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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 16 MAY, 2022

AT 10.00AM

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

THE COMMISSIONER: Mr Darams.

MR DARAMS: May it please, Chief Commissioner, before I proceed with calling Mr Tony McNamara, there's an application by Mr David Lloyd of Senior Counsel on behalf of Mr Sawyer.

THE COMMISSIONER: Yes. Yes, Mr Lloyd.

10 MR LLOYD: May it please the Commissioner, I seek leave to appear with Ms Avery - - -

THE COMMISSIONER: Could you just use the microphone.

MR LLOYD: I'm sorry. May it please the Commissioner, I seek leave to appear with Ms Avery-Williams for Mr Gary Sawyer.

THE COMMISSIONER: Thank you, Mr Lloyd. I grant leave for you to appear.

20 MR LLOYD: Thank you.

THE COMMISSIONER: Just one matter before you start. Mr Leggat, my apologies for you and your team for your client having to be excluded for a brief time on Friday when we sorted out the COVID issue. I understand that you were able to hear proceedings in the foyer. It was just really machinery to deal with the adjournment.

30 MR LEGGAT: Thank you, Chief Commissioner. I appreciate your comments.

THE COMMISSIONER: Anyway, we're ready to proceed today, that's the main thing.

MR LEGGAT: Thank you.

THE COMMISSIONER: Mr Darams.

MR DARAMS: Yes. I call Mr Tony McNamara.

40 THE COMMISSIONER: Yeah. Good morning, Mr McNamara.

MR McNAMARA: Good morning.

THE COMMISSIONER: Do you take an oath or - - -

MR McNAMARA: An oath, thank you, Commissioner.

THE COMMISSIONER: Thank you. There's a Bible there, I think. I'll have my associate administer the oath.

10

THE COMMISSIONER: Thank you, Mr McNamara. Just take a seat there.---Thank you, sure.

MS ALDERSON: Thank you, Commissioner. I've explained to Mr McNamara the effects of section 38 and he would request the declaration is made.

10

THE COMMISSIONER: Thank you. Thank you very much.

MS ALDERSON: Thank you.

THE COMMISSIONER: Now, Mr McNamara, will you just put on the record your full name, please?---Anthony Gerard McNamara.

You were formerly General Manager of Canada Bay Council?---No, Chief Commissioner. I was Director of Planning and Environment.

20

My apologies. You have since retired from that role?---That is correct.

Thank you. Mr McNamara, your counsel has raised with me that the provisions of the Independent Commission Against Corruption Act as to witnesses being entitled to give evidence on objection as has been explained to you?---Yes, it has.

You appreciate, of course, that all witnesses must answer questions truthfully whether a declaration is made or not?---Yes.

30

And you are required to produce any document or other item should that arise.---Yes, I do.

Very good. I'm bound to point out to witnesses that although the declaration has the effect of preventing your evidence from being given in any other proceedings in the future, the exception to that, however, is that it does not prevent evidence you give from being used in respect of any offence under the Independent Commission Against Corruption Act. I think you understand that provision. I'm not suggesting that that would ever arise but I'm just informing you of that just in case you haven't been told that. ---Yes, thank you.

40

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

10

DIRECTION AS TO OBJECTIONS BY WITNESS: PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THE WITNESS, MR MCNAMARA, ANY DOCUMENTS OR THINGS THAT ARE PRODUCED BY HIM, AS REQUIRED, DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. THAT BEING THE CASE, THERE IS NO NEED FOR MR MCNAMARA TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER TO BE GIVEN OR DOCUMENT OR THING PRODUCED.

20

THE COMMISSIONER: Now, Mr Darams, is there anything else of a formal nature you want to raise?

MR DARAMS: No, nothing by a formal nature.

THE COMMISSIONER: All right. Mr McNamara, Counsel Assisting Mr Darams will put some questions to you.---Thank you.

30

MR DARAMS: Mr McNamara, could I just start by asking you to outline your professional qualifications?---Yes. I've got a Bachelor of Arts degree at New South Wales Uni, Master of Environmental and Local Government Law from Macquarie University, I've got a Local Government Ordinance 4 Qualification Town and Country Planner, a Post-Grad Diploma in Urban Studies from Macquarie University and a Post-Grad Diploma in Local Government Management from, it was then Mitchell College, now Charles Sturt University.

40

Now, I understand that you were for a period of time between 2004 and 2018 the Director of Planning and Environment at the Canada Bay Council?---That's correct.

If I refer to "the council" today in my questions with you, I'm referring to the Canada Bay Council.---Yes.

10 I'll make it clear if there's another council I'm referring to. Could I just ask you, though, to outline your work experience before you came to start at the Canada Bay Council if you might do that?---Yes. Prior to commencing with Canada Bay Council, which was in 2004, I was employed by Environmental Resources Management, ERM, which is a private consultancy firm. I was employed by ERM from 1997 to 2004 and in that, with that company, I was the manager of their north coast operations based in Port Macquarie for five years and then I was then subsequently employed for two years in Sydney basically in their planning and environment section within the Sydney branch.

20 Was that the two years preceding you commencing at Canada Bay Council?---It was. That's correct. Yes.

So before ERM?---Before ERM, I was the Chief Town Planner at, at Hastings Council in Port Macquarie, that was from 1985 till 1997 and there, I was, as I say, Chief Town Planner and then it became Director, again, Planning and Environment.

30 Before that role, did you have any other - - -?---Before that role, I was employed at Wollondilly Shire Council from 1979 to 1985 and I was Chief Town Planner in that period.

And we're stretching back a little bit further but was there further employment - - -?---Want me to keep going? Yes.

40 Was there further employment before that?---Before that, I was at Liverpool City Council for a bit less than 12 months. I was a strategic town planner with the Liverpool City Council. So that was from 1979, it was in 1979, basically. Prior to that, I was overseas, just travelling for 18 months, '75, '76, '77 or thereabouts. Prior to that, I was, I was engaged at Marrickville Municipal Council, as it was back in those days and that was from 1974 to 1976 and prior to that, I was at university.

So working back, you left university, Marrickville Council or Marrickville Municipal Council?---Yes.

Overseas for a short period of time?---Yes.

Back to Australia, working for, so Liverpool City Council?---Correct.

Then Wollondilly?---Wollondilly, yes,

10 Wollondilly, Port, well, Hastings - - -?---Port, that's right.

Hastings Council, then you were in the private sector for a number of years and then back into local government?---That's correct.

20 Just in relation to the positions Chief Town Planner with Wollondilly and Hastings, I think you said if I understood it correctly that the Chief Town Planner, at least for Hastings Council, did the title of that change to Director of Planning and Environment or similar?---The position changed in 1993 because a new Local Government Act came into effect. Councils were required to restructure, senior staff went onto contracts, and the roles expanded from planning into planning and building compliance. The role grew as a result of that council restructure following 1993.

30 I'll come to ask you in a minute about your responsibilities in the position of Director of Planning and Environment of Canada Bay Council, but were the positions of Director of Planning, Director of Planning and Environment of Canada Bay Council, similar or equivalent to, say, for example, the Chief Town Planner roles/positions you had?---Well, they, they were. Essentially the same, yeah. The addition came later with the addition of the building and compliance roles.

So just so I can understand that. Different titles, effectively the same duties and responsibilities. Although in the Director of Planning and Environment, the expansion of the roles after 1993.---That's correct.

So additional responsibilities.---Correct.

40 Could I now just move, then, to your responsibilities as the Director of Planning and Environment in, at the Canada Bay Council?---Yes. Well, I was the director of the department which incorporated about 50 to 60 staff. We had the development control function, which is the development

applications. We also had the strategic planning function, which is essentially the zoning and rezoning proposals, development of the planning scheme for the council area. Looked after building control, which is issue of building certificates. The compliance role, which is effectively managing breaches of building control, issuing PINs and orders and prosecutions for illegal building works. Also looked after the waste contract, which is effectively all the waste and recycling collections throughout the city. And the sustainability functions of council, which is looking at, yeah, encouraging all the recycling and water conservation and so forth. Also had
10 the function of parking control, which is all the parking inspectors around the city. So they were the major functions that I performed.

Did you report to the general manager in that position?---That's right.

So the general manager at the time you commenced, in 2004, do you remember who that was?---Yes, that was Mr Michael McMahon.

He left in about 2006, is that right?---I think it was towards the end of 2005, and then there was a period of a few months and then he was replaced in
20 2006 by Gary Sawyer.

So you reported to Mr Sawyer for the balance of your employment at the Canada Bay Council?---That's correct. Oh, except for about the last six months, when Gary Sawyer finished with the council and Mr Peter Gainsford became the general manager.

Just in relation to some of the people that might have reported to you. Ms Narelle Butler was one of the employees that reported to you?---Yes.

30 She a direct report to you, was she?---She was a direct report, yes.

What about Mr Tony Pavlovic?---Yes, he was a direct report.

Do you know who took over your role after you left the council?---Yes, it was Mr Scott Pedder.

Was there any handover period of time between yourself and Mr Pedder?
---No, he, Scott Pedder was not employed by the council when I left. He was appointed after I left.
40

I want to ask you some questions about your relationship and interaction with Mr Tsirekas during the time that you were the Director of Planning and Environment. Now, other than the period of time between 2016 and 2017, Mr Tsirekas was the mayor of the council for the entirety of your employment, is that right?---That's right.

Now, I just wanted to, as I said, indicate, sorry, focus on your interactions and relationship with Mr Tsirekas and ask you can you explain the types of interactions you had with Mr Tsirekas and how they came about?---Yes.

10 There was a process that the mayor, Angelo Tsirekas, met with the council executive, which was the general manager and the directors, every Thursday for a briefing. So that was always at 7.30. In the early days it was at the council, later it was we'd meet somewhere within the City of Canada Bay for a coffee and then a, an overview of activities that were current and each of the directors would give a conversation or a discussion about the major points that were either of interest, I suppose, to the mayor or matters which would have been coming up in a report to council in the near future.

20 Could I just ask you about – so it was every Thursday, was it?---That's right.

Did you understand that you were required to attend that or was it a voluntary type basis?---No. It was required to be there.

30 How did that come about, was it Mr Sawyer said to you that this is what was going to be put in place or did it start by Mr Tsirekas saying to you "We're going to have a meeting every Thursday night. I'd like you and others to report in"?---It really started in the time of Mr McMahon and at that time we would meet in the mayor's office and it just continued from that point forward.

Do you know whether the commencement of it was at the instigation of Mr Tsirekas or was it at the instigation of Mr McMahon? And when I say the commencement of it, this meeting, whose idea was it, in effect?---Look, I, I wasn't present when that was discussed. My, my understanding was it was at the request of the mayor that that meeting would be held.

40 Can you just assist us a little bit with how the general structure of this meeting would proceed? So, for example, would you prepare some notes for yourself or was it more along the lines that you attend and you would be asked questions by either Mr Tsirekas or Mr Sawyer or any of the other

attendees?---There was no actual structure. The procedure was that each of the directors and the general manager would just run through a current list of what were topical subjects pertinent to their portfolio. So at time there were questions but it was often each director would raise something like three or four or perhaps half a dozen items of conversation, the purpose being to inform everyone present of that, of progress on that particular situation.

