very surprised to return to find a counter report had been drafted, put on the agenda, considered by council, resolved by council and determined in the space of time while I'd been away.

20 It had been resolved by council before your return on 31 May?---Either resolved by council or was about to be.

About to be.

MR DARAMS: Could I just ask you, given that you had, as I understand your evidence, you were the primary council officer who was involved in the negotiations with Mr Bartolotta?---Yes.

30 Are there any matters that Mr Osland has included in this report that you might be able to assist us with really in terms of whether they were accurate or not accurate or the like?---Yes. Give me a chance to read. Is that okay, Mr Darams?

Yes, please.---Thanks. There are a number of matters in there which I would not have drafted in a report that I wrote to council on the matter.

THE COMMISSIONER: All right. Perhaps if you'd address them one by one, yeah?---Certainly. Within the third paragraph underneath the report, it talks in relation to, starting the sentence, "The standalone value of the site is \$1.8 million" - - -

40

Yes, that's, we've been through the valuations you had obtained or that council had obtained. What do you wish to say about that?---The reasoning for whoever wrote the report to identify that as the standalone value refers to the number of easements. Anyone who knew how a valuation report was drafted would understand that any encumbrances on the land would be included in that consideration for the value. So that's definitely a matter that is of concern.

10 Well, the 1.8 figure – sorry, I withdraw that. Mr Bartolotta, I think, had initiated a negotiation with an offer of 1.8, had he not?---That, that's correct.

And then subsequent to that offer coming in, you took the required steps to ensure proper valuations were obtained, in fact, two were obtained as we've been discussing?---Yes.

And the lower end of the range of the amended valuation was certainly higher than 1.8 million?---That's correct.

20 MR DARAMS: So you would agree with me, wouldn't you, that the reference to, "The standalone value for this site is 1.8 million" is incorrect? ---That's the individual writing the report's opinion, far from fact and far from based on the valuation advice received or the negotiation conversation we'd been having with the proposed purchaser.

30 Right. So you go on, 'cause you're identifying those matters in here that you wish to comment on?---Yeah. The last paragraph on the page refers to "settlement period". There's no need to entertain an increased settlement period due to someone, due to a potentially purchasing party's desire to lodge a development application and we all - - -

THE COMMISSIONER: Well, it's three times what you considered was reasonable.---Correct. And, as I mentioned previously, an 18-month settlement period should have required some indexation or adjustment to an initial agreed figure at that point in time because the market was moving upwards. So, again, that is an embellishment of the truth.

40 MR DARAMS: Were there any other matters on that that you want to comment on?---You know, the, the, the statement in the second-last paragraph, the second, the third sentence in there, "However, it's felt that the current offer of 2.1 is fair and reasonable." Yeah, I mean, you know, the last correspondence in writing from council which, being from myself, was

at 2.25. There's already a substantial variance between the two. I don't think that's as glaringly incorrect as the other two matters I've raised, but it's certainly a concern.

Well, can I just ask you about that? I want to, it seems to be referable though to the offer that had been received, or clearly it's referable to the offer received from Mr Bartolotta.---Yes.

10 Can I ask that the witness be shown page 254? So Mr Walton, you understand this to be, in effect, the counteroffer received from Mr Bartolotta, that's right?---Yes.

So if we just look at the terms of what is referred to as the revised offer, the address is fine, the area is fine. And when I say "fine", it accords with what you understood to be the position?---Ah hmm.

20 The allowable GFA parties are at one on that. When I say "at one", based upon the 17 May, 2016 counteroffer, that was the proposed or allowable GFA, that's right?---Yes.

The increase in GFA, so an amount for any uplift that's ultimately granted, that term there was consistent with the term of your counteroffer, correct? ---Correct.

Then we get this settlement period, 18 months from exchange.---Yes.

Your offer was six months from exchange.---Yes.

30 Then there's a 5 per cent deposit on exchange. Could I just focus on that for the moment?---Yes.

Had you ever had any discussion about what the amount of deposit would be accepted on exchange?---I don't recall, Mr Darams. Never mentioned any in correspondence from myself, I understand.

Did you at that stage, what was your expectation of the deposit or any - - -? ---Send, send the deposit, it's 10 per cent unless negotiated.

