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PUBLIC
HEARING

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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 TUESDAY 10 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: My apologies for the delay. I understand the technical problem has now been sorted. Mr Darams.

MR DARAMS: Yes.

THE COMMISSIONER: I'll have Mr Bartolotta re-sworn. If you wouldn't mind standing and taking the Bible again. Thank you, Mr Bartolotta.

THE COMMISSIONER: Thank you.

MR DARAMS: Mr Bartolotta, I just want you to focus your mind back to this period of time, January to June 2016, okay?---January 2016, yep.

Yep. To June 2016.---Yep.

10

During that period of time, the only what I might call commercial or business dealings you had with Mr Colacicco was in relation to the potential purchase and purchase of 227 Victoria Road?---Correct.

And 231 Victoria Road?---Correct.

You and he didn't have any other commercial or business dealings?---No.

20 Were you and he, Mr Colacicco, close friends or good friends at this period of time?---Close, yeah, friends. I wouldn't say close friends.

Yeah. Were you in the habit of just ringing him or was he in the habit of ringing you, in effect, out of the blue just to talk about how things were and stuff like that?---Yes.

Yeah. How often would that happen in this period of time?---I'm trying to think back then. Maybe once a fortnight.

30 THE COMMISSIONER: If you could just keep your voice up a little bit. ---Once a fortnight.

MR DARAMS: Just to check in, "How are you going, John?" et cetera, something like that?---Correct.

Did those calls inevitably or invariably end up talking about where things were at or might have been at in relation to 227 and/or 231 Victoria Road? ---Yes.

40 So to the extent that you had conversations on the telephone with Mr Colacicco in this period of time, it was either about that only or there was

some social aspect about it and you ended up talking during this conversation about 227 and 231 Victoria Road?---Correct.

I'll ask you the same line of questions in relation to your interactions with Mr [REDACTED] in this period of time. But it's also the case, isn't it, that in the period January 2016 to June 2016 you also had another commercial or business relationship in terms of the ownership of the farm, that's right?
---Correct.

10 Just going back to that period of time - - -?---Yeah.

- - - can you recall how often you and he might have been having conversations just about the farm and - - -?---Just about the farm?

Just about the farm?---I'm trying to work it out. Probably every two weeks.

Every two weeks?---Mmm.

20 Is it your recollection that if you did discuss issues about the farm, that you would inevitably or invariably end up also talking about 227 and 231 Victoria Road?---Yes.

Likewise, if you had what I might call social, non-business-related calls on the telephone with Mr [REDACTED], is it also the case that they would inevitably also discuss where things were at with 227 and 231 Victoria Road?---Not all the time but - - -

Not all the time?---Yeah, yeah, like, I can't remember every conversation but not, not, not all the time.

30

So there would be an occasion in that period of time where all you were having, the only discussions you were having with Mr [REDACTED] would be of a social nature?---Social and the farm.

Social and farm?---Yeah.

I asked you some questions yesterday about the three companies that purchased 227 Victoria Road, being Drummoyne 888 Pty Ltd, Victoria RM Pty Ltd and Sydney City 227 Pty Ltd.---Yeah.

40

Do you remember that?---Yes, I do.

I put the suggestion or the proposition to you yesterday that those three companies were associated with the separate interests of each of the three persons in the partnership between yourself and Mr [REDACTED] and Mr Colacicco. Do you remember me putting that proposition?---Yes.

10 I might have been mistaken but I had understood your evidence to be that two of the companies were associated with your interest and the other one was associated with Mr Colacicco's interest. I just wanted to understand whether I have that correct - - -?---At what time, what period are you saying? What, what date?

When they were registered in June 2016.---Yeah. So, so when they were registered in 2016 originally, they were, one partner, one partner, sorry, one, one share was mine, one was the [REDACTED] family and the other one was Mr Colacicco and his business partner.

20 So what I was suggesting to you yesterday and wanted to suggest to you again is that those three companies, one of them represented your family interest - - -?---Yeah.

- - - one represented Mr [REDACTED]'s family interest, one of them represented Mr Colacicco, I think you said his business partner's interest in the transaction?---Yes. As, as of 20 June when they were registered, so just to clarify.

It changed at a later stage, didn't it?---Yes. Yes. Correct.

30 It changed at a later stage I think when, is it when you sold out of the - - -? ---No.

No. Okay. Well, we might come to that a bit later on, but I just want to focus on this period of time - - -?---Yeah.

- - - back in June 2016.---Yeah.

40 One of the questions I asked you yesterday is was there a reason why when these companies were registered, you were the sole director of each of the companies?---Yes.

You, all your family members - - -?---Yeah.

- - - were the shareholders of each of the three companies?---Correct.

Can you tell us the reason why, given that those companies represented different interests, why you were the sole director and your family, I take it your wife was - - -?---Yes. Yeah. Yeah.

- - - and your son - - -?---Yes.

10 - - - were the sole shareholders of those companies or the shareholders of those companies?---Okay. We, we went and had meetings with - - -

Just stop there. Sorry.---Sorry.

When you say “we”, that’s you, Mr Colacicco and Mr [REDACTED]?---Yes.

So you went and had meetings?---With Paul Masters from Sovereign.

Sovereign Wealth?---Yeah. Sovereign Wealth. Correct.

20

Was that a company that was associated with you?---Yes.

Yes?---Yes.

So you went and had conversations with them?---Yes, in regards to the structure, the best structure for potentially buying, setting this development up if it was to proceed.

30

Right. So how is it that the best structure involved, when there were three separate interests in the partnership, how is that the best structure had you being the sole director of each of those three companies and your family being the shareholders?---Okay, in regards to the advice from Sovereign, right, that was the advice they gave us in regards to partitioning. And in regards to me being the sole director and, and shares of that company, it was following conversations with Kent Walton on or around, during May of that year. May of 2015.

40

So you – go ahead.---Yeah, so I had conversations with Kent Walton which I indicated that if the development was to proceed, that the entity would be a partnership where I’d have other investors.

So you had a conversation with Mr Walton in May 2015 where you told him you had other partners. Sorry, it's a development proceeding.---May 2016. Sorry, May - - -

Sorry, I thought you said May 2015.---Sorry, I correct that.

Do you accept, though, that you could have these other partners and, for instance, Mr Colacicco could be the director or the shareholder of the company associated with him, Mr [REDACTED] could be the director or the shareholder of companies associated with him or the company associated with him?---Yeah - - -

That just, that could have been a decision taken, you accept that?---Correct.

Why wasn't that decision taken?---Mr Kent Walton said that he'd been dealing with me as John Bartolotta.

THE COMMISSIONER: Sorry, I couldn't pick up on that.---Oh, sorry.

20 If you just speak a bit louder and closer to the microphone.---Okay. Sorry. Mr Walton had said to me that he'd been dealing with myself, John Bartolotta, and he expected me to be the, that council wanted me to be the only one that they dealt with to see through this transaction.

The council wanted you to be the sole director?---Yeah, the, the, no the sole person - - -

The sole - - -?---Sole person that was responsible for completing this transaction.

30

I see. Thank you.

MR DARAMS: But do you accept that you could be the sole person who was responsible for completing the transaction and Mr [REDACTED] and Mr Colacicco could still be identified in the companies associated with their interests? They could have been named as a shareholder?---They had trusts, they had trustees underneath them, so they appeared there anyway.