10 Did the meetings run for a usual length of time?---The usually ran for about probably one hour.

Obviously dependent upon questions, obviously dependent upon issues. So sometimes they might be a bit shorter, sometimes they might go a little bit over?---Yeah. There was no strict structure to it.

20 What about outside the, I might refer to it as, the weekly briefing meeting, what about outside that? What about other interactions between you and Mr Tsirekas of sort of a more ad hoc nature?---The other occasions would occur usually towards the end of the working day, in which case Mr Tsirekas would invite myself and usually the general manager to his office to discuss any particular issue that he wanted to be informed about.

Did those meetings, if I can call them meetings, were they more of an ad hoc nature in the sense that you might be in council working and then someone would say, whether it was Mr Tsirekas or the GM or their PAs perhaps, would say, "Are you available in 20 minutes?" or something like that? Or was it more structured?---They were not scheduled meetings. They were, they were an ad hoc meeting.

30 Right. To the extent that they were arranged, can you recall how they were arranged? That is, was it through your respective PAs or would you get a call from Mr Tsirekas or the general manager at the time?---From recollection it would be a call from the mayor's PA.

Do I take it you, if that request came, you would make, if you were available, make all attempts to attend the briefing or meeting?---Oh, that's correct, yes.

40 Were you at any stage ever directed or told by the general manager that you were required to attend these meetings?---I don't recall being directed to attend.

Now, were there any other occasions outside those circumstances where you might have an interaction with Mr Tsirekas in relation to matters within your responsibility?---No other scheduled matters. Not to say that I couldn't at times run into the mayor because he, he was in his office at the time, but they were the, the more regular occurrences.

10 Was there anything in those, either the briefings, the weekly briefings or these ad hoc meetings, was there anything that occurred in those meetings that ever caused you any concern about, for example, the interest shown by the mayor in any particular development or anything, or the like?---No, I didn't have any concerns. The, what I understood to be the situation was that particularly planning matters are often lengthy and complicated, and the mayor was taking the time to understand the progress of, of matters that would normally come before council in a formal report.

20 So do I understand that to be that your interactions with Mr Tsirekas would be more of the nature of him trying to understand where things were at, what's going to happen next, what's likely to come to council, those types of things?---I would, I would put it in that category, yes.

None of the questions or none of the topics that you would discuss, none of those caused you any particular concern in relation to any application or any proposal?---Oh, I couldn't say I was, raised any concern with me, no.

I'd like to just ask you a few questions. Now, in your role of Director of Planning and Environment, did you have any responsibility in relation to the negotiation of voluntary planning agreements?---Yes.

30 Now, what was your responsibility or role in relation to those negotiations? ---Right. With those matters I was involved primarily with the general manager. There were a number of elements that had to be addressed, and they, they would include, number one, a probity protocol.

Sorry, say that again.---A probity protocol.

40 Yes.---Because often they were quite substantial issues in terms of financial matters. There was the question of planning probity as to how any voluntary planning agreement associated with planning matters, how were these things to be approached, what were the formal requirements, because they're very prescribed matters under the Environment Planning and

Assessment Act, and I, I provided advice in that regard. There, there was an element of negotiation, which was primarily managed through the general manager, on the dollars, the value to the developer and what, what would be the relationship or what would be the nature of the, of the agreement with council in terms of return to the community via that agreement. There was matters of how, how these matters would be processed at arms-length from council, and by that I'm referring to use of independent consultants to assess matters that have a benefit to council as well as to the developer. So there was a process and I was, I was involved, I would say, in, in virtually all of those matters to some degree or to a large degree.

You said they were negotiated primarily between, involving you and the general manager. Is it the case that other council staff were engaged, sorry, involved in the negotiation of voluntary planning agreements from time to time?---I'm thinking of the, the Victoria Road development where Mr Walton was involved and also Mr Osland, and from recollection, some of those negotiations on the nature of the value to, to council and to the community through that, through that agreement were primarily managed by the general manager and Kent Walton who, he's, he was the Manager of Property Services.

I understand. Just going back to some of the things you outlined, you referred to a probity protocol. What did that entail or what was that?---The, the probity protocol was primarily intended to keep council away from ICAC because there is issues related to either development applications or planning proposals which vary planning controls for, the net outcome is usually increased floor space, which is of a benefit to a developer and there's a, a value either in property, for example, affordable housing units or cash, that comes to the community as a benefit. Now, the potential for I suppose questions to be raised about, about probity in that process are, are quite, quite, quite obvious, so as a result, the, the council developed a, a protocol, which was developed through legal firms, to, what was the process to be undertaken and, and that was a requirement that was to be strictly followed by, by council and by developers if any planning agreement was to be entered into.

So the probity protocol, I take it then, it was distilled into writing?

---Correct.

Was it a standard protocol that would apply to all negotiations for a VPA?
---Yes, it was. Yes.

Was it put in place or was it in place by the time you commenced or was it something that was developed after you commenced?---It was developed after I commenced.

Can you recall when it was developed?---Look, I, I'd be, hazarded a guess because it related to when the provisions of the Environmental Planning and Assessment Act were varied to incorporate formal provisions for planning agreements, and I can't off the top of my head remember the sections there,
10 but it was probably around 2006/2007, around that time.

Do I understand your evidence before that one of your roles in the negotiation of planning agreements was oversight or ensuring that the probity protocol was followed. Is that right?---That is correct. I, I would, I'd ensure that anybody who wanted to enter into a voluntary planning agreement associated with a development application or a planning proposal were directed to the planning, the probity protocol and, and they were required to proceed by following its provisions.

20 You also referred to planning probity. What did you mean by that?---In the, in the sense of planning probity, there is a, well, it, it derives from the, the probity protocol as, as an overarching protocol and what it required was that it had a number of provisions, number 1, that council was only going to entertain the concept of voluntary planning agreements on developments which were good planning outcomes, in other words, it wasn't floor space for sale or uplift for sale. It wasn't, it was trying to set the tone very strongly that there had to be better planning outcomes, better community planning outcomes by following that, that process. To, to, to go down that path it was required that any development application or planning proposal which was,
30 which was submitted to the council for consideration with a voluntary plan agreement, usually with an offer to enter into a planning agreement, would be independently assessed by, by an independent planning consultant, usually a firm, that would look at the merits of that proposal and, and assess it and report independently of the council to ensure that there was not a – to keep, keep the proposal at arms-length.

You referred to better community outcomes.---Yeah.

40 Can you just help me understand that a little bit, really about what were the types of community outcomes that were being looked at from that part of the council? And the second thing I want to ask you is, who determined

what those outcomes or proposed outcomes would be for the council? That is, was it something that the councillors said or was it something that the staff of council said?---Right. Well, firstly, what sort of benefits, community benefits would arise. The, the best examples would be the first stage of the Rhodes West uplift, which generated what's referred to as The Connection, which is a community centre on the waterfront on Homebush Bay at Rhodes. It was a \$20 million community centre, e-library, it's got a café, it's got meeting rooms and, and it is a genuine planning – it's a community facility in that location. In addition to that, there was a
10 substantial amount of upgrades to the public domain, cycleways, footpaths, landscaping, artworks. Total benefit there was in the order of \$40 million and that was independently valued and audited by quantity surveyors and by valuers to ensure that these were true values. So that's a good example that we undertook.

Just, and I'm sure it was my questioning, and let me deal with that. But who came up with the proposal, for example, using the community centre, is that something that emanated from council or was it the applicant for the planning proposal or the development application or is it more fluid than
20 that, it comes about through a negotiation process? For example, are there lists of things that council wanted to achieve within the community, and you might get it through a voluntary planning agreement process or something like that?---Okay. The, I, I think it was a slightly more fluid process where by a planning agreement, an offer has to be submitted by the developer to the council. That's, that's the legal process. So it has to come forward as an offer. The basis of that offer would be a result of the developer looking at local needs. That could be a result of looking at the, the published community plans issued by council and, and interrogating staff, possibly councillors as to what does this community need and often the, the – not
30 often, sorry. The draft agreements went, so this is to answer the second part of your first question.

Sure, yeah.---The draft agreements would go on public notification so that the community would be involved in assessing whether or not, sorry, assessing whether they had a good or a bad or no opinion about that proposal.

So to understand, all draft voluntary planning agreements would be, what, exhibited or provided to the public for comment?---That's correct.
40

Would those comments, good, bad or indifferent, also be provided to the independent assessor to take into account in overall assessment of whether the agreement's terms were acceptable or - - -?---That's correct. Yes.

I see. Just going back, before I forget about it, the probity protocol that you referred to before, is that a publicly available document?---Yes. It was published on our council website.

10 Do you know whether its terms were updated at any stage during your employment? That is sometimes a document's published and then feedback's given about the process and you update it all. Do you know whether that occurred at all?---I just can't recall whether that happened or not. If there was a change to the legislation, obviously it would have been reviewed and updated. But I, I can't give you a specific on that one.

I just want to keep, a few more questions about planning agreements if you don't mind.---Yes.

20 Maybe you've covered this already but I'll ask it again. Are you able to assist us with what types of benefits might make a – if this is the case – make an unacceptable development acceptable?---Right, okay, if an unacceptable development. The basic principles were that we have floor space and height controls embedded in the LEP, and a planning proposal associated with a development application would be seeking to increase the floor space ratio or the height to, to gain greater floor space for that development. Now, at face value, if a development came forward asking for a floor space or height in excess of the LEP, that would simply be refused on their, on their, on their merits. They're just, they're not acceptable. In the event that a development was submitted which added floor space and
30 height for a residential project, and the, in those, in those instances a voluntary planning agreement might well suggest that a contribution be made to the council, to the community in the form of affordable housing, and that did happen on a number of occasions. So then the question arise, is this a good, apart from the benefit that comes by having some affordable housing to, to put recipients in, is this a good planning outcome? Is it a positive or a negative? And there's ways of assessing that, and that's, that was outsourced again to an independent assessor to determine whether that was good or bad. Often it was accepted but on occasion it was also deemed
40 to be unacceptable and refused.

I understand that. So to the extent that an assessment was undertaken of, I call it the trade-off or the benefits flowing both ways, one to the developer, one back to the council, that was undertaken by the independent consultant to the council that's - - -?---That's correct.

Are you able to help me with whether the independent consultant's view was generally adopted by council when it came back? So, for instance, it's assessed and they say, "Yes, we agree it provides the benefits. It would be beneficial to council," or "No, for these reasons," do council then generally
10 accept that or - - -?---My, my recollection is that the council always accepted that recommendation.

THE COMMISSIONER: Can I just inquire about, I think you were addressing a situation where there may be an application for a residential development that does propose exceeding FSR or height controls - - -?
---That's correct.

- - - but that such an application might be considered against what form of VPA might be offered with the application. Did I understand you to say
20 that?---That it could be refused, you say?

