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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 2.00PM

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

THE COMMISSIONER: Yes, Mr Darams.

MR DARAMS: Mr Walton, before the adjournment I was taking you, or I took you to the email from Mr Bartolotta which is at volume 4.5, page 2. Can I have that brought up again? Did you have a chance to look at that email over the adjournment?---I have, yes.

10

Could I ask that the witness be shown volume 4.5, page 5? I want to ask you to consider the email from you to Mr Bartolotta on 21 March, 2018 which starts at the bottom of the page. So if you could read that and then let me know when you need me to go to the next page.---Ah hmm.

Can we please go to the next page? Just read that to yourself. Now, You'll just note under your signature or sign-off there's Mr Colacicco's sign-off.---Ah hmm.

20 Just note that. Could I just go back to page 5 now? I just want to draw your attention to the first paragraph. It's clear that you are responding to an email from Mr Bartolotta but on the email copy that we have, other than Mr Colacicco's sign-off, there was no further information referred to below. But I want to suggest to you that what you're responding to was the email from Mr Bartolotta dated 15 March, 2018. Does that accord with your recollection?---I agree, yes.

So if I can now just ask you a few questions about this email.---Ah hmm.

30 The first thing you say, well, the second thing you say on the page there at the bottom, you're effectively indicating to Mr Bartolotta that your role is to act on behalf of council, correct?---As a property owner, correct.

Yeah. So if we go over the page, I'll draw your attention to the second paragraph there. In effect you're basically saying, in answer to Mr Bartolotta's request for an extension of time, in my words, "Look, you've got a pretty good deal."---Ah hmm, yes.

"And so I'm not minded, in effect, at this stage to extend settlement."

40 ---Correct.

Right. Then if we go down to the third-last paragraph, or fourth-last paragraph, you're effectively setting out "Look, since you reached an agreement with Mr Osland back in 2016, property prices have increased and if you really want me to consider", again, my words, "if you really want me to consider a further extension, you've got to consider those matters and come back with some commercial term attached to the extension." Is that right?---Yeah. That's correct, yes.

10 Right. Then could I ask you to be shown page 9, please? I just want to draw your attention to the email from Mr Bartolotta to you on 12 April 2018. Now, Mr Bartolotta sent that to you but he's also copied in Mr Gainsford and Mr Tsirekas. Just on that, did you ever ask Mr Bartolotta to include Mr Tsirekas in the correspondence he was sending to you or any correspondence he was sending to you?---No.

Can you think of any reason why Mr Bartolotta might be including Mr Tsirekas?---No.

20 I want to come back to your response in a moment but from what Mr Bartolotta says it appears that there was some meeting between you and Mr Gainsford and he where you were discussing what I might call this commercial basis of an extension, is that right?---That seems correct from this correspondence, yeah.

Right. Do you have any recollection now other than what might be recorded in this correspondence about the discussions between the parties? ---Not specifically, no.

30 I see. Then I just want to draw your attention to your email, which appears to be in response to that email of 12 April from Mr Bartolotta, so if we can just scroll up a little bit? So it appears that you respond to this email on 24 April to Mr Bartolotta but the CC this time doesn't include Mr Tsirekas?---Yes.

Now, it appears that, can I ask this? Did you make a conscious decision to remove Mr Tsirekas from the email or you can't remember now?---I can't remember but I believe so. I've got no reason to include Mr Tsirekas who's, I always reporting to Mr Gainsford, the general manager.

40 Now, so in effect what occurs, so the time line of events, Mr Bartolotta reaches out to you to seek an extension of the settlement time, you ask for

an explanation as to the reasons why. Mr Bartolotta gives you those explanations. That's not satisfactory to you without any commercial aspect associated with the extension time, and what I mean by that, some form of compensation - - -?---Yeah.

- - - payable to the council in light of the terms that have already been struck with Mr Bartolotta. Is that correct?---That's correct.

10 You then have this negotiation with Mr Bartolotta in respect of that commercial aspect of an extension?---Yes.

And do you recall then preparing a report for council in relation to this request for an extension of time?---I do.

20 Right. Could I ask that the witness be shown volume 4.5, page 18? Now, are you able to tell from this cover page, so this first page, whether that's the report you prepared?---Has my initials as the author on there. I was the only KJW in the organisation. There was a KW for a time but not a KJW, so I believe that's the report I wrote.

Could I just ask that you then have a look at the next page? Tell me when you'd like me to go to the next page?---Would you like me to take in the content or - - -

No, just get yourself familiar with it. Take the time you need to.---Sure. Okay.

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

30 Then the next page?---Okay.

So, in effect, you prepare a report to council indicating the history of the matter, including the history of the request for an extension of time, then you put in a base upon which council might consider extending the contract on terms that, in essence, provide that Mr Bartolotta, his companies, provide financial compensation for that extension?---That's correct.

Right.

40 THE COMMISSIONER: Mr Darams, just go back to the beginning of that report or whatever it is.

MR DARAMS: Page 18.

THE COMMISSIONER: Yes, thank you.

MR DARAMS: Now, the next thing that I wanted to ask you about, do you recall this report being submitted to council and what, if anything, happened thereafter?---I believe it got resolved as recommended.

10 And so when you say “resolved as recommended”, could I just ask that you be shown page 22. So your recommendation, or one of your recommendations, that council agree to extend the contract completion date based on the terms contained within the above report.---Yep.

Then could I ask you be shown page 16. Excuse me. This is your email, or one of these emails is your email from, to Mr Bartolotta on 16 May, presumably after council meeting the night before, is that right?---That would be correct, yes.

20 In effect you are relaying to Mr Bartolotta the outcome of council’s deliberations on this extension of time.---Yes.

Now, just one last document I wanted to ask you about before I come back to this email. If I could ask you to be shown page 27. So this is a memorandum written by you on the – it appears to be written by you on 15 May, 2018.---Yes.

So during the day of the council meeting. The day. The council meeting was held in the evening.---Yes.

30 So what it appears is you’ve prepared your report to council, where you put your recommendation in that. Subsequent to you preparing the report, there’s some other conversation or discussion between you and Mr Bartolotta where an increase from Mr Bartolotta’s previous financial component has come back, but you consider that but reiterate the position set out in your report, is that right?---I don’t believe there would be any further conversation with Mr Bartolotta at the time following his original initial offer, myself drafting the report. There seems to be some variance between the terms there, but I don’t believe that would have resulted in a  
40 conversation with Mr Bartolotta as such.

So is it possible that this – where you say, “Following is a further offer provided by the purchaser,” do you believe that came by way of email or something to the effect?---Must have.

Right. In any event, you consider what comes in from Mr Bartolotta and you, in effect, reiterate the position that you set out in terms of your report to council and the recommendation on that basis.---Yes.

10 That was the ultimate position. That is, council accepted your recommendation. That’s how you understood it?---Yes.

Set out in your report, which you then communicated to Mr Bartolotta on 16 May, 2018.---Yes.

20 Right. And just if we can go back to page 16. Just draw your attention to Mr Bartolotta’s email, at the top, in effect, Mr Bartolotta, just if we can scroll the page down slightly? No, no. Sorry. Go the other way. It’s all right. So we get the email from Mr Bartolotta to you, copied in to Mr Roberts on 17 May, effectively accepting the offer that was put out or recommended by council. Correct?---Yes.

Did you then, in effect, turn it over to the lawyers to document the process from there?---Most likely, yes.

They’re all the questions, Chief Commissioner, that I had for Mr Bartolotta – sorry, Mr Walton, my apologies. I understand there’s an application on behalf of Mr Sawyer’s representatives to cross-examine Mr Walton.

30 THE COMMISSIONER: Yes. Very well. I received an application for cross-examination - - -

MR LEGGAT: Chief Commissioner, we will also be making an application for cross-examine. We held off making that application till we heard what was in this afternoon’s session. That’s why we haven’t yet provided the application. I anticipate I would be about 15 minutes and I’m ready to proceed now if that is of assistance to the Commission.

THE COMMISSIONER: Well, have you now got a list of topics?

40 MR LEGGAT: Yes. It will be provided in an email to Counsel Assisting.

THE COMMISSIONER: Sorry? You're instructed by RGSLAW?

MR DARAMS: No, that's Mr Sawyer's representative.

THE COMMISSIONER: That's Mr Sawyer's lawyers? Right.

MR DARAMS: That's Ms Avery - - -

10 THE COMMISSIONER: I don't think I've seen, Mr Leggat, I don't think  
I've seen your - - -

MR LEGGAT: No, it hasn't been sent yet. My junior's been preparing it.

THE COMMISSIONER: Well, why not?

MR LEGGAT: Yes.

THE COMMISSIONER: Why not?

20 MR LEGGAT: Because we were waiting to see what - - -

THE COMMISSIONER: Well, that's really no, with respect, well, unless  
there's something just arisen since lunch, which I think is unlikely, you  
should have been in a position before lunch to advise.