So what - - -

40

THE COMMISSIONER: What was the reason given by him, that's Mr Walton - - -?---The reason - - -

- - - that he wanted you to be the sole person responsible for the transaction?---Yes, because in all our conversations I presented as the person that would be responsible for it, and, and he said that he just wanted me to be the person responsible for it.

10 Responsible for what, exactly?---Completing the transaction. So whatever, whatever amount was agreed to for the purchase of the land, right. And to that extent, he asked me for a personal guarantee document to council.

A personal guarantee?---Yes.

To underwrite what or to guarantee what?---The completion of the amount owed to council that was agreed to.

20 MR DARAMS: Do you say that these conversations happened before 24 May, 2016?---Before 24 May. It was around, it was around May.

THE COMMISSIONER: Trying to understand it. Why would it have mattered to Mr Walton if there was you or another or others, just so long as council's position was secured in terms of receiving the money?---That'd be a question for Mr Walton.

Right. And you can't explain why he was saying this to you? He didn't make it clear to you as to why he was saying it?---He wanted to make sure that the transaction was completed.

30 Yes.---And that the council would get their money. And so, you know, he wanted me to be responsible for it.

Okay.---'Cause he'd dealt with me prior to that period.

MR DARAMS: I see. Now, you gave some evidence yesterday that to the extent that you put forward or proposed terms of purchase to the council for 231 Victoria Road, you always had a discussion with Mr Colacicco or Mr [REDACTED] - - -?---Correct.

40 - - - or both of them about the terms that would be put to council. Remember saying that yesterday?---Yes.

So that when we look at any offers that have been put by you, they have been discussed and agreed between you and Mr Colacicco and Mr [REDACTED] before you committed that to writing to the council?---Can I talk, yeah?

Yeah. It was a proposition I was putting to you.---Can you repeat that?

10 Yeah. So that when you, in respect of each of the offers put by you in writing to council for the purchase of 231 Victoria Road, those terms had been discussed and agreed between you and Mr Colacicco and Mr [REDACTED] before you committed them to writing and sent them to the council?
---Correct, yes.

Could the witness be shown volume 4.2, page 254? Just have a look at that Mr Bartolotta.---Yes.

Now, did you write this or did Marc Triulcio write this?---In this instance, I did.

20 Based on the evidence you've just given this morning and your evidence yesterday, you and Mr Colacicco and [REDACTED] discussed these terms before you put them in writing?---These terms were discussed, these particular terms were agreed to, on a meeting on 23 May, 2016 at 3.00pm at council, at council offices.

Say that again?---At 23 May, 2016 at approximately 3.00pm, as per my diary note, there was a meeting organised by Mr Kent Walton for me to attend with himself and Gary Sawyer.

30 THE COMMISSIONER: So this is where the revised offer was discussed, is that what you're saying?---Yes, Commissioner. What actually happened, Commissioner, was that on 17 May, 2016, I received a counteroffer from Mr Kent Walton. It arrived to me by mail, which I received on 19 May, 2016.

Yep.---On 20 May, 2016 I emailed Mr Walton to ask him could we have a discussion to finalise, because we had already scheduled a meeting for the following Monday at 3.00pm.

Right.---He, he, he'd organised the meeting prior, and in preparation for that I wanted to have a conversation with him, and that's when I received his out-of-office.

Yes. Well, thank you for that evidence on the chronology of events. I think the question put to you is going just a step before those steps you've just outlined.---Yes.

10 That was that, so far as this revised offer you see on the screen, which you say you prepared - - -?---Yes.

The question was whether that had been preceded by a meeting and understanding between you and Mr Colacicco and Mr [REDACTED] to ascertain and obtain their agreement to this revised offer being put.---Yes. This, this revised offer came out of an offer that I made on 23 May at the 3.00pm that I addressed to Mr Kent Walton that I believed was going to be at the meeting.

20 Right.---Right. My offer was less than this offer, it was only \$2 million.

That was on the 23rd?---On the 23rd at 3.00pm.

30 Yes.---Where Mr, the, the, the, the, the proposal which was written, right, included the how I got to that number, which included the original evaluation, which I, I brought to the meeting. I, his, his offer and then my counteroffer, and why I thought that offer was – Mr Kent Walton didn't turn up at the meeting a 3.00pm on the twenty, sorry, on 23 May at 3.00pm, and John Osland was at the meeting along with Gary Sawyer, where I, where I left them, I discussed that proposal of \$2 million, which was less than this.

Yeah. I understand.---At that, at that meeting, at that meeting it had the terms in it, but at that meeting both Mr Gary Sawyer and John Osland knocked it back, said it wasn't sufficient, and that I should revise it again for them to consider it to council.

40 That's where the 2.1 million came from, against that background.---Correct. So overnight, yeah, so overnight I then revised it because I said to them, you know, like, where are we? You know, I'm at \$2 million. We had a timeline of 1 June that I had to action the deed option that I had. So there was a sense of extreme urgency on my behalf - - -

Yes, I think you mentioned this yesterday.---Correct. So I then proposed the 2.1. I asked them and they said, well, you know, this is something that we might consider, so revise it, which I did.

Right. Perhaps - - -?---And I built out the square metre rate of where there was two portions to it.

Yes, yes.---There's the set amount and then there was the amount that they would get on any gross. And I had to reduce that from 19, I can't remember
10 the exact number on the original offer, they wanted me to reduce it to 1,773, right, and they wanted \$1,000 a square metre of anything that council, that eventually the DA, we would have to pay \$1,000 per square metre once we knew what the DA would be approved.

Can I just inquire, before the offer put by you on 23 May that you've spoken about, and then the next day the offer of 2.1 was put, had you discussed and did you have agreement from Mr Colacicco, Mr [REDACTED] – if I'm pronouncing his name properly.---Colacicco.

20 Had their agreement?---Yes.

Right, okay, thank you.

MR DARAMS: So just so I'm clear in my head on the chronology, do you say you had a meeting planned with Mr Walton for 23 May already?
---Correct, at 3.00pm.

That was planned sometime before 20 May?---Correct.

30 How did you organise that meeting? Did you ring Mr - - -?---By phone call.

Yes.---Yes.

So did you arrange that meeting between 17 May and 20 May?---No, I think it was prior to that. I can't remember exactly when the phone call went to him, but - - -

Well, just bearing in mind the offer from the council was dated 17 May, the counteroffer.---No, I had organised the meeting of Mr Kent Walton prior to
40 that.

That's what I was trying to understand.---Yeah, prior, prior to his offer. 'Cause his offer was coming and coming and coming, because from 23 March that I had made my offer, right, there was some eight weeks later that he wasn't putting an offer in writing. We'd had many discussions, right. We had a meeting on 4 May with the town planner, Tony McNamara and a couple of his people, talking about possible timelines of how long this development would take, where they explained to me that we would have to go through two, two sets of independent consultants, and this would take a lot longer than a normal DA.

10

So before you get Mr Walton's counteroffer on behalf of the council, 17 May, you had arranged a meeting for 23 May?---Correct.

You then get the, you get the counteroffer from the council - - -?---Yes.