Well, that it might be entertained depending upon what was being proposed by way of a VPA. Is that what you said?---So, Senior Commissioner, the, the, where the matters were independently assessed, they could be rejected on the basis of a bad planning outcome. I don't recall it ever being rejected on the basis that the offer, in the terms of what was offered in the VPA, was unacceptable. The, the planning consultant would more stick to the planning merits of the proposal.

30 Yes, yes.---Yes.

So you were dealing with the situation, as I understood what you said, with a proposed development for a residential development.---Yes.

If its proposal exceeded FSR or height controls or both in any respect, it would not be entertained, is that right, or not - - -?---Well, what I was - - -

- - - or is there a qualifier to that with residential development?---Senior Commissioner, with, the, the general provision was that it was not, not
40 considered acceptable. Having said that, the, the Act makes provision or, sorry, the LEP makes provision under clause 4.64 variations to those

controls, that's, that's a mandated provision within the LEP. So the application itself is not, it doesn't become prohibited development because of the nature of the clause in the LEP, it, it must be considered by the council but it, it certainly would not be considered or, or invited by council to vary it just because the applicant applies for it under those circumstances. So those, those sort of variations to floor space and, and heights where accompanied by a voluntary planning agreement which, which is contemplated under the Act as, as a proper matter for consideration, would be considered, whether that was a good outcome, considering all factors.

10

Good outcome globally, yes - - -?---Globally, outcome - - -

- - - but it may still be of concern to some that a proposed residential development would exceed, for example, height controls but taking a more global view, so, well, that may be so and it's not a good look - - -?---Yes.

- - - but if there's a community residential proposal for a VPA, then it's going to get through?---Well - - -

20

That sounds to me as though it's compromising the principle that lies behind or underpins controls such as FSR and height controls.---If I could say, Commissioner, there, there is, I can recall instances where applications were refused, regardless of whatever was on offer because it was considered that was just a bad outcome, planning-wise, in terms of the building form. And so that, that was that reason for that planning protocol because your reservations are absolutely correct. That was the same reservations that the council itself had, that it did not want to be seen as floor space for sale under any circumstances, so those, those matters were independently assessed, thank you.

30

Thank you.

MR DARAMS: Now, I've been asking you about the negotiations for voluntary planning agreements. As I understand it, they were negotiated between an applicant or on behalf of an applicant and council staff. During, your employment, did councillors have any role to play in the negotiation of the terms of a voluntary planning agreement?---No. The councillors did not get involved in those negotiations. It was done through the general manager, with, with whatever technical advice he needed to assist his

40

determination.

Could you just help me out with, I guess, the formal process after the agreement terms had been reached, so, for example, you've got the negotiations between council staff and the applicant, input from the independent consultant. Once the parties had all reached agreement on the proposed terms, what happened then? Was the agreement or the proposed terms put to council for its resolution or consideration?---The, at that point, a, a draft agreement was put together and it was put on public notification, together with the draft development application or draft planning proposal. The draft planning proposal, of course, had another step in it, had to go
10 through Gateway to, to get to that stage, but, yeah. The general, it was put up for general comment to the committee and to make sure that there was transparency in what was on offer and what was being proposed building or development-wise. Ultimately, it, it had to go to council to accept the terms of the planning proposal and then the general manager would be authorised to, to finalise the, the process of having that legally finalised and, and registered on the property.

I see. Do you recall, we spoke a bit about the interaction between yourself and Mr Tsirekas. Do you recall whether Mr Tsirekas had discussed or, I'll
20 say intervened but I don't mean that in a pejorative sense, but discussed the terms of any planning agreements that you were involved in negotiating during your time at the council?---I don't recall being involved in any conversations about the, the terms of any agreements. Mr Tsirekas would be interested in these major projects and the, the overall progress of them but certainly not in terms of the negotiated outcomes.

Just lastly about the probity principles and the process of negotiating voluntary planning agreements. Given your role in that overall process, are you able to offer any view that you had about whether the probity principles
30 adopted by the council were useful or added value to the process?---I thought they were essential to the process, absolutely.

I want to just ask you a couple of questions about the annual disclosure of interests. Were you required to do that during your employment?---Yes.

Just based on your experience, did you find the process of compiling the annual disclosures time consuming at all?---No. I probably spent 15 minutes per year going through it. I would look at the previous year's return. My circumstances didn't change greatly year to year so I would
40 update as necessary but it didn't take long to do that.

In terms of looking at the previous years' disclosure, did you retain a copy of your previous years or did you go and ask, for instance, the general manager or some other council employee for it?---The procedure at Canada Bay Council was to give myself a copy of the previous year's submission.

So was there a process in place where each year you were reminded or asked to complete the disclosure for that year, or for that relevant period of time?---Yes.

10 At or about that same time you were also provided your previous year's disclosure to assist you in that process, is that right?---That's correct. Yes.

Thank you. I want to ask you a couple of things about some specific matters now, if I might, Mr McNamara. Can I ask that the witness be shown volume 10.1, page 290? Now, I'll just ask you, Mr McNamara, could you look at this email that you sent to Mr Tsirekas on 9 September, 2016?---Yes.

20 Now, just have a look at that for me, if you don't mind.---Yes.

Now, Mr McNamara, I don't know whether you recall, but at this period of time Mr Tsirekas wasn't the mayor. That is, on 9 September, 2016.---Right.

30 So the first question I had is are you able to assist us as to why, when he wasn't the mayor, you were providing him with this information?---The reason I provided that was because over the years he'd had this process of seeking this – people would go to him for information. He would chase up a list of matters and go back to them with their responses. I, I can see that he's asked Narelle Butler in the first instance to provide that information. She's obviously referred it to me "Should I answer this information?" My view was that if we don't answer it, he'll be a bit of a pest and just keep asking for it. So let him know what is, what could be found out by ringing council and asking the question. And that's the reason really, to, to just give him the answer so basically we don't get chased up continually.

40 I just want to ask you about a couple of those things. So in terms of the information that was provided to Mr Tsirekas, if I was, let's say, just a member of the public, I contacted Ms Butler or then I was referred on to you, would you provide that information to me as a member of the public? ---I would say yes. I don't see there's any confidential information here that advantages anybody. It uses names in there that would not be known to the

general members of the public, like first names, Christian names. But apart from that, I, I believe it's information that's in the, in the public realm.

So when you say you believe the information you gave Mr Tsirekas was in the public realm, do you mean to say that if I was, at this point in time, let's take the snapshot 9 September, if I was just a member of the public and I searched the publicly available information, presumably from council, I would be able to ascertain that information, is that what you're saying?
---Well, either you'd find it off the DA Tracker, or if you rang a member of
10 staff, you would be given that information verbally.

Even if it was a question that I was asking where I wasn't the applicant or had any relationship with an applicant, for example, for a development application, is that right? Council staff would give me that information?
---The question would be raised "Why are you asking this question?" and the answer, if the answer was "Well, I'm asking, I'm asking on behalf of the applicant," they would be given that information.

I see. The second thing you, I think you said something along the lines of if
20 you didn't provide the information, you might get pestered for it again or council might get pestered for it again. What do you mean by that?---I believe the mayor would – sorry, the former mayor would simply either come back to me or he'd go to the general manager and say, "I need to know this information. Can you please provide it?"

Do you recall any circumstances where the general manager at the time – well, it would have been Mr Sawyer at this time because - - -?---That's correct, yep.

30 Do you recall any circumstances where in fact Mr Sawyer did come to you and say, "Look, Mr Tsirekas or Angelo has asked for this information. Can you go and get it for me or look into it for me and give me an answer?"---I couldn't give you a specific instance.

Right. But do you recall whether there – whether you could give me a specific incident or not, but was that something that did occur at this period of time, do you recall?---Oh, yes, I believe that was, that was the sort of thing that would happen, and the general manager would say to me, e.g. one of these matters, "Angelo's been chasing it up. Can you please tell him
40 what's happening?"

Did you know at this time, in September 2016, whether or not it was the intention of Mr Tsirekas to run again for council?---No. I had no idea. I, I personally assumed he would do but I had no knowledge of that.

Can I ask that the witness be shown volume 1.2, page 9? I just want you to look at this email correspondence, Mr McNamara and then I'll ask you some questions about it.---Yes. Okay.

10 So you can see from the email that there's a reference to a proposed motion. I just want to show you the proposed motion now. So could the next page be shown to the witness? Once you've had a chance to consider that information let me know because there are some other pages I want to show you.---Okay.

I'll show you the next page.---All right.

20 Just before I go and ask you the, or show you the next page, do I take it that the reference in paragraph 7(c) there is really a reference to that process we discussed a little time ago about voluntary planning agreements and the involvement of independent consultants and assessment? Is that what that's directed to?---Well, that is not so much the planning merits but more that the community would receive fair value in the terms of its policies adopted at the time for what they referred to as profit share. So that involves valuation of property, valuation of uplift, quantity surveyor's assessment and the probity to – so that, that's more about the commercial element of what comes back to the community out of the VPA.

30 THE COMMISSIONER: At this time in May 2016, you were aware that Billbergia Pty Ltd was a major developer in the Rhodes and related areas? ---Billbergia, Commissioner?

Ah hmm.---Yes, yeah. I knew Billbergia.

Many of their developments were high-rise residential, mixed-use properties?---Yes. Yes, Commissioner. Yes.

40 And do you know in this case, or do you recall what sort of uplift in floor space they were seeking as referred to in paragraph 7(a)?---Mr Commissioner, I - - -

I'm not expecting you to remember, I just thought you might have some recollection. If you don't, just say so.---I, I don't recall the detail, I'm sorry. But I know it was substantial, but I can't recall the detail.

Ah hmm. Well, as at this time, had Billbergia developed what might be loosely called high-rise development in the Rhodes area?---Yes, they'd already undertaken a number of developments, yes.

Yes, thank you.

10

MR DARAMS: Yes. Could the witness please be shown the next page. Just let me know when you've finished reading that.---Right.

Yes. Perhaps if we could go back to page 9 now. So it'd be fair description, Mr McNamara, to say that that proposed motion was, in effect, related directly or solely – put aside the part (d) principle point for a moment, but up to that point was directed solely in relation to the Billbergia planning proposal?---That's my recollection of it, yes, yeah.

20

This email also suggests that – well, there's a reference to, appears to be you, the reference to Tony but it suggests that you had some conversations with Mr Kenzler. Do you recall discussions with Mr Kenzler about this proposed motion or not now?---Oh, look, I couldn't go back to the specific details of any conversations on it. No, I, I can't recall that.

Right. Now, what you do see here, Mr, on this email as well, Mr McNamara, is that the email from Mr Kenzler to the councillors, copied in to yourself and Mr Sawyer, was then forwarded to Mr Furlong, do you see that?---Yes, yes.

30

Forwarded the next day, but in effect the draft or proposed motion was sent to Mr Furlong. First thing I wanted to ask you is were you aware that that had happened?---No, I, I wasn't aware that it had gone to him. I was only – so I know where the question's going but I wasn't aware that that was sent to him, no.

Now, do you know at this time in May 2016, a couple of things, you knew who Mr Furlong was?---Yes, I knew.

40

Did you know, you didn't understand that he was associated with or had been engaged by Billbergia, did you?---Not by Billbergia, no.

