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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION TOLOSA

Reference: Operation E17/1221

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 17 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, unless there was any other applications, we'll continue with the evidence of Mr Bartolotta this morning.

THE COMMISSIONER: Yes, thank you.

MR DARAMS: So I'll call him to the witness stand.

10

THE COMMISSIONER: Yes. Mr Bartolotta? Good morning, Mr Bartolotta. I think you took an oath on the last occasion.

MR BARTOLOTTA: Yes.

THE COMMISSIONER: I'll have the oath re-administered. There's a Bible there. My associate will administer it.

THE COMMISSIONER: Yes, Mr Darams.

MR DARAMS: Mr Bartolotta, I want to ask you a few more questions regarding the events in May 2016 leading up to the provision of the final offer on behalf of yourself and Mr Colacicco and Mr [REDACTED] for the purchase of 231 Victoria Road. Just going back to that time in May 2016, I
10 take it from your evidence on the last occasion that you and presumably Mr Colacicco and Mr [REDACTED] were keen to understand whether an agreement could be reached with council on the price for the purchase of 231, is that right?---Yes.

Did I understand your evidence on the last occasion to be one of the pressing matters in that respect was the fact that the option that your company had taken out on behalf of the, I might call the syndicate members, but yourself and Mr Colacicco and Mr [REDACTED] was due to expire on 31
20 May, 2016. Is that right?---No. It expired on 1 June.

1 June.---2016.

So is it the case that you wanted to know whether or not you could reach agreement with the council before exercising that option?---Yes.

Were there any other matters, other than the impending expiry of the option for 227, that were, I guess, pressing at this in May 2016? And when I say “pressing”, pressing you to get an answer from the council on the price for 231?---Yes. In, Chief Commissioner, now that I’ve had time to go back
30 over my records to assist the Commission correctly, I focused, I’ve gone back and focused over the month of May of 2016. So I just wanted to clarify that. So the other pressing issue was a probate, the, the probate for the daughters of the deceased had a two-year time period and that time period expired on 27 July, 2016. The, the issue there was, for us, was that if it wasn’t completed by 27 July, 2016, a CGT tax of \$150,000 would have to be added to the price, purchase price.

Was the \$150,000 in CGT, was that made a term of your agreement with the vendor of 227, was it?---Well, when we asked for an extension of it, they
40 wouldn’t give us any further extension of the option.

Sorry. I was just focusing on, just so you understand, I'm focusing on what matters were pressing you and Mr Colacicco and Mr [REDACTED] in May 2016 to get a position from council on the purchase price of 231. The first thing I had suggested or understood was the expiry of the option granted to your company to purchase 227 and that was to expire on 1 June, 2016.---Correct.

The second matter, I then asked you more and the second matter you've raised is the CGT applicable to the vendor, or payable by the vendor if the contract wasn't exchanged or completed by - - -?---Completed.

10

Completed by 27 July - - -?---Yes. 2016.

2016.

THE COMMISSIONER: 26 July, was it?---27 July.

27.---27 July, 2016.

MR DARAMS: So then I think you said something about, this is my interpretation, you asked the vendor if you could extend the option that was due to expire on 1 June. Is that right?---Correct.

20

When did you make those inquiries with the vendor?---It would have been sometime in May.

Sometime in May?---Yes.

So you said that you went back, I think if I understood this correctly - - -? ---Yeah.

30

- - - you went back to try and assist the Commission and looked at your records?---Yeah.

Was there something in those records that allowed you to recollect now this event, the event being you asking the vendor of 227 - - -?---Yes.

- - - whether they might extent the option?---Yeah, extend the exchange, not the, the actual option. So it had to be completed by 27 July, with no further (not transcribable)

40

Sorry. Let me get it clear, and I apologise.---Yeah. Sorry.

You never had a conversation with the vendor to inquire whether they were prepared to extend the option period?---No, I did not.

That's right?---Yeah. The option period, the exchange on the option period, the exchange on, the, the, to, to exercise the deed, right, to exercise the deed was 1 June, 2016. We inquired about extending that, the exercise of the deed by, by whatever period we could, right? And they came back and they only allowed us to extend it to 20 June, 2016.

10

20 June.---2016.

THE COMMISSIONER: These were discussions, were they, or was it done by email or correspondence about - - -?---No, some, some emails - - -

- - - requesting - - -?---Yes.

- - - an extension, in effect, of the option period and their response?---To, to exercise the option, Chief Commissioner, to exercise the option, yes, yeah.

20

Yeah. Exercising the option. That's what I'm talking about.---Yes. Yeah.

Discussions about extending that time.---Yes.

Did these discussions take place orally or were they by email - - -?---By email.

- - - and who were you dealing with?---By email By the lawyers acting on behalf of the vendors.

30

Right. And you have emails - - -?---Yes, to that effect.

- - - currently showing those requests and the responses, have you?---Yes.

All right.

MR DARAMS: Did you see those emails recently when you've gone through your records again, have you?---Yes.

40

So just in terms of the negotiations over extending the exercise period - - -? ---Yes.

- - - they were between, what, you or your lawyers?---Yeah, between our lawyers.

So that's what I mean.---Yeah.

Was it you or was it your lawyers on your behalf?---It was, it, it was our lawyers, yeah.

10 Your lawyers with the vendor's lawyers?---Correct.

Right. So, again, I apologise, I want to get this clear. So the date of 1 June, 2016 - - -?---Yes.

- - - that was a pressing date to exercise something?---Correct.

The discussions that were had between the lawyers was about extending that date, was it?---Yes.

20 Now, I think I'm getting a clearer picture now.---Yeah.

When did you find, and so as a part of those discussions between the lawyers, you came to understand that the vendor might have been prepared to extend that period to 20 June?---Correct.

When did you find that out, like, when did your lawyers find out, when did you find out?---I can't remember. It was sometime in May, but I can't remember.

30 Sometime in May?---Yeah, I can't remember exactly. I can't remember every email.

So they were prepared to extend it to 20 June. Is that right?---Yes.

Did you have to pay or was there any consideration payable?---Yes. Yes.

How much?---\$12,000.

40 Right. Did you agree to, did you, when I say "you" did you and Mr Colacicco and Mr [REDACTED] agree to pay that money?---Yes.

So you did get that extension, did you?---Yes.

Had you been granted that extension before 20 May, 2006?---I can't remember exactly the date that it was granted.

Did you just look at these emails, I thought I understood you looked at these emails recently, when I say "recently" over the last few days. Is that right?
---Yeah, but it was more around the 231 emails, not in regards to 227, right?
There was, my focus was on 231.

10

But, presumably, this correspondence between lawyers was about 227?
---Correct.

So that's what I'm asking you about. You've given some evidence now about extending the date from 1 June to 20 June?---Yes.

That must have been in relation only to 227?---Correct.

20 So you must have seen that in the correspondence that you've looked at in the last few days to give us that evidence?---Yes, but I cannot, can't remember that date exactly.

So you can't remember whether it happened after 20 May or before 20 May, this extension?---This extension. I, I think it happened after the 20th.

THE COMMISSIONER: Well, can't we resolve this? Where are the emails? Have we got them or has Mr - - -?---You would have them.

30 MR DARAMS: We don't have the emails.

THE COMMISSIONER: Mr Bartolotta, do you have access to the emails so that we can clear up this one question rather than going back and forth, back and forth with questions and answers?---Chief Commissioner, I do, but I don't, like, I don't have them, like, here here.

Well, then - - -?---It's on a computer.

40 Have you any idea as to whether lawyers for - - -?---To the best, to the best - - -

Go on.---Sorry.

No, you go ahead.---To the best of my recollection, it was after 20 June.

MR DARAMS: 20 May?---Yes. Sorry.

10 All right.---After 20 May. Because at that point the critical point was we, we, from, on 4 May we still didn't know was council willing to sell, yes or no, right. We didn't get that answer apart from when Kent Walton told me on 10 May that the council would now consider selling it, right. And for us, he would start negotiation at that point. So it was all happening very quick. And I had expressed to Mr Kent Walton that the, that the option period, we had to either exercise it, right, knowing that council and have some agreement with council, otherwise we weren't going to go into the transaction.

THE COMMISSIONER: Well, Mr Darams, I think in due course emails should be collected.

20 MR DARAMS: I can move on from that. Now, when you were here on 10 May this year, you gave evidence or you've told the Commission that you had a meeting with Gary Sawyer and John Osland on 23 May, 2016.---23rd, correct.

Your evidence on the last occasion is that when you attended on 23 May, you had expected to have a meeting with Mr Sawyer and Mr Walton.
---Correct.

But when you attended for the meeting, Mr Osland was there.---Correct.

30 Mr Walton wasn't there.---To the best of my recollection, no.

You had this meeting at council's chambers, is that right?---correct.

Your evidence on the last occasion was that that meeting on 23 May was arranged before 17 May, 2016.---Yes. Upon my going back over my records again, back over my records and refreshing myself, I think it was organised around those dates. There was a lot happening around those dates. So I can't pinpoint exactly the date that that meeting was made.

40 THE COMMISSIONER: It's been put to you or suggested to you that the 23 May meeting had been organised on 17 May, '16. You're unable to say

definitely. Does that seem, are you able to say whether it seems like 17
May might be the right answer?---It might have been but, Chief
Commissioner, at the time there was a lot of phone traffic with Kent, with
Kent. I'd tried to ring him a couple of times to, because the date was
moving, because there was a council meeting scheduled for the end of May
and they're ultimately the ones that give you the yes or no. And if we didn't
have a proposal, you know, to put to council for that meeting, that, that was
the last meeting. Like, if you didn't make that council meeting, we weren't,
we couldn't further extend it to 30 June. So there was that pressing issue of
10 the council meeting coming up and, and that that's why there was a flurry of
trying to, you know, give me a counteroffer and I can come, you know, get
the decision-makers in a room, let's discuss it, and if we can reach some
type of, you know, arrangement that you would like to put to council, right,
in the first instance, let's do it. If not, let's walk away.

Okay, thank you.

MR DARAMS: So you're not clear now whether the meeting on 23 May
was arranged before 17 May?---I'm not clear, correct.

20

Do you recall how long the meeting on 23 May went for?---No, I don't.

Well, it's the case, isn't it, that you had prepared a note for your use at the
meeting on 23 May?---Yes.

That note set out what I think can broadly be described, the chronology of
offers, et cetera?---Yes, so that outlined four items. The original item was
that the valuation had come in at 1.710, right, and that that was based on
not, not having a direct easement across the property, right? So I, I
30 furnished that valuation at the meeting - - -

Sorry, sorry. That's what I want to get, I want to get through the process of what
happened in the meeting as best you recall.---Oh, okay. Yes.

I'm just starting off, you prepare the document to take with you into the
meeting.---Correct.

To in effect argue your case for the offer that you were putting in the
meeting, which was to be \$2 million.---Correct.