MR LEGGAT: Yes.

THE COMMISSIONER: It just helps us program, that's all.

30 MR LEGGAT: Look, I'm sorry that, our perspective was we didn't want to  
send in two requests saying "here are items 1 to 3" and then after lunch - - -

THE COMMISSIONER: Well, you haven't got a list yet?

MR LEGGAT: No, we haven't.

THE COMMISSIONER: I suggest you make a list - - -

MR LEGGAT: Certainly.

40 THE COMMISSIONER: - - - and hand it to Counsel Assisting.

MR LEGGAT: Yes.

THE COMMISSIONER: We'll deal with it as soon as we can.

MR LEGGAT: Thank you very much.

THE COMMISSIONER: Okay. Yes. Now, sorry, who's wanting to cross-examine?

10

MS AVERY-WILLIAMS: Chief Commissioner, my name is Avery-Williams, A-v-e-r-y-Williams, and I appear for Mr Sawyer.

THE COMMISSIONER: Very well.

MS AVERY-WILLIAMS: My instructors have made an application in writing.

20 THE COMMISSIONER: Yes, your application is in today's letter, is that right, addressed to the Commission?

MS AVERY-WILLIAMS: Yes.

THE COMMISSIONER: Yes. Just approximately how long do you think you might be, so - - -

MS AVERY-WILLIAMS: No more than about 20 minutes.

30 THE COMMISSIONER: All right. Yes. You proceed, Ms - - -

MS AVERY-WILLIAMS: Thank you.

THE COMMISSIONER: I grant leave.

MS AVERY-WILLIAMS: Mr Walton, my name is Ms Avery-Williams and I appear for Mr Sawyer. You gave some evidence this morning that you reported to Mr John Osland. Do you recall that?---Yes, I do. Yes, I did.

40 And you also gave some evidence that you had kept him up-to-date about the sale of this property at 231 Victoria Road. Do you recall that?---Yes, I do.

I just wanted to show you a couple of examples of that. If the witness could be shown volume 4.2, page 202, please? So, Mr Walton, this email chain includes an email from you dated 9 February, 2016, addressed to Gary. Do you see that, "Hi, Gary"?---Yes, I do.

And it's Mr McNamara that has replied to you at the top of the page, copied to Mr Sawyer and also Mr Osland.---I can see that, yes.

10 So this email from you on 9 February records a meeting that you and Mr McNamara had in relation to the proposed developments of 227 and 231 Victoria Road?---That's as I read it, yes.

And the owner, or the soon to be owner, was not present at the meeting?  
---That's what I read as well, yes.

And if you go to about the fifth paragraph that begins "Following the joint discussion", the last sentence of that paragraph you set out there you had advised that it was your preference and recommendation to council to  
20 dispose of the land rather than be partners through the development.  
---That's correct.

And you, just two paragraphs below that, you set out there that "As Mr Bartolotta's property surrounds council's, there is only onwards adjoining owner and so his site is must less developable without combining it with council," and you were told, or you record there that you were told what that adjoining property had been purchased for. Do you see that?---Yes, I do.

30 So this was one example of you keeping, I suppose, other members of the team, including Mr Osland, informed of what was happening with the negotiations, is that right?---It's a specific file note in relation to a meeting, that's correct, yes.

Could the witness next be shown volume 4H, page 154? Mr Walton, this is a document you were asked some questions about this morning and just to give you the context, it's an email from Mr Sullivan to you with a draft proposed counteroffer. Do you recall being asked about this document?  
---Yes, I do.

I just wanted to ask you, at the top of the page it says “When yourself and JO are comfortable”, JO is a reference to Mr Osland, isn’t it?---That is correct.

And so you discussed the terms of the counteroffer with him, is that right?  
---Sorry, can you restate the question, please?

Yes. You discussed the terms of the counteroffer that was made by council with Mr Osland. Is that right?---I think that that’s James stating that when I do that, whether I did, presumably, I, I couldn’t be certain.

All right. Might the witness be shown page 158 in this volume, please?

Now, Mr Walton, this is an email from you to Mr Osland on 19 May.---Yes.

And you refer in the second paragraph to the sale of this particular site, Victoria Road, and you say there “I discussed this with you last week.” Do you see that?---I do.

20 So what I want to suggest is that you did discuss the written counteroffer with Mr Osland.---Seems likely.

This was the last communication you had with Mr Osland about this matter before you went on leave on 20 May, is that right?---I couldn’t be certain of that.

But certainly it’s a communication that you had the day before you went on leave?---That’s correct.

30 And you express your view there that “Anything greater than 2 million would be a good outcome for us.” Do you see that?---That’s as I, that’s as I read it, yep.

And you wouldn’t have set that out in writing if you didn’t hold that view at the time, would you?---Oh, that’s unlikely, that’s right.

Now, you gave some evidence that negotiations for this sale started in about May of 2015. Do you recall that?---Yes.

40 So at this point in time, there’d been negotiations going on for about 12 months. Do you agree with that?---Yes, I do.

And you then went on leave from 20 May, you were asked some questions about that this morning. Do you recall that?---Yes, I do.

It is the case, isn't it, that when you went on leave, you didn't know what date you might return to work?---That's correct.

And do you recall sending a message to Mr Sawyer where you said, "I've let John know that I need some time away from work"? Do you recall that?  
10 ---I don't.

Ordinarily when you go on leave, someone else in your team would progress matters that you had been dealing with, is that right?---Depending on what sort of background and information they would have in relation to that matter.

And in this particular case there were a number of individuals who had been kept updated about the sale of this particular property, weren't there?  
20 ---That's correct.

There was, for example, Mr Sullivan.---Yes.

Mr Osland.---Yes.

Mr McNamara was another person who had been involved in a number of these meetings that you'd attended.---Mr, Mr McNamara wouldn't have had any involvement once the negotiation for the property started. His involvement would have been more so focused on the planning matters which had at this stage, I believe, ceased.  
30

THE COMMISSIONER: Was he Director of Planning?---That's correct. Planning and Environment.

MS AVERY-WILLIAMS: And I think you gave some evidence this morning that there was a Mr Roberts who was capable of stepping in. Do you recall that?---Mr Roberts was the coordinator of the Buildings and Properties Team, so he was my 2IC. So he would, he, he needed to know about it. He hadn't been involved, necessarily, in any of the negotiations.

40 I want to suggest to you that when you took leave on 20 May, 2016, you expected that other members of your team would progress each of your

matters, including the sale of this particular property while you were away.  
---I disagree.

You this morning were shown an out-of-office email that you had set when you went on leave. Do you recall that?---Yes, I do.

I want to suggest that you had set that out-of-office for the purpose of matters being advanced in your absence. Do you agree or disagree?---I agree.

10

And that is so that emails that were sent to you wouldn't just languish in your inbox. Someone else could be made aware of them and action could be taken. Is that right?---That's correct.

Could the witness please be shown in this volume page 166. Mr Walton, you were shown this email this morning. It's an email forwarding on an email from Mr Bartolotta about the sale of this property.---Yes.

20 That you sent on 20 May. Do you recall being asked some questions about this?---I do.

I want to suggest that the purpose of you forwarding on Mr Bartolotta's email was so that negotiations with him could be progressed while you were on leave. Do you agree with that?---No, I do not.

Well, you didn't forward on his email for no reason, Mr Walton.---That's correct.

30 So I want to suggest that you forwarded it on so that some action could be taken in relation to it.---I disagree.

At this point in time, do you recall that there had been some press about potential local council mergers?---That's likely, yes.

And do you recall that in preparation for what was a foreshadowed or possible merger, there was a lot of activity happening at council, if I can put it that broadly?---Whether it was because of that or because the council was busy at the time, I couldn't comment on that matter.

But council was attempting to organise a number of matters, is that right, would you agree with that?---The Buildings and Property Team were, were very busy at the time.

Would you agree that it would not be an efficient conduct of business to allow your matters to sit idle while you were away for an undefined period? ---I disagree. I think if we reflect back on one of the other documents that we saw there, there was a proposed date when I returned from leave. It was stated as sick leave, which was obviously incorrect, and so someone's  
10 determined 6 June, from recollection, was the date I was proposed to return. I returned, from recollection, on 31 May or 1 June, whatever it might be. So I don't believe you'd call that an extended period of time.

But, Mr Walton, at the time you sent this email, on 20 May, the date of your return was unknown. You've agreed with me about that.---I do agree.

So at this point in time it would be the case that if action wasn't taken, then your matters might sit idle for an undefined period of time. Do you agree? ---Generally, yes. But specifically in relation to this matter, I don't see that  
20 as a concern. As you referred to previously to me, this negotiation had been proceeding for a year already.

In the negotiations that had been conducted for the sale of this property, there was only one interested purchaser. That's right?---It was a landlocked site. That's correct.

And so because it was landlocked, this particular site, if Mr Bartolotta had developed the neighbouring site, that is 227, without using this site at 231, that would limit council's options about 231 Victoria Road in the future,  
30 wouldn't it?---Yes, it would.