No. Who did you know, or did you know whether he was engaged by any particular party?---My recollection, I had meetings with Mr Furlong, associated with the I-Prosperity group who owned the, or had options on the five properties on the corner of Mary Street and another street. It's a smaller, they, they were the other smaller developer of that Station Precinct.

10 We've received some evidence, Mr McNamara, that as you can see the proposed motion was sent to Mr Furlong, and Mr Furlong proposed and drafted clauses to be included in the proposed motion. Now, first question is were you aware that Mr Furlong had done that?---I was, I was aware of that when I saw the amended motion.

But not at this time in May 2016?---Not, not when this, at this time, no.

20 Could I ask that the witness be shown page 17? Just before I ask you some questions about this, this amended motion, could you think – I just want to ask you, in circumstances where Mr Furlong was engaged on behalf of I-Prosperity, secondly, the proposed motion was related or directed to the Billbergia planning proposal, could you think of a circumstance why it would be, or in what circumstance it would be appropriate or acceptable for Mr Furlong to be provided with a copy of the proposed motion? Not from the councillor who had prepared it.---My recollection was that the report leading up to the recommendation, the original recommendation from staff, referred primarily to the Billbergia planning proposal and it also made reference to the I-Prosperity submission which had come in, as I recall, quite recently. And, as I recall, the recommendation to council was to not deal with the I-Prosperity proposal because it was quite recent and had not been assessed in, in any detail, so that, that would be the connection.

30 So let me just understand that. So perhaps if I do it this way. If I draw your attention to paragraph or clause but let's say paragraph 9 and 10. These are the paragraphs that were drafted by Mr Furlong. I just ask you to read those.---Yes.

40 Before I ask you a question about them, I just want to go back to something you just said. You referred to I think the lead-up to this motion, there was a report from council that did touch upon or refer to the I-Prosperity planning proposal. Is that your recollection?---My, my recollection is there was a reference to it in there, even though the report was primarily about the Billbergia planning proposal.

And the recommendation or the comment by council staff at that stage, what was that, sorry?---My recollection was that it had only been received within the last, something like the last week or, or week or two, it had not been, had not been assessed as to whether it warranted support or not and therefore it was, my recollection was that it was recommended for not to be considered at this time, it be considered in the future after that assessment had taken place.

- 10 Can you just assist us, particularly those who don't know the process and the procedure, can you outline the procedure that would follow, should be or was to be followed in council, within the council process, after I-Prosperty lodged its application and you can see, just to help you here, the planning proposal was lodged or the application was lodged on, seems to be 24 May?---Yeah.

- What would happen within council after that was lodged? What's the process? And can you assist us with timing, as well, if you can?---Okay. Well, firstly, because we used another firm of consultants, from memory, it was Conybeare Morrison, who'd undertaken a master plan for that Station Precinct. And the, the report to council effectively supporting the Billbergia proposal, subject to all those provisions within the recommendation, would have followed the Conybeare Morrison review and recommendation which, which took some time. So the I-Prosperty proposal, which had only been for a week or so, had not been, had, had not been reviewed following that sort of a process back against the master plan. So what would have happened over, and it could have, to answer the second part, it could have taken a matter of weeks or months to, to undertake the review, would be to refer it to that company, Conybeare Morrison, to ensure that they reviewed it against the overall master plan for the precinct and against the, the work that had been put forward by Billbergia to, to look at the integration of those concepts over the precinct.
- 20
30

So just so I understand your evidence, I-Prosperty lodged their application or planning proposal with council?---Yes. Yes.

- Don't know whether it has, but that would have, in accordance with the usual course of events would have been referred out to Conybeare Morrison?---Yes.
- 40

That process for them to comment, initially. Is that right?---That is correct.

That process would have taken at least some weeks, potentially maybe a number of months, for the comments to be considered by Conybeare Morrison, the comments to be received back by council?---Yes.

Would the process then be council would consider the comments from Conybeare Morrison and then make a determination as to whether the I-Prosperty proposal goes up to council, is that right?---That is correct.

10 Right. So your understanding is that preceding this meeting, there was a council meeting on 31 May, 2016, council had either not recommended, or had recommended just because it has only just been received, that it not be considered by council, that is the meeting of the council, at that stage and it go through the usual process?---That was the staff recommendation, yes.

Yeah. Just could I ask you to be shown page 17 again? I just want you to look at paragraph 9 again and tell me once you - - -?---Yes.

Then could I ask that the witness be shown page 66?

20

THE COMMISSIONER: Was that 56?

MR DARAMS: 66. Now, Mr McNamara, I'll just draw your attention to paragraph 9 on the middle of the page there. Now, these are the minutes, so it's an extract of the minutes of the council meeting on 31 May, 2016.---All right.

30 You will see that a resolution was passed in these terms, substantially similar to the draft paragraph 9 that had been provided or drafted by Mr Furlong. Do you accept that it's substantially the same? But if not you can tell - - -?---I'm not sure what the difference is, if you say substantially. I see no difference.

I think there's some slight wording difference but in effect - - -? - - Well, it looks pretty similar, yes.

40 Yep. Now, just based on your experience and also give your understanding of the timeline, and when I say timeline that is the time the application had been filed by, development application being filed by I-Prosperty, did this resolution provide a benefit to I-Prosperty in terms of its planning proposal and application, and if so can you tell us what you would say the benefit

received by I-Prosperity was?---Well, I believe what it, what it does, it advances the planning proposal submitted by I-Prosperity, it, it shortens the time of consideration by weeks or months, number one. And number 2, it effectively, it implies the council is, in broad principle, supportive of the concept, even though it hasn't really received any, any assessment at all by, by the staff or its independent consultants.

Yep.

- 10 THE COMMISSIONER: As to the latter point, does that indicate that that's unusual, it's an unusual situation? I'm talking the effectiveness, effectively, as you say, indicates broad acceptance or possible agreement with the - - -? ---Oh, I think it is unusual – sorry.

- - - I-Prosperity. It is usual, yes.---I think it's unusual, yes.

- 20 Yeah. And just to elucidate that, I think it's possibly already been dealt with by you, but just for clarity's sake, why is it unusual?---Well, Mr Commissioner, it's quite a significant project, a multi-storey, high-density residential development.

Yep.---The, the council was very aware of how long and how much consideration has gone into the planning of the Station Precinct and they were very aware of the issues that we've had up until that point with, won't go into the planning issues, but they're quite complex issues about this site. And so to, to imply by that resolution that council was accepting of that proposal was, I think, without a, without a supporting recommendation from staff or its, or its advisers, was quite, quite unusual.

- 30 As I understand it, council at this time, and probably always has been, intent on demonstrating objectivity in relation to matters such as this, rather than an attitude that conveys possible interpretation and prejudgement, is that right?---Correct, yes.

All right, thank you. Yes, Mr Darams.

MR DARAMS: Just in relation to attendance at council meetings, was it normal for you to attend council meetings as a part of your duties?---Yes.

- 40 If you were to attend a council meeting, is it your or was it your experience that your attendance would have been noted in the minutes?---Yes.

Do you know whether you attended the meeting on 31 May, 2016?---Look, I can't recall off the top of my head. I'd have to look at those minutes myself.

10 Could I just ask that you be shown page 21. Doesn't identify you as being in attendance at this meeting, so I just wanted to understand whether that would, based on your experience as to how, or your experience during your employment, where you had attended and it had been noted, that would suggest that you didn't attend this meeting?---That's correct.

20 Just before I – I think I'm almost finished. Just before I do, just going back to the mayoral, call them the briefings but the weekly meetings that you had with Mr Tsirekas and Mr Sawyer and the other directors, did they continue when Ms McCaffrey was the mayor during that period of time that Mr Tsirekas wasn't?---No, we didn't have the Thursday morning meetings. From memory, we didn't have, we didn't have a regular weekly meeting. We, we probably had more ad hoc meeting as necessary with Councillor McCaffrey, from memory, but we certainly didn't have those regular Thursday morning meetings.

What about in relation to the engagement between you and Ms McCaffrey in terms of other ad hoc type meetings? So use it as by way of comparison, you had those ad hoc meetings with Mr Tsirekas. Did you have similar ad hoc meetings with Ms McCaffrey?---I'd say quite rarely.

Chief Commissioner, I note the time.

30 THE COMMISSIONER: Take the, I'll take the morning - - -

MR DARAMS: Yeah, take the morning adjournment. I believe I've finished but I just want to check something.

THE COMMISSIONER: Yes, I'll take the morning tea adjournment, about 15 minutes. I'll adjourn.

SHORT ADJOURNMENT

[11.29am]

40

THE COMMISSIONER: Yes.

MR DARAMS: Mr McNamara, could I ask that you be shown volume 1.2, page 9 again? I'm going ask you, sorry, a few more questions about this process disclosed in these email correspondences. So firstly, just focusing on Mr Kenzler's email to the councillors, copied in to you and Mr McNamara [sic]. So Mr Kenzler prepares a draft or proposed motion dealing with a particular item that was related to Billbergia. You understood that. Him, that is Mr Kenzler, or a councillor if it wasn't Mr Kenzler, providing the other councillors with a draft of a proposed motion,
10 is that something that you were aware of occurred any other time during your employment? That is councillors.---I can recall, I can recall Councillor Kenzler doing that from time to time. I couldn't give you specific instances, but if any councillor was going to do it, it would have been Councillor Kenzler. He, he, that was his interest to, from time to time, to draft a motion for consideration.

THE COMMISSIONER: I suppose it was quite open for him to do that and to forward to the other councillors a motion that he proposed to move at that meeting?---That's correct, yes.

20 Yeah. The objective in sending it to other councillors in a situation like this, I take it, would be to give them an opportunity to consider what the proposal was about so they could exercise their voting rights the next day or whenever the council meeting would deal with it?---That's correct, yes.

Yep. Thank you.

MR DARAMS: Now, we then see the next thing, or one of the things that happens next is, Mr Tsirekas, as the mayor, forwarding onto the consultant for I-Prosperty. Now, just in relation to that, were you aware of Mr
30 Tsirekas forwarding on any other, put this motion to one side, but any other proposed motions that had been sent to him previously by any other councillor?---I can't recall that happening.

Can you think of a reason why it would be appropriate for Mr Tsirekas to forward what was essentially a, if I can say this, in-house document to an external consultant, can you think of any circumstance where that might be appropriate or acceptable conduct?---I, no, I can't.

40 Right.

THE COMMISSIONER: Can I understand this further? It's quite appropriate, as I think we've just discussed, for a councillor such as Mr Kenzler to forward a proposal to a proposed motion to his fellow councillors but also to a staff member such as yourself, given the position you held at that time?---Yes.

10 But aside from sending copies to the councillors and to yourself, this would otherwise be regarded as, I take it, an in-house document, that is to say it's not for publication to the world at large or to anyone out there other than councillors or council staff. Is that right?---That would be my understanding, yes, Commissioner.