40

So you had prepared this document, you'd taken the document to the meeting.---Yes.

So did the meeting start on time at 3 o'clock?---I can't recall.

Best of your recollection you don't - -?---Best of my recollection, yes.

10 You don't recall it being delayed or anything. So you get in there, Mr Osland's there, Mr Sawyer's there, you don't know whether Mr Walton's there?---Yeah.

20 So just tell us, did you prosecute your case, so to speak, on your document? ---Yes. I, I, I handed over the, the valuation, right, so there was the valuation. I, and then went through each of the points. The first point, I had discussions to the effect of the valuation is at 1.710, my initial offer is 1.8 million and, and what the terms of that was. I then put in their counteroffer, item number 3 was the counteroffer of 2.25 and, and, and we also discussed the period of settlement, right, on that property being a realistic date of when DA would be approved. And then the item number 4 was my counteroffer of \$2 million with the terms that I was willing to offer.

Now, in terms of the conversation or the discussion back from either Mr Sawyer or Mr Osland, who drove that conversation or who spoke on behalf of the council?---John Osland.

30 Right. So just going back to your answer. Do you recall whether the -- sorry, I'll go back. So did he get into discussion about the valuation that you provided him, that is the valuation report? Did he look at it and have the discussion about that?---To the best of my recollection, yeah, he looked at it but didn't, didn't, didn't harp on it. He, you know, he, he - - -

THE COMMISSIONER: Sorry, who did most of the talking to the council?---John Osland.

John Osland?---John Osland, yeah.

MR DARAMS: What about Mr Sawyer, how much talking did Mr Sawyer do?---Oh, Mr Sawyer did a bit of, bit of talking.

40 Do you recall what things he spoke about?---Not exactly.

Well, whether it was exactly, do you remember the substance of the things that he was talking about?---Well, the items that we discussed, the key items were, you know, obviously I was at 1.8 million originally, they came in at 2.25. We then discussed the two, well, the three major items which were my offer of 2 million, the \$1,000 per square metre, which was a very significant part for them as well, on a lower GFA, and then finally, but most importantly as well, was a realistic time frame that the DA would be approved, and if, and also if the DA was approved earlier, we, we had an option to be able to settle earlier, bring the settlement date earlier.

10

All right. I see. Now, I take it this meeting went, what, half an hour, 45 minutes, an hour?---To the best of my recollection it would have gone probably an hour.

An hour.---Yes.

Just so I'm clear for the record, if the witness could be shown volume 4I, page 192. This is the document we've been talking about, Mr Bartolotta?
---Yes.

20

Right. Just in relation to your meeting on 23 May, best of your recollection, it went about an hour. Were there any breaks during the meeting or just sat down with Mr Osland and that and you met through and then you finished the meeting and you departed, is that right?---This is some six years ago. I cannot remember exactly was there any breaks, when exactly I departed. Like, I'm trying to make the best that I can and remember it.

Sure. But just, I appreciate there is some timing, but do you recollect whether there was any breaks in the meeting?---I don't, I don't remember.

30

Now could the witness be shown volume 4I, page 183. Mr Bartolotta, this is the extract from your diary for the period – well, there are two periods on the page, but just focusing on the period in the bottom half of the page, 23 to 29 May.---Yes.

The entry that you were referring to is the one that appears at 3 o'clock to about 4 o'clock on 23 May, that's right?---(NO AUDIBLE REPLY)

You'll have to say yes or no.---Yes.

40

Yeah, that doesn't pick up nods.---Sorry.

So when you looked at your records to refresh your memory about the meeting, this is the entry you looked at?---Yes.

Just in May 2016, were you the person who entered your entries into your diary?---Yes.

10 Yeah. Was it your practice to make a diary entry for a meeting at or about the time that you had arranged the meeting?---Sometimes. Sometimes I would scribble them down on a piece of paper and then, you know, if I wasn't at my computer - - -

I understand that. But - - -?--- - - - like, yeah, but within, within probably a number of days.

Right. But it was generally your practice to do it at or about the time. I mean, if you were at your computer, you would do it?---If I, yes, if I was at my computer.

20 But if you were away from your computer, you might make a note of it and then go back to your computer to put it in, is that right?---Correct.

You understand you, I think you made available or provided to the Commission's officers the metadata or the electronic record of your diary. Do you understand that?---Yes, I do.

30 I wanted to show you a record of that information, the metadata. So could I show you page 189, volume 4I. Now, if I'm interpreting the information correctly, and I'm sure at some stage someone will tell me if I've got this wrong, but I just want to put this proposition to you.---Yeah.

It appears from this data that in fact the entry for this meeting on 23 May was created or entered in your diary on 20 May at about 1.45.---Yes, correct.

40 Could that actually – well, firstly, does that correspond now with your recollection as to when this meeting was entered in the diary?---I can't be a hundred per cent sure. As I said, it's six years ago and I have many, many meetings and I'm doing the best I can to remember.

But one possibility based upon your practice at the time was that this meeting for 23 May was actually arranged on 20 May. Do you accept that as a likely possibility?---It could be, yes.

Yeah, based upon your practice of entering diary entries if you were at your computer or near your computer at about the time. So one possibility is that it was, you had agreed to this meeting shortly before you made the entry.
---Sorry, can you repeat that, please.

10 You had arranged the meeting with Mr Sawyer shortly before you made the entry into the diary.---To the best of my recollection, I thought I had made the meeting with Mr Kent Walton.

Right. When you say to the best of your recollection you made it with Mr Walton, is there any particular matter or event that led you to that conclusion or leads you to that conclusion?---Well, we'd had discussions with Mr Walton that we needed to get a suitable proposal ready to put up to council for 30 or 31 May, I can't, the council meeting. And I'd said to him that we needed to obviously have a proposal, you know, just negotiate this
20 before that date so that he could put it up for that meeting.

Right. Well, could I just, could I have the witness be shown volume 4H, page 160? Now, just, I took you to these emails the last time you were here but I just wanted to asked you now - - -?---Yeah.

- - - about the chronology as to how this meeting came about. So just focusing on your email on 20 May to Mr Walton.---Yes.

30 You say here, "Hi, Kent. Received your counteroffer. Thank you." Now, on the last occasion you were here, your evidence was that you received that counteroffer, that is the one dated 17 May, 2016, on 19 May?---To the best, yes.

So that would fit in with this time line of what you're emailing?---Yes.

You then say, "Do you have time today to discuss and finalise?" When you say "finalise" you mean reach agreement on price. That's what you were hoping to do on that day. Is that right?---No. There was two things that I was taken back by by that offer. It was the price and it was the settlement
40 period.

The six-month settlement period?---Correct, 'cause that was the first time a settlement period of six months had been discussed.

Sure. Yeah. Just focus on what you said to Mr Walton, though.---Yes.

10 What you were trying to do, were you not, in that last sentence is you were trying to see whether or not you could arrange a time for that day, 20 May, to meet with him or discuss or talk to him to discuss and finalise, that is, to come to some agreement on the terms?---Can you repeat, sorry, repeat that question?

What you were asking Mr Walton was whether he had time that day to discuss or meet with you or discuss to try and finalise the terms of the sale? ---But, not, yeah. By that email, I wanted to discuss it with him, right, because he'd said to me that any proposal would have to be put between him and the GM, so we would have to present it to him and the GM before, so the GM would have to be part of that process.

20 Yes. But you also say "finalise". So I guess what I'm suggesting to you is that as at 20 May when you send this email, you've received the counteroffer, you were looking to see whether or not you could agree or come to terms at least with Mr Walton on the terms of the sales, not only discuss but finalise, you were trying to reach some agreement on that day? ---Yes. I wanted to, ultimately, it was driven by Kent, so I wanted to keep, try and get to a, a number that he was going to be happy with.

Understand that. But I'm just suggesting that you wanted to do that on that particular day if you could?---I wanted to talk to him.

30 To discuss and finalise the terms of the sale?---Yeah.

On that day?---I wanted to talk to him. Correct.

Yes. Now, I want to suggest to you that you don't refer to any meeting that you have scheduled for 23 May in this email with him, do you?---No, I don't.

40 See, what I want to suggest to you is that as at this time that you send this email on 20 May, you haven't actually scheduled a meeting with Mr Walton or Mr Sawyer for 23 May?---As I said, I'm only going back to my diary

notes. It's some time away. And to the best of my recollection, I had organised that meeting.

Right.---It's to the best of my recollection.

See, what I'm putting to you is that as a different proposition or different hypothesis is that at this stage, you don't have a meeting arranged because you don't refer to a meeting for 23 May, can I just finish, I'm putting the proposition to you. I take you to a diary entry for that meeting of 23 May
10 which seems to be created on your records later on 20 May. Do you accept that I've taken you to that?---I, I accept that, yeah.

So one alternative hypothesis is, in fact, you haven't at this stage on 20 May arranged a meeting for 23 May?---Can you repeat that, sorry, again?

You have not at this stage on 20 May arranged a meeting with Mr Sawyer and Mr Walton for 23 May?---It might be a possibility, then.

Yeah. Now, then I just want to – if I could ask the witness be shown page
20 163. You then get this bounce back, if I could say that, or out-of-office response from Mr Walton to your email that you send shortly beforehand.
---Yep.

Do you see that? So you get a notice from Mr Walton which purports to say, or says he's out of office and that you should contact Mr Roberts.
---Correct.

After you receive this, do you then reach out to Mr [REDACTED], contact Mr [REDACTED] to say "Look, this is what's" – or try and speak with Mr [REDACTED]?
30 ---Yes. At, at that time it was, it was a real shock to get this out of office because we only had literally days to put a proposal together that was going to be acceptable for the council meeting. So I did, I, I would have reached out to Mr [REDACTED].

THE COMMISSIONER: Why would you have got a shock getting that message? It doesn't say how long he's going to be out of the office. It might have been an hour. And note the time it was sent, 7 o'clock (not transcribable) on Friday the 20th. So what he's saying is he's currently out of the office.---Out of office.
40

So that wouldn't have caused you any shock, would it?---Well, I wanted to talk to him on that day. So - - -

Yeah, but it wouldn't have caused you shock, would it?---Well - - -

It might have been that he was, you know, 7 o'clock, he would be there at some stage.---You're right, Chief Commissioner. The word "shock" probably was an overstatement, but it was a surprise.

10 Why a surprise? 7.02, sending this and saying "I'm currently out of the office." Why would that cause you a surprise?---Because I was, I was very eager to, to finalise this with him.

Yeah, but this email doesn't convey anything about his likely availability, does it?---No.

Except currently.---Yes.

All right.

20

MR DARAMS: So just picking up what you said, you were eager to finalise an agreement, or the terms of sale and purchase of 231 from council.---Yes.

Mr [REDACTED] and Mr Colacicco were also of the same eagerness, were they not?---Of course.

30 Yeah. So if the witness can be shown volume 4C, addendum, page 8. Can I just draw your attention to the first entry, number 1? I'm going to go through a few of these entries, Mr Bartolotta.---Yes.