And certainly 231 Victoria Road was far less valuable if it was sold to somebody other than Mr Bartolotta, would you agree with that?---Yes, I would.

So the highest value could only be obtained if the sale to him went through?---That's correct.

Now, I want to ask you about an earlier report to council. So if the witness  
40 could please be shown volume 4.2, page 204. Now, Mr Walton, I'm not suggesting this is a report you've prepared. The initials on the report, author

initials are JO, which I take it is Mr Osland. Is that correct?---Yes, that's correct.

And we've seen a later report to council that had your initials on it, KJW.  
---Yes.

Was it your practice when you prepared a report to council to put your initials on it?---Yes.

10 Now, this particular report, I'll just take you to the heading in the middle of the page there, 231 Victoria Road, Drummoyne. Do you see that?---I do.

Now, is this a report you've seen before, Mr Walton?---I have seen it, yes.

Just to give you some context, it was prepared and put before the council at the meeting on 1 March, 2016. You'll see there in that first paragraph under the heading 231 Victoria Road, Drummoyne, the last sentence, "Council will also recall that there are a number of rights of way over both properties so the value of one without the other is significantly diminished." Do you  
20 see that?---I do.

Is that something that you would agree with?---Yes, generally.

Could the witness next be shown volume 4.2, page 250, please? Mr Walton, you were also asked some questions about this report this morning.---Yes.

It's the second report prepared by Mr Osland for the council and one of the matters that you gave some evidence about is the third paragraph under the heading Report, and the reference there to "The value of the site as an  
30 independent property is significantly reduced due to the number of easements which restrict its use. The standalone value for this site is \$1.8 million." Do you recall being taken to that?---Yes, I do.

Now, the previous report that I just took you to referred to the value of one site, that is 231, without the other, that is 227 being significantly diminished. You would agree with me that certainly \$1.8 million is a significant reduction on the valuations that you had obtained for the use of the properties in a combined value. Do you agree?---Correct.

And those valuations that you had obtained, which you were taken to, relied on there being a combined value, that is both of 227 and 231. That's right, isn't it?---That's correct, yep.

You were also asked, in relation to this document, about the 18-month settlement period that's referred to in the last paragraph on this page. Do you recall that?---I do.

10 The reference in that last paragraph is in relation to a development application and it says there that "If the DA is obtained earlier, settlement will be required at that time." Do you read that as if the DA is obtained earlier than 18 months, the settlement period will be less than 18 months? ---Yes, I do read it like that.

And in fact, I think in the contract that was ultimately prepared, which you dealt with the terms of the contract, didn't you, with the solicitors?---Yes, I would have.

20 And in the contract that was ultimately prepared, the settlement period was either 18 months or 42 days after the purchaser provided a written notification. Do you recall that?---I do.

So the settlement period may could have been something less than 18 months. Do you agree with that?---I do.

30 You were also asked some questions about the direct dealing document this morning. There is a copy of it in this volume at, if the witness could be shown page 240? You'll see there in this document, there's a heading Benefits of Direct Dealing?---Yes.

And in the second paragraph, it says, "The land can continue to be utilised by council for its current use and remains a strategic asset as council's operational needs change in the short to mid-term." Do you see that?---I do.

40 So do you agree that based on that there might be some value in holding onto this property for at least the short to mid-term?---Yes, from an operational perspective, it was used for the council officer car park, so, until it was needed, till it was actually transferred, then council would continue to use it for that purpose, so, yes.

And so that might be one reason why council would agree to an extended settlement period, do you agree?---That would be why there's a condition within the contract to allow that to continue until settlement.

Now, this document, I don't need to take you to it, but this document was signed by both yourself and Mr Sawyer. Do you recall that?---I do, yes.

And, of course, that is the usual practice for general manager to sign off on direct dealing documents of this type, isn't it?---Usually, yes.

10

Now, you were also shown then volume 2H, page 201. This was an email I think from you to Mr Osland the day after the council resolution was passed. Do you recall looking at this email?---I do, yes.

What I want to suggest to you is that in that email, you don't record any concern that you had about the price of the sale, do you?---I don't note it specifically, that's correct.

20

And in this email, you don't record any concern about the terms of the sale, that is the settlement period of 18 months, do you?---I refer in the last sentence to "understand how the agreement was reached in the matter" not specifically in relation to the settlement period, no.

So just returning to my question, you don't record any concern about the settlement period in this email, do you?---I believe that's contained within the "i.e., date, location" discussion context but not specifically, no.

30

So your evidence is that where you ask for a file note about the meeting, that records a concern about the settlement term of 18 months?---Well, I believe a discussion would have included settlement terms since it varied from the previous correspondence and also the price since it varied from the

---

THE COMMISSIONER: I think he's said that twice now, Ms Avery-Williams.

40

MS AVERY-WILLIAMS: The sale price that was resolved by council to accept of 2.1 million, you'd agree with me that that was above \$2 million, being the amount you told Mr Osland would represent a good outcome?---I agree.

And, ultimately, when a recommendation is made to council, as in this case, it was on 31 May, 2016, it's the councillors who vote to accept the recommendation and pass a resolution or to reject the recommendation, that's right?---That's how it works, yes.

And so ultimately it's only the councillors who could approve and resolve to sell 231 Victoria Road on these terms, is that right?---That's correct.

10 Those are my questions, Chief Commissioner.

THE COMMISSIONER: Yes. Thank you, Ms Avery-Williams. Mr Leggat, how are we going with your list of topics?

MR LEGGAT: Yes. It's been provided. Thank you, Chief Commissioner.

THE COMMISSIONER: I haven't seen it.

20 MR LEGGAT: A number of the issues as you'll see, Chief Commissioner, have been dealt with, but there are still a small subset. But my estimate is 10 minutes now.

THE COMMISSIONER: Well, Mr Leggat, on the basis that you don't require any more time than you've indicated, I'll allow the cross-examination sought. The list of topics will be marked for identification, it's probably MFI 1, I think. That's Mr Leggat's list of topics.

30 **#MFI-001 – CRAIG LEGGAT SC'S LIST OF TOPICS FOR CROSS EXAMINATION OF KENT WALTON**

MR LEGGAT: Thank you, Chief Commissioner.

THE COMMISSIONER: Cross-examination. Yes, Mr Leggat.

MR LEGGAT: Mr Walton, part of the sale agreement included council having a licence to continue parking for free on the subject land. That's so, isn't it?---Correct.

I suggest to you that the potential for council to park for free pending the settlement created a significant financial benefit to council. Do you agree with that?---That's a difference of opinion, significance, I guess.

I take it from your answer you're not disagreeing with me. You're just saying reasonable minds might differ as to the nature and extent of the difference, the financial benefit? Is that - - -?---There's an unknown value there for sure.

10

Are you aware of approximately how many cars, how many council cars were capable of being parked on the site?---15.

Are you aware of any other paid parking facilities available for council employees in the locality?---No.

20

Putting it another way, this was a relatively rare and important feature of the site to council to have that continued ability to park up to 15 cars in that location close to council, you'd agree with that?---It continued its previous use.

Yes. You're not disagreeing with me, are you? The previous use, in your view, was of value to council, wasn't it?---There was value there, yes.

30

And if the settlement occurred in three months, then council wouldn't get as good a return on investment for the parking of the cars as if the, compared to the situation where the settlement occurred for 18 months and council had 18 months free car parking. That's self-evident, isn't it?---I believe it was looked at differently from the council's perspective. It was more about continuing the use of the car park for those managers' benefits, otherwise those managers would need to have parked on the street or in all-day parking behind the council building.

40

Yes. The on-the-street parking, I'm instructed, is limited to two hours, and what happened when the 15 car parks were filled up, the council employees, including managers, would have to leave council offices, stop work, go and move their car to a place where they could get another two hours. You saw something like that happening from time to time, didn't you?---There was all-day parking at the back of the council building.

Look, I'm asking a slightly different question. There was – I'm sorry, I think that's, there was all-day parking at the back and that would fill up, and you're aware, aren't you, that council employees would park in the two-hour limited car parking from time to time, and that would necessitate those employees moving the cars from time to time during their working hours?  
---Some staff do park in two hours, yes.

THE COMMISSIONER: Mr Leggat, I just query this line of cross-examination, quite frankly.

10

MR LEGGAT: Yes.

THE COMMISSIONER: We're dealing with a situation where completion period was six months. You're not seriously submitting or that there'll be any evidence that those in council who agreed to 18 months sat down and worked out the benefit of parking as against having a deferred sale three times what was originally envisaged, namely six months, are you?

MR LEGGAT: The - - -

20

THE COMMISSIONER: See, it's a question of what was the reason - - -

MR LEGGAT: Yes.

THE COMMISSIONER: - - - behind the extension, not relative value. I mean, you're not suggesting really somebody sat down and worked out the maths and said, "Oh, this is something in this for us because we'll get parking fees," really, are you?