40 THE COMMISSIONER: 10 per cent being regarded as what, a standard sort of deposit?---10 per cent of the sale price. I'm sorry, can you repeat that?

Was 10 per cent regarded as the usual standard?---Correct, yes.

MR DARAMS: Then the licence terms, that was consistent with your, when I say your counteroffer, the 17 May, 2016 counteroffer, there was a reference to the licence agreement.---That's correct.

Now, so that's the nature of the offer. If I can go back, or sorry, they are the terms of the offer. If I can go back to page 250. Now, Mr Osland appears
10 to say that, or says that it is felt that that offer was fair and reasonable.
Would you have expressed the same view?---I would not have written it in that, in those terms, no. If there had been further discussions from my counteroffer of 2.25 on behalf of the council, and they wouldn't be the, the words I would use, no.

What words would you have used?---I would refer to the council valuations which gave us guidance to negotiate. As we've seen, the valuations, the, the final valuation came in at 2.175. \$2.1 million is below the bottom, the lower end of that range. You know, James and I both felt that there was
20 more value in that site from, from a development perspective and therefore council could achieve a higher settlement, sorry, a transfer price at, at the time.

THE COMMISSIONER: Was that the basis of your counteroffer of 2.25? ---It was the exact midpoint of the valuation from recollection, or roughly the midpoint of the valuation range.

It represented what you considered to be a proper offer?---Correct.

30 And this is all occurring in a rising market.---That's correct.

MR DARAMS: You would have noted from the counteroffer, Mr Bartolotta's counteroffer, there was no reference to indexation or anything of the kind.---Yes.

So would that have had any impact upon your assessment, as at 31 May, of whether Mr Bartolotta's offer was fair and reasonable?---Definitely indexation for sure. If, if the settlement was 18, if, if it was agreed 18 months, I, I would have been very hesitant to agree to 18 months settlement
40 in the first place because it complicates the matter, essentially. Again there's

no reason to allow a potential purchaser time to lodge a development application on a, on land and give them the benefit of, of that time frame.

Would you have recommend council accept 2.1 million with an 18-month settlement without an indexation component?---I would not.

Right. Now, and do we understand that to be because of – sorry.

10 THE COMMISSIONER: Sorry. Can you, based on your knowledge of the property and the sale negotiations and valuations and so on, can you see any basis for justifying an 18-month settlement period?---No, I cannot.

MR DARAMS: Could the witness be shown volume 4H, page 201. Now, it's an email you sent to Mr Osland on 1 June. Do you remember sending this email now?---I do.

20 Right. I take it by this stage you had found out that Mr Osland had prepared the report to council and that council had, well, were you aware at this stage council had resolved to accept the recommendation of Mr Osland, is that right?---It seems to be the case, noting that 98 per cent of council meetings were held on a Tuesday night. So it seems that the council meeting was most likely the preceding night.

So you ask Mr Osland, or you're effectively informing him that you had countersigned the direct dealing document.---Yes.

30 Now, are you effectively saying, well, we need to get some further advice, given that it appears that you are the person who has now negotiated on behalf of council, is that right?---Correct.

Now, you refer in the last paragraph, sorry, to receiving or asking for a file note of the meeting between, presumably, Mr Osland and Mr Bartolotta. Is that John B, that's who you're referring to?---That is, yes.

Do you know whether there was a meeting when you sent this?---I don't know.

40 Are you just making an assumption that there was a meeting, is that right? ---I'm making an assumption there was a meeting or a conversation, yes.

All right, yep. Do you recall whether you ever received a file note from Mr, or whether a file note was prepared by Mr Osland?---I don't believe so.

THE COMMISSIONER: What was the basis for your statement "I believe that this is important for our records to understand how an agreement was reached on the matter"?---There's no correspondence between my counteroffer of 2.25, Mr Bartolotta's then offer of 2.1 million, including the 18-month settlement. There's nothing to fill the gap. There was, and it seems to me like there's been no response to me in relation to why that's
10 happened or justification for it happening.

Does this memo reflect your concern about what had taken place?---Yes, it does. This, I believe, is my way of putting the matter in writing, on the record.