- - - dated 17 May. You email Mr Walton.---Yes, it's, it's, just for the, just for the record, the letter is dated 27 May, 2016, from Mr Kent Walton. It was mailed to my office. I received it on 19 May, 2016. On the morning of 20 May, 2016, I emailed Mr Kent Walton following receiving that, where I

20 asked him could we have a discussion today, right, which was the 20th, which was the Friday, to try and finalise the matter and have a number that I could bring to the meeting on Monday, 23 May, at 3.00pm.

That's what I just want to ask you. So if I could ask that you be shown volume 4H, page 166? So it's 4H, page 166. I just draw your attention to the message from you to Mr Walton on 20 May at 7.02am.---Correct.

So you say, "Hi, Kent, received your counteroffer. Thank you. Do you have time today to discuss and finalise?"---Correct.

30

There's no reference in there to the meeting that you say was going to occur on 23 May, is there?---No.

No. When you say there was a meeting on 23 May, you seem quite certain there was a meeting on that day. How are you certain about that?---It's in my diary notes and I, I also prepared a proposal that I left with council on 23 May at 3.00pm, addressed to Mr Kent Walton that had organised the meeting, along with Gary Sawyer.

40 Right. So there's a record in your diary?---There's a record in my diary.

And a note you took to the meeting, the counterproposal?

---Counterproposal. Correct.

Is the counterproposal, if I could have 4.2, page 254 brought up again? Was the counterproposal in this form here or was it in some other form document, is it?---No, in, in another form document.

Okay. I understand that. Now - - -?---It was addressed, it was on 23 May and it was addressed to Mr Kent Walton.

10

Now, Mr Sawyer and Mr Osland were at the meeting with you on 23 May?

---At 3.00pm, yeah.

Yeah. You put forward the two million. You say it was rejected?---Yeah, so part of the proposal was how I got to the 2 million, right?

Right.---And it was rejected.

20 Right. Now, I understand you had a conversation with Mr Colacicco and Mr [REDACTED] where they said to you, "If you don't pay the 2.1," which I understood to be 2.1 million, "or if you don't agree to paying the 2.1 million that he wants, it ain't going to happen," remember they told you that?---I remember at the meeting, at the, at, at the meeting that I had with council that they put back to me 2.1 million - - -

No, no - - -?---Sorry. Yeah.

30 No. Well, I understood before that council didn't put back to you 2.1 million at that meeting?---Yeah, no, at, they put back to me it, it had to be higher than 2 and, and, and they were indicating 2.1.

Well, when you say they were indicating 2.1, that's not what I understood your evidence before. They didn't give you any indication of the price at this meeting?---Well, John Osland at the time, you know, I, I was trying to push him on a price that would get it over the line 'cause we were, we were time sensitive, right? And he said to me at the time "something around 2.1 might be palatable".

40 Right. So you, Mr Osland says "something around 2.1" - - -?---Yeah.

- - - "might be palatable"?---Mmm.

Now, my question was slightly different. I had understood that Mr Colacicco or Mr ██████ told you that if you don't agree, if you, all three of you, don't agree to pay the 2.1 million that he wants, then it ain't going to happen, that is the transaction.---Who, who did I have that conversation with, sorry?

Mr ██████ and Mr Colacicco.---I could have had that conversation with them.

10

No. What I'm suggesting to you is that you did have that conversation and they did tell you that.---Yes. Possibly, yeah.

And what I want to suggest to you is that's how you came up with the figure of 2.1 million, because that was the figure that Mr ██████ and Mr Colacicco told you to include in the offer. That's what I'm suggesting to you.---Yes. But I had also mentioned it, I, I, I had also heard about it from John Osland at the meeting with Gary Sawyer. Both of them were there.

20 So, you had heard the figure mentioned in the meeting?---Yes.

And separately Mr Colacicco and Mr ██████ told you that that's what he, Mr Osland, wanted?---I can't remember exactly that conversation but from – I can't remember exactly that conversation but I would have discussed it with them that evening, right, because that's, I, I took it away and I had to put an offer back to them the next day.

30 So do you – well, can I ask you this? Do you deny that Mr ██████ and Mr Colacicco had a conversation with you where they told you that you, all three, had to offer the \$2.1 million?---I can't recall exactly that conversation. I could have had that conversation but I'm not 100 per cent sure of that conversation.

Commissioner, I would like to have a variation of a suppression order made in relation – so the suppression order was made on the 10th of the 3rd, 2022 in relation to some evidence of Mr Bartolotta at a compulsory examination. I would like to vary that order so that I can put some of Mr Bartolotta's evidence to him.

40 THE COMMISSIONER: All right. It's in relation to the events you've been discussing with the witness?

MR DARAMS: Yes, it is.

THE COMMISSIONER: Yes. In relation to the direction under section 112 of the Independent Commission Against Corruption Act, made for the purposes of and in respect of the compulsory examination held on 10 March, 2022 with the witness, Mr Bartolotta, I vary the direction to permit a transcript of the compulsory examination to be utilised for the purpose of the public inquiry in relation to the matters about which Mr Bartolotta has been examined this morning that occurred in the period of May 2016. The variation of the section 112 order is, in my view, necessary for the proper disposition of the public inquiry.

VARIATION OF SUPPRESSION ORDER: IN RELATION TO THE DIRECTION UNDER SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, MADE FOR THE PURPOSES OF AND IN RESPECT OF THE COMPULSORY EXAMINATION HELD ON 10 MARCH, 2022 WITH THE WITNESS, MR BARTOLOTTA, I VARY THE DIRECTION TO PERMIT A TRANSCRIPT OF THE COMPULSORY EXAMINATION TO BE UTILISED FOR THE PURPOSE OF THE PUBLIC INQUIRY IN RELATION TO THE MATTERS ABOUT WHICH MR BARTOLOTTA HAS BEEN EXAMINED THIS MORNING THAT OCCURRED IN THE PERIOD OF MAY 2016. THE VARIATION OF THE SECTION 112 ORDER IS, IN MY VIEW, NECESSARY FOR THE PROPER DISPOSITION OF THE PUBLIC INQUIRY.

THE COMMISSIONER: Yes.

MR DARAMS: Now, so could I have the witness be shown page 283 of the transcript on that occasion? Just bear with me, Mr Bartolotta. We are experiencing some technical difficulties this morning, but doing our best. So Mr Bartolotta, I wanted to draw your attention to the questions and evidence starting about line 11. So you see the 10 on the side?---Yep.

I put a question to you where I say, “Did you ever have a conversation with Mr Colacicco where he said to you something to the effect, ‘Well, council might accept this figure?’” You said, “I think at one stage, it wasn’t, I don’t think he said council would accept this figure. I mean, to the best of my

recollection, it was, ‘If you don’t pay the 2.1, if we don’t agree to paying the 2.1 million that he wants, right, it ain’t going to happen.’” Then I queried that, “So just so I can understand that, this was a conversation, to the best of your recollection, with Mr Colacicco, are you saying, if you don’t pay the 2.1?” “Not to Mr, it would have been [REDACTED] and Mr Colacicco.”---Yes.

10 “Both of them together?” “Both together, separately, I can’t remember exactly.” Then you say, okay, “But it was a discussion, because he wanted 2.1, so we were discussing it.” So your understanding from the conversation was that council wanted 2.1 plus any upside.---Correct.