It looks like pretty shortly after you receive the bounce-back email from Mr Walton you call Mr [REDACTED].---Correct.

Yeah. It appears that you didn't get through to him but you left a message. Do you see that?---Yep.

40 I want to suggest to you what you're calling him about is to speak about the fact that you had received the bounce back from Mr Walton's email account.---Yes.

Thereafter it looks like Mr [REDACTED] calls you back at about 7.48. Now, it's possible he spoke to you or left you a message. You don't recall now anyway?---No.

I appreciate it's so long ago, I appreciate all that. Then you and he have a, potentially, either a conversation at about 8.28 or a really long message by Mr [REDACTED]. Just going back again, does any of this assist you with the chronology of events? Because I'm going to put a chronology of events to you as to how this meeting came about on 23 May.---All right.

10

But it looks like at this stage you get the bounce-back from Mr Walton, you reach out to Mr [REDACTED], you want to talk to him about the fact that you've got this bounce-back and what can we do about all of this.---Yep.

Because you're eager to reach some agreement with council, Mr [REDACTED]'s eager to reach some agreement with council, and Mr Colacicco is eager to reach some agreement with council, correct?---Correct.

20 You said before that you had to get this – these are my words – but in effect you had to get this before council on, at its last meeting in May, is that right?---Yes, to the best of my recollection.

How did you know that there was going to be a meeting at the end of May? Did someone tell you that?---Through this whole process I knew that they met once, once a month. And I believe, yeah, either Frank or, or [REDACTED] would have reminded me that the, we needed to get - - -

30 So at least one of Mr [REDACTED] and Mr Colacicco was telling you during this process, probably around this time as well, "We need to get this finalised and before council by 31 May"?---Yeah. But it was before that. I mean, we knew, we knew early in May that that was, that was the, the council meeting we had to get to.

And so the potential non-availability of Mr Walton, at least in your mind, might have thrown a bit of a spanner in the works?---Yes, because Kent was the main one that I was dealing with and he was driving the negotiations, so.

40 Well, at this stage, 20 May, in fact the negotiations that you were having about the price were with Mr Walton.---Correct.

He was the council officer or employee, as far as you knew, who had the detail about the valuation on behalf of council, but also to the extent you've shared any valuations with him, that is the valuations you had received, is that right?---My valuations, yes.

Yeah, the valuation you had independently received.---Yep. Yes.

10 Yeah. Is it the case that – so to take you to the entry at number 12 there at 10.09. This looks like you in fact tried to reach out to Mr Walton yourself. See that?---Yep.

I take it from the duration it's likely you only left him a message as opposed to had a conversation with him because if you'd had a conversation with Mr Walton on this day at that time - - -?---It would have been more than 10 minutes.

I would have thought so, yeah.---Yeah.

20 Then the next entry that I want to draw to your attention, if we go over to page 9. I want to draw your attention to the entry number 37 in a moment, but it doesn't appear, at least from these records, that you actually did receive a call back from Mr Walton before 12.38 on 20 May. Do you recollect whether Mr Walton ever contacted you back?---I guess, again from the best of my recollection, he didn't.

Yep. Now just focusing on this entry at number 37. So that's at 12.38 on 20 May.---Yep.

30 It's a call, this is a record between yourself and Mr, between yourself and Mr Sawyer. So the time stamp is, when I say time stamp, the duration is 98 seconds. Now, do you recall whether or not that was a call or whether it was a really long message?---98 seconds. 98 seconds.

A minute and a half.---Minute and a half.

That's a pretty long message.---It probably would have been a long message.

40 Right. How did you get Mr Sawyer's mobile number?---I had Mr Sawyer's number.

How did you get that?---From I think one of the original meetings that we had back in, I think it was May, back in May 2015.

May 2015?---I think at one of the original meetings, correct.

Do you deny that Mr Colacicco and Mr [REDACTED] gave you his mobile number?---No, I don't deny, no.

10 Right. Did you ask Mr [REDACTED] or Mr Sawyer, sorry, Mr Colacicco for Mr Sawyer's mobile number?---I, I could have, yes.

One proposition might be that during the exchanges between yourself and Mr Colacicco and Mr [REDACTED] on 20 May leading up to this contact between you and Mr Sawyer, you've asked one of them to give you Mr Sawyer's number and that they had given it to you.---Can you repeat that for me?

20 Yeah, sure. So one hypothesis is that in fact you didn't have Mr Sawyer's number and one of the Mr Colacicco or [REDACTED] gave it to you in one of these exchanges between you and them leading up to this contact with Mr Sawyer on 20 May?---Yes. That could be -- yep, yes.

That's a likely possibility?---Yes, yes.

Yeah. Because what I want to suggest to you, what's happened is, you get the bounce-back from Mr Walton.---Yes.

You try and call Mr Walton, you've had all this contact then.---Yep.

30 You don't get any return call from Mr Walton, you go to Mr [REDACTED] and Mr Colacicco again and say, "Look, what do I do now?" One of them says "Here's Sawyer's number, contact him."---Correct.

That's more likely what happened in this scenario of events, isn't it?
---Correct.

Yeah. Then after this contact between you and Mr Sawyer, there's further contact between yourself and Mr [REDACTED] and Mr Colacicco. Sorry, just between yourself and Mr [REDACTED].---Yep.

40 Then Mr Sawyer, entry number 45, do you see that at 1.33?---Yes.

He makes contact with you. Now, again, I don't know whether you recall whether that was a 40 second call with you or whether he left you a message. Do you have any recollection now?---No, I don't. It would have been either a call or a message, I guess.

Yeah. Well, it's either one of those two. I just wanted to know whether you can remember now, given that we've started exploring some of these events.---Yeah. I can't remember exactly.

10 And they might have assisted with your memory, like when you looked at these records over the last few days, they seemed to have helped your memory.---Yeah, yep.

I just wanted to see whether this would help you now.---No.

See, what I want to suggest to you is that what's likely happened here is you get in contact with Mr Sawyer and this is where you arrange this meeting for the 23rd, because then if we go back to your diary, the metadata, you make the entry in your diary after these calls with Mr Sawyer and this
20 exchange.---I, I, upon reflection - - -

That's actually what happened, wasn't it?---Well, it could have happened.

Yeah.---Yeah. I mean, as I said it's many years ago but I, I don't deny that could have happened, yes.

Yeah. Just in relation to the involvement though of Mr Osland - - -?---Yes.

30 His involvement was a, I don't want to say shock, but it's a surprise when you turned up at that meeting on the 23rd because you didn't know that he was going to be at that meeting, is that right?---Wasn't, it wasn't a shock but I, I, I thought Kent was going to be there.

Right. You thought he was going to be there.---Yeah. Because Kent always said that the two key decision-makers were always going to be John Osland and the GM, Gary Sawyer, even in - - -

40 THE COMMISSIONER: Sorry, you said Kent was always the decision maker, is that what you said?---Yes, but ultimately we would have had to have a meeting, he said, to get final, let's say agreement with Mr Sawyer and John Osland. What, what I meant, Chief Commissioner, was if Kent

didn't recommend it, there wasn't going to be a chance of the other two,
given - - -

So Kent - - -?---If, if Kent hadn't recommended in my understanding of it, it
would have been less likely that the other two would agree to it.

MR DARAMS: Now, I want to again just ask you about the 23rd and the
meeting between yourself and Mr Sawyer and Mr Osland. I understood
your evidence before that to the best of your recollection, it was about an
10 hour?---I can't be sure. Yes, the best, to the best of my recollection.

To the best of your recollection?---Yes.

You, my words, prosecuted, this is lawyer words, prosecuted your argument
for why the offer of 2 million which you were putting to council on the 23rd
should be accepted?---Yes, along with the other terms.

The bundle of terms that you're offering - - -?---Yes.

20 - - - you went through each of those items on your memo that you created
on 23 May?---On the morning, yeah. Yeah.

And there was discussion primarily by Mr Osland with you about those
terms. Now, just, you're clear in your recollection that you had a meeting
on the 23rd. Is that right?---Yes, to - - -

Could I then just ask you to look at some records from around that time,
phone records. If I could ask you to be shown page 11 of addendum 4C?
So you said the meeting was at 3 o'clock on the 23rd?---Yeah.

30

So do you see item number 16?---Yeah.

So here's a call from Mr [REDACTED] to you at 3 o'clock. It's a 50 second
duration. Now, again, it could be a long message or you could have spoken
to him just before you went into the meeting. That's one possibility?
---Right. Yeah. Yeah.

But then we have a call from you, if I can skip down a little bit, at 3.24,
which is item 19, to Mr [REDACTED] for a duration of 24 seconds. So that's
40 likely to be a message that you've left?---Could have been, yeah.

So this is at 3.24. I asked you before whether or not there were any breaks in this meeting because I'd understood you'd said it went for about an hour or around that - - -?---Mmm.

- - - and I accept your memory of that duration is not crystal clear 'cause of the passage of time, I understand all that.---Yeah.

10 But it would be unusual, wouldn't it, to get on the phone almost halfway through a meeting to call two other persons, would it not, and that be something you might remember?---I can't remember, to be, to, to be honest but I could have made, you know, if, if that's my phone records, I could have left the meeting to ring him because, you know, we needed to further discuss matters, you know?

Well, there are a couple of other alternatives.---Yeah.

20 One there was no meeting, that's one alternative and your recollection of the events is not accurate or correct. That's - - -?---No, I don't, no, I don't agree with that. There would have been a meeting. If I, if I put a meeting in my diary, there's a meeting.

Sure. I'm just putting - - -?---Yes.

- - - different hypotheses to you, Mr Bartolotta. You don't agree with that one 'cause, to the best of your recollection, there was a meeting?---Correct. Yes.

30 So one alternative, your memory about that is faulty and there was no meeting, that's one hypothesis?---I, I don't accept that. I don't accept, if, if - - -

I know you don't accept that but it is one hypothesis. Correct?---It's a hypothesis, yes.

The next hypothesis is you had the meeting, you started at about 3 o'clock, and you concluded the meeting by 3.24, so a relatively short meeting?---It's, could have been, yeah.

40 Yeah, so that's another hypothesis, correct?---Yep.

Another hypothesis is you broke during the meeting and got on these calls with, or at least tried to call Mr [REDACTED] and either spoke to him very briefly or left a message. And then called Mr Colacicco, and it looks like you had a conversation with Mr Colacicco that's 125 seconds. Do you accept it's more likely to be a conversation as opposed to a really long message?
---I can't recall if it was a message or a phone call. Could have been, yeah.

Sure. Then at 3.00 - - -?---Could have been a discussion.

10 Sorry, then at 3.27 Mr [REDACTED] contacts you. You have a 308 seconds, five minutes, a little bit over five minutes. That's likely to be a conversation, would you agree with that? Or a really, really, really long message.---I can't, I can't remember this far back, was it a phone call, sorry, was it a phone discussion or a message.