30 MR LEGGAT: Yes, we are. That it's a relevant, a relevant consideration.

THE COMMISSIONER: But how does that go to motive? Are you submitting to me that there is evidence that that's what happened? That they sat down - - -

MR LEGGAT: No, no, no.

THE COMMISSIONER: No. Well, no, it's speculation then, isn't it? We're talking about motivation, yes, that's what I'm talking about.

40

MR LEGGAT: Yes.

THE COMMISSIONER: Not fair dealing in terms of how much I get out and how much you get out, that's not the issue.

MR LEGGAT: Yes. No, one's looking to explain motives, yes.

THE COMMISSIONER: Well, I'm not sure that we are talking the same. That's why I raised it.

10 MR LEGGAT: All right. Let me move on - - -

THE COMMISSIONER: You're dealing with the reason as to how it got from six to 18 months and I don't think the benefit of parking was a matter anybody even turned their minds to. I may be wrong but from what you've said, you're not seeing such evidence either.

MR LEGGAT: No, I haven't seen the evidence of that.

20 THE COMMISSIONER: Well, it's speculation then and it doesn't go to the reason. Anyway, you carry on.

MR LEGGAT: Yes, thank you. Mr Walton, you were aware of the benefit to council of the ongoing use of the site as car parking, weren't you?  
---That's why it was asked for, yes.

Yeah, yep. And that's a factor that was not an irrelevant consideration for you in your recommendation to council of the sale price. Do you agree with that?---I don't believe it's to do with the sale price, no.

30 You're not saying it was an irrelevant consideration, are you?---I'm saying there's no relationship between the two.

THE COMMISSIONER: But, Mr Leggat, it comes back to this. Do you think that the valuers took that into account when they were trying to assess value and that council were working out, well, let's string this out as he wants to for 18 months because we'll get some benefit from parking our cars? Really, Mr Leggat, I don't think so.

40 MR LEGGAT: Very well. Let me move on. There was another slightly unusual term, in the sale agreement which had the potential to increase the

amount payable to council and that was the uplift provision. Do you agree with that, Mr Walton?---I wouldn't say it's unusual. It was included, yes.

And the way it worked was \$1,000 per square metre payable to council?  
---That's correct.

Yeah. So for example if there was 1,000 square metres, that would be another million dollars payable to council, wouldn't it?---That's correct.

10 Okay. In the memo that you wrote to Mr Orland [sic] on 19 May, "Anything greater than \$2 million would be a good outcome for us," you used the word good outcome and you meant to differentiate from reasonable outcome or poor outcome, didn't you? It was an advised choice of words, "a good outcome", wasn't it?---I see good as a decent outcome. A great outcome would be, would be better.

All right. So it was something short of a great outcome but it was better than a reasonable outcome. That's what you're saying was your view?  
---Sure, yes.

20

All right. And the reason why more than \$2 million was a good outcome was based on your lengthy experience as a council officer dealing with the sale acquisition of properties, agreed?---Yes.

I'll put it another way. You brought some 20 years of experience to the reasoning process which you concluded that anything more than 2 million would be a good outcome. That's true, isn't it?---I did conclude that. It's obviously contrary to all the other agreements we've considered today but that's, those are my words, that's right.

30

Yeah. I want to explore the probity adviser. That was Mitchell Morley. Was he retained permanently by council, he or his firm, permanently as a probity adviser?---Not permanently. We had a bulk of matters that we were working through at the time and he was assist us with those other matters as well as this matter.

So he was not an employee of council, he was a consultant to council, was he?---He was, was part of another firm who council had used previously for probity matters.

40

All right. Can you recall the name of his firm?---Oh, InConsult is in my mind but I, I can't be 100 per cent sure if that's the name.

All right. Was that firm on retainer for probity matters or were there a number of probity advisers available to council for this particular site? ---The, Mitchell Morley was, I don't believe was on a retainer from council, they were, he was, he was engaged individually on separate matters.

10 How would he be briefed? Would you send him instructions in writing to get his input as to whether probity had been satisfied or not?---A number of situations, verbally over the phone, face-to-face, in writing.

Did you keep minutes of those discussions with Mitchell Morley about the probity of this particular property transaction?---I can't recall. I was usually quite thorough with my registration in the document management system, so any emails and letters in writing would have been registered to that system.

20 Advice from Mitchell Morley that the probity was satisfactory, was that advice that was obtained in writing by you, do you know?---I can't recall.

Right. You suspect that there may be a written probity report that was provided to you?---In relation to what matter, sorry?

The matter that we're talking about, the sale.---Up-front?

At any stage.---There would have been a report up, originally in relation to the matter, when we prepared the direct dealing document, I'm sure, yes, or some sort of correspondence in relation to it.

30 Were you sufficiently troubled by the manner in which the matter proceeded to raise the matter in writing with Mitchell Morley?---I can't recall.

Was it because you took the view at the time that a good outcome had, in fact, been achieved and there was no point in raising any probity concerns with Mr Morley? Is that your view?---No. I think you'll see from the correspondence we've, we've been shown today that I wasn't, I didn't accept that that was a good outcome.

40 So you say when you expressed the view in writing to Mr Oliver [sic] that anything more than 2 million would be a good outcome, that that view was wrong. Is that what you're saying?---No, what I'm saying to you is the last

correspondence I had with the proposed purchaser, Mr Bartolotta, was at 2.25 million.

Yes, we know that. And let me move on. You referred to a Mr Sullivan. Could you explain his role in the transaction, please?---Certainly. So he was engaged by myself to assist with a number of matters, in particular, development feasibility matters for other properties. Mr Sullivan was asked by myself to be involved in the negotiation, in particular the early meetings as a separate council officer to be involved in those, those meetings and then  
10 continued to assist me with documentation and the like.

All right. And by whom is Mr Sullivan paid?---Canada Bay Council.

But he wasn't an employee, he was a consultant, was he, is that what you're describing?---Yes. Contractor I guess you'd describe him.

Right. And did you seek advice from anyone prior to retaining Mr Sullivan to assist in this matter?---Mr Sullivan was engaged prior to this matter commencing to assist me, like I said, with other matters, doing feasibility  
20 schemes and the like, to prepare EIOs for other matters we had going on. So Mr Sullivan's engagement by council was I engaged him and was aware of his background and experience.

His background included that he was not a valuer, is that right?---I don't believe he's a valuer, no. Right.

Right. But he had experience in relation to probity matters and town planning matters, did he?---Probity matters. He worked in the State Government, so he was, you know, generally aware of probity matters, like  
30 most local government people were.

Right. So there were two independent parties looking at the probity of this transaction, being Mitchell Morley and Mr Sullivan, is that right?---Mr, Mitchell Morley formally and Mr Sullivan as a, a, an assistant to myself or someone to guide the process with me.

Yes. And at no stage has Mr Sullivan raised with you in writing any concerns that he had with the probity of this particular transaction, is that  
40 right?---Can't recall any.

The ICAC document entitled Guidelines for Managing Risks and Direct Negotiations, that's a document that you appear to have some familiarity with, is that right?---That's correct.

THE COMMISSIONER: I'm not sure about that. what's the date of the document?

MR LEGGAT: It was Justice Cripps, he's 2006.

10 THE COMMISSIONER: 2006?

MR LEGGAT: Yes.

THE COMMISSIONER: It was first published.

MR LEGGAT: Yeah.

THE COMMISSIONER: I know it's been updated recently, but - - -

20 MR LEGGAT: Very well. Consistent with that, as I understand it, and correct me if I'm wrong, the idea of segregating duties, that is having fresh sets of eyes available to look at matters like probity, that was part of what you took into account in retaining Mr Sullivan for his services, I presume, was it?---Not originally, no.

But nevertheless - - -

30 THE COMMISSIONER: Mr Leggat, I don't think Mr Sullivan was there to deal with integrity matters, from what I understand, on the evidence of this witness. Mr Walton, is - - -?---Mr Sullivan was there to assist me in the meetings and also to be someone to have a conversation with in relation to transactional matters, values, you know, offers we received and those sort of things. Not necessarily probity. But he did assist with the documentation to prepare the probity. He's also had involvement with Mitchell Morley on other matters that we were dealing with from a probity perspective, so he's familiar with Mitchell.

Right. Thank you.

MR LEGGAT: Had worked, Mr Sullivan worked with Mr Morley previously in probity matters for the council, is that what you're saying?  
---Yes.

All right. And that's a part of your brief to him in this particular transaction as well, as you understood it?---No specific brief.

But you didn't say to him, "Look, in the past you've advised us on probity. I don't want you to take into account any probity matters in this matter."  
10 You didn't have a conversation like that, did you?---Mr Sullivan or Mr, Mr -  
- -

Mr Sullivan.---Don't see a need to have that conversation with him, no.