Now, you don’t recall – sorry, you don’t refer to any meeting that you had on 23 May with Mr Osland and Mr Sawyer where they told you about, or Mr Osland told you about the 2.1 million, do you, in that - - -?---No, I don’t.

And you understood I was asking you about the 2.1 million figure and we were discussing that?---Yes.

20 Yep. When did you come to recall that there was this meeting on 23 May?
---Following yesterday when I went back through my notes, right, when you asked me what happened, yesterday there was a question put to me of what I did after the 20 May out-of-office reply, which I couldn’t answer you ‘cause I couldn’t recall. As you will remember in the opening, this was a side thing for me and I had many things going on at the same time in my other business, so I couldn’t remember every conversation. So overnight I went through my diary notes, right, back to that date in my diary, electronic diary, where that date, where that meeting had been scheduled. And along with the, where I’d saved also in my files the, the, the offer addressed to Mr Kent Walton on 23 May, 3.00pm.

30 So you’ve recently been able to obtain a copy of the letter you say addressed to Mr Kent Walton?---Not recently obtained, it’s my records. Overnight.

Overnight you’ve found this offer?---Yeah. No, two things. So I went back to the diary note on 20 May because I was concerned that I couldn’t answer you properly when you asked me yesterday and I didn’t want to be vague. So I went back to my notes, I went back to my diary of 20 May, 2016.

40 THE COMMISSIONER: And what does the entry in your diary say as best you can recall?---Yes. My diary entry, and I looked on 23 May, 2016 at 3.00pm, there is a diary note where I had a meeting with Kent, well, I had

scheduled a meeting, should I say, with Mr Kent Walton and Mr Gary Sawyer.

That's the effect of the entry in your diary?---The, the entry, that's 3.00pm at council with Mr Kent Walton. Following up that, I went to my files, where I save, you know, offers and stuff that I would have done, and there was an offer that I had prepared for that meeting. I, in fact, emailed [REDACTED] and said to him "Could you send me the, could you send me the, the, the, the valuation?" because I needed a copy of the valuation because I wanted to present that to council. So how I was coming to the, the number. So I, I took along the valuation and I took along their offer and I took along my new proposed offer.

You said you recorded in your phone the amount of the offer.---No, not recorded on my phone. I recorded it in a, on my file on my computer. So it's a diary note on my calendar, like electronic calendar I'm talking about here, right, it's an electronic calendar.

What was the amount of the offer recorded in the computer?---The, the letter offer that I presented to council on 23 May was \$2 million.

MR DARAMS: Did you leave a copy of that offer with council, did you?
---Yes, yes.

So did you take two copies or just one copy?---I can't exactly remember a copy of, but there was, I can get you a copy.

We might call for that in a moment, but I'm just trying to understand. So you go with the offer with the \$2 million in it - - -?---2 million, that's right.

You leave it with Mr Osland or Mr Sawyer, can you remember now?
---Well, I, number one, I thought I was meeting with Kent, I didn't realise I was meeting with John Osland. So, the, the, the, the counteroffer is addressed to Kent Walton, it's not addressed to John Osland, because I thought that I was meeting with Kent and the GM, which was Gary Sawyer. At the meeting, John Osland turns up, as Kent was unavailable, and I leave that with council. I would have, yeah, it's probably common practice that I would have brought at least two copies, because I knew I was meeting with two people.

40

I see. Now, just going back to that, just so I can understand. When you gave this evidence on 10 March, what you were suggesting at this stage is that the 2.1 was arrived at because Mr Colacicco and Mr ██████ told you that that's what had to be offered, because that's what he wanted. So that's the case, isn't it, that is that they independently told you that that's what the council wanted?---Yes, correct. And they would have told me that, but I heard it myself when I went to the meeting.

10 That's what I was putting to you before, just trying to understand. So you say that you heard it yourself in a meeting with Mr Sawyer and Mr Osland?
---Correct.

And just on that, just so I'm clear on what your evidence is, did they say to you "Offer 2.1 and we'll accept it" or was that the interpretation you placed upon the discussion?---It was, they said to me at the meeting that 2.1, right, was, was going to be something that they might consider.

They might consider it?---Might consider it.

20 You then have a conversation with Mr ██████ and Mr Colacicco. They tell you, you have to offer, we, you, he and Mr, you have to offer 2.1 million otherwise you ain't going to get it?---Walk away, you ain't going to get it.

So the conversation you had with them is more certain, is it not, than the conversation that you have with Mr Osland and Mr Sawyer on your evidence. Do you accept that?---Yes, yes.

30 I take it from what Mr ██████ and Mr Colacicco said to you about the 2.1 million, you must have understood that somehow that they had independently found out that information?---Correct.

THE COMMISSIONER: And do you know how?---No, I don't.

MR DARAMS: Now, so if we go back to 4.2, page 254.---Yes.

Can I ask you this because you seem to have reviewed it overnight - - -?
---Yes.

40 - - - the offer that you left with council, did that have an 18-month exchange period in it, settlement period?---Yes, it did.

It did?---It did.

So if you, when you produce that, we expect to see the - - -?---Correct.

Yes. In addition to the letter offer – really bad way of putting it. I apologise. In addition to the offer that you left with council - - -?---The letter offer?

10 The offer that you left with, the letter - - -?---No, no. I, I didn't - - -

THE COMMISSIONER: Are you talking about this - - -

MR DARAMS: Not this one here, sorry. No. The one that you left with him on 23 May.---It wasn't a letter offer. It was a printout, like, it was, yeah, it was a document like this, but, but - - -

Like this? Addressed to Mr Sawyer?---No.

20 Sorry. Addressed to Mr Walton?---It was addressed to Mr Walton and it was a step-by-step, it was, it wasn't in this detail, right, because it basically outlined how I got to my offer of 2 million based on, this is what our valuation is, these, you know, like, how, how do you come up to 2 million, right?

Yes.---So it was - - -

THE COMMISSIONER: Well, what's the reference to the letter Mr Bartolotta's referring to?

30 MR DARAMS: So this is the letter that I understood from the evidence this morning that Mr Bartolotta has found overnight - - -?---Yes. It's not a letter. It's a document.

A document, sorry. I thought you said it was addressed to Mr Walton. So I'd misunderstood that. I apologise.---No.

40 THE COMMISSIONER: How do you describe it? What is it? If it's not a letter, what is it?---Okay. It's, it's, it's a, it's, it's a file note, it, it's a note that I brought - - -

File note. A file note.--- - - - I had brought to the council meeting. So it basically said, addressed to Mr Kent Walton that I was going to hand over for discussions at the meeting. So it was addressed to Mr Walton. It said “3.00pm” on the day of “23 May, 2016, 3.00pm”, addressed to Mr Kent Walton, outlining exactly what we were going to discuss at that meeting to come to what I, what I was trying to do was to come out of that meeting, given the time line was only seven days where I had to exercise the deed, so I wanted to give them everything, right, and walk away with a number that was going to be palatable to council.

10

MR DARAMS: I understand. Thank you for clarifying that. I had misunderstood when you said it was addressed to Mr Walton, I thought it was a letter.---No, no, it wasn't a letter. It was something that I brought to the meeting, I brought to the meeting.

I understand all that. That sets out your rationale or reasoning as to how you arrived at the 2 million?---2 million.