All right.

THE COMMISSIONER: Well, the entry at 20, number 23, sorry, where are we? Twenty - - -?---21.

20

21. Is recorded as having a duration of 308 seconds. That's obviously consistent with it being a phone call rather than SMS transmission.---Yes. Yes, it could be.

But you say you have no independent recollection of that call?---Correct.

MR DARAMS: Just you also don't have any recollection of this meeting on the 23rd breaking for, well, breaking for a number of minutes by the looks of it, in order for all these calls to be made, do you?---I can't remember.

30

No, okay. I just want to make sure I'm clear about this. The proposition or hypothesis that the meeting did not occur, you reject that?---Correct.

Your recollection is there was a meeting?---There was a meeting, yes.

You're not sure now whether it was a short meeting, that is not longer than say 20, 24 minutes. Is it possible it could have been quite a short meeting?
---I can't remember, to be honest. It's a bit too, you know, to the best of my recollection, it was longer than 24 minutes.

40

Right. Well, as I understood your evidence you in effect were prosecuting – again, those are my words – prosecuting your points in terms of trying to get council to accept your, your offer, that is your offer and Mr [REDACTED] and Mr Colacicco’s - - -?---Correct.

- - - \$2 million offers. You were setting it all out.---Yes.

One would have thought that would have taken some time.---That’s why I say it.

10

Your evidence on the last occasion was that there was no agreement reached on price in this meeting, that’s right?---In this meeting?

Yes.---No.

No. Because you needed to discuss the price that you and Mr [REDACTED] and Mr Colacicco were going to offer the council because, as you had understood from this meeting, the \$2 million had been rejected.---Yes. Well, the \$2 million was rejected.

20

Yeah.---But to the best of my recollection, we did have a discussion about bringing it up to 2.1 at that, in that meeting.

Your evidence was that council might consider something around that offer?---Correct.

30

Your evidence was then, when you spoke to Mr Colacicco and Mr [REDACTED] about that, they told you, either one or more of them or both of them told you that they wanted 2.1 million, the council wanted 2.1 million, and you had to pay it to get the deal done, correct?---To the best of my recollection, correct, yes.

THE COMMISSIONER: Sorry, just to be clear about that. Are you saying that at the meeting that you believe did occur on 23 May, one of the council representatives suggested or put forward the figure of 2.1?---Yes.

40

Who was that?---I think by memory it was John Osland. It was in discussion, Chief Commissioner, so I was at 2 million and I kept on saying, you know, I was trying to gauge, you know.

Well, I appreciate you're indicating you're not certain but could it have been Mr Osland or Mr Sawyer?---Yes, it could have been.

But you can't specifically recall who, which one?---No, no, I can't.

Or whether both was talking about that.---No.

Is that - - ?---I, I can't recall.

10 You can't recall. Okay.

MR DARAMS: Now, in terms of this conversation or conversations you had with Mr Colacicco and Mr [REDACTED] about reaching an agreement between you three to put forward the 2.1 million and the additional terms, when do you – well, firstly, do you say that that was a telephone conversation or did you meet in person?---Things were happening very fast at that time so I can't remember if it was telephone conversations or a meeting.

20 Where would you be having meetings?---Usually it would be at Pymont.

Pymont?---Pymont, yeah.

What's at Pymont?---My office.

Your office at Pymont?---Yes.

Anywhere else that you had meetings?---At, in, at Mortlake.

30 Mortlake. What's at Mortlake?---I had a warehouse, I had a, a warehouse, a car warehouse and Mr [REDACTED] had his office upstairs, rented an office upstairs.

Could I just have that paragraph – sorry. Page 11 of volume 4C, addendum, be brought up again? So the possibility that you had this discussion either at Pymont, that's one possibility, is that right?---Yes.

Or at Mortlake because Mr [REDACTED] had an office there, is that right, and you have a warehouse there?---Yeah. I can't remember, because this is
40 2016, I can't remember if Mr [REDACTED] had his office there at the time because - - -

I see.---I can't remember the exact date, because his office was at Ryde prior to that.

If you had a meeting, was it usually the case it would be all three of you at the meeting, would it?---No. Not necessarily.

No. Who would be at these meetings?---Most of the time it was myself and [REDACTED].

10

THE COMMISSIONER: Sorry, yourself and?---[REDACTED].

MR DARAMS: Now, just focus, do you see, after what I suggest is a call between you and Mr [REDACTED] at 3.27 on 23 May, that the next records show calls or messages between Mr [REDACTED] and Mr Colacicco, if you just see that, 3.33. And if we go over the page, they're all between – on 23 May, this is.---23 May, yep.

20

They're all between Mr Colacicco and Mr [REDACTED]. So we don't have any record of any contact by way of phone between you and either of those gentlemen after your, my suggestion, call at 3.27 on the 23rd. So on the assumption those records are accurate, and my suggestion is they are accurate, that there is no further telephone contact between you and those gentlemen, between you and those gentlemen individually or together - - -? ---Yep.

30

- - - after 3.27 on 23 May. We know that from the records that you – so then if we go to, say, page 12, the next contact by way of phone between you and either one of those gentlemen is on 24 May at 7.22am. Do you see that? Entry 27.---Correct, yeah.

We know from your records that you had submitted to council the offer before that period of time. So could I just show you that to – could the witness be shown volume 4H, page 169. So this is the email you send to Mr Osland, 5.35am on 24 May. See that?---Yep. Yep.

Just if we go to the next page. This is the offer.---Right. Yep.

40

Now, focusing on these terms. Putting aside the purchase price, the 2.1, but on your evidence there was some discussion of a figure of 2.1 in the meeting

between you and Mr Sawyer and Mr Osland, that's right?---Yes. To the, to the best of my recollection.

To the best of your recollection.---It would have to be a minimum of 2.1.

THE COMMISSIONER: Sorry, I couldn't hear that.---It would have to be a minimum of 2.1 for them to consider it.

10 It had to be a minimum? Why do you say that?---Because that's what they said to me.

You say – what did they say to you?---To the best of my recollection, I was trying to push them on a number that they would, you, you know, that we were at 2 million, they were at 2.2, I was trying to find a middle point. And, you know, they basically said to me 2 million wouldn't buy it, and to the best of my recollection, I got, you know, a positive look, I guess, across the room and I said 2.1. I was trying to get to a number that - - -

20 So you got to the number that way, by - - -?---Yeah, my mathematical thinking was, you know, they're at 2.25, we're at 2. Let's go in at 2.1.

So you say they gave an indication to you that 2.1 would - - -?---May, may, may have.

May.---May.

MR DARAMS: After that, either one or both of Mr Colacicco and Mr [REDACTED] tell you 2.1 is what they want. Correct?---Sorry, give me two secs. Can you repeat that question?

30

After that discussion with Mr Osland and Mr Sawyer, Mr [REDACTED] and Mr Colacicco tell you 2.1, either one of those two, tells you 2.1 million is what they want.---Yes, from my, best of my recollection, yep.

Just before I come back to the timeline again, you include – so the 2.1, there's some discussion between you and council. There's a conversation between you and Mr [REDACTED] and Mr Colacicco before the 24 May document is sent.---Yep.

40 Where does this deposit 5 per cent on exchange come into it? That hasn't appeared in any of the other correspondence I've seen to date. You haven't

referred to it in any conversation with Mr Sawyer or Mr Osland. Where does this come about?---I can't remember, to be honest.

THE COMMISSIONER: The normal, what was the normal deposit rate? ---It varies between, you know, I've done a couple of deals, a number of deals at 5 per cent and sometimes 10 per cent.

What's the most common, commercially, at that time in deposit terms?---I had done, I had done deals at 5 per cent.

10

Pardon?---I, I have done deals at 5 per cent around that time.

But what I'm putting to you is that the more common deposit at that time was in the order of 10 per cent, in fact it was 10 per cent. Do you agree or not with - - -?---I agree.

MR DARAMS: Wasn't the deposit on 227 10 per cent?---No.

What was it?---I'm trying to remember now but I think it was 5 per cent.

20

Right. Now, who told you to include the deposit of 5 per cent, was that Mr Colacicco or Mr [REDACTED]?---I can't remember to be honest.

THE COMMISSIONER: Well, how did it come about?---Well, it would have been part of the discussions of what to, you know, to, to discuss the deposit. So - - -

Which discussions are you now referring to?---The overall offer, the discussions of the overall offer. You know, we would have discussed this before I put this together.

30

On what occasion?---It could have been on the night of the 23rd.

Of the 23rd?---23 May, yes. Or after the meeting.

MR DARAMS: That's what I want to ask you now, I'll come to the point, when are you having these conversations or discussions about the terms of this offer, given it was sent out around 5.20, or 5.30, let's say 5.30 on the 24th, we don't have any record of any telephone contact between either you and Mr [REDACTED] or Mr Colacicco after 3.27 on the 23rd. What I'm trying to

40

understand is, when do you get together and discuss these terms?---It could have been after the meeting.

When you say it could have been after the meeting – but if we can go back to volume 4C, page 11. So we've got the entry at 21 there, entry number 21, that's the call between you and Mr [REDACTED].---Yep.

10 It seems to be, in your evidence, that you must have been located in the council's chambers, at or near the council's chambers at that time.---As I said, I, I assume so, yes.

Yeah. Then, as I said before, there's no record of any other phone contact between either of you and these gentlemen. The only, I guess the only - - -

THE COMMISSIONER: On the 23rd.

20 MR DARAMS: On the 23rd there's no contact, if I show you record on this page, no phone contact with any of the gentlemen before you send the offer out on the 24th. So, I guess, one alternative is that you were present with one of those gentlemen after 3.27 on the 23rd, you were in the presence of one of these individuals and you called the other individual.---Is this after the, what time?

The call at 3.27.---Can you repeat the question? Sorry, I don't get it.

Yeah. And I just want to try and work this out in my mind as to what was the likely course of events.

30 THE COMMISSIONER: Is it the position that after the call at 3.27 between you and Mr [REDACTED], you do or no not have any recollection that you met with him and/or or Colacicco after that phone call?---I do not have definite recollection.

You don't recall physically having a meeting.---Physically.

Face-to-face you mean?---Yeah. We, we, we could have, we could have got together for a coffee after but I can't be 100 per cent sure.

40 MR DARAMS: Just bear with me one moment.

THE COMMISSIONER: Then is this a likely scenario that if you had the meeting with, as you say, Mr Osland and Mr Sawyer on 23 May in which you say there was some discussion about what price it might be necessary to go to - - -?---Yes.

- - - that there was also some discussion about the amount of the deposit that would be required or would be acceptable - - -?---It could have been in those - - -

10 - - - is that a possibility?---Yes. I can't remember. Yeah. It wasn't a big thing, the deposit.

Sorry?---It wasn't a, a, a major item that I can clearly remember.