Very well. Your expectation was that he would involve himself in any relevant probity considerations in relation to this transaction. That's so, isn't it?---Involve himself in the probity considerations?

He wouldn't turn his mind away. He wouldn't say, "I've got nothing to do  
20 with probity matters." If he thought there was something that was - - -

THE COMMISSIONER: Mr Leggat, how does this witness know what would be going through his mind?

MR LEGGAT: Yes, yes, that's fair, with respect. And – Chief Commissioner, thank you, those are the questions. Thank you.

THE COMMISSIONER: Thank you, Mr Leggat. Mr Darams, any further  
30 evidence?

MR DARAMS: No.

THE COMMISSIONER: Mr Walton, thank you for your attendance.  
---Thank you.

That completes your evidence. You're excused.---Thank you. Thank you, cheers.

40 **THE WITNESS EXCUSED**

**[3.02pm]**

THE COMMISSIONER: Yes, Mr Darams.

MR DARAMS: Yes, so the next witness today is Mr Bartolotta. I'll make some inquiries whether he's outside.

THE COMMISSIONER: Is Mr Bartolotta represented?

10 MR HOLLO: Chief Commissioner, my name is Hollo, H-o-l-l-o, and I appear by video.

THE COMMISSIONER: Yes, Mr Hollo.

MR HOLLO: I appear for Mr Bartolotta.

THE COMMISSIONER: Very well. I grant leave to you, Mr Hollo, to appear. Afternoon, Mr Bartolotta. Now, do you take an oath or an affirmation to give evidence?

20

MR BARTOLOTTA: An oath.

THE COMMISSIONER: An oath? There's a Bible there. My associate will administer the oath. Just take the Bible.

THE COMMISSIONER: Just take a seat there, Mr Bartolotta. Just give us your full name.---John Bartolotta.

Thank you. Yes, Mr Hollo, do you have any application to make?

10 MR HOLLO: Yes, Chief Commissioner. Mr Bartolotta will give evidence on objection and he seeks a declaration under section 38 of the Act.

THE COMMISSIONER: Very well. Thank you. Mr Bartolotta, the application to make a declaration under section 38 is to treat your evidence as given on objection. I understand these provisions have been explained to you, is that so?---Correct.

20 You understand that the point of taking objection is that the evidence can't be used in other proceedings in the future against you. You understand that?---Yes, I do.

There is an exception, and that is that if, should there be any offence under the Independent Commission Against Corruption Act by a witness, including wilfully giving false or misleading evidence, that would constitute an offence under the Act. And the evidence of a witness given in a public inquiry such as this one could be used in a prosecution for such an offence. Do you understand?---Yes, I do.

30 Very well. Aside from that, whether a declaration is made or not, you have to answer all questions truthfully. You understand that?---Yes, I do.

Thank you. And if you're required to produce any document or item, then you must do so. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness, Mr Bartolotta, and any documents or things that may be produced by him during the course of this public inquiry are to be regarded as having been given or produced on objection. Accordingly there is no need for the witness to make objection to any particular answer given or any document or other item produced.

40

**DIRECTION AS TO OBJECTIONS BY WITNESS: PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS, MR BARTOLOTTA, AND ANY DOCUMENTS OR THINGS THAT MAY BE PRODUCED BY HIM DURING THE COURSE OF THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. ACCORDINGLY THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION TO ANY PARTICULAR ANSWER GIVEN OR**  
10 **ANY DOCUMENT OR OTHER ITEM PRODUCED.**

THE COMMISSIONER: Yes, Mr Darams.

MR DARAMS: Mr Bartolotta, you're the director of a company that runs the Royale Limousine business?---Correct.

How long have you been a director of that company?---Since 1 July, 1989.

20 Was that the time that the company started the Royale Limousine business?  
---Correct.

In relation to Royale Limousines, is that, for want of a better, a hire car business?---Yes.

Has that been the business that you've worked in since that period of time for the majority of your working time, is that right?---Correct.

30 So if you were to describe your work since the commencement of Royale Limousines, it's working in the limousine or the hire car business, is that right?---Correct.

Now, have you ever been involved in property development as well?---I, I invest in property and do renovations and set and forget but not actual developments.

So when you say you invest in property, do I take it you mean that you or companies associated on behalf of you will buy property, might renovate it, then, what, sell it or rent it out?---Rent it out.

40 Are they residential properties generally?---Mostly, yes.

Have you done some commercial property, have you?---Yes, I have.

Yes. Have you done that during that entire period of time that you've been running the Royale Limousines business?---Yes, I have.

Would it be fair to describe that type of activity as being a side business or a side interest if yourself, as opposed to your major work?---Yes, correct.

10 Right. Now, I want to focus on some questions now involving the acquisition of properties located at 227 Victoria Road and 231 Victoria Road, to help you out with that. Now, the property at 227 Victoria Road was purchased by three companies of which you were a director in June/July 2016, that's right?---Which properties were they again?

Sorry, 227 Victoria Road.---No. 227 was at 27 July or 26 July, 2016.

Yes. So between that period, contracts were exchanged in June, settlement in July, is that right?---To the best of my recollection, yes.

20

The three companies that purchased 227 were Drummoyne 888 Pty Ltd, that's one of them?---Yes.

Victoria RM Pty Ltd?---Yes.

The third one was Sydney City 227 Pty Ltd?---Correct.

Now, you were the sole director at the time of the purchase, that is sole director of each of those companies, is that right?---Correct.

30

But it's the case, isn't it, that the companies the, three separate companies represented three separate interests?---Two, oh, one was – sorry. Two represented interest, right, my, my own interest.

Right. Which ones were they?---Drummoyne 888 and I, I think it was the RM Victoria.

Victoria RM?---Yep, yep.

The Sydney City 227, whose interest did that represent?---That represented the interest of Frank Colacicco and his partner at Cobden & Hayson, business partner, sorry.

Business partner. You say that Drummoyne 888 and Victoria RM represented your interest. Did you hold those interests beneficially as well, or were you holding one or more of those interests on behalf of someone else?---Well, there was, there was the third company, the, the RM 888, Triple, RM - - -

10

So there's Victoria RM.---Victoria RM.

There's Drummoyne 888.---Yeah. Initially it was meant to be for, as a shareholder. It was meant to be for Mr [REDACTED] and - - -

So when you refer to Mr [REDACTED], you're referring to Mr [REDACTED]?  
---Correct.

20 Is this the case, that there was some form of partnership between yourself, Mr [REDACTED] and Mr Colacicco in respect of the purchase of 227 Victoria Road?---Yes, correct.

Now I want to go back a little bit in time and ask you about how you came to be introduced or become aware of the opportunity to purchase 227 Victoria Road. So can you assist me, was the opportunity to purchase it, was that something that you obtained or ascertained yourself through some sort of search? Or did someone in effect bring it to you?---In effect bring it to me.

30 Yes. And was that Mr [REDACTED]?---Correct.

Do you recall when he brought that opportunity to you?---I think it was either late 2014 or 2015, early 2015.

Did you have any sort of business dealings or were you in business dealings with him at that stage?---We had a property together.

So you and Mr [REDACTED] owned a property together. Where was that property located?---At the Hunter Valley.

40

How long had you owned that with him for?---Since 2009.

Right. So, what, late 2014 he comes to you with the potential or an opportunity to purchase, what, 227 Victoria Road, is that right?---Yeah, it was in regards to a potential development opportunity but we would have to take an option first on the, on 227.

When you say potential development opportunity, did you mean potential development opportunity solely in relation to 227 or do you also mean in relation to the property located at 231 Victoria Road?---In regards to both.

10

Right. Did you have a conversation with Mr [REDACTED] at the time as to whether there would be anyone else involved in that opportunity?---Yes, I did.

Was that Mr Colacicco that he discussed?---Yes, correct.

So is this the broad outline of what happened? Mr [REDACTED] comes to you and says, "Are you interested in being a part of a development in relation to a property at 227 Victoria Road and 231 Victoria Road?"---Can you just repeat that again?

20

Is this the process? He comes to you, you have a conversation with him. He says, "Look, are you interested in becoming involved in a potential development opportunity in relation to 227 Victoria Road and 231 Victoria Road? And Mr Colacicco's also going to be involved in it."---Yes, correct.

Right. So you understood at the time the opportunity came to you, the opportunity was, consisted of potentially purchasing 227 Victoria Road, that's right?---Correct, yes.

30

Potentially purchasing 231 Victoria Road.---Correct.

Seeking to redevelop both properties.---Correct.

Mr Colacicco was going to be involved in that, along with you and Mr [REDACTED].---Yes, correct.

Could I ask that the witness be shown volume 4.2, page 198. This is an email from Mr Walton to yourself, from June 2015. Do you remember receiving this email?---I'm just reading through it. Two secs.

40

Sure.---Yes, I do.

Now, just using this point in time, that is June 2015, but based on the evidence you've already given it's clear by this stage that the parties, for want of a better description, involved in relation to this proposal you're discussing with Mr Walton of the council is you or companies associated with you, Mr [REDACTED] or companies associated with him, and Mr Colacicco or companies associated with him?---Can you run that by me again, sorry?