MR DARAMS: Now, could the witness be shown - - -

THE COMMISSIONER: Just a moment. Just before, so you were putting it back to Mr Osland, the second paragraph, last paragraph, explaining that it
20 needed to be signed, "Get the document back from Mitchell Morley after he has signed it. We will need to get advice in relation to updating it so that it includes mention of you so that you can sign off on it." So you were there being, in a sense, somewhat insistent that he himself provide accountability, he being involved in the concluded sale, is that right?---That's correct. That's correct.

MR DARAMS: I think you referred, I asked you before whether you recollect receiving or seeing a note prepared to that effect by Mr Osland, and I believe you said you didn't.---I don't believe I, I had seen it, no, prior
30 to me leaving the organisation.

Could the witness then be shown page 202 of volume 4H? This is a further email you sent to Mr Osland on 14 November, 2016. The second paragraph, you say, "While I was looking through the ECM about this matter, I noticed that the direct dealing document hasn't been completed by council, only the purchaser"?---Mmm.

Now, I just want to understand that, given that there is some evidence that you had signed the direct dealing on behalf of the council when you've
40 signed it on 31 May, 2016. Do you recall now what you were referring to there?---I don't. Only I can imagine that I was, yeah, I don't.

THE COMMISSIONER: So this email of 14 November, 2016, which is about six months after your return to work on 31 May or thereabouts, so you say you had been looking through the - - -?---Electronic maintenance system.

- - - file and you noticed that you had made the request for him to sign off on it, as it were?---Mmm.

10 And, what, you were conveying that obviously he hadn't signed off on it and you are now pressing him?---Yes.

Is that fair?---That's correct. That's fair.

And we might come to this but did Mr Osland respond to this email to you or don't you remember?---I don't recall. I would highly doubt I got a response to it.

All right. Perhaps, Mr Darams, I'll leave it in your hands to - - -

20

MR DARAMS: Yeah. So is this one possible explanation is that whilst you signed the direct dealing document when you returned from leave on 31 May, you look at the records, what's on the system is an unsigned one on behalf of the council. Is it possible you'd assume that, notwithstanding you would sign it because Mr Osland had continued the negotiations, that it should be signed by him, as opposed to the previous email from 1 June where you say, "Once it comes back, we're going to have to make, we'll have to get some advice as to how to amend it"?---I believe I'm just pushing him to get a signature on the document, so that he's, he's involved as a, a
30 party to the negotiation rather than I've actually sought any advice in relation to it.

Sure. Okay. So you then say in the next paragraph, "I'd previously requested you prepare a file note"?---Mmm.

What you're referring to there is that email you sent on 1 June, is that right?---That's correct.

The assumption from here is that you didn't receive such a file note?

40 ---That's correct.

Would the file note if you had received one, where would that have been stored if anywhere?---So ECM was the document management system that the council used, so there was a number of different folders that you, you needed to attach any document you were related, you were related to or that you prepared or received. In this case, there was the property address, any customers involved and there was also a subject folder for the disposal of 231 Victoria Road. Most likely, I would have looked in the folders for 231 Victoria Road for disposal or for the property address, 231 Victoria Road.

- 10 Yeah. Do you recall after sending this email whether you had any conversation with Mr Osland where he said, "I'll give you that note" or whether you recall receiving a note after this email?---I don't recall a further conversation. Again, I think I'm putting this on the public record again to state that nothing's happened between the original date and this date.

THE COMMISSIONER: So is this the position that you don't recall him ever responding to this email of yours of 14 November, 2016, either verbally or by email?---That's correct.

- 20 So it's clear from this letter you are satisfied that he hadn't prepared a file note, had not registered in the ECM, the data management system. That right?---Yes, that's correct.

And, to your knowledge, was it ever recorded in the ECM if there was ever a file note?---I, not from recollection.

MR DARAMS: So could this be the alternatives, Mr Osland prepares a note but doesn't record it in ECM, or lodge it in ECM, that's one possibility?---It is.

- 30 Another possibility is he just didn't prepare the file note that you took? ---That's correct.

Right. Just so I can confirm this, but at this time in November 2016, you were reporting directly to Mr Osland, is that right?---Yes.