It's a possibility but do you have any specific recollection of that topic of the deposit being discussed at that meeting that I've just referred to or not? ---What I was, yeah, there is a possibility, yes.

20 Right. Okay.---Chief Commissioner, what I wanted to put, put back to the council was the last offer that they could bring to council, so it was - - -

I'm sorry? Say that again.---That I wanted - - -

You want to make the point - - -?--- - - - to give them the last offer, right, the, an offer that they could bring to their council meeting 'cause there, there was the timing, so it was as complete as possible.

30 MR DARAMS: Was it almost, I don't know, best and final offer. Is that right?---Yes, at that point.

Chief Commissioner, I note the time.

THE COMMISSIONER: Yes. We'll take the morning tea adjournment and - - -

MR DARAMS: I anticipate when we come back, that I know there are some applications for cross-examination. I think I've finished my questions for Mr Bartolotta, so if we come back, it will be - - -

40 THE COMMISSIONER: All right. Well, just on that, who makes application to cross-examine Mr Bartolotta?

MR LEGGAT: Chief Commissioner, we have made a written request to cross-examine Mr Bartolotta.

THE COMMISSIONER: And what is your interest in this witness?

MR LEGGAT: Allegation 5 suggests that the sale of 231 Victoria Road involved the partial and dishonest exercise of official functions benefitting this witness and Mr Colacicco. So I want to explore through this witness
10 the notion of whether a financial benefit arose or was capable of arising in relation to the valuation of the property. We've set it out in detail in our written request.

THE COMMISSIONER: I see, I don't know that it's caught up with my papers - - -

MR LEGGAT: The request has been updated as evidence has been given.

THE COMMISSIONER: When was that sent through?
20

MR LEGGAT: The first one was about a week. The most recent one was about 20 minutes ago, based on an email that I've seen from Ms King but I think there was another one earlier this morning.

THE COMMISSIONER: Have we got the latest? We do. I'll have a look at it over morning tea.

MR LEGGAT: Very well. Thank you.

30 THE COMMISSIONER: Yes.

MR HOLLO: Commissioner, excuse me. Hollo. I've also made an application to the extent it's required to - - -

THE COMMISSIONER: Sorry? Could you use the microphone?

MR HOLLO: So sorry. I've also made an application to examine Mr Bartolotta on some discrete matters.

40 THE COMMISSIONER: And you've made formal application, as well, have you?

MR HOLLO: Yes.

THE COMMISSIONER: Yes. Thank you. All right. I'll deal with that when we resume.

MR LLOYD: Chief Commissioner, we also have made application but may I tell you it's unlikely that I will wish to do so. If I can let you know after the break?

10

THE COMMISSIONER: All right. Thank you. Very well. We'll take the morning tea adjournment and then we'll resume.

SHORT ADJOURNMENT

[11.29am]

THE COMMISSIONER: Yes, Mr Darams.

20 MR DARAMS: Yes. Just before I move into the applications for leave to cross-examine, could I tender volume 4I, which will become Exhibit 42?

THE COMMISSIONER: Sorry, was is it?

MR DARAMS: Volume 4I, Exhibit 42.

THE COMMISSIONER: Yep. 42?

MR DARAMS: Yes.

30

THE COMMISSIONER: Okay. What number are we up to?

MR DARAMS: So the Exhibit number is 42 and volume that's being tendered, which will become exhibit 42, is volume 4I.

THE COMMISSIONER: Okay. That will be noted. Exhibit 42. Yes.

#EXH-042 – PUBLIC INQUIRY BRIEF VOLUME 4I

MR DARAMS: Yes, that's it.

THE COMMISSIONER: All right. Now, the applications for leave to cross-examine Mr Bartolotta. Who wants to go first?

MR LEGGAT: I'm happy to commence, Chief Commissioner, if that's satisfactory to you.

10

THE COMMISSIONER: Yes. I have received your latest request. You haven't given an indication of how long you might be. Could you help me?

MR LEGGAT: Yes. Less than 30 minutes.

THE COMMISSIONER: Okay, thank you. You go ahead.

MR LEGGAT: Thank you. Chief Commissioner, I wonder if we might have, please, Exhibit 39, volume 4H for Harry, page 1, on the screen, please. Mr Bartolotta, I would like you to assume that this is a note prepared by Ken [sic] Walton and refers in part to the property strategy involved in relation to council's sale of 227 Victoria Road. You will see in the third dot point of Mr Walton's note, "The site was included within a property strategy that I prepared," I would like you to assume that that's Mr Walton, "prepared in 2011 and 2012. See attached document which includes site particulars, zoning details and recommendations for dealing with the property in the short and long term." So, I'm providing you with the context of the document that I'm about to take you to. If the witness could be taken next to page 5, please, which is part of this property strategy prepared by Mr Walton in relation to the sale of the council car park. Perhaps on the way through, if we could please, Officer, go back to page 4 so we can just set the context. So Mr Bartolotta, you'll see the property address there, 231 Victoria Road, property name, staff car park, and then the - there's the evaluation there, 1.4 million, prepared by Colliers, August 2011. And on the next page, please, if we could go to that, you will see Mr Walton has written this. "Council is aware of possible contamination of the soil via ground of the subject site which has transferred from a previous dry cleaning business that was located uphill and two premises away, 225 Victoria Road. Council officers have attempted to uncover further information about this issue. However, without undertaking environmental testing from groundwater no certainty can be provided. It's recommended

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that suitable testing investigation be undertaken at this site when council is ready to deal with the site.” And then if I could take you please in this context of any negotiations with Mr Walton to page 81, please? Now, take it from me, this is a valuation that council obtained, and on page 81 of this valuation from FPV Consultants, environmental issues, it states this, “This valuation is made on the basis that the land is not contaminated.” And then the last sentence, “Should I subsequently be advised of any contamination or other defects, I reserve the right to reassess our valuation.” Now, just pausing there, was this valuation provided to you as part of the negotiation
10 with council in relation to this subject site?---No.

THE COMMISSIONER: What’s the date of the valuation?

MR LEGGAT: Commissioner, we see that a few pages forward, it’s 18 June, 2012, and we get that from page 75.

THE COMMISSIONER: June 2012.

MR LEGGAT: Yes. Now, I’m about to move on to the next valuation
20 which is if we could go to page 94, please, and we’ll see council’s next valuation. And you’ll see this is another FPV Consultants’ valuation and we can see from page 87 that this is 18 August, 2014, but of particular relevance is page 94 where, Mr Bartolotta, you’ll see at the foot of the page environmental issues, “This valuation is made on the basis that the land and buildings are not contaminated,” then the final sentence, “Should I subsequently be advised of any contamination, I reserve the right to reassess my valuation.” Now, was that valuation provided to you by Mr Kent Walton or anyone else at council in the course of the negotiated purchase of this subject site?---No.

30

Let me take you to the next valuation, please. Page 112, please? We see from page 106 that the date of this valuation is 8 April, 2016. And we see on page 108 that the valuation range is 2.4 million to 2.6 million. And on page 112, please, the valuer has stated, “This valuation is made on the basis that the land and buildings are not contaminated,” and then the last sentence, “Should I subsequently be advised of any contamination, I reserve the right to reassess my valuation.” Now, just pausing there, Mr Bartolotta, my understanding, and correct me if I’m wrong, is that you had obtained a valuation of \$1.7 million. Is that right?---1.710.

40

1.710. Thank you. And that valuation was made on the basis that the land and buildings were not contaminated because that was the view that you understood to be correct at the time. Is that right?---Yes, that is correct.

My understanding is that you provided that valuation, the 1.710 million valuation, to council as part of your negotiation process. Is that right?

THE COMMISSIONER: It's part of the evidence. It's part of the evidence.

10 MR LEGGAT: I think that's right, isn't it? Yes. In the course of your negotiations with Mr Walton and others about the value of the property, did Mr Walton say to you words to the effect of "We have a valuation around the 2.4 million. You'll need to come up from your figure"?---No, he never mentioned any valuation that he had.

All right. Did he ever say to you "I am aware of contamination of the site but I haven't told my valuers to value it on that basis"? Was there ever a disclosure like that?---No.

20 If you had known that the approximate cost of decontaminating the site would be in the vicinity of \$2.5 million, what impact – if any – would that have made on the price that you were prepared to offer council?

THE COMMISSIONER: Mr Leggat, what's this go to? What are the issues that this goes to?

MR LEGGAT: It goes to allegation 5 - - -

THE COMMISSIONER: No, no, no, just directly answer my question.

30

MR LEGGAT: Yes.

THE COMMISSIONER: What specific factual issue does this go to that I'm concerned with?

MR LEGGAT: The, whether or not - - -

THE COMMISSIONER: This is not a compensation hearing about whether there's been a loss or what a purchaser would have done. So how does it
40 come into the specific issues that I've got to determine under the

Independent Commission Against Corruption Act in terms of sections 8 and 9?

MR LEGGAT: It goes to the question of whether or not there was a financial benefit obtained by Mr Colacicco and Mr Bartolotta in purchasing land for \$2.1 million.

THE COMMISSIONER: But how does that go to anything to do with sections either, any of the subsections of 8 or 9?

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MR LEGGAT: The allegation is that Mr Tsirekas has provided a benefit to Mr Colacicco and clearly Mr Bartolotta as well in relation to the sale of 231 Victoria Road. And the submission that I'm seeking to explore is that there can't be a benefit derived from purchasing property for a sum more than its value.

THE COMMISSIONER: How can this, how can this hypothetical question to the witness as to what he would have done in any way impact or be relevant to the issue that I, the allegation that you mentioned?

20

MR LEGGAT: Because if the witness says that he wouldn't have purchased the property for that amount of money, it seems highly unlikely that there has been any benefit provided to him by any actions of Mr Tsirekas.

THE COMMISSIONER: No, Mr Leggat, I reject the question.

MR LEGGAT: May it please.

30 MR HOLLO: Commissioner, could I just say something to correct the record.

THE COMMISSIONER: Yes.

MR HOLLO: There is no allegation, as I understand it, by the Commission that Mr Bartolotta received a financial benefit in any relevant sense in which those allegations are framed.

THE COMMISSIONER: Yes.

40

MR HOLLO: And that was stated by Mr Leggat and I just wanted to place it on record that that's my understanding.

MR LEGGAT: My learned friend's quite right and I withdraw that. The allegation 5 refers to the benefit to Mr Colacicco, but it's a benefit arising to Mr Colacicco as one of the three joint venturers of whom Mr Bartolotta is one. And of course the evidence being that Mr Bartolotta was acting on behalf of Mr Colacicco, so there's an inextricably intertwining - - -

10 THE COMMISSIONER: Yes, well, put your next question, Mr Leggat.

MR LEGGAT: Very well, thank you. Let me – I wonder if the witness might be taken to page 145 of the same document, please. Mr Bartolotta, have a look at the email that Mr Walton sent to Mr Sullivan on 10 May, 2016. And we know from the extensive cross-examination this morning what was going on around 10 May, 2016. The last paragraph, “I think we should get them back in later this week to discuss. I’m not fussed if we don’t reach agreement at the first meeting. I think the parties’ views are a long way apart on value at this stage, but again we’re not the ones who have
20 holding costs to deal with.” As part of the negotiations with Mr Walton, did you tell him that you had holding costs that you were endeavouring to deal with and that was part of the reason why you wanted the matter to proceed quickly?---Yes.