MR DARAMS: Now, just if I could ask you to go to page - - -

THE COMMISSIONER: Sorry. Just in respect of that, then, we have here, this is Mr Kinsella's motion, proposed motion, sorry. It's dated 30 May. But a copy of it is being sent the next day, 31 May, 2006, by the mayor to Mr Furlong?---Yes.

20 Well, I take it, as we just discussed, sending it to other than councillors and yourself, for the mayor to send a copy to Mr Furlong, who's then acting for I-Prosperity, is not something I think you've said you've seen before. Is that right?---Yeah, I wasn't aware of that happening before.

30 So in terms of publicising the document, that is an in-house document, do you see whether it's in accordance with proper practice or process or not, for a copy to be sent on 31 May to the developer's representative, that is I-Prosperity's representative?---Through, Mr Commissioner, I, I'm not aware whether it's in breach of the Local Government Act. It's, it's, it's not a formal notice of motion that would go on an agenda. It is effectively a motion that comes off the floor, which councillors are entitled to do but it's been, if you like, circulated to an interested party prior to that, so it, it takes on a, another characteristic that it's, it's not a, it hasn't been published as a, as a notice of motion. It's, it looks like a spontaneous notice of motion but, in fact, it's been informed by the, by, by an affected party, so there, there may be some ethical issue with that. But, as I say, I'm not aware it's, it's an illegal process. I don't know if it's actually addressed in the Local Government Act - - -

40 I'm really addressing it in terms of probity issues as to whether it's appropriate in your judgement and your experience - - -?---I think that's

where it goes in terms of a question of probity. Is it, is it an appropriate action to follow? Yes.

All right.

MR DARAMS: And if I understood your evidence correctly, based on your experience, you would say it wouldn't be an appropriate action to do this, given the motion was directed to Billbergia's planning proposal. That's right?---That's correct and, effectively, the report and recommendation was
10 not in support of that action.

In effect, on one view, it was circumventing the council staff's recommendation at this stage?---Well, that's what it did, yes.

Just if I could ask you to have a look at page 15. Now, I take it from your evidence, you don't know one way or the other whether or not this actually occurred but on one interpretation of the email coming back from Mr Furlong to Mr Tsirekas was there was some conversation with Mr Furlong, sorry, between Mr Furlong and Mr Tsirekas. Now, you don't have any
20 knowledge of whether that occurred?---No.

Likewise, could you think of any reason why, at this stage in the process, and when I say the process that is I-Prosperty having just lodged their application or within the preceding seven days, why the mayor would be having conversations with the engaged consultant of I-Prosperty? Firstly, any circumstance why the mayor would be doing that?---Oh, I'm not aware of any circumstances or any reason for that.

Yeah. Secondly, why there would be any proper basis for the mayor to be
30 having conversations with Mr Furlong, the engaged consultant, on behalf of I-Prosperty in relation to the draft or proposed motion?---I, I have no knowledge of, or what the reason for that is.

Would there be any proper basis for Mr Tsirekas to do that based on your experience at this time, that is within the short period of time that the application had been filed?---No. I'm not aware of any basis at all, no.

No. Chief Commissioner, I don't have any further questions for Mr McNamara but there is, as I understand it, some applications to cross-
40 examine.

THE COMMISSIONER: Yeah. Mr Leggat, you make application to cross-examine Mr McNamara?

MR LEGGAT: Yes, Chief Commissioner, that's correct. Yes, we did that in writing.

THE COMMISSIONER: Yes. I have your request. I grant leave.

10

MR LEGGAT: Thank you, Chief Commissioner. Mr McNamara, my name's Leggat and I'm appearing for Mr Tsirekas.---Okay.

You're aware, aren't you, that one of the objects of the Environmental Planning and Assessment Act is set out in section 1.3(j) and it states "To provide increased opportunity for community participation in environment planning and assessment"?---(NO AUDIBLE REPLY)

You're nodding.---Yes.

20

You recognise that as one of the important objects of the Act, don't you? ---That's my understanding, yes.

And when you were speaking earlier about why you and the staff would provide information to members of the public, you said, in effect, people would try and run the DA Tracker, or a member of staff would give it to them. That's an example, isn't it, of council officers and you, as a director, complying with the object of the Act, to provide increased opportunity for community participation in environmental planning and assessment matters, that's right, isn't it?---I, I believe that's part of it, yes.

30

Yes. The NSW Government in recent years has taken that community participation even further since 2016 by use of what's described as the Planning Portal. You would agree with that, wouldn't you?---Yes.

The Planning Portal is a publicly available internet site - - -

THE COMMISSIONER: Mr Leggat - - -

40 MR LEGGAT: Yes.

THE COMMISSIONER: I don't think it was in existence until recently, is that right?

MR LEGGAT: 2020, was it, it came about, Mr McNamara?---Yeah, it wasn't around, it was just starting, sorry, when I finished in 2018. So it came in after that, in its, in its current guise with the current access, yes.

Yeah.

10 THE COMMISSIONER: Mr Leggat, I could be wrong, but my recollection is it may have been about two years ago or something of that kind that, and I think that marries in with what Mr McNamara I saying.

MR LEGGAT: Yes. Look, I think that's right.

THE COMMISSIONER: But don't take that as being absolutely correct but that's my recollection, that's all.

20 MR LEGGAT: Yes, yes. And that requires every single development application to be lodged on the Planning Portal so that any person in New South Wales, or in fact anyone in the world, can see a development application that's been applied for and can track the assessment process through, that's so, isn't it?---That is, that is correct, yes.

30 Yeah. Now, in accordance with that opportunity for community participation, that's why motions that, to go before council are put on the council's public website so that members of the community can see what business it is that the councillors are thinking of transacting, that's so, isn't it?---Yeah, the reports and the recommendations go up on the, for public information, that's correct.

Yep. And in addition to that, proposed motions are published on the publicly available website, aren't they?---Notices of motion go up on that because they're part of an agenda, that's correct, yes.

Yes. So a member of the public can look on the council website, see that there's a meeting coming up in a few days' time and can look at the - - -

40 THE COMMISSIONER: Sorry, Mr Leggat.

MR LEGGAT: I'm terribly sorry.

THE COMMISSIONER: Are you talking about the position as at 2016?

MR LEGGAT: Yes.

THE COMMISSIONER: You say – yes, all right.

MR LEGGAT: Yes, that was the position in 2016, wasn't it, Mr
McNamara?---That's correct, yes.

10

Yeah. And the reason why the text of proposed motions is available to the public is, I suggest to you, consistent with the object of the Environmental Planning and Assessment Act that I took you to. That's as you understand it, isn't it?---It is my understanding, yes.

20

And in order to provide members of the public with information about motions or proposed motions or motions that may be coming off the floor, you would accept, wouldn't you, that it's entirely orthodox and in fact good practice to provide the public with as much forewarning about motions that may be raised at a council meeting. You'd agree with that, wouldn't you?
---Sorry, just run through that question again, if you don't mind.

Consistent with the aim of providing increased opportunity for community participation - - -?---Right.

30

- - - there is a procedure whereby the text of motions are put on the website so that, on the council website, so that community members can be informed of the council proposed business?---Well, that's, you're referring to notices of motion. They are printed and they go on the website for the, for the public.

Yes.---The motions that come off the floor obviously are only recorded in the minutes.

Yes.---There's no pre-warning or pre, pre-notification of those sort of more spontaneous matters - - -

Indeed.--- - - - which are at the end resolved by council.

Yes, indeed. And I'm putting forward for your consideration and something of a lament that that actually occurs because that has the capacity to defeat the full involvement of the public, doesn't it, where a councillor - - -

THE COMMISSIONER: Mr Leggat, I reject that question in that form.

MR LEGGAT: Very well. Very well. Let me come at it this way. A motion that comes off the floor has the capacity to not be scrutinised in advance by members of the public in the same way that a more formal
10 motion is advised to members of the public, do you agree with that?
---That's correct, yes.

Yeah, and you'd see that as something of a pity, wouldn't you?---Look, I, I don't really have a view on it. It is, it is a legal right of councillors to put forward motions in response. I see it as an element of democracy, if you like. There is a debate on the floor and then matters come out of that and a, and a motion or an amended motion is put forward. So I'm not sure I'd use the word "lament". I, I don't write books on democracy. I simply respond to the rules as they applied at the time.

20

Yes. You think, do you, that it could be a good recommendation of this Commission that, in future, motions that may come off the floor ought be subject to public scrutiny by publishing those on the website? There ought to be an obligation on a councillor to provide, say, 24 hours' notice of an intended motion - - -

THE COMMISSIONER: Mr Leggat, how can that, how can you - - -

MR LEGGAT: - - - rather than keeping that from the public?
30

THE COMMISSIONER: Mr Leggat, how can you put that question when the witness is explaining that it's a right associated with the democratic process? Are you suggesting that the democratic process be changed in that respect? Is that what - - -

MR LEGGAT: Yes. I'm suggesting that the process of taking motions from the floor is inconsistent with the fundamental object of the Environmental Planning and Assessment Act to provide increased opportunity for community participation.
40

THE COMMISSIONER: What do you say about that?---Look, I wouldn't, I wouldn't go that far. I do respect the right of councillors to hear all the information, hear the debate, hear from applicants and objectors and then make an informed decision. And I believe your proposition of then extending that determination by another fortnight is - - -

MR LEGGAT: No. I said 24 hours.---I beg, well – sorry. By, by extending that process, I think is, to me, it becomes more bureaucracy and red tape. I think there's a need for the, the chair, which is often, usually the mayor, to, to make a determination on whether this is an appropriate motion that comes forward and I think council has, has a, an appointed duty to make determinations of matters, rather than having them strung out in a, in a further, lengthy process. So, as I say, that's just an opinion. I, I wouldn't, I wouldn't be strongly recommending that the, the behaviours of council are so constrained that they cannot do anything without that further extended public notification process.

Well, I think we're at cross-purposes. I'm not suggesting that there would be delay in the process. What I'm suggesting is that 24 hours prior to a meeting, a councillor would tell the public what the councillor was proposing to have the other councillors vote on, so that the public can be informed.---Well, with respect to, Mr Commissioner, matters arise through the debate and I think that's totally appropriate. There, there is a, often a, a rigorous debate around the elected people and an outcome, a, a motion may go through one or more amendments along the way and then it is determined by those present. So it would be impossible to give 24 hours' notice of that unless you stopped the process then and put it on public notification and brought it back which would, no doubt, knowing councillors, end up in more debate before the matter was resolved.

It's your experience, isn't it, that where councillors have a political alignment, for example, a Greens councillor, that a Greens councillor may well seek input from a barrister, sometimes Senior Counsel, sometimes people like Tim Robertson, to assist him formulating a motion to be taken to council. If it's not unheard of, is it - - -

THE COMMISSIONER: Mr Leggat, I reject that question.

MR LEGGAT: May it please, the Commission.

THE COMMISSIONER: Mr Leggat, you've estimated 15 minutes. You've almost used up your 15 minutes on this one topic. The witness has, I think, very frankly made clear his position. Now, do you want to - - -

MR LEGGAT: All right. Let's move on, then.

THE COMMISSIONER: - - - persist in this or not?