20 It also sets out your rationale, does it set out your rationale in relation to the 18 months?---Yes. So what we, what had actually happened was Mr Walton had, had previously said to me that he wanted to decrease the per square metre rate, right? So from the original, my original proposal on 23 March, to the best of my recollection - - -

22 March, yes.--- - - - yeah, no, that, the one that you showed me yesterday.

30 The Royale Limousines one?---Correct. That's right. He wanted me to reduce the per square, the, the, the, the part where they end up getting the \$1,000 a square metre. So it was 1913, or whatever it was, he wanted it reduced to 1773, okay, and following the meeting on 4 May where we got a better understanding because Tony McNamara and I think James Sullivan from my diary note, right, and, and recollection of the meeting, discussed a realistic time frame, right, that this transaction would take, right, a realistic time frame, given that at that meeting, they said to me they had an immense workload, number one, so, you know, it wasn't going to be something that was quick. Two, it had to go through independent consultants from the council's point of view. And three, it had to go to the New South Wales State Government thirdly, and that process was going to take a long period of time.

40

Sorry, my question was about the document that you left with Mr Sawyer and Mr Osland.---Yes.

Did that have your rationale in relation to the 18-month settlement?---No, it didn't have the rationale.

10 It just - - -?---It had that reference because I didn't think I was explaining it to John Osland and to Gary. I had this conversation with Mr Kent Walton on 4 May with Tony McNamara. And the planners had to be in the meeting, because the 4 May meeting addressed the town planners. The town planner had to tell me what time frame, and that was at, on the, it was roughly around 4 May at 4.00pm. I can't remember it was 3 May or 4 May, but I've got a diary note again to that, to that effect.

So just going back to your meeting with Mr Sawyer and Mr Osland. You left the meeting and did you understand that you were to direct any further offer to Mr Osland? Is that - - -?---Yes.

20 That's how his name comes to appear?---That's right, correct. I was told at that meeting that Kent couldn't, was away, right. And that, to send a counteroffer to John Osland, which I did.

Do you recall who led the meeting on 23 May? Was it Mr Sawyer, was it Mr Osland or - - -?---No, Mr Osland.

Mr Osland.---Mr Sawyer never spoke very much.

30 The last question about this meeting, I think.---I've got a copy of the letter if you want it.

We'll call for it in a moment. So the meeting's arranged for 23 May. You turn up to council at the time expecting Mr Walton and Mr Sawyer and your, and you appear and there's Mr Sawyer and Mr Osland, correct? ---Yeah, so what ends up happening is I get the out-of-office reply from Mr Kent Walton on Friday, 20 May, at about 7.53, with a reference "For any inquiries call" - - -

Mr Roberts?--- - - - "Bradley Roberts," to the best of my recollection, right?

Yeah.---When the office time came up, like, you know, office hours, 'cause it was 7.53am in the morning, right, so at that time I rang Mr Bradley Roberts.

Did you speak to Mr Roberts?---Yes, I believe I did.

How long did you speak to Mr Roberts for?---I can't remember exactly but it was a quick, it was a quick conversation in regards to confirming that the meeting at 3.00pm on the following Monday, 'cause this was the Friday,
10 and the meeting for 3.00pm would be going ahead. And at that time he said to me yes.

Did you ring Mr Roberts from your mobile phone?---No, I think it could have been from my office phone, could have been from my - - -

Well, what, do you remember were you in your office when you called him?---Possibly, yep.

Well - - -?---It was Friday, it was a Friday, so I would have been in my
20 office.

Now, so you called him, what, when council opened at 9 o'clock, 10 o'clock?---I can't remember exactly. I can't remember exactly the time that I called him.

I see. Now, just a few questions about Mr Tsirekas. Do you recall the first time you met Mr Tsirekas?---The first time I met him. I can't exactly remember the first time I met him. I, I remember going to the council chamber one day where we had a meeting and we were going into a room,
30 like, like the, like the meeting room and I believe he was sitting there having a meeting with other people and I think that probably was the first time I actually met him.

Right.---Like just, this is Mayor Angelo. But - - -

THE COMMISSIONER: When was that?---Sorry?

When?---It was, it would have been prior to, prior, prior to, prior to - - -

40 Well, what year or month are we talking about?---We had a number of council meetings, Commissioner. I just can't remember exactly.

This was the first time, I think, you're addressing your mind to. You met, you said, him in a meeting room when others were present. Are you able to assist as to when that was approximately?---I can't remember exactly when it was. I, I - - -

MR DARAMS: So just when you say prior to these events, just so I understand, are you saying when you attended council to meet with Mr Walton to talk about this potential purchase of 231 and maybe the potential
10 redevelopment of that and 227, that's what you mean?---Yeah. It was, it was one of, one of the meetings in, in the, in the process.

I see. But you hadn't met him before that?---No.

Right. I take it you hadn't been introduced to him or met him after that?
---Yes, I did.

You did. When was that?---In about July of 2019.

20 Was that the first time that you were introduced to Mr Tsirekas and had a conversation with him?---Yes, correct.

Right, I see.---I think it was July or August when I met him.

Was this when you were in Lipari, was it?---Yes.

Right. What were you doing in Lipari?---I was holidaying with my family.

30 Were you holidaying with anyone else?---Yes, the Colaciccos.

You were holidaying with the Colaciccos in Lipari. Did you know Mr Tsirekas was going to be in Lipari?---No.

No. So when did you find out he was there?---When I was lying on the beach.

40 Right. And, what, he walked past or something like that, did he?---Yeah. He was walking, he walking, he, he was walking along, along the beach there with his wife, or partner at the time, and I, I was lying there and he came up and said hello to Frank and - - -

Oh, so you were on the beach with Mr Colacicco?---Yeah. I was with, yeah, yeah, of course, yes.

And Mr Tsirekas walks by with his partner and says hi to Mr Colacicco?
---Correct.

Is that then your, I guess, first time introduced to Mr Tsirekas?---Properly, yeah. Like a, a proper introduction on - - -

10 Well, when you say a proper introduction, are you referring to some other introduction, were you?---Well, no, I'm talking about the time that I said I perhaps met him in the, you know, like briefly - - -

In the council office?--- - - - because we were, yeah, he was already in a meeting and we were waiting for the meeting room. So it was, like, very, you know - - -

There was a time when you had negotiations or discussions with Mr Walton about extending the settlement period. Do you remember that?---Yes, I do.
20

I just want to ask you some questions about the correspondence between you and Mr Walton.---Yes.

If the witness could be shown volume 4.5, page 2. So what happens, Mr Bartolotta, you reach out to Mr Walton in about March 2018 and you say "Look, we're seeking an extension of the settlement period." That's right?
---Yes.

He asks you, that is Mr Walton asks you, to explain why you're seeking it.
30 ---Yes.

You then compose this email to Mr Walton?---Yes.

Now, you probably don't need to read the email to answer my questions, but if you do let me know.---Can I just see the second page for a minute?

Sure. Show him the next page.---Yes, yep.

Just one question. Did you type this up or did Mr Marc Triulcio type this up?
40 ---Marc Triulcio typed it up.

Right. On this page here, it looks like there's some writing in the second paragraph on the page in blue. Do you know how that came to be in blue? Is that something you added or - - -?---Yeah. It would have been something that I probably added.