So the reference there that Mr Walton's making to “we're not the ones who have holding costs to deal with”, you would read that as Mr Walton saying, in effect, that Bartolotta and Colacicco are the ones who've got the holding costs to deal with?

30 THE COMMISSIONER: I reject that. I reject the question.

MR LEGGAT: I see, very well. Let me go, please to – I'm sorry. If we can have that back on the screen again. Mr Bartolotta, did Mr Walton at any stage say to you “I'm going to use the fact that you have holding costs as a tool to negotiate with you in relation to the sale price”? Did he say anything like that to you?---No.

No. If we could go to page 177, please. Now, you'll see this is 31 May, 2016, and again this time period was subject of extensive cross-examination
40 this morning, because we know the importance to you that you have described in evidence about the option period and the date for the exercise

of the option period. We see, at the middle of the page, Sally Yeo, who we can tell from the top of the page, is an employee of Canada Bay Council. Sally Yeo sends an email to Mr Walton at 9.00am on Tuesday, 31 May. “Hi Kent. JO just advised me that you are back at work today. I have updated the roster. Would you want me to send out another email saying that you’re in today?” Mr Walton replies, “Hi Sal. Don’t worry about a further email. As long as the roster is correct, that’s fine. I might get a few less calls if no-one knows I’m here.” Now, at any stage on 31 May or after that did Mr Walton say to you that he may well choose to not tell you when he’s at work because that would enable him to take less calls by acting in that manner?

MS ALDERSON: Objection, Commissioner. I don’t know what the – this wasn’t put to Mr Walton. This is - - -

THE COMMISSIONER: Yes, you needn’t worry. I reject the question.

MS ALDERSON: Thank you, Commissioner.

MR LEGGAT: The reason why it wasn’t put to Mr Walton is that this - - -

THE COMMISSIONER: You don’t have to give a reason.

MR LEGGAT: Very well. It relates to the timing of disclosure of the document.

THE COMMISSIONER: Mr Leggat, you do not have to give a reason.

MR LEGGAT: Thank you. Thank you. Did you try to contact Mr Walton on 31 May and were told that he wasn’t there?---I can’t remember.

Let me move to another topic. You spoke about having annual holidays to Italy with your family. Do you remember giving evidence to that effect? ---Yes, I do.

You didn’t mean to suggest, did you, that those annual holidays always included Mr Tsirekas and/or member of his family, because that never occurred, did it?---No, never.

All right. The encounter with Mr Tsirekas at Lipari was, I suggest to you, not a planned rendezvous, it was a chance encounter, wasn’t it?---Correct.

You probably didn't know at the time but you now know, do you, that Lipari is a sister city of the Canada Bay area and that Mr Tsirekas has formal links with Lipari because of that matter. Are you aware of that?
---Yes.

All right. But you didn't at the time you and your family decided to holiday in Lipari, is that correct?---No, no.

10 The personal guarantee that you provided in relation to purchase of the car park, was that a personal guarantee provided in writing?

THE COMMISSIONER: What's that got to do with the issues?

MR LEGGAT: The question of the - - -

THE COMMISSIONER: And where does it come under your leave application?

20 MR LEGGAT: It relates to the delay in the negotiation of the sale, which is 1C.

THE COMMISSIONER: How can it relate to delay?

MR LEGGAT: Because my understanding is that this witness was concerned about delay because he had a personal guarantee and that in that context, he sought to have council officers respond quickly to the matter because he was personally exposed.

30 THE COMMISSIONER: I reject the question.

MR LEGGAT: Very well. The 18 months period for the settlement of the purchase of the car park from council, you've given evidence that the 18 months was necessary because the car park development had to go to State Government and to a Planning Panel. When was it that you first knew about that or did you know about that all along, that is who was the consent authority for the development?---I think on 4 May meeting, we were given a document or, or Kent shared a document from the town planners that indicated that it would be a timely, you know, timely period.

Do I take it from your answer that the 18 months was discussed with Mr Walton as being the length of time that it might take the Planning Panel to deal with the merits of your development application. Is that the gist of it? ---I can't remember, I can't remember exactly if I, we discussed 18 months at that time.

All right. At the time, you knew that the mayor had no voting role on the Planning Panel, didn't you?---No, I didn't know.

10 THE COMMISSIONER: Did you know one way or the other?---No, I didn't know.

MR LEGGAT: All right. Now, the \$2.1 million that you offered council, that was in the context of you having acquired for \$2.3 an income-producing property at 227 Victoria Road. That's right, isn't it?

THE COMMISSIONER: I'm sorry, Mr Leggat?

MR LEGGAT: Have I misunderstood that?

20

THE COMMISSIONER: Do you understand that question?

MR LEGGAT: Have I got the numbers wrong, have I?---No, no, no

THE COMMISSIONER: Do you understand the question?---Yes.

MR LEGGAT: And that's right, isn't it?

30 THE COMMISSIONER: What's the relevance of this?

MR LEGGAT: It goes to the question of value and what Mr Bartolotta and Mr Colacicco were prepared to pay.

THE COMMISSIONER: The question of value is not an issue here.

MR LEGGAT: Oh, yes, it is.

THE COMMISSIONER: No, no, no.

40

MR LEGGAT: That's the financial benefit, as I understand it.

THE COMMISSIONER: But that's the, what is of relevance here is what offers and counteroffers were, in fact, made - - -

MR LEGGAT: Yes.

THE COMMISSIONER: - - - between the parties and there's been a lot of evidence now given on that, yes.

10 MR LEGGAT: Yes.

THE COMMISSIONER: Are you trying to suggest that, in some way, these offers were otherwise based on certain material rather than just arising through the course of the negotiation or - - -

MR LEGGAT: What I'm seeking to get to the bottom of is the relevance of Mr Bartolotta having paid \$2.3 million for an income-producing property in terms of why it was that he was prepared to pay or offer \$2.1 million for a car park that had no income-producing capacity.

20

THE COMMISSIONER: Right. Can you deal with that?---Yes, Commissioner.

Pardon?---Yes, I can.

Are you able to answer that?---Yeah. Can, can you repeat the question directly?

30 MR LEGGAT: The question is that your offer of \$2.1 million was informed in part by the fact that you were ready to pay \$2.3 million for a site that would produce income?---Correct, that's right.

Is that correct?---Yes.

Yeah. And at one stage, I think you said – my words, not yours – if worst comes to worst, we can keep 227 because we're getting income from the tenants upstairs and downstairs and it could go into a land bank and that was part of your reasoning, wasn't it?---Yes. Correct.

As contrasted in your reasoning process with the car park which was not capable of producing an income return sufficient to justify its purchase?
---Yes. Correct.

And putting it another way, that's one of the reasons, I suggest to you, why you needed an 18-month settlement in order to obtain a DA from the Planning Panel because that is how you could justify purchasing a non-income-producing asset.---Yes, correct.

10 Thank you. Can I suggest to you it didn't surprise you at all when Mr Colacicco suggested to you that he didn't want to be the public face of these property acquisitions and he didn't want anyone in the community to know of his involvement in this project? That struck you as being consistent with the way Mr Colacicco seeks to do business in the area, correct?---Yes.

Evidence has been given by another witness, and I won't identify the witness unless I need to, but if you could take from me that another witness has said the cost of the decontamination of the site was approximately \$2.5 million. Do you have a recollection one way or another whether that is
20 accurate?

THE COMMISSIONER: I reject that question.

MR LEGGAT: May it please the Commission. There was a witness who spoke about having obtained quotes for the decontamination of the site. Did you ever see such quotes?---No.

Commissioner, Chief Commissioner, excuse me a moment. Mr Bartolotta, you have never visited Mr Tsirekas' home, have you?---Never.
30

Mr Tsirekas has never visited your home, has he?---Never.

Chief Commissioner, those are the questions, thank you.

THE COMMISSIONER: Thank you. Now, you wish to cross-examine this witness in relation to - - -

MR HOLLO: Mr Bartolotta is my client. I wish to examine him on some discrete - - -
40

THE COMMISSIONER: I'm sorry?

MR HOLLO: Mr Bartolotta is my client. I wish to examine him just on some discrete matters.

THE COMMISSIONER: Yes, Mr Hollo, yes. Yes, yes.

MR HOLLO: I expect, Chief Commissioner - - -

10 THE COMMISSIONER: You have given notice as to what it is that you wish to raise, and I understand what it is, so I grant leave.

MR HOLLO: Thank you, Chief Commissioner. Mr Bartolotta, I just want to ask you some questions about the review of your records that you conducted last week. You recall on 9 March [sic] last week, on the first day that you gave evidence at this hearing, you undertook a search of your records in relation to the events that occurred in May 2016. In particular, the events that occurred between 17 May and 24 May, 2016?---Yes.

Recall that?---Yes.

20

And can you just explain to the Commissioner what led you to undertake that review?---In order to, you know, give evidence before the Commission, I wanted to go through my records to refresh my mind of exactly what happened at the time so I could recount to the Commission correctly the events to assist the Commission.

Thank you. And just to be clear, [REDACTED], [REDACTED], did you review any of your records prior to [REDACTED]?
---No.

30

Thank you. Now, Mr Bartolotta, I want to just ask you some questions about the negotiations that you had with council for the sale of 231 Victoria Road, focusing on the 18-month settlement period. Could Mr Bartolotta be shown Exhibit 39, volume 4.2, page 234. You see there that is your offer on Royale Limousines letterhead, dated 22 March, 2016?---Yes.

That was your first purchase proposal. And you see at paragraph 3 the document reads “Our purchase proposal outlines a base price and a price for any further uplift in gross floor area.” Do you see that?---Yes, I do.

40

Now, going down to the rows that appear in that document, the third row contains a purchase price of 1.8 million?---Yes.

And that was a fixed price, is that correct?---Yes, correct.

And further down there is a purported GFA of 1,917 square metres?---Yes.

Now, does that relate to the uplift component of the offer?---Yes, correct.

10 And that itself is based on the initial proposed concept, which appears further down under the heading Proposed Concept, and over page, if Mr Bartolotta can be shown, and you see there the building height then was seven storeys?---Yes.

And beneath the rows it says there that an attached concept plan and photo montage was included.---Yes, correct.

Do you recall those documents were included?---Yes.

20 Now, were those the initial plans that you had presented to council in earlier meetings?---Yes, they were.

Now going back to the first page of the document, the increased GFA, gross floor space area, was referable to whether development consent for the final development would be more or less than the proposed figure there of 1,917 square metres?---Yes, correct.