MR LEGGAT: No, look, it's the subject of submissions, I would have
10 thought, yes.

THE COMMISSIONER: Well, I was going to say, it really is a matter for submissions.

MR LEGGAT: Yes. Let's move to something else. Mr McNamara, you were very familiar with the Rhodes Station Precinct Master Plan in 2016 or thereabouts, weren't you?---Yes.

And, Chief Commissioner, as you know, this is Exhibit 19. The approach
20 taken in the Rhodes Station Precinct Master Plan was an approach formulated by Conybeare, the consultants to council. That's right, isn't it? ---They, they were responsible for drafting that master plan at council's direction, yes.

Yes. And would you agree with me that the Rhodes Station Precinct Master Plan can be described as taking a whole-of-precinct approach to the Rhodes Station Precinct?---That, that was the intention. Correct.

And a whole-of-precinct approach, you'd describe as a very orthodox
30 approach, wouldn't you?---I think so, yeah. That would be my understanding, yes.

Another objective of the Environmental Planning and Assessment Act, section 1.3(c) is "to promote the orderly and economic use and development of land". A whole-of-precinct approach is consistent with that object, isn't it?---That's correct, yes.

One consequence of a whole-of-precinct approach is that if I-Prosperty
40 owns land next to Billbergia or in the vicinity of Billbergia, and is part of a precinct that a whole-of-precinct approach means that an I-Prosperty planning proposal and the Billbergia planning proposal will ideally work in

harmony to provide a whole-of-precinct approach, do you agree with that?
---Certainly.

Yeah. And accordingly the time benefit that may be provided to I-Prosperity is simply a consequence of the coordinated whole-of-precinct approach, that's right, isn't it?---Sorry, just run that one again.

10 The whole-of-precinct approach requires landowners like Billbergia and I-Prosperity to ideally join in together so that there's a whole-of-precinct approach. Agree so far?---Yes, that's correct.

So the time benefit accruing to an adjoining owner like I-Prosperity is simply a consequence, some might say an inevitable consequence, of a coordinated whole-of-precinct approach. That's right, isn't it?---I'm not clear really what you mean. If it means not doing it on an individual basis but trying to get a bigger picture together, that's, that is the purpose of that, yeah, to, to save wasted time and effort on a block-by-block or lot-by-lot basis, yes. Yes, yes.

20 You don't leave people behind, so to speak, you put them all in - - -

THE COMMISSIONER: Mr Leggat, where are we going with this issue and where is it on your list of issues?

MR LEGGAT: That's the issue about - - -

THE COMMISSIONER: No, well, where, which paragraph number?

30 MR LEGGAT: Commissioner, I don't have that in front of me, but it's - - -

THE COMMISSIONER: Well - - -

MR LEGGAT: It relates to - - -

40 THE COMMISSIONER: I can't see it. There's three paragraphs. You've sought leave. You said it would take about, around 15 minutes and I can't see any of the items set out in paragraphs 1 or 2 or 3 entitling you to go down this path. I think the witness is – I've refrained from interfering so that you could try and develop the proposition or point you want to make, and I think the witness has done his best, given the limited questions that have been asked. But it's not, you haven't sought leave on this topic, at

least not according to the copy of your request that I have here in front of me. And this is not done for nitpicking reasons. It's so that these public inquiries can finish within the foreshadowed time. It's not in your document that I have in front of me, at least not the copy I have.

MR LEGGAT: My recollection – I don't have, unfortunately, have the document in front of me. My junior - - -

10 THE COMMISSIONER: No, is that right? Is that right? That's all I'm asking you.

MR LEGGAT: No, I understand that.

THE COMMISSIONER: You should have a copy of your own document. Would you pass a copy down to Mr Leggat?

MR LEGGAT: Thank you. Ms King, as you know, has COVID and is not here. She's the person who's been dealing with - - -

20 THE COMMISSIONER: Well, has Mr Leggat been provided with a copy?

MR LEGGAT: We're trying to contact, get the document from Ms King. Thank you. Chief Commissioner, the topic identified as 2(d), the process of securing a Gateway Determination, and then the 3(d), the affirmative case that the Gateway Determinations are determined by the minister and not within the control of the council, that's where this cross-examination is going in relation to the - - -

30 THE COMMISSIONER: Go straight to the Gateway Determination point, then.

MR LEGGAT: Very well. I'll return that. Each planning proposal requires a Gateway Determination, correct?---Yes.

Billbergia planning proposal in 2016 had a Gateway Determination?
---Correct, yes.

40 I-Prosperity's planning proposal needed to obtain a Gateway Determination at some stage, didn't it?---That's correct.

As part of a whole-of-precinct approach, it would be entirely orthodox and appropriate for both Gateway Determinations to proceed in a consistent and harmonious fashion, you agree with that?---Well, that would be the ideal, yes.

10 All right. Consequently, any time, benefit or advantage that I-Prosperty made and obtained in relation to having its Gateway Determination dealt with sooner rather than later was simply an inevitable consequence of the coordinated whole-of-precinct approach. Do you agree with that?---Well, if you're referring to the resolution, I disagree. The council had to consider the planning merits of that proposal. It would have been accompanied by an offer to go into as a VPA and these are matters that the council needs time to consider. And also whether the proposal does or does not fit within the master plan, which was a council creation, these are matters that had not been undertaken and that, that was the reason, in the original recommendation, for proposing that the matter be deferred until that sort of investigation could be undertaken.

20 Let me move on. Mr Tsirekas has never been to your home, that's correct, isn't it?---Never been to my home, no.

And similarly you have never been to Mr Tsirekas' home, have you?---No.

30 In relation to 231 Victoria Road, you were aware during your time at council that the laundromat in Victoria Road had been the subject of concerns by the EPA about contamination and that the contamination that was leaking or plumbing from the laundromat was something that had the real likelihood of effecting other properties, including 231 Victoria Road. Do you agree with that?---Yes, yeah. It had been investigated. Yeah.

Yeah. Do you think it was a breach of probity for council not to advise a prospective purchaser of the contamination and thus the effect on the value of 231 Victoria Road?---Look, I, I couldn't comment whether it was a question of probity because I knew the remediation had been undertaken. I was aware of that sort of investigation, and whether the council property was still effected or not by that historical contamination, I, I couldn't advise.

40 Yes.---It may, it may not have, may not at that stage have been listed on a, the, what was it called, the 149 certificate.

Yes.---There's a new name for it now. I, I'm just not aware what it was at the time of the sale, whether it was listed on the certificates or not and I would, I would relate the probity question to whether or not it was legally identified on that property certificate.

You may not be aware of this, but I'll ask you to assume that when one looks at the three valuations that council obtained in relation to 231 Victoria Road, the valuer assumed that there was no contamination issue and that's stated expressly in the valuers report. I'd just like you to assume that. You
10 accept, don't you, that if the valuer had been informed of the contamination issue, that is likely to have adversely impacted the amount of the valuation in that it would likely produce a lesser value. Do you agree with that?

THE COMMISSIONER: Just before you answer that question, are you in a position to answer that question?---Mr, Senior Commissioner, I don't think I am in a position to answer the question because I, I don't know whether it was still considered to be contaminated.

Well, have you ever been a valuer?---No. I'm not a valuer, no.
20

MR LEGGAT: Let me – very well. You're aware aren't you, that the 231 Victoria Road development was approved in due course by the relevant planning panel and not by council?---That's correct, yes.

And that was consistent with the approach in the Environmental Planning and Assessment Act in that properties of a certain capital value, by the certain capital value, are taken away from councils and given to a planning panel?---Yes.

30 That's as you understood it?---Yep.

Have you had occasion to look at what I've described as the suite of conditions that the Planning Panel imposed on the development of 231 as a consequence of the contamination that was pluming towards 231 Victoria Road?---I, look, I honestly don't recall ever looking at those conditions. That's, that is the best of my recollection. I can't recall looking at that.

Right. It wouldn't surprise you, though, would it, that the Planning Panel would impose significant contamination conditions on a developer of 231
40 Victoria Road given the contamination at the laundromat?---Well, again, it would be subject to whatever condition the land was in. As I say, I recall

the remediation taking place and I'm not aware of the subsequent site investigations of this land. But depending on what they found, if it was, still had residents, residual contamination, it would need conditions to go on it, yes.

Yes. Are you aware of the approximate expense involved in decontaminating the laundromat site?---No.

10 The Commission's heard evidence that the cost of decontaminating the 231 Victoria Road site and complying with the DA conditions imposed by the Planning Panel was in the vicinity of two to \$2.5 million. Does that surprise you?---Oh, look, I, I really can't comment. I, I don't know the extent of it, but I - - -

MS ALDERSON: Chief Commissioner, I think the witness has answered these questions. I'm not sure where we're going. He said he wasn't aware of how much or, you know - - -

20 THE COMMISSIONER: Yeah. Mr Leggat, I don't think - - -

MR LEGGAT: All right.

THE COMMISSIONER: I think Mr McNamara has indicated the extent of his knowledge of these matters.

30 MR LEGGAT: All right. Thank you. Just before I leave that topic – now let me move on. In 2016, the capital value trigger that took a development application away from council and put it in the hands of a planning panel was 5 million or was it 10 million at that stage, can you remember?---The number 5 comes to mind but I know it did vary at some stage but I couldn't say when.

Yes. And the Planning Panels are panels set up under the Environmental Planning and Assessment Act, aren't they?---Correct, yes.

They're set up by the State Government to provide a degree of independence and overseeing and removing matters from local councils where the matters are important. That's right, isn't it?---Yes. Yes.

In the event of the Planning Panel determining to reject a development application, a proponent has an appeal to the Land and Environment Court, that's right, isn't it?---Yes.

And you're aware, aren't you, that the Environmental Planning and Assessment Act, whilst it requires the council to be named as the respondent, the actual effective party pursuant to section 8.15(4) of the Act is the relevant Planning Panel. That's as you understand it, isn't it?---Look, I haven't been too involved in appeals of that nature. I, I did understand
10 council is primarily still responsible for the, dealing with the appeal, but I'm not a hundred per cent sure where – this is the regional panel and I'm not sure what their role is in that. I haven't been involved in that situation.

All right, that's fine. Just out of fairness to you, the section 8.14(4) of the Act - - -

THE COMMISSIONER: Mr Leggat, before you go on.

MR LEGGAT: Yes.
20

THE COMMISSIONER: Where is this taking us to and how does it arise under your leave application? Your leave that's been granted.

MR LEGGAT: Commissioner, it's identified in 2(c), concerning the issue to be cross-examined, cross-examination, as to who is the consent authority for Rhodes East. So that's what I'm exploring.

THE COMMISSIONER: We can establish that by, somebody will give me a copy of the legislation, won't they, or any instrument under legislation that
30 deals with these matters?

MR LEGGAT: Yes, look, that's probably more efficient. Just do this, section 8.15(4) - - -

THE COMMISSIONER: Mr Leggat, no.

MR LEGGAT: No. Very well. Thank you. Let me move on. The relevant planning panel for Billbergia's development application and for the I-Prosperty development applications was, as you understood it, the Sydney
40 Eastern City Planning Panel, that's right isn't it?---Yes.