So Mr Marc Triulcio sends you a draft email to send to council and you add some text and then you send it from your email account?---Correct, yes.

Just going back to the previous page.---Yeah.

10

Just, you've CC-ed this correspondence in to Mr Gainsford - - -?---Yes.

- - - and Mr Tsirekas?---Yes.

Now, if I understand your evidence, you hadn't had any dealings with Mr Tsirekas at all at this point in time?---Correct.

You hadn't had any dealings with Mr Tsirekas in respect of the purchase by the three companies of 231 Victoria Road?---Correct.

20

Can you tell us why you copied Mr Tsirekas in to this email?---Yes, I can.

Please tell us.---I was extremely annoyed by council's conduct because when they gave us the, when, when we did the deal, the proposed deal on 231 Victoria Road, Mr Walton never, never informed me of the contamination issues of the site. And the contamination issues of the site to me should have been something that an, an, an authority like council, at minimum, should have told me.

30 THE COMMISSIONER: Can we just pause there for a moment? Which site are you talking about now?---231.

231?---Yes.

And what sort of contamination are you referring to?---Commissioner, during the process of going for the DA and getting all the reports that council required, we were told that there was contamination that Mr Walton had already known about previously - - -

40 Well, don't deal with what he would have known or might have known or did know. I'm just trying to focus on - - -?---Yeah.

- - - somebody told you that there had been contamination on the site, apparently; is that right?---Yes. Through the process.

That's how you found out?---Yes. Correct, through the DA process.

Who told you?---One of the consultants that we had there.

10 Who was that?---I can't remember exactly. There was many consultants involved on the site.

You don't know the name of the consultancy?---No.

All right. Well, this person said there had been, or there seemed to have been contamination on the site or words to that effect?---Correct.

Right. Are you able to say what sort of contamination he identified?---Yes. It was due to a laundromat.

20 A laundromat?---A laundromat, two properties up, so not, not at 227, the next one up and, and that was where the contamination originated from.

What sort of contamination from the laundromat was asserted? What sort of contamination from the laundromat?---Chemical, I, I, I assume it was chemical contamination - - -

Well, did he tell you?---Yes, in the report, yes.

30 I assume it's a he. It might be a she.---No. It, it was a report, so Marc Triulcio was dealing with all these consultants and - - -

Right. Was this matter investigated by some consultant after - - -?---Yes.

- - - this was made known?---Yes.

Okay. And do we know what the outcome of that investigation inquiry was about the contamination?---Yes.

40 What was it?---That when we did, when we, part of the, the DA was that we would have to put, potentially put a plinth, a plinth in the, in the, once the land was excavated out, the, the, the soil had to be further obviously tested

at the time and, and a plinth would have had to be put in underneath the car park level right around, right, to, to make sure no contamination, further contamination from the above property could seep into this property.

I see. All right. I see the time. We might take the morning tea adjournment. Resume about quarter to 11.00, sorry, quarter to 12.00.

SHORT ADJOURNMENT

[11.29am]

10

THE COMMISSIONER: Yes, Mr Darams.

MR DARAMS: Now, Mr Bartolotta, can I ask you to have a look at the email again at volume 4.5, page 2? Do you recall I asked you why you sent this to Mr Tsirekas then you started to explain issues about contamination and the like? I'll go back to my question. Why did you copy Mr Tsirekas in, given that he'd had no dealings with you in relation to this purchase of 231 Victoria Road?---I copied him in because I thought that we, I had been
20 wrongly dealt with and, and, and my dealings with Kent Walton hadn't been satisfactory.

Well, just looking at this email, you referred, I think you referred before to contamination issues.---Correct.

Can you just draw, sorry, assist us with where you refer to these issues about the contamination in the email?---Go to the last page.

Right. Whereabouts?---I'm just trying to find it. "To be updated, as well as
30 the car park condition on the DA approval of the geotech reports, including the contamination report being the RAP plus the audit."

THE COMMISSIONER: Just go back to the previous page so I can read it in context. Yes. Okay, the next page. Yes. You go ahead, Mr Darams.

MR DARAMS: Yes. So that's the only reference, as I understand it, to this issue of contamination in this quite lengthy email, you would accept.---Yes.

Now, you don't, anywhere in the email, express any disappointment you say
40 you had with either Mr Walton or the council generally, do you?---No.

The only disappointment you express was in respect of the planning panel.
---Yeah. I said, “The six months request is required to get the property ready for finance. It is disappointing that the planning panel didn’t raise any concern,” right, “to us.”

THE COMMISSIONER: No, but - - -

MR DARAMS: With council.---Any concern to council, yes.

10 Yeah. So this isn’t Mr Walton’s issue that you were, can I say this, complaining about. You were complaining about the planning panel.
---Yeah. I was complaining about the, well, I, I look at the council as part of planning, like, for me I was dealing with council. I was, they, they had the planning panel. My issue with Mr Walton was there was emails that I sent to Mr Walton in regards to these delays, right, and the delays that had occurred to me, and he just discarded them. He said that’s got nothing to do with him, that’s to do with planning.

20 When you say these emails you sent to Mr Walton, when did you send these emails?---It was, it would have been before this period when I asked for the extension.

So are you saying that there are other emails that you sent to Mr Walton seeking an extension, complaining about contamination?---No, no. I didn’t complain to him about contamination because, to Mr Walton directly.

THE COMMISSIONER: You did, and they would be found in correspondence from time to time?---Sorry?

30 Recorded in correspondence from time to time with Mr Walton?---Well, it would have been in, I don’t know if I put it in formally in an email because it was too late, it was buyer beware, right, at this stage.

Are you saying you could have but you don’t - - -?---I, I could have, yes. I’m not 100 per cent sure.

Certainly there’s no complaint in this email we’re looking at, is there?---No.

40 MR DARAMS: So if you want - - -

THE COMMISSIONER: And there's no criticism of Mr Walton's conduct or - - -?---No, no.

MR DARAMS: So going back to the question I asked you, it doesn't seem that the reason you're copying Mr Tsirekas in is to make some complaint or raise some complaint about Mr Walton or his conduct?---No. Correct.

Right. And if you did have some issue with Mr Walton's conduct, wouldn't the appropriate person to raise that issue with, if you weren't raising it with
10 Mr Walton, would be to Mr Walton's supervisor or superior?---Correct.

Who you would understand at this time to be Mr Gainsford?---Correct.

Right. Now, going back to my question then, so it doesn't seem that the reason you're copying Mr Tsirekas in has got anything to do with Mr Walton's conduct.---No. The reason being that I wanted a sense of urgency, right, because my previous correspondence with Mr Walton, on many occasions, was that there's a history there, right, that he takes months, sometimes an extremely long period of time to address correspondence.
20 And this was a critical correspondence 'cause I had a personal guarantee on the line here to complete with council.

What did you hope Mr Tsirekas would do?---Well, I, I hoped that Mr Peter Gainsford and Mr - - -

No. Go back.---Sorry.

What did you hope Mr Tsirekas would do?---Would, would give this some urgency, would, would discuss it with a sense of urgency. I had a personal
30 guarantee on the line.

THE COMMISSIONER: You'd previously agreed to a six months settlement date, is that right?---Six months after, yeah, the - - -

After exchange of contracts?---Yeah. Correct. Yeah.

And you understood at that time, you - - -?---Sorry, sorry, Commissioner.