30 And having now considered the details of your purchase proposal of 22 March, 2016, do you have anything to add to the questions asked of you last week in relation to the absence of any date for settlement of 231 Victoria Road?---It, it was a date in the future which we hadn't, hadn't come up with yet because it was subject to the DA being approved.

Do you mean to say that you couldn't fix a date for settlement because part of the purchase price was contingent on development consent being obtained?---Yes, correct. The \$1,000 per square metre over and above 1,917 metres square.

40 And so did you regard, at the time of making that offer, that the settlement date would be a matter to be discussed and negotiated?---Yes, correct.

In the future, that is, with council?---Yes.

Thank you. Can Mr Bartolotta be taken to Exhibit 39, volume 4.2, page 246? Now, you see there, Mr Bartolotta, that that is Mr Walton's letter with a counterproposal dated 17 May, 2016.---Yep.

And you gave evidence that that is the document that you believe was received on 19 May, 2006 [sic] by letter in the post to you. Do you recall that?---Yes.

10

Now, just noting some of the terms of the counterproposal. The sale price there increased to 2,250,000 and the allowable GFA was reduced to 1,773 square metres and settlement was six months from exchange. Do you see that?---Yes, I do.

Were there any discussions between you and Mr Walton in relation to the six-month settlement term prior to receiving the counteroffer on 19 May, 2016?---No.

20 Were there any discussions about the six-month settlement term at that time, and before that time, with anyone else from council?---No.

Okay. Now, I just want to direct your mind to the evidence that you gave about the 23 May meeting with Mr Sawyer and Mr Osland. Did you consider prior to that meeting council's proposed six-month settlement term?---No.

I just want to be clear on that, that prior to meeting Mr Osland and Mr Sawyer, you'd received the six-month settlement term in a letter from Mr
30 Walton, and in preparation for that meeting did you consider any settlement period beyond six months?---Yes. Yes.

Okay. And how did you consider what would be an appropriate settlement period?---The length of time that a proposed DA would take to complete.

And did you have any discussions with anybody about those matters?---Yes.

And who did you discuss that with?---My partners.

40 With Mr [REDACTED] and Mr Colacicco?---Yes.

And at the meeting on 23 May, did you have any discussions about the date for settlement?---Yes, we did.

And can you just outline what those discussions were?---That it would be 18 months or, or earlier if a DA was approved earlier.

And why did you want the term to include earlier settlement if a DA could be approved?---Because we were keen to get the development underway if it was approved earlier.

10

And you recall that that term flowed through to the contract for sale of 231 Victoria Road?---Yes, correct.

Thank you. Mr Bartolotta, I just have some questions that arose from the examination of Counsel Assisting about the meeting on 23 May and the preparation of the letter of offer on 24 May, 2016 that followed. Do you accept that it's possible that the meeting on 23 May went for less than one hour?---Yes.

20 And when you gave evidence earlier that you thought the meeting went for one hour, was there any reason or basis upon which you thought that the meeting may have been of that duration?---Because when I put a meeting in my calendar, it defaults to one hour, and when I reviewed the records it was there for one hour.

And having regard to the telephone records that were shown to you by Counsel Assisting this morning, you would accept the possibility that the meeting may have been for less than half an hour?---Yes.

30 Is it possible as well that you agreed on key terms of the sale that were included in the 24 May letter of offer in conversations with Mr [REDACTED] [REDACTED] on 23 May at around 3.27pm, I think the telephone records showed, which was for a period of just over five minutes?---Yes.

And you would accept there's a possibility that you formulated the offer on the basis of that conversation?---Yes.

40 Given your recollection, your evidence was that your recollection was not clear, do you also accept the possibility that you had a face-to-face meeting after the meeting with council on 23 May with [REDACTED] or Frank

Colacicco or both of them, and you then agreed with them to the terms of the offer of 24 May?---Yes.

Nothing further, Commissioner.

THE COMMISSIONER: Thank you, Mr Hollo.

MR LLOYD: Chief Commissioner, I don't wish to cross-examine this witness.

10

THE COMMISSIONER: Thank you. Thank you for that. Anything in reply?

MR DARAMS: Nothing at all.

THE COMMISSIONER: Thank you, Mr Bartolotta. That completes your evidence. Thank you for your attendance. You are excused.---Thank you, Chief Commissioner.

20

THE WITNESS EXCUSED

[12.34pm]

MR DARAMS: So the next witness who will continue will be Mr Colacicco.

THE COMMISSIONER: Mr Colacicco, I think you took an oath, did you
- - -

30 MR COLACICCO: Yes.

THE COMMISSIONER: - - - or an affirmation?

MR COLACICCO: An oath.

THE COMMISSIONER: Yes. We'll have you resworn.

MR COLACICCO: Thank you.

40 THE COMMISSIONER: My associate will do that.

THE COMMISSIONER: Yes, Mr Darams.

MR DARAMS: Mr Colacicco, excuse me. I just want to ask you some questions about the sale and purchase of 231 Victoria Road from the council. Do you recall when you and Mr █████ settled on the purchase of 2331 Victoria Road?---No, I don't.

10

Was it around about November 2018? Does that accord with your recollection?---It may have been. I don't, I don't recall the actual date.

You don't?---Unless you've got something there to show me that I can
- - -

In relation to the contract for sale, you know that there was an original period of time of settlement of 18 months?---Yes.

20 There were discussions and negotiations by Mr Bartolotta on your behalf and Mr █████'s behalf to extend that period of time?---That's correct, yes.

The original settlement period under the original terms of the contract was, I think, March 2018?---I don't recall the exact date, but I know that there was an extension asked for.

Yeah, up to six months?---Yes.

30 Yeah. So does any of that assist you with your recollection of when you might have settled on 231?---I, I don't recall the actual date, no.

You and Mr █████ or the company associated with you have subsequently sold those properties. Correct?---That's correct, yes.

You didn't undertake the development of those properties?---That's correct.

Right. Do you recall when those properties were disposed of?---I don't recall the actual date but it wasn't a very long settlement 'cause that was part of the deal, but I don't recall the actual date, no.

40

Well, was it in 2020 or 2019?---I, I don't recall the actual date. It could have been 2019, I don't, I don't, I don't actually recall the date.

You don't actually recall?---No.

Now, when you were here on the last occasion, I asked you whether you were a member of the SCG, the Sydney Cricket Ground, and you said you were a Platinum Member. That's right?---That's correct, yes.

10 You had a number of cards, access membership cards?---Yes.

Have you let those or loaned those cards to any of those gentlemen who formed part of the group that meet at the Nield Park café?---Not that I'm aware of. They may have attended a game with me, using the cards.

Yeah. But in terms of handing the cards over to someone to go and use independently?---Sometimes I've done that to friends for the cricket and that 'cause I'm not into the cricket, and I've lent them cards or if it's an AFL game or rugby union.

20

But can you recollect any occasion where you've lent them to the individuals, well, the gentlemen who attend the Nield Park café?---No, I, I, I don't, I don't recall specifically.

I just want to finish off a few questions I asked you on the last occasion. Could the witness be shown volume 4.2, page 198? Sorry, just one moment. Sorry, 4.5, page 2. So, Mr Colacicco, I asked you some questions about this email on the last occasion. You understood this was the correspondence Mr Bartolotta was sending to Mr Walton seeking council's agreement to extend the settlement period?---I believe so, yes.

30

Right. Now, is it the case that you told Mr Bartolotta to include Mr Tsirekas into this correspondence?---I don't recall but as I said I may have. But I don't, I don't recall.

Yeah. In terms of including Mr Tsirekas into the email correspondence, a reason you would have done that, or might have done that, was to bring this matter to Mr Tsirekas' attention, is that right?---On, on the basis that Mr Bartolotta was a client.

40

Yeah. Well, Mr Bartolotta wasn't just a client. In fact this was an extension that was your benefit as well.---Yes.

Yeah. So you're not only just doing this on behalf of Mr Bartolotta, you're doing it on behalf of yourself.---Yes.

Mr [REDACTED] as well.---Yes.

10 But going back to the reason why you would have Mr Bartolotta, or a reason you might have Mr Bartolotta include Mr Tsirekas into this correspondence is to bring this matter, that is the request for an extension of time, to Mr Tsirekas' attention, correct?---I may have, yes.

Yeah. Well, it's likely that that's what you did tell Mr Bartolotta, isn't it? ---Yes.

You were seeking for your benefit but also the benefit of Mr Bartolotta and Mr [REDACTED] to have this contract period, settlement period extended?---Yes.

20 Is it the case that you had understood at this stage that potentially there was an issue with Mr Walton agreeing to this extension, is that right?---I don't, I don't recall. I know that there were some issues with, as we said before, in regards to some contamination and I think there was, there was some issues that there was getting no response back or nothing was happening.

No response from Mr Walton?---Yeah.

30 Yeah. So it's the case, isn't it, you wanted Mr Tsirekas to be informed about all of this because there was some issue, or perceived issue, about Mr Walton responding in a timely manner?---I, I don't, I, I can't remember. It, it may have been that I suggested it, yes.

Yeah. For that reason, that is to have Mr Tsirekas to become aware of it so that he might intervene on behalf of - - -?---Well, to find out where the issue is or what's happening.

Right. But in any event, to intervene into the matter, correct?---It may have been. I can't recall the exact - - -

You can't think of any other reason why Mr Tsirekas might be involved in the matter that is essentially one between Mr Walton and council and Mr Bartolotta?---No.

No. But at this period of time, when I say this period of time, March 2018, you had, had you not, throughout your relationship with Mr Tsirekas, asked him to do these kinds of things on behalf of other people before, that is intervened in a matter before council, correct?---Sometimes if there was an issue and it was something that was being held up, I would say, as being the
10 mayor, I would say, "Can you look into this and find out what the problem is?"

Yeah. But in addition to him being the mayor, you were also utilising, were you not, your relationship with Mr Tsirekas when you asked him this question?---Just a, a common thing. We were friends and I felt comfortable asking him.

Yeah. But also when you had asked him previously, you got a favourable response?---Well, sometimes I would get a response and sometimes I would
20 get "Look, they're snowed under and it's just got to wait."

Sorry, let me come back another way. What I intended to suggest to you is that when you asked Mr Tsirekas to do something, to look into something, to see the progress of some particular matter, you got a favourable response in the sense that Mr Tsirekas would do that and then come back to you one way or the other?---Yes. Sometime he would and sometimes it - - -

But in any event, it wouldn't be that he just simply respond and say, "No, Frank. I've got no interest at all in that." What happened was that he'd
30 look into the matter for you and then come back to you, correct?---Yes.

Yeah. So when you told Mr Bartolotta to include Mr Tsirekas into this email correspondence, you did it under the impression or understanding or expectation that Mr Tsirekas would take an interest in this particular matter?---Oh, he would be aware of what was going on in council within the staff.