That entity is known as the determining authority?---Yes.

Yes.---Yes.

And “determining authority” means the decision-making authority, doesn’t it?---Exactly. The consent authority, I suppose.

Yes.---The right term, yeah.

10 Yes. And in 2016 - - -

THE COMMISSIONER: Mr Leggat, again, can’t you provide for me references to the Acts, provisions that deal with these matters, rather than asking - - -

MR LEGGAT: Yes, that might be more efficient, mightn’t it? Very well.

20 THE COMMISSIONER: Mr McNamara’s quite frankly indicated what his position on these matters is and if there’s an alternative way of dealing with it, then I’m inviting you to do it.

MR LEGGAT: Okay. Just finally, you spoke about a practice that Mr Tsirekas developed whereby he would require you to meet with him and, as I understood, other directors would also be involved and those meetings would take place in various coffee shops around the council premises?
---Yes. That’s correct.

30 Yes. You saw that, didn’t you, as a benefit to the community, to get the directors out into the community?---Yes. I have no issue with that. Yes.

All right. It’s the case, isn’t it, that from time to time when the directors were meeting with the mayor in a local coffee shop that people would come in and say to you “Mr McNamara, what’s happening with my DA for so and so?” or “What’s happening about the footpaths that you said were going to be repaired?”

40 THE COMMISSIONER: No, wait a minute, Mr Leggat. Let’s not get this confused. I understand meetings with the executive, as Mr McNamara has detailed, and the nature of the business transacted, Mr McNamara was not, by my recollection, addressing meetings in coffee shops between developer

representatives and council staff or councillors. Your question is eliding the difference, with respect.

MR LEGGAT: Look, I'm dreadfully sorry if I did that.

THE COMMISSIONER: Well, I know sometimes these things, by chance are misstated but - - -

MR LEGGAT: Yes. Thank you. I, I take that onboard.

10

THE COMMISSIONER: But I just want to make it – you're addressing now with the witness the question of meetings he gave evidence about that it became a practice.

MR LEGGAT: Yes.

THE COMMISSIONER: Amongst the executive, if I can call it that, is that right?

20 MR LEGGAT: Yes.

THE COMMISSIONER: Yeah.

MR LEGGAT: Thank you. That's it. And what I'm exploring with you, Mr McNamara, is that in practice what actually occurred was when the directors were meeting with Mr Tsirekas in coffee shops from time to time, members of the public would take that opportunity to raise questions of the directors. You can recall that happening?---No. I disagree. We would, people would go past and wave and say hello, primarily to the mayor, not to myself but we didn't really engage with people during that process. It was a little bit of showcase if you like but there was no question and answer with members of the public. We just stuck to our business and I think the intention was to be seen to be busy out there in the community, working for the community.

30

THE COMMISSIONER: Mr McNamara - - -?---But not engaging,

Sorry. Talking about coffee shop meetings, I can understand with the executive they can choose a place that's convenient and they can have the discussions you've said they had.---Yes.

40

But in your lengthy experience, is it appropriate for members of staff or councillors to meet with developer representatives in coffee shops if the developer has some matter of business that's current before council?

---Generally not, Mr Senior Commissioner. The appropriate place for that sort of business is within the council chambers. That's where we'd prefer to have it, yes.

10 The code of conduct deals with issues of influence, for example, it deals with donations. You would understand that the reasons that area's been regulated is because of this question of either the actuality or perception of influence - - -?---Yes.

- - - between developers and council, staff of councils and councillors. Is that right?---That's my understanding, yes.

20 And do you see insofar as I think you've indicated it's not, in your view, anyway, appropriate for members of staff or councillors to meet with developers' representatives in coffee shops where they've got current business with council. Is your view that that's not appropriate is again by reason of either the actuality or the perception of influence becoming an issue which impairs the actuality of objectivity by the council and impartiality?---Look, I, yes, to answer you, Mr, Senior Commissioner, I, I don't think that is the appropriate place for business meetings or, or meetings of that nature. It, it creates a different impression of the nature of the business. And council officers in the council meeting rooms is always seen, in my view, as the appropriate place for those sort of meetings to take place.

30 Thank you. Yes, Mr Leggat.

MR LEGGAT: Thank you, Chief Commissioner. Mr McNamara, you would agree, wouldn't you, that reasonable minds might differ as to whether or not the object of the Act to provide increased opportunity for community participation is, in fact, enhanced by the type of I think you described as a showcasing but you know what we're talking about, the activity of the mayor taking the council to the community. That could be seen, couldn't it, quite reasonably as providing increased opportunity for community participation?

THE COMMISSIONER: You're now referring to, are you, Mr Leggat, Mr McNamara's evidence on the practice of members of the executive meeting, whether in the coffee shop or elsewhere?

MR LEGGAT: Yes, that's it. Thank you.

THE COMMISSIONER: Fine. So that the - - -

MR LEGGAT: Yes.

10

THE COMMISSIONER: - - - as to what you're putting.

MR LEGGAT: Thank you.

THE WITNESS: So, so your question is exactly?

Well, I took you through one of the objects of the Act about providing increased opportunity for community participation.---Sure.

20 I'm suggesting to you that Mr Tsirekas was acting completely consistently with that aim of the Act in taking the directors to coffee shops and communicating with the community in that manner?---Look - - -

THE COMMISSIONER: Mr Leggat, that's a non sequitur, with respect. We're not dealing with members of the community in the coffee shop. The witness was giving evidence about the council employees themselves, meeting in coffee shops and they used to meet elsewhere - - -

MR LEGGAT: Yes.

30

THE COMMISSIONER: - - - to discuss relevant matters of business of the council.

MR LEGGAT: Yes.

THE COMMISSIONER: Well, that's a wholly different concept to a meeting, a different concept to what you're referring to and that is to engage with the community. The community's not there and they ought not to be there on the evidence of this witness. You are running together, if I may say
40 so, with respect, two different concepts, (1) you earlier explored with the witness about the Act encouraging - - -

MR LEGGAT: Yes.

THE COMMISSIONER: - - - community engagement. I get that. I understand what you're saying and the Act, indeed, as you say, provides for it.

MR LEGGAT: Yes.

- 10 THE COMMISSIONER: But the subject matter of these meetings with the executive is a wholly different concept, is it not?

MR LEGGAT: With respect, I don't think it is.

THE COMMISSIONER: You're not dealing with community. You're dealing with a group of conscientious employed staff members - - -

MR LEGGAT: Yes.

- 20 THE COMMISSIONER: - - - which includes the witness. We're talking about matters of business, which is a wholly different concept, is it not - - -

MR LEGGAT: No, with respect, it's not.

THE COMMISSIONER: - - - to community engagement.

MR LEGGAT: No, because the matters of business are matters that the community have put before council.

- 30 THE COMMISSIONER: Oh, Mr Leggat, really.

MR LEGGAT: It's a - - -

THE COMMISSIONER: This is engagement with the community we're talking about.

MR LEGGAT: Yes. No, we are. Mr McNamara's daily business, Mr McNamara, is assessing development applications put forward - - -

- 40 THE COMMISSIONER: No, no, no. Don't you address the witness. You address me, Mr Leggat.

MR LEGGAT: I'm sorry. There's no - - -

THE COMMISSIONER: I haven't ruled yet. I'm wanting to clarify your last question.

MR LEGGAT: Yes.

10 THE COMMISSIONER: Because it seems to me it's seeking to elide two different concepts and seeking the one answer from the witness, that the community engagement provisions of the Act have some relevance in terms of meetings of council staff.

MR LEGGAT: Yes. Let me see if I can clarify that, Chief Commissioner.

THE COMMISSIONER: No, no, no. Do you accept what, do you understand what I'm putting?

20 MR LEGGAT: I understand what you're putting.

THE COMMISSIONER: Now, would you please make sure that the distinction is maintained in your questioning on this subject?

MR LEGGAT: Yes, look, I endeavour to. Mr McNamara, as Director of Planning, it was your job to – amongst other things – assess development applications put forward by members of the community, wasn't it?---Yes.

30 So the business that you would be talking about in the coffee shop with Mr Tsirekas would be, would include development applications made by members of the community?---Yes.

So the business that was being engaged in the coffee shop was discussion of business matters raised by members of the community via a development application?---The, the substance of the conversation was more scheduling for appearance on council agendas, never in the merits of, or the detail of specific applications. It was more "Where is it up to?" et cetera, et cetera.

40 Right.---There was no, there was no community engagement or consultation. I use the term "showcase", you know, I think correctly. We were there, we were a bit on show but we didn't really engage or consult. It

was to be seen to be out doing something with the mayor as working for that community.

To be seen to be participating in the community, is that the way you put it? ---Oh, I didn't say that. It's not, you're not actually participating with anybody. You're just not locked up in your council office. You're out obviously working on something on behalf of the community.

10 Right. Was that partly in response to complaints that had been directed to Ms Butler's slowness in dealing with development applications? Was that something that was raised with you from time to time?---This, this was, no, this, the practice of having those meetings started before Ms Butler was ever with the council.

20 I see. Right. I presume, and correct me if I'm wrong, there's almost inevitability about there being complaints made by developers who think council staff are not dealing with their matter sufficiently quickly. It's just something that always happens, presumably.---I've never heard them argue it went too fast.

Yes, thank you. Yes, yes. And prior to Ms Butler and after Ms Butler, probably forever in the foreseeable future, there's likely to be complaints by developers that their matter is not being dealt with quickly enough, is that right?---It's part of the business. That's correct, yeah.

30 And you saw the showcasing as being partly the mayor's desire to show the community that the council staff were getting on with business, is that what you're saying?---I, I think that's what it was. That was the essence of it, yes.

Right. Thank you, Chief Commissioner.

THE COMMISSIONER: Yes. No other application for cross-examination, Mr Darams?

MR DARAMS: No other applications.

THE COMMISSIONER: Nothing further?

40 MR DARAMS: No, there's no other applications.

THE COMMISSIONER: Mr McNamara, that completes your evidence.
Thank you for your attendance. You are excused.---Thank you very much.

THE WITNESS EXCUSED

[12.44pm]

THE COMMISSIONER: Yes.

10 MR DARAMS: Yes, I propose to call Mr Peter Gainsford next.

THE COMMISSIONER: Mr Gainsford, do you wish to take an oath or an affirmation to give evidence, Mr Gainsford?

MR GAINSFORD: Affirmation.

THE COMMISSIONER: Very well. I'll have my associate, if you wouldn't mind standing and my associate will administer the affirmation.

20

THE COMMISSIONER: Thank you. Take a seat, Mr Gainsford.---Thank you, Commissioner.

Yes.

10 MS ALDERSON: Thank you, Chief Commissioner, and Mr Gainsford would like to take advantage of the section 38 declaration.

THE COMMISSIONER: Yes, very well. Thank you. Mr Gainsford, just put on the record your full name if you would?---Peter Gainsford.

20 Thank you. Mr Gainsford, just dealing with some formal matters before Counsel Assisting asks you any questions. I understand from counsel who represents you that you are aware of the provisions of section 38 of the Act, which entitles you to, and the other provisions related to your right to give evidence on objection. I understand that's your wish?---Yes.