- 10 It's clear, based on the evidence you gave before that by the time you come to sit down with Mr Walton of the council that the parties involved in the transaction for want of a better description, or proposed transaction, are you or companies associated on your behalf, that's one part, correct?---2016 (not transcribable). At this particular stage, it was only around, I had an option on 227 as a fall-back position because it was a set-and-forget.

I understand all that. But if I understood your evidence before, the opportunity to purchase 227 and also the opportunity to potentially purchase 231 was brought to you by Mr [REDACTED]?---Yes. Correct.

20

At the time he brought it to you, he told you that Mr Colacicco would have some involvement or potential involvement in it.---Yes, correct.

So the time that you're sitting down here with the council, you knew that both of those individuals were going to be involved on your side of the transaction as well.---If and when any development got approved.

If and when it approved.---If and when, if and when, yes, correct.

- 30 But certainly when you were going into these negotiations with council, you weren't just simply negotiating for yourself, you were negotiating on behalf of Mr [REDACTED] and Mr Colacicco as well?---Yes, correct.

Now, if I – I just want to go back. Did you know Mr Colacicco before you were introduced to him?---No, not before. But you only came to know Mr Colacicco through this, or as a consequence of this transaction, is that right?---I think I could have met him [REDACTED]. But, yeah, not - - -

So it's a possibility that before you were introduced to him you may have come across him [REDACTED].

---Correct.

But to the best of your recollection it's through this introduction you came to know Mr Colacicco.---Correct.

How long had you known Mr [REDACTED] before he had introduced you to Mr Colacicco?---I don't really know Mr [REDACTED] from before. I'd initially been  
10 introduced to him early in 2000, so I'd met him once probably early in 2000 and then it was a couple of years before or a year before we bought the farm, I think, about 2008. I can't exactly remember.

So you'd been in some other relationship with Mr [REDACTED] from 2008 in any event?---The farm.

Yep, the farm.---The Hunter Valley farm.

The Hunter Valley farm. Now I just want to go back to the, whether there  
20 was any reason or rationale behind you being the sole director of three companies that firstly purchased 227 Victoria Road, if you understand that.  
---Yep.

So the records indicate when those companies were formed you were the sole director, that's right?---Correct.

Can you tell us a reasons why you were identified as a sole director?---Yes, it was around, those were set up, to the best of my recollection, around 2016, in 2016/2017, and they were only set up after we finally got a clear  
30 indication from council that they were willing to sell that particular property.

Was there a discussion as to whether – let's take Sydney City 227 Pty Ltd. I think I understood your evidence before that was a company associated with Mr Colacicco.---Yes, correct.

Was there a discussion with Mr Colacicco about why you would be a director of a company associated with him as opposed to Mr Colacicco?  
---Yes. It was in regards to, with my dealings with council and, in  
40 particular, Kent Walton. My original proposal to them had all been as part of my own private company. And I had said to him that if and when a

development was going to be approved, I would need other investors. Right? And he, his words to me were as long as you're the only person that we're dealing with, and to that effect even a personal guarantee, and to that effect, that's why I became director.

I'll have to explore that a little bit with you.---Yep.

Maybe we're at cross purposes here.---Yeah.

- 10 If we go back to your, if we go back to the email on volume 4.2, page 198. So at the time you had this discussion with Mr Walton, are you saying at this stage the intention was that if an agreement was concluded with the council here about 231 Victoria Road, at this stage what was intended was that your company – or a company associated with you – would be the party that would enter into the transaction, is that right?---No, so the one that actually had the option for it was my own private company.

Option for which property?---For 227.

- 20 THE COMMISSIONER: Do you remember when you took that out that option?---Yes. It was in about, it was in seven years ago so I'm just trying to, but it was in twenty, it probably around just before that date in May, it was around that date.

Before the date of this email of 24 June, 2015?---Yes, correct.

MR DARAMS: Yes, so, let me understand that. Your company, do you remember which company it was?---Bartolotta Investments.

- 30 Bartolotta Investments enter into an option with the owner of 227?  
---Correct, yes.

In terms of the purchase price that I assume was negotiated with the option, correct?---Yes.

- Was it intended that Bartolotta Properties would pay the purchase price entirely or would Mr Colacicco and Mr [REDACTED], or interests associated with them, contribute to that as well?---It was always subject to what transpired at the end of the option period, because if the option, if council wasn't  
40 interested in buying, in selling their land, if they didn't want to sell 231, I was going to continue, or I would have had to make a decision but it was

consistent with me to buy 227 in our own right, in my own company, and rent upstairs and rent downstairs and just leave the property sitting.

But if in fact council had indicated that it was interested in selling 231, was it always the intention that in relation to the purchase price for 227 that Mr Colacicco and Mr [REDACTED], or companies associated with them, would contribute to the purchase price of 227 as well?---Correct, yes.

10 If we just go back to your negotiations with council. Did you ever tell council at any stage in your negotiations with them that to the extent that you were negotiating with council, you were negotiating on behalf of Mr [REDACTED] and Mr Colacicco as well?---No.

Did you ever have a conversation with Mr Colacicco and Mr [REDACTED] where you discussed that particular issue, that is, whether you would make it known that they were involved or potentially involved in the negotiations that you were having with council?---Can you repeat that question again, sorry.

20 Did you ever have a conversation with Mr Colacicco or Mr [REDACTED] where you three, or one or more of you, discussed whether you should disclose to council that when you were negotiating with them that you also negotiating on behalf of those two individuals as well?---No, we never discussed it but Marc Triulcio attended meetings with me.

30 Do you say there was never a conscious decision not to disclose the involvement of Mr Colacicco and Mr [REDACTED] in this proposed transaction as well?---Mr Colacicco, it was only around the fact that he stated to me that they owned a real estate in the area and that they wanted to keep their interest private.

So there was some conversation with you and Mr Colacicco where he said he wanted to keep his interest quiet, is that right?---Private.

Private.---Private.

40 THE COMMISSIONER: And did he explain why?---Yes, 'cause they owned a local real estate, yeah. So it was part of the, they were in the, in the area.

Well, what, did he have a particular concern because of that?---No, I don't, it was just because, you, you know, he wanted to keep his interests being a, being a real estate in the, in the area, he just said that, you know, there was other real estates and, and people around there that, and he'd rather keep his interests private. It, it's him and his business partner as the real estate company, not the, not, not his personal - - -

10 MR DARAMS: Do you remember when that conversation occurred? So if we use this point in time where you've sat down with Mr Walton, did it occur before that period of time or some stage later?---To be honest, I can't remember when, when it was.

Right. What about in relation to Mr [REDACTED]? Was there any conversation between you and he where a decision was made to keep his involvement quiet or secret?---No. There was never a decision in regards to Mr [REDACTED] to keep it private, no.

20 Was there a conversation or decision made at any stage during the negotiations with council to keep Mr [REDACTED]'s involvement quiet or secret?---No.

30

40

10

Now, could I ask you this. In terms of your negotiations with the Canada Bay Council in relation to the proposed purchase of 231 Victoria Road - - - ?---Yeah.

20 - - - were those negotiations conducted between you and, Mr Marc Triulcio was present, and Mr Walton on behalf of the council? Was that the person who you were negotiating with?---Yeah, most of my negotiations that I, were, were, were with Kent Walton. Correct.

Do you recall whether there were any other council employees who you negotiated the terms of the potential sale with?---In these meetings, I, I can remember once in one of the initial meetings, I, I think Gary Sawyer was present. I can't remember all the, all the other people there.

30 Did you ever have any conversations or discussions with Mr Sawyer about the proposed I'll say sale from them and purchase from your end of the transaction? Did you have any discussions with Mr Sawyer about that? ---Oh, I, I just sent one email once and I wasn't getting anywhere and he told me to join the line.

Right. So this is, so I understand it, an email you sent to Mr Sawyer. What did you say in that again?---I, I wasn't getting any traction with Mr Walton and he knew that we, I had an option on the, on the property and, and aware there was a, a date set and - - -

40 Just going back to Mr Sawyer's knowledge of the option, why do you say or how do you know that Mr Sawyer knew that you had an option on the

property?---No, Mr Sawyer knew that we had an option, Kent Walton knew we had an option.

Sorry. Just wanted to clarify that. So Mr Walton knew you had an option over 227?---Correct.

At some stage you sent an email to Mr Sawyer because, I think in your words, you weren't getting any traction with Mr Walton, is that right?  
---Yes, correct. We had, the auction was dated 1 June, 2016 and there were  
10 some probate issues and, you know, I made him well aware that it was, you know, 12 months of negotiations. So it was a long time of negotiations.

So when you say you made him aware, do you mean Mr Sawyer aware or Mr Walton aware?---No, sorry, no, Mr Kent Walton, not Mr Sawyer.