And take an interest in this particular matter that has he's been copied into, correct?---Well, it was as normal as any other matter that I may have put to
40 him.

Right. Well, could I then ask you to - - -

THE COMMISSIONER: This was a bit different from other situations though, wasn't it, in terms of bringing Mr Tsirekas into the loop by, in terms of the memorandum on the screen, 15 March, 2018, from Mr Bartolotta to Mr Walton, because this was a matter that you had a personal interest in.---
Yes.

That made it different, didn't it, from other - - -?---Yes.

10

- - - situations that you might have contacted Mr Tsirekas in order to inquire into a matter concerning someone else?---Yes, Chief Commissioner. But as I said before, he wasn't aware that I was involved.

But I'm not dealing with that issue at the moment. I'm just simply dealing with the issue that if you wanted him to be put in the loop so he could be aware of what was being said by Mr Bartolotta, that was in a situation which potentially could operate for your personal benefit as well as your other two partners.---Yes, I accept that.

20

Well, did you consider that was appropriate then to be seeking the mayor to be brought into this issue of contract extension when you, as a friend of his, were in effect seeking him to keep an eye on this question of an extension of time?---Sure.

Well, is there some reason why you didn't - - -?---No, as - - -

- - - declare that "Look, I have an interest in this. The mayor's a personal friend of mine"?---No. I, I never declared to them that, to Mr Tsirekas that I was involved in the property.

30

But as counsel put, isn't then, there's the situation where you could be seen to be utilising your friendship relationship with the mayor in relation to a matter of business, namely contract extension for settlement, when you were in a sense a beneficiary of any intervention that he might make, along with your two partners.---Yes, I understand. But I think it was due to the fact that we weren't getting anywhere and I think there was a bit of urgency and I was just, I, I - - -

40

I'm sorry, could you just repeat that? I'm having trouble hearing you.---I, I believe it was due to the fact that there was a bit of urgency with the matter

and I just wanted to make him aware of what was going on with this whole matter. But I never disclosed to him that I was - - -

That doesn't change what I'm putting to you, does it?---No.

Hmm?---No.

10 Well, why would you then seek to have the mayor informed on this issue in order to, potentially at least, have his assistance if there was a problem about this contract extension when you were in a friendship relationship with him and could be said you should have disclosed it? Why didn't you?---Because as I said earlier, all the way along, I didn't want anyone to know that I was involved for my personal reasons. So at that point I didn't, I never - - -

That still doesn't explain why, notwithstanding you had a personal interest, you brought the mayor, Mr Tsirekas, into this contract extension aspect.
---Yes. I think it was just over the fact that we were being held up and John was dealing with the council and I just maybe would have said to him,
20 "Include the mayor."

You needed your friend, the mayor, to keep an eye on or become involved in some way if necessary in this contract extension question.---Just, yeah, just to see what was going on.

And you now see the probity issue arising out of that, don't you?---Yes, Your Honour.

Utilising the friendship relationship in that way.---Well, I thought I wasn't doing any wrong 'cause he didn't - - -

30 Pardon?---I didn't believe I was doing wrong because he, he didn't know I was involved.

In retrospect now, looking back on it, you do realise - - -?---Yes, I do.

- - - as you frankly conceded - - -?---Yes.

- - - that it was wrong, wasn't it?---Yes.

40 Well, all right.

MR DARAMS: Now, it's also the case, though, Mr Colacicco, that you could have achieved your desire – that is, to have someone else in council become involved in the matter – by including Mr Gainsford, correct, Mr Walton's manager?---No, I, no.

You also, in addition to Mr – sorry, including Mr Tsirekas, you told Mr Bartolotta to include the correspondence with Mr Gainsford as well, didn't you?---I don't recall if I said to him to include Mr Gainsford, no, I don't.

10 Well, can I just ask that you be shown volume 6.5, page 231. So this is an extract of a text message exchange between you and Mr Tsirekas and the blue balloons are your messages and the green ones are Mr Tsirekas'. So see the first blue one?---Yes.

You sent this text on 12 March, 2018, "Don't forget to send me the email of the general manager." Mr Tsirekas responds with Mr Gainsford's email address.---Yes.

20 See, I want to suggest to you that the reason you asked him for that was so that you could then give that to Mr Bartolotta.---I don't recall but it's there. Could be a possibility, yes.

Well, was there any other matter at the time that you were wanting to speak to the general manager about, or email the general manager about?---Not that I can recall.

30 Yeah. Because if we go back to, please – if we can go back to volume 4.5, page 2. An email from Mr Bartolotta's then sent on 15 March. So just I want to put this proposition to you, is that you tell Mr Bartolotta to include Mr Gainsford in this correspondence. That's right?---I assume so, yes.

Yeah. You got the contact details of Mr Tsirekas and you gave those to Mr Bartolotta?---Yes, yes.

You also told Mr Bartolotta to include Mr Tsirekas into the email conversation for the reasons we've just discussed?---Yes.

40 Could the witness then be shown page 5? Now, I took you to this on the last occasion you were here, Mr Colacicco, but it's the case, isn't it, that you were forwarding to Mr Tsirekas the response that Mr Walton had sent to Mr Bartolotta, again, for the same reasons we've just discussed, to bring this

matter to Mr Tsirekas' attention so that he might intervene in this matter on behalf of, you say, Mr Bartolotta, but it's also on your behalf too.---Yes.

When you did this, because of your relationship with Mr Tsirekas, you anticipated and expected that he would intervene in this matter, correct?
---Yes.

All right. Likewise, consistent with the Chief Commissioner's questions, you say you didn't appreciate there was any issue with the probity of that at
10 the time but you now accept there is an issue with you doing that, correct?
---Yes.

I just want to ask you about - - -

THE COMMISSIONER: So is it clear then that the strategy here was, on this contract extension question, for the matter not to be left in the hands only of Mr Walton but now also to be left in the hands, as may be required, for action by Mr Tsirekas and/or Mr Gainsford, if there was a problem about this extension being granted?---Yes. In the time that it was taking and the
20 issue that it was, at the time - - -

Is what I put to you, correct?---Yes.

Well, in effect, you're enlisting two senior officers now, one a councillor or mayor, Mr Tsirekas, and the other the General Manager of Canada Bay Council.---Yeah, your Honour.

Hmm?---Yes. I understand what you're saying to me.

30 Well, this was a strategy, wasn't it, to ensure that whatever Walton did or said, or decisions made, there would be a fall back situation about this contract of extension, namely some sense of some sort of intervention by the mayor and/or Mr Gainsford.---Well, I think, as I said, I think it was because of the fact that there were some issues getting back to us that I, I would have suggested, please, CC them in so they know what's going on.

Just concentrate on what I put to you is what I put to you correct, that if Walton was not going to come across, you would have as part of the strategy, in effect, the backup of having the mayor and/or Mr Gainsford to
40 call on to try and ensure that there would be an extension?---Well, that there'll be an, and outcome, yes.

Is that right?---Yes.

Is what I'm putting to you right?---Yes.

That was the strategy, in effect, of bringing Mr Tsirekas and Mr Gainsford in as a potential backstop, if you like, if you struck a problem with Mr Walton?---Yes.

10 Thank you.

MR DARAMS: Mr Colacicco, you say at this stage, that is March 2018, Mr Tsirekas didn't know about, sorry, you didn't tell Mr Tsirekas about your involvement in the purchase of 231 Victoria Road. Is that right?---That's correct, yes.

Right. Are you sure that at no stage you disclosed to Mr Tsirekas that you did have involvement in 231 Victoria Road?---Not to my recollection, no.

20 Is it possible you might have done that at some stage during this relationship that you had with him up to this period of time?---I cannot remember but I, I, I believe I didn't, no.

So the best of your recollection now is that you didn't do it but are you open to the possibility that you might have done that?---No, I believe I didn't.

You believe you didn't?---Yeah, unless you can show me something that I did, but - - -

30 Now, well do you remember Mr Tsirekas asking you about, inquiring why you were engaging him, that is Mr Tsirekas, in this matter at this stage? Did you explain who Mr Bartolotta was? Did you explain to him and the like? ---Yes, I did. I said he was a client friend.

What, sorry? Did you say he was a client or a friend?---He was originally a client and then a friend.

So how was he a client?---He, this is the first transaction that he was doing
- - -

40 I'll just go back to, how was he a client of yours?---Property was purchased.

THE COMMISSIONER: Sorry? I couldn't hear that?---Property was purchased.

Sorry?---The property of 227 was purchased.

MR DARAMS: But Mr, but the purchase of 227, that was purchased by you, Mr [REDACTED] and Mr Bartolotta?---That's correct.

10 Are you saying that, and, sorry, as I understood your evidence on the last occasion, the opportunity to purchase came to you. Correct?---Yes.

You then discussed that with Mr [REDACTED]?---That's correct.

He was the one that then discussed bringing Mr Bartolotta into the transaction?---Yes.

20 So are you saying in those circumstances Mr Bartolotta was your client?
---Well, no. He became, we were, we were, there was this opportunity and he was a client friend. That's how it started off, as a client, as a, as sale of the property and, well, he's a friend.

Did you disclose to the vendor of 227 that you were one of the interested parties who purchased 227?---No. At the time, I didn't 'cause I wasn't dealing with the vendor. There was another gentleman in our office that listed the property and was dealing with that.

One of your employees?---Yes, he was a contractor, yes.

30 Well, when you say "contractor" so wasn't an employee but was engaged by your business?---As a selling agent, yes.

Yeah. If we accept your evidence before that you've given, you didn't disclose to him your involvement in this as - - ?---No, I didn't.

Right. Did you ever consider whether you should have disclosed to the vendor your interest in the transaction, given that it was being handled by your office?---No, because it was a commercial transaction.

40 Right. So you made a conscious decision, did you?---Yes. As I said before, I didn't want anyone to know.

No, no, a conscious decision not to disclose your involvement in it with the vendor?---Well, there was, at that point in time, we didn't know if it was going to go ahead 'cause it was purchased under an option, under Mr Bartolotta's personal company.

Yeah, but you accept that when the option agreement was entered into - - -?
---Yes.

10 - - - you contributed to the option price?---Yes.

You accepted previously that even though the option was in the name of Mr Bartolotta's company, it was taken out for your benefit, as well?---Yes.

It was always intended that a company associated with you and you say your business partner would have an interest in the, if the agreement, sorry, if the option was exercised in the purchase of the property. So there's no dispute, is there - - -?---Correct.

20 - - - that at the time that the option was being negotiated with the vendor of 227, you had an interest in that option and the potential purchase?---Correct.

Chief Commissioner, I note the time.

THE COMMISSIONER: Yes. Very well.

MR DARAMS: It's a convenient time.

30 THE COMMISSIONER: We'll take the luncheon adjournment and resume at 2 o'clock.

LUNCHEON ADJOURNMENT

[1.00pm]