Yes, that's all right.---Yeah. It was the six months after the development
40 consent, 'cause I, I, it was the non-completion of - - -

Is it six months - - -?---Of the development - - -

- - - to complete the contract - - -?---Yes.

- - - was the term six months?---Sorry?

To finalise the contract, wasn't the original term six months?---Yes.

10 And at the time you agreed to that, you were aware that you'd need to apply for finance to be able to complete the purchase?---Can you repeat that, sorry?

Yeah.---Which six months?

The original deal - - -?---The original deal, yes?

- - - yeah, was a period of six months to complete the purchase?---No, the original was 18 months to complete the purchase, not six months.

20 No, but originally, wasn't it six months?

MR DARAMS: There was an offer from council of six months?---Yes.

You counteroffered with 18 months?---Correct, yes. The deal was 18 months, not six months.

THE COMMISSIONER: Right. Eventually, yes. All right. Go ahead.

30 MR DARAMS: And now you're seeking a further period of time to settle, correct?---Correct.

The question I was asking you was about why you copied Mr Tsirekas in to that correspondence with Mr Walton.---Yes.

And you first gave an explanation that you were, well, you said you were dissatisfied with council, including Mr Walton. That's right?---Yes.

40 That seems to be inconsistent with what you say in the first paragraph, though, doesn't it? Well, you actually say in the first paragraph in the second sentence, "During the development assessment process, council and

specially Shannon, the DA coordinator, were very helpful getting reports and advice from various council departments”?---Yes.

That seems to be inconsistent with the concern you had about council’s conduct?---The, yeah. The council’s conduct that I was disappointed with, right, was around the contamination that they were aware of that was not disclosed to me in any of my dealings.

10 THE COMMISSIONER: How do you know they were aware of contamination?---Because through the DA process when we had our consultants look at the, the, the entire history of it all, right, they, they brought to the front, and, as I said, Marc, I, I wasn’t at all these meetings but Marc Triulcio, which is very, Marc and [REDACTED] which are, are both, what do you call it, experienced developers, right, had spoken to the, the, the consultants that we’d actually got, right?

Anyway, yeah, sorry. Okay.

20 MR DARAMS: Now, who told you to copy Mr Tsirekas in? Was it Mr Colacicco?---Yes, probably.

Was it Mr [REDACTED]?---It could be both of them.

They told you, did they, “copy Mr Tsirekas in so that he becomes aware of these matters”, is that right?---It could be, yes, yes.

Well, what was it?---Yes, they did.

30 Yeah. So but for Mr [REDACTED] or Colacicco telling you - - -?---Yeah.

- - - you wouldn’t have independently copied Mr Tsirekas in?---No, probably not. No.

Could the witness – just can I ask you - - -?---Yes.

- - - why didn’t you copy Mr [REDACTED] or Marc, or Mr Colacicco in to the correspondence?---I never copied them into any of the correspondence with council.

40 What was your process? You’d send this out and then forward it on?---Yes.

By doing that, were you trying to conceal their involvement in the - - -?
---No.

And I don't mean conceal in a pejorative sense - - -?---No.

- - - just keep it private, their involvement in this?---No. No. They attended meetings. Marc Triulcio attended many meetings - - -

10 Sorry. I mean, Mr [REDACTED] and Mr Colacicco.---Frank Colacicco attended meetings.

When did he attend these meetings?---During the planning process. He was at the – I recall him being at the New South Wales, when we went to the, the independent panel.

Right. What about meetings in council?---I think he could have attended one or two.

20 THE COMMISSIONER: What meetings did either one of them or both of them attend in the, throughout the planning process?---Marc Triulcio attended many meetings with me.

Marc?---Marc, correct, yes.

Yeah. But I think these questions are directed to - - -

MR DARAMS: [REDACTED].

30 THE COMMISSIONER: [REDACTED].---No, [REDACTED] didn't attend.

All right. And what about Mr Colacicco? Did he attend any meetings during the planning process or not?---Yes, I do remember him appearing at the, attending the New South Wales panel.

The independent panel you've just referred to?---Yes, correct.

Yes. But did he attend any meetings at council or only really at that panel meetings?---Really at that panel meeting, yeah.

MR DARAMS: So when you're referring to the planning panel, that's not the council's planning panel, that's the State and Regional Planning Panel? ---Correct, in 2 O'Connell Street, by memory.

Sorry?---2 O'Connell Street in the city or something around there.

Could the witness be shown volume 4.5, page 9. Just draw your attention to the email you sent on 12 April, 2018. So you send this email to Mr Walton after you've had some meeting with he and Mr Gainsford - - -?---Yes.

10

- - - on the Monday preceding 12 April, that's right?---Can you, just the dates, can I go back to the dates? 'Cause I'm trying to - can you just pull it down a bit. Oh, sorry. What was the date of the top one?

12 April.---Yes, correct, yep.

So same question again. Why do you copy Mr Tsirekas into this email when this doesn't seem to be any complaint about Mr Walton or council?

---No, no.

20

Why did you copy Mr Tsirekas into this, then?---It would have been following discussions with [REDACTED] and Frank.

Right, so the same answer that - - -?---Yes.

- - - you were told to copy this correspondence in by either Mr Colacicco or Mr [REDACTED], or both of them together?---Correct. Yes, correct.

30 Did you ask them why they wanted you to copy him in?---No, I didn't.

Right. You just did as they suggested, is that right?---Well, they, it was to give it a sense of urgency, I think, from that perspective.

But how does copying Mr Tsirekas in alone give a sense of urgency? Why wouldn't you copy all the other councillors in?---That's a good question.

Well, I'm just asking you. Did you have that conversation with them or is this you surmising now as to why Mr Tsirekas was copied in?---Yeah, I'm
40 surmising that they said, you know, at this stage I knew he was the mayor, right.

THE COMMISSIONER: In any event, you say they didn't explain to you why they made that suggestion to include Mr Tsirekas in there.---No. Correct.

Okay. And you didn't seek an explanation from them.---No.

Is that right?---Correct.

10 MR DARAMS: You just accepted, I don't mean this in a pejorative sense, but you just accepted that if Mr [REDACTED] and Mr Colacicco were suggesting that you – or perhaps more than suggesting, telling you to copy Mr Tsirekas, that they must have some reason based upon their experience as developers or the like?---Yeah, yes.

Now, just finally in relation to this first aspect of questioning, and I'll come to explain that in a moment, you ultimately sold out of, for want of a better description, the proposed redevelopment of 227 and 231 Victoria Road, is that right?---Yes, I did.

20

When did you do that?---I think it was about October, October 2018. October or, I think it was October 2018.

Did you sell out of that by disposing of your interest in these properties to one or more of Mr Colacicco or Mr [REDACTED], or someone else?---No. To Mr [REDACTED].

Yes.---Mr [REDACTED], for the consideration of approximately 500,000, was to take over the, take over those companies.