- THE COMMISSIONER: So is this the position, Mr Osland has never explained to you or provided explanation to you as to how the sale came about and the way it did?---Either any explanation or any reasonable
40 explanation.

MR DARAMS: Just so I understand that, you said “Any explanation or any reasonable explanation”?---Yes.

That second answer suggests that there’s been some explanation given from Mr Osland that you don’t believe is reasonable or - -?---I, I don’t recall an explanation. Most likely if I had verbally confronted Mr Osland about it, he may have made some statements to me that I was unwilling to accept.

10 THE COMMISSIONER: How long had Mr Osland – sorry. How long had Mr Osland been in the position he held as at 2016? Do you remember or don’t you?---I don’t know exactly. Mr Osland was employed in this role prior to my commencement of employment at Canada Bay, which was, so prior to July of 2009.

So he headed up the team, that’s the Building and Property Team, is that right?---That was my role, Chief Commissioner. He was the Director of Technical Services and Operations.

20 I’m sorry. I stand correct. You did say before he was the director.---Yep. So basically at the depot, I guess he managed all the asset classes, you know, garden maintenance, road repairs, rather a large portfolio.

MR DARAMS: Now, Mr Walton, I want to move forward in time a little bit to March 2018. You recall at that time that Mr Bartolotta sought an extension of the time to settle on 231 Victoria Road. Do you remember that?---I do, yes.

30 Could I just ask the witness to be shown volume 4.5, page 1? This is an email from Mr Bartolotta to you on 6 March, 2018. Now, do you remember receiving that email?---I do.

It refers to there being some discussion between you and he on 5 March. Do you recall a discussion to that effect occurring?---Not necessarily.

No. Did you know at this time, that is March 2018 – sorry. In light of your evidence earlier today, you didn’t know at this stage, this time, that Mr Bartolotta was asking on behalf of not only himself but those other two individuals?---I had no idea.

40 Yeah. If we go to, ask to show you the next page, please. There’s an email from Mr Bartolotta to you, copied into Mr Gainsford and Mr Tsirekas on 15

March, 2018. Just can I pause there? Was Mr Gainsford the – well, what position did Mr Gainsford have at that stage?---He was the general manager of the council.

THE COMMISSIONER: I'm sorry, I couldn't hear.---The general manager of the council.

MR DARAMS: He had taken over from Mr Sawyer?---Correct. I think Mr Sawyer may have resigned somewhere around late 2016, maybe early 2017.

10

Right. And Mr Tsirekas obviously was the mayor at this time.---Yes. Oh, couldn't be sure.

Right, okay.---He was the mayor most of my time within council, apart from a brief period

Right. Now, can I assume that given this is addressed to you and it seems to go into some detail, that you had asked Mr Bartolotta to justify why the extension was being sought?---Seems to be the case, yes, Mr Darams.

20

Right. If you need to read that email again, please do it. I want to ask you some more questions about some further emails.---There's a lot of detail there. Perhaps I'll come back to it when you ask the question, or - - -

Right, no problems. If I then ask you to be shown page 5.

THE COMMISSIONER: Mr Darams, I don't know if the witness wants the opportunity to read through that to refresh his memory of things. If so, we could adjourn at this time to give him the opportunity to do that.

30

MR DARAMS: Yes. That's appropriate.

THE COMMISSIONER: I'm not sure what line you're going to follow from here but if it's relevant to the line of questioning, perhaps he should be given the opportunity of reading through it. It's a fairly lengthy document.

MR DARAMS: Yes. We're going to give you the opportunity to read through this.

40

THE COMMISSIONER: All right. Okay. Mr Kent, we'll take the luncheon adjournment. There may be time for you to read through that

email if you wish, if you feel you would be more comfortable to - - -?---If
it's required, yeah, depending on - - -

I'm sorry?---If that's required, depending on the questions and what you
ask.

Yes, it does depend on the questions, yes.---So - - -

Mr Darams, I'm in your hands to some extent.

10

MR DARAMS: Well, I am going to ask him a follow-up, I'm going to ask
him questions about a follow-up email from that email and it might be that
he needs to look at this email.

THE COMMISSIONER: Okay. We'll take the adjournment and resume at
2 o'clock. I'll adjourn.

LUNCHEON ADJOURNMENT

[12.56pm]

20