THE COMMISSIONER: I think you said most of your negotiations were done through Mr Walton so far as council matters were concerned?---Yeah, correct. I just, I, I remember one lady initially with Mr Sawyer being  
20 present, there was someone else, I can't recall exactly, and then some time during the transaction I wasn't getting, all, all I wanted was answer of yes or no and I couldn't get a yes or a no.

Well, you eventually got one, an answer?---Yeah. Yes, but Mr Sawyer, when I, when I emailed him once, at the beginning he just said "Join the queue, we've got a lot more pressing issues." So, and I just went back to dealing with Kent and that was it.

MR DARAMS: So just I can understand a couple of your answers. When you say you wanted a yes or no, do you mean you wanted a yes or no on  
30 behalf of the council as to whether it was interested in negotiating a sale, is that what you're talking about?---Yes, correct. So before the 2016 expiry of the option, I simply wanted an answer of yes or no so I could make a decision.

Whether to exercise the option?---Yeah. Either exercise the option, either yes or no. In other words, exercise the option or, if council wasn't going to buy it, make a decision was I just going to buy 227 in my own private company and not involve anybody.

40 Was one of the other things you might have – was one of the other things that you possibly considered if you didn't get an answer one way or the

other from council, but it wasn't a hard no, we're not interested, potentially extending the option? Was that something you thought about at the time? The option over 227.---Yes. But with that extension, probate had been finished, which I told Mr Walton about and we had a drop-dead date of 27 July, 2016 and I, I, I expressed that, the sense of urgency, given that it was, you know, at that point it was 13 months, 13 months.

10 So going back to your email to Mr Sawyer, do I understand your evidence that you sent the email to Mr Sawyer because at the time you sent the email to Mr Sawyer you hadn't been advised one way or the other whether the council was interested in negotiating a sale?---Mr, the email to Mr Sawyer was early in the piece, back in 2015, it wasn't - - -

Sorry, that's what I was - - -?---Sorry.

So that's what I was trying to get at and maybe I should have just asked you directly, do you remember what - - -?---Yeah. It wasn't around, it wasn't around when we were coming to the end, it was - - -

20 No, much earlier in time.---Much earlier, yeah.

So, I asked you before whether you had any discussions or negotiations with Mr Sawyer about the potential purchase and the one that you referred to was this email that you did say "I sent to him" but that's the only one you can recall?---Yes.

30 Yeah. Now, what about Mr Osland. Did you have any discussions with him or – sorry. Did you have any negotiations with him on the potential purchase of 231?---Yes. I've, Mr Osland, I can't remember if attended some of the meetings but I do remember in around, I had spoken to Kent early in May 2016, expressing the sense of urgency around the date and he, he, he had a copy of the option so he knew the date and, and then all of a sudden, without notice, he just, I just got a return email basically saying that he wasn't there.

40 Right. Now, when you got the return email, what did you do then?---I'm trying to think back then, I think I, I copied in one of the other, I think it was, said go to Brady, Bradley Cooper, I can't remember the – there was a return email from what I can remember on the out-of-office for Kent Walton.

Perhaps if the witness could be shown volume 4H, page 163.---That's the email, yep.

That's the email you're referring about.---Yep.

So my question was what did you do then?---I can't remember exactly without going through my records, but I escalated it and I remember sending an email but I can't remember who I sent an email to.

10 So when you say you escalated it, who did you escalate it to?---I could have sent an email to Gary, 'cause I'd met him in a meeting, or John Osland.

Right. Well, just focus on this for a moment.---Yes.

You're dealing with Mr Walton on the negotiations?---Yep.

20 You say you met Mr Sawyer in some meeting, but as I understood your evidence it was earlier in the time. You didn't, wasn't any other further meetings with Mr Sawyer after that, is that right?---I can't remember exactly. There wasn't a lot of meetings with Mr Sawyer, correct.

Well, I just want to understand your evidence. I understood there was an initial, potential earlier meeting but I didn't understand there were any other meetings with Mr Sawyer. Do you say there were other - - ?---No, not that, not that I recall.

Right.---Yep.

30 So I just want to understand who you say you escalated it to. So you get this email. It refers to you contacting Mr Roberts. Did you call Mr Roberts?---I can't recall. I can't remember.

Well, if this is the message you get, you're dealing with Mr Walton. It seemed logical to contact Mr Roberts, wouldn't it, in those circumstances, given that he – he, Mr Walton – has indicated that you should contact that person?---Yes, correct, I should have.

40 Well, my question is do you – did you do that?---I can't remember. But I think I did, correct.

Right. So if you did do that, do you recall whether you did that by email or did you ring him up and – or did you ring the council and say, “I want to speak to Brad Roberts”?---I could have rang council and spoken to Brad.

But you don’t have any recollection of doing that?---No, I don’t. Don’t exactly remember.

All right. Now, is it possible you rang either of Mr Colacicco or Mr [REDACTED] and said, “Look, I’ve got this response. What do I do?”---Yes.

10

Did you do that?---Yes, I would have forwarded this, probably forwarded this email to Mr Colacicco and Mr [REDACTED] and said, “What do I do?”

Well, do you remember doing that?---Yes.

Do you remember what they told you, either one of them?---I’d have to check my emails. I can’t remember. But I think at, at that time it was to contact John Osland.

20 So do you remember who told you to contact John Osland?---I think it was Frank.

So you believe you had a conversation at some stage after receiving this email where Mr Colacicco tells you to contact Mr Osland?---I can’t remember exactly. To the best of my recollection.

It’s the case, isn’t it, though, in terms of your negotiations and dealings with the council over the purchase of 231, this is what would happen, you would have some form of contact with the council, then you would raise that, i.e. speak to Mr [REDACTED] and you’d speak to Mr Colacicco about what had occurred?---Yeah, no, no. I, he, in regards to dealing with council, most of the negotiations was with myself and Marc Triulcio, because Marc was more experienced in development. So it was with Marc Triulcio in regards to council.

30

Yeah, but I’m talking about you would, in relation to the conversations and the negotiations you were having with council, you would, well, perhaps a way of describing it is to report back to both Mr [REDACTED] and Mr Colacicco, given their involvement or potential involvement in this transaction.---Yes, correct.

40

You'd want to report back to you, for want of a better description, your partners in this transaction.---Correct.

Now, just going back to, I'll ask you a few questions about the offers that went backward and forward. Could I ask the witness be shown volume 4.2 page 234. Just ask you to read this, Mr Bartolotta, and let me know when you've finished this and I can show you the next page.---Yes, I remember that one.

10 Do you need to see the next page?---Yes.

All right. In terms of the, what I might call the terms of the offer, were these terms that were agreed between all three of you, that is Mr Colacicco, Mr [REDACTED] and yourself?---Yes, they were.

So was it just some form of discussion between the three of you before you put this to paper, so to speak, where you said, yep, look let's put that in as our offer to the council?---Marc Triulcio had obtained a valuation, I can't remember if it was Marc or [REDACTED] had obtained a valuation, and based on  
20 that valuation the discussions followed on from there.

The question was slightly different, so there's a valuation was obtained, you then have a conversation between the three of you, at least one conversation between the three of you where you, Mr Colacicco, Mr [REDACTED] come up with the basis upon which you put your first offer in?---Correct, yes.

Putting it another way, you didn't proceed in this negotiation by yourself without consultation with – I'll call them your partners for want of a better description, is that right?---Correct.  
30

Now - - ?---Just for the record there, the valuation came in at 1.710.

You've referred a number of times, to Mr Marc Triulcio being present when you were negotiating with the council. What was his role in, well, firstly the negotiations. What was he doing in terms of the negotiations?---Well, Marc had a lot of experience dealing with council which I didn't have and they were developers and so he was taking the lead on our behalf.

When you say that, you refer to Marc and [REDACTED], is that right?---Correct,  
40 yes.

THE COMMISSIONER: Which experience did he have – I’m sorry. Which council did he have experience with? Or councils.---I don’t remember like a particular council but it was in regards to I knew the history of the developments they had done. They were also working with reputable companies like Woolworths doing, doing some stuff up at Kellyville so I knew they were, that was one particular one at Kellyville on behalf of Woolworths. So they were experienced, let’s say.

10 MR DARAMS: So just in relation to that experience, is that something that Mr [REDACTED] told you or is that something that you got from Marc himself or was it a combination of both of them?---As I said, I’d met Mr [REDACTED], Marc, sorry, [REDACTED] early 2000 after he’d developed Italian Forum. So I knew he’d done the Italian Forum as a development back in - - -

I guess what I’m trying to understand is you had referred to the experience of Marc Triulcio, I’m just trying to understand whether what you really mean is the experience of Mr [REDACTED] in terms of property development?---Yes, but also Marc because Marc had been researching a whole heap of different developments at St Peters, you know, just, you know, stuff up at Gordon that may have come up, so he had experience  
20 looking and dealing with council from what I could see.