30

Now, Chief Commissioner, I've reached the end of the questioning of Mr Bartolotta for the moment. However, I'm going to ask the Commission to make an order for certain records to be produced, both in hard and electronic form, which I would like Mr Bartolotta to produce to the Commission, before I continue with my cross-examination of Mr Bartolotta. There are also, I think at this stage, three applications to cross-examine Mr Bartolotta and obviously they should follow conclusion of the cross-examination. What I would seek Mr Bartolotta to produce to the Commission are all records relating to the purchase of and development of
40 231 Victoria Road, which should include all file notes, diary entries, correspondence, including emails, and I would like them, Chief

Commissioner, to be produced electronically as well, that is those correspondence that there are electronic versions of. I can ask and provide Mr McClintock of the Commission to liaise with Mr Bartolotta as to how he does that electronically but we would like those to be produced relatively quickly so that we can continue with Mr Bartolotta's cross-examination.

THE COMMISSIONER: So I take it the interests - - -

MR DARAMS: Examination, my apologies.

10

THE COMMISSIONER: - - - in those documents attaches, amongst other things, to meetings, correspondence - - -

MR DARAMS: Files notes.

THE COMMISSIONER: File notes and so on.

MR DARAMS: For the purchase of 231.

20 THE COMMISSIONER: All right. Now, Mr Bartolotta, you made reference to some records today that might fall within the class of documents that's just been mentioned by Counsel Assisting. So I take it that there won't be any difficulty in being able to comply with any order I make, at least so far as those records you've recently consulted.---Yes.

MR HOLLO: It's Hollo by video for Mr Bartolotta. Commissioner, my observation - - -

THE COMMISSIONER: Excuse me. I haven't finished.

30

MR HOLLO: I'm so sorry, Commissioner.

THE COMMISSIONER: Mr Hollo, is it?

MR HOLLO: Yes. I'm so sorry, Chief Commissioner.

THE COMMISSIONER: I was coming to you, Mr Hollo.

MR HOLLO: Thank you.

40

THE COMMISSIONER: Now, Mr Bartolotta, it seems to be that it is necessary to have those documents produced. The question is time and how you're placed to be able to be able to assist the Commission and cooperate with the Commission in that regard. What I have in mind is that the course to follow is that Counsel Assisting has indicated that he may require those documents before he can complete his examination of you.---Yes.

10 And that he has properly said that he should complete his examination of you before other counsel are called upon for any application to ask you questions. I think that's the correct course of action. What I'm asking of you is, what is your estimate as to when you would be able to produce such documents? That would be, some would be electronic, some would hard copy. For example, if you were released now would you be in a position this afternoon to undertake that task, or at least attempt to undertake that task?---I'll try my best to get it all done.

20 Yes, all right. Mr Bartolotta, I think, I appreciate this in effect amounts to short notice to you but as some of the documents have been employed, as it were, in the course of evidence, I think it's appropriate that we should have them as soon as we can.---Be happy to provide them.

30 Thank you. It may be, then, that the correct order of events and timing of it is that you will do your best and you can speak to Commission officers about how you can go about that and make arrangements to speak to them about those arrangements. If it was capable of being complied with in the near future, for example, if it was possible to have those documents produced later in the day then we would ask you to return tomorrow. If that's going to prove to be impossible then we would defer your return to a little later.---I will do my best to work on them today.

All right. Thank you. All right. Thank you for that, Mr Bartolotta. Before I make any order, Mr Hollo, you wanted to say something. Now is an appropriate time.

MR HOLLO: Thank you, Chief Commissioner. I apologise for my interruption.

THE COMMISSIONER: That's all right. That's okay.

40 MR HOLLO: Chief Commissioner, my observation as a reasonably experienced practitioner is that what is called for are all records, as I

recorded the request, relating to the purchase of 231 Victoria Road and its development. Now, that covers a period, Commissioner, of some three years from 2015 the early involvement of, the initial involvement of Mr Bartolotta through to his disposing of his interests, and that is a considerable task given the magnitude of the request. May I suggest that Mr Bartolotta's legal representatives and he endeavour to get a sense of what the scale of that task is and to notify the Commission's solicitors about a realistic time frame.

10 THE COMMISSIONER: Yes. That I think is what I've been discussing with Mr Bartolotta and he has indicated he will do his best. I have indicated that if he needs more time, if it's a task that requires more time then he'll get it. So it is a question of programming that, and what I propose to do is to make an order requiring production of those documents falling within the description. As to a date for that to be done, I will defer specifying a date until, as you say, those inquiries have been made and there can be consultation between Mr Bartolotta's lawyers and Commission officers.

MR HOLLO: Thank you, Chief Commissioner.

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THE COMMISSIONER: Thank you. Very well. I make an order for the witness, Mr Bartolotta, to produce documents and records, being hard copy or electronic records, in respect of the purchase and development of 231 Victoria Road, including file notes, diary entries, correspondence and email correspondence. The requirement to produce such records will be on a date and time yet to be appointed following consultation between Mr Bartolotta and his lawyers and his lawyers with Commission officers. For that purpose I'll deal with the matter later during the course of today.

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DIRECTION TO PRODUCE: I MAKE AN ORDER FOR THE WITNESS, MR BARTOLOTTA, TO PRODUCE DOCUMENTS AND RECORDS, BEING HARD COPY OR ELECTRONIC RECORDS, IN RESPECT OF THE PURCHASE AND DEVELOPMENT OF 231 VICTORIA ROAD, INCLUDING FILE NOTES, DIARY ENTRIES, CORRESPONDENCE AND EMAIL CORRESPONDENCE. THE REQUIREMENT TO PRODUCE SUCH RECORDS WILL BE ON A DATE AND TIME YET TO BE APPOINTED FOLLOWING CONSULTATION BETWEEN MR BARTOLOTTA AND HIS

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LAWYERS AND HIS LAWYERS WITH COMMISSION OFFICERS.

THE COMMISSIONER: Yes, very well. I think it follows from that that any, as I indicated before, any leave to exercise cross-examination in respect of Mr Bartolotta should be deferred until the documents are produced and Counsel Assisting has determined if there is any other matter that he wants to raise in evidence. Accordingly, we will deal with that when we're in a position to specifically program the dates and times. Mr Bartolotta, you have heard what I've said and we will try and deal with it on a cooperative basis as much as we can in the way I've indicated. There's no reason why
10 Mr Bartolotta should not be released at this stage?

MR DARAMS: Yeah, there's no reason why he shouldn't be released from that now.

THE COMMISSIONER: Mr Bartolotta, we will endeavour to fix a date for you to give evidence to complete your evidence as soon as possible. If you just consider your own position, other commitments and so on we'll try and work a program that's convenient to everyone.---Thank you, Commissioner.

20 Thanks, Mr Bartolotta. You're free to step down, thanks.---Thank you.

THE WITNESS STOOD DOWN

[12.19pm]

MR DARAMS: What I propose to do now, Chief Commissioner, is to move into private session.

THE COMMISSIONER: Yes, all right. Very well. I propose in respect of
30 the next witness to take evidence from him by way of private hearing. That means that the only persons entitled to be present in the hearing room, apart from the witness, are legal representatives who have been granted leave to appear and Commission officers. Any persons that are present should leave the hearing room before the witness is called, being the private hearing. I have determined that a private hearing is appropriate in this case for reasons which I need not here publicly detail. I am satisfied, however, that it is appropriate to take his evidence in private hearing. As I understand it, everyone presently here is either a party or party's legal representatives who are entitled to be here, and as I've indicated, Commission officers. Mr
40 Darams, I think that is the position and accordingly we'll proceed with you calling the next witness.