Okay. Now, understand that you, however, must answer all questions truthfully.---Yes, I do.

And you must produce any records or document if you're required to.---Yes.

30 The protection offered by the Act by taking objection, as you wish to do, is that the evidence can't be used in future proceedings, be they criminal, civil or any other proceedings. But there is an exception to that, and that is that the evidence a witness gives can be used in the event of a prosecution for an offence under the Independent Commission Against Corruption Act, which includes giving wilfully false evidence. Do you understand that?---Yes, I do.

That is the exception.---Yes.

40 Very well. Pursuant to the provisions of the Act, I make a declaration pursuant to section 38 of the Independent Commission Against Corruption Act. I declare that all answers given by the witness, Mr Gainsford, any documents or things that he may be required to produce during the course of this public inquiry are to be regarded as having been given or produced on objection. That being the case, there is no need for Mr Gainsford to make

objection in respect of any particular answer given or document or thing produced.

DIRECTION AS TO OBJECTIONS BY WITNESS: PURSUANT TO THE PROVISIONS OF THE ACT, I MAKE A DECLARATION PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT. I DECLARE THAT ALL ANSWERS GIVEN BY THE WITNESS, MR GAINSFORD, ANY
10 **DOCUMENTS OR THINGS THAT HE MAY BE REQUIRED TO PRODUCE DURING THE COURSE OF THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. THAT BEING THE CASE, THERE IS NO NEED FOR MR GAINSFORD TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

20 THE COMMISSIONER: Mr Gainsford, Counsel Assisting will proceed with some questions.

MR DARAMS: Mr Gainsford, thank you. I just want to ask you some background information about yourself and your employment. Just can I first start with, do you have any professional qualifications?---Yes. I have a Bachelor of Civil Engineering and a Master of Business Administration.

You were the General Manager of the Canada Bay Council between January 2018 and April 2021, is that right?---That's right, yes, correct.

30 What's your current occupation?---I'm the General Manager of the Inner West Council.

Did you leave Canada Bay Council to take up the General Manager role at Inner West Council?---I did.

What about your employment before you started with Canada Bay Council?---I was at the Inner West Council, I was the Deputy General Manager of Assets and Environment.

How long were you in that position for?---Oh, that position, a little over a year but my previous employment I worked at either Inner West Council or Leichhardt Council since 1983.

And was that employment period that started in 1983, was that your employment out of university or - - -?---Oh, it was out of, I did university while I was at, I did university while I was working, so I was part-time. So I've been a senior exec since 2003.

10 2003. Now, I just want to focus on a few things about the procedure that might have been adopted in relation to planning applications and meetings and the like during your period of time firstly at the Canada Bay Council. So, I want to focus on that in a moment but firstly I want to ask whether you're able to assist us with your relationship with Mr Tsirekas during the period of time that you were the general manager of the council and explain the type of engagement you had with him, what type of matters you engaged with him on and whether there were any meetings or anything of the like that you attended with Mr Tsirekas?---In, during my employment at City of Canada Bay?

20

Yes, correct. Just the period you were the general manager.---Yeah. I would have regular routine. I took a few months to put it in place. So I would meet, I would meet casually with the mayor in his office and then I set up a routine where myself and the directors and the mayor would meet once a week. We would go through agenda items on the agenda, anything that, of note that any of the directors wanted to raise, and in particular community issues, any particular important matters that might be coming before council, any particular important council issues, so, that were relevant that we thought the mayor and the councillors should know. So

30

we'd - - -

So was this a process that you set up?---Yes.

Were you aware whether a process to that effect had been undertaken previously before you started?---Not, not my understanding. The mayor did say early on that he used to like go and do these offsite and I, and he did them occasionally previously. But in my mind, my understanding is he'd never done them at council in the way, the manner that I'd set them up.

So in terms of them being offsite, did you understand where offsite they were undertaken?---Range of – I wasn't there but it was a range of places throughout the local government area.

Did you conduct any meetings with the directors and the mayor offsite during your period of employment as general manager?---The, the only one – not as, not as an exec in that forum. The only meetings of whereof there was an advisory committee for Drummoyne Oval, and that involved senior staff, the mayor and community members, and that was in place before I
10 started and still gathered it was done in a coffee shop.

So that's the only occasion that you might have this meeting of the executive of the council and the mayor offsite.---Yeah, it wasn't the entire executive. It was myself and the assets engineer.

In relation to a particular item or matter, being the Drummoyne Oval?
---That's correct.

Right. If I can just go back to the period of time that you shortly
20 commenced with Canada Bay Council. Did the mayor, Mr Tsirekas, take any opportunity to introduce you to any particular persons?---Before my commencement?

No, at the time you commenced.---Oh, yeah, the first, the first week that I commenced, I had a heavy schedule of going around meeting staff. There were three particular meetings that happened at council with developers.

So were these meetings that you arranged or did the mayor arrange them?
---The mayor arranged them.
30

Can you tell us who those meetings were, each of those meetings?
---I-Prosperity was one meeting.

Just in relation to I-Prosperity - - -?---Belinda - - -

Yes?---Belinda Li and David Furlong.

Right. The next developer?---I, I can't remember what order, but it was in the first week, was John Kinsella and Billbergia, and I can't remember
40 whether anyone else came but it was Billbergia.

The third one?---Jacob, Prolet, but I can't remember whether it was both Pierre and Joseph or just the one of them.

Can you recall what Mr Tsirekas said to you in relation to, if anything, to arranging or the purpose of arranging these meetings?---I do recall that shortly before my commencement there was an Australia Day service a couple of days before and he did mention at that surface there were a lot of things happening in Rhodes, things have been taking a long time and there's a priority to deal with these particular matters, and they were all people that I met within the first week.

Did he identify, at this Australia Day meeting, did he identify those three or any one of those three?---Not the individuals, just talked about the precinct.

Right. Well, you said that he, Mr Tsirekas, had said that things were taking a long time. Did you ask him at that stage what he meant by that?---I, I just took it on face value.

Did you have any conversation with Mr Tsirekas after that period of time, after you had started with council, about this taking, the taking of time for matters?---Not that I recall. There seemed to be a series of meetings and, you know, concerns that it had been, things hadn't been happening and it had been going on for a long time. Just a general comment.

General comment from the mayor, was it?---Yes.

Did you come to form any view one way or the other whether or not any of these matters had taken any length of time or any inordinate length of time? ---No, 'cause I was in my first few weeks of employment. I just took it on face value and worked with the Planning Team. I let the Planning Team do their work.

Yes, sorry, I reckon I probably wasn't clear enough, and I apologise for that, but you've had this conversation with Mr Tsirekas where he said things are taking a long period of time. You then get your feet under the desk, so to speak, and you're there for, you get into your role. What I was asking was were you then able to understand or form a view as to whether there was any truth or veracity to what Mr Tsirekas had said to you just based on your experiences?---I, I don't believe that it was, there were any, any inordinate amount of time but the planning with Rhodes was very complex so it was,

you know, difficult to, for someone new to put my finger on exactly, you know, what all the issues were and what the concerns were with timing.

Now, did you, just going back to the meetings or the introductions with the three developers, were these meetings led or directed by the developers or by Mr Tsirekas, do you recall?---They were set up by Mr Tsirekas and there were a conversation had between council staff, Mr Tsirekas, it was myself, Tony McNamara, I'm not too sure if another staff member was in there and the, the developers. We just took notes out of those meetings and circulated it afterwards.

Do you recall anything specific or particular that anyone or the developers raised with you or was it more about timing issues and things like that?---It was timing, typical sort of development conversation about, you know

- - -

Want things to happen more quickly?---Yes.

Right. I think we just heard some evidence that developers didn't complain that things took, were too quick - - -?---I, I, think that's, yeah, they never ring you up to say that, "You've done that one quick," no.

Did you have any conversation with Mr Tsirekas before any of these meetings where he disclosed any knowledge or any relationship that he might have had with anyone of these developers?---No.

I take it from your answer that Mr Tsirekas never informed you in relation to I-Prosperty whether he had met any of those persons associated with I-Prosperty in China or on any occasions previously?---No.

Did you have any knowledge during the period of time that you were engaged as a general manager that Mr Tsirekas had travelled to China, Shanghai and had met with any persons on behalf of or associated with I-Prosperty?---Not that I'm aware of.

Just going down to the Prolet company and the Jacobs. I think you indicated Mr Joseph Jacobs or Mr Pierre Jacobs. Did Mr Tsirekas ever disclose to you at any period of time that you were the general manager, of any relationships that he might have had with either of the Jacobs - - -?
---No, he didn't.

No. What about in relation to Mr Chidiac? Did Mr Tsirekas inform you or disclose to you any particular relationship he had with Mr Chidiac?---No, he didn't.

Did you have any engagement with Mr Chidiac during the period of time that you were general manager?---I'd met him once or twice early on in my employment.

10 Can you recall how that came about? Was he introduced to you by Mr Tsirekas or was it at a council event?---It would have been at a, some sort of council event, then introduced by - - -

By Mr - - -?--- - - - yeah.

THE COMMISSIONER: Sorry? You said a councillor would have introduced you?

MR DARAMS: Mr Tsirekas.

20 THE WITNESS: Mr Tsirekas.

THE COMMISSIONER: I see.---Yeah.

Thank you.

MR DARAMS: Do you recall now how Mr Tsirekas introduced Mr Chidiac? Did he - - -?---No, not necessarily. No. I do recall a conversation with Mr Chidiac at some time where he said that his role was, the community come to him to, about issues and he helps talk to Mr Tsirekas
30 about it.

Right. What - - -

THE COMMISSIONER: Sorry? I just didn't catch all that again. Would you just restate that?---Sorry. I do recall a conversation with Mr Chidiac who said that the community come to him about issues and he helps facilitate a conversation with the mayor or brings them to his attention.

MR DARAMS: Can I just ask you a few questions about that before we
40 break for the adjournment? Do you recall when that conversation occurred and where it occurred?---I can't, to be honest, I'm sorry. And I, I, I'd met

him a couple of times very early on and then I never saw him for the rest of my employment.

Right. Now, just going back to this conversation, do you recall anything about the words he said or the content or just the substance of - - -?---Other than, than substance.

Did you form any view based upon what he said about - - -?---Not - - -

10 - - - whether it was unusual or strange, odd?---Nuh. It would, I suppose you could say it was unusual but then I never saw any evidence of him raising a community issue with anyone or having any dialogue with council.

Can you recall whether you explored with Mr Chidiac what he meant by raising issues with Mr Tsirekas?---No, it's just a short conversation.

Yeah. Chief Commissioner, I note the time.

20 THE COMMISSIONER: Is that a convenient time?

MR DARAMS: Yeah, it is a convenient time.

THE COMMISSIONER: We'll take a luncheon adjournment and we'll resume at 2 o'clock.---Okay. Thanks, Commissioner.

2 o'clock. I'll adjourn.

30 **LUNCHEON ADJOURNMENT** **[1.00pm]**