When you say from what you could see, what I’m trying to understand, is from what he told you or what, you were involved in other developments with him or just - - -?---We - - -

You referred to this research that he’s doing.---Yeah. So at the time, there was other developments, potential developments coming up. One had been up at Gordon, so we, you know, you know, we’d look at that one. There  
30 was one at St Peters was another one. They didn’t go anywhere but there was, yeah, there was, investigating other potential developments.

At this time, and when I say “this time” in May 2016, you’d come to know Mr Colacicco, I take it, [REDACTED], but you’d known him for about two years at this stage or approximating or coming up to two years?---2015, 2016, yeah, short of two years, probably about a year and a half, roughly. Can’t remember.

Did you come to know at this stage, that is, May 2016, that he was friends with Mr Tsirekas?---I knew he knew Mr Tsirekas but I didn't know the extent of - - -

Had you ever had a conversation with Mr Colacicco about the extent of his friendship with Mr Tsirekas?---No.

10 So when you say you knew that he knew Mr Tsirekas, how did you know that? Was that a conversation or was that, someone else told you?---I, I remember, I, I remember, I remember around the time that he knew a lot of people in council, with his office being at Drummoyne and so, you know, I think in one conversation, he mentioned that he, he knew Angelo.

Right. So when you say "around the time" are you referring to be around this time in May 2016 or are you referring back to the time you were introduced to him?---To the best of my recollection, it was probably in that period, I can't remember exactly when it was.

20 So it was somewhere in the period when you were introduced in late 2014 or 2014 to May 2016?---Correct. Yes.

So one conversation where Mr Colacicco says that he knew Angelo or Mr Tsirekas?---Correct, yeah.

What about any friendship or any friendship between Mr Colacicco and Mr Sawyer?---No, he never mentioned that.

30 Just going back to the offer that you had submitted, so if we go back to page 234 of volume 4.2, you didn't include any settlement period in that offer. Was there a reason why you didn't include a settlement period? Had you thought about what the settlement period would be?---This was, this was prepared by Marc on, on my behalf, on our behalf, so - - -

Could I just understand that, sorry, let me understand that. So Mr Marc Triulcio prepared this document, you sent it out under, sorry, sent it out under or on Royale Limousines letterhead, is that right?---Correct. Yes.

40 Do I take it then that you never, did you have a conversation with Marc before he drafted this document for you to send out about any period of time for the settlement and how long it would be?---The only discussions that we had that was, it, it was around the, how long it had taken even to get to this

point, so from my opinion, I, I remember saying to him, you know, “We’re going to need at least 12 months, six to 12 months because, you know, it’s taken us this long to - - -

Sorry, is this a conversation you were having with Mr Marc Triulcio or is this a conversation you’re having with Mr Colacicco and Mr [REDACTED]?---It, it would have been between, probably between myself and Marc.

10 Right. When you say “probably”, are you saying that you didn’t have a conversation with Mr Colacicco on the one hand about settlement period?  
---He would have been involved in, in those discussions.

Well, that’s what I asked you before about whether it was a conversation with just Mr Marc Triulcio or whether it involved the other - - -?---No, it would have, it would have involved the others.

20 I’ll ask you this, and tell me if it’s being too general, but to the extent that there were terms of this settlement, sorry, terms of the purchase put on behalf of yourself and Mr Colacicco and Mr [REDACTED], you always had a discussion with either or both of those in relation to what terms would be put to council, is that right?---Correct, yes.

To the extent that the council had responded with its imposed terms, you had a conversation with both, or at least Mr Colacicco and Mr [REDACTED] [REDACTED] about those terms?---Yes, correct.

We can make this assumption, you didn’t engage in the negotiations without the knowledge of those other two individuals on those terms?---Yes, correct.

30 So you say that, do I understand this, can you recollect the conversation where you have sat down and/or stood up, but conversation where there was specific discussion about the settlement period? Can you recall one of those conversations?---I can’t recall the exact. At, at this particular point it was around agreeing to a price to begin with, you know? So - - -

All right. I see.

40 THE COMMISSIONER: At the time of this offer, this 1.8 I think it was, (not transcribable) finance availability?---No. Not at this stage.

You’d made no enquiries at this stage?---No, not at this stage, no.

MR DARAMS: So this is just March 2016. What were you going to do if the council turned around and accepted the offer?---It, part, part of when accepting the offer there was always going to be a, even from my, it would have been at least 12 months to get the DA through. So it was never going to be.

Sorry, we're talking about the finance, the finance aspect of - - -?---Yes. We wouldn't have to settle on it. This is 231, isn't it, sorry?

10

This is 231, that's right.---Yeah, sorry. Yep. So it was always going to be once the DA got approved, if and when a DA got approved, right, that's when we'd settle on this property.

Right.---It was never intended to settle before.

Just help me out about that. When did you have that conversation with the council?---During this time. It was always part of the conversation. They knew we had to get a DA across both sites.

20

Right. So let me just understand. So you say that in your negotiations with Mr Walton, you told him that a condition of, is it settlement or condition of the purchase, would be the development application being approved?

---Well, I'm referring to the different, so from my, from my point of view, settlement would, would precede after, if, if and when the DA got approved across both sites. So there was never, it was never to buy the property straight off.

Right. That's what I'm asking you about. Are you saying that that's, I'll call it a term but a condition or however you want to describe it, that was something that you discussed with Mr Walton, is that right?---Yes.

30

You have a clear recollection of having that conversation or conversations?---Yes, yes, I do.

Did you have that conversation with Marc [REDACTED] as well?---Yes, I did.

Right. Did you review this offer before you sent it out to Mr Sawyer?---I quickly looked at it. I didn't go into detail with it.

40

All right. Just that – help me if I’m wrong about this, but there isn’t any reference to that condition in the, when I say the condition of that term or condition about settlement being subject or conditional on the application, approval of the DA. You don’t see that in that document?---No, correct, yep.

All right. Now, you recall that that offer wasn’t accepted by the council?  
---Yes, correct.

10 I want to show you a document at 4.2, page 246. Now, do you remember seeing this document, Mr Bartolotta?---Yes, I do.

This was council’s counteroffer or counterproposal to your offer of 22 March, 2016. Given your evidence before, do we understand that you get this offer from the council. Did you provide a copy to Mr Colacicco and Mr [REDACTED] or did you just discuss it with them?---I probably would have forwarded an email with this offer, with this counteroffer.

20 Now, you see from the counteroffer that what the council was proposing was a sale price of 2.25 million. Do you see that?---Yes, I do.

And they also included a settlement period of six months from exchange. See that?---Yes, I do.

Now, just in terms of the six months, that was something within what you had considered to be a period you needed, is that right?---Well, I thought we’d need more than six months.

30 I thought you said before you needed six to 12 months.---Yeah, at least six months but - - -

At least six months.---Minimum.

So they’re offering six months here?---Sorry?

So the proposal here was six months. So that would have satisfied that first, or that first one. That is, at least six months?---Yes.

40 Yep. What about the purchase price? What was your view on that there?  
---From my, from my point of view, it was way too expensive.

Right.

THE COMMISSIONER: Sorry, it was what?---Too expensive.

MR DARAMS: Way too expensive.---Way too expensive, sorry.

10 When you say, “Way too expensive,” is that based upon the valuation you say that Mr Marc Triulcio obtained?---Based on the valuation but also the, based on the 2.3 that I’d negotiated for 227 that had a building on it with rental returns versus the car park that was surrounded and had easements and, and a whole heap of issues with it.

Right. Sorry, what were the issues with the car park?---The car park had easements in favour of 227. It was landlocked.

When you say landlocked, what do you mean by that?---It was surrounded by the property at 227, so it was right around the boundary of the property.

20 But there was one side that wasn’t landlocked, right? There was (not transcribable) road.---Yes. Victoria Road, sorry. Victoria Road.

Chief Commissioner, I note the time. Chief Commissioner, I note the time.

THE COMMISSIONER: Yes.

MR DARAMS: Perhaps it would be apt just to remind the people - - -

30 THE COMMISSIONER: Mr Bartolotta, I’m afraid we’ll have to get you back tomorrow. I propose to adjourn till 10 o’clock tomorrow. So we’ll see you then.

MR DARAMS: Chief Commissioner, can we also just note for those listening that there is the suppression order in place, given the reference to the, Mr [REDACTED] - - -

THE COMMISSIONER: Yes, well I think just for more abundant precaution the name [REDACTED] – how do you spell that again? [REDACTED] - - -

40 MR DARAMS: [REDACTED]. [REDACTED].

THE COMMISSIONER: Yes. The publication of that name has been prohibited under an order or direction I made earlier today under section 112 of the Act. That suppression order continues until further order of the Commission. Very well, I'll adjourn.

**THE WITNESS STOOD DOWN** **[4.01pm]**

10 **AT 4.01PM THE MATTER WAS ADJOURNED ACCORDINGLY**  
**[4.01pm]**