

TOLOSAPUB01228
18/05/2022

TOLOSA
pp 01228-01286

PUBLIC
HEARING

COPYRIGHT

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 WEDNESDAY 18 MAY, 2022

AT 10.00AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Yes, Mr Colacicco. We'll just have you resworn.

THE COMMISSIONER: Now, Mr Darams.

MR DARAMS: May it please, Chief Commissioner. As you recall from yesterday afternoon, I had concluded my examination of Mr Colacicco and there were a number of applications to cross-examine Mr Colacicco.

10 THE COMMISSIONER: Thank you.

MR DARAMS: We're ready to proceed with that.

THE COMMISSIONER: Very well. Who wants to go first?

MR LLOYD: Chief Commissioner, if it's convenient, I can go first.

THE COMMISSIONER: Thank you.

20 MR LLOYD: Mr Colacicco, my name's Lloyd, I'm here for Mr Sawyer. You understand?---Yes.

You remember yesterday you were asked some questions about being or having Platinum membership of the Sydney Cricket Ground?---That's correct, yes.

And you've told Mr Darams in answer to a question that it was your practice from time to time to loan your membership cards to friends? ---That's correct, yes.

30

And that was your practice in January 2019, I take it?---I believe so, yes.

And I think you mentioned at least AFL as being one of the sports played there.---Yes.

And obviously enough there's cricket played at the SCG.---That's correct.

And that includes a form of cricket known as the Big Bash.---Yes.

40 And your membership cards permit entry into Big Bash games?---That's correct.

And was your practice, if you weren't using your cards, that you might lend them to friends to attend matches of that kind, that is Big Bash games?

---Yes, I do.

And Mr Sawyer was one of your friends in January '19?---Yes.

And consistent with your practice, if you weren't using your cards, quite likely you might have lent them to him.---Yes.

10

Can I ask you then about some evidence you gave on 11 May. And I'll just remind you what you said. You were asked by Mr Darams on 11 May about the group that attends the Nield Park café for coffee on a Friday.

---Yes.

Do you remember being asked about that?---Yes, I do.

And do you remember, I'll just summarise some of the evidence you gave and then I'll ask you a question. You were asked how long you'd been attending that café with that group. You said, "I don't recollect the date exactly but it's been quite a while." You remember saying that?---Yes, correct.

20

And then you were asked whether it was 10 years or five years and asked about whether you started going there with that group before 2015. You said "possibly", you remember that?---Yes, possibly, that's correct.

Then you were asked, "Can you recall who has attended that gathering, the persons?" You said, "About 10 of us and they come in and out, depends who can make it." You remember saying that?---Yes.

30

And then you were asked about the names and you said yourself, Angelo, "on occasions Gary would come in and out". Do you remember saying that?---Yes.

I just want to suggest this to you in terms of the timing of when Mr Sawyer first starting sitting down with that group for coffee, and I want to suggest to you that that did not occur until 2018 and after.---Yes. That's probably when he retired from council that he started to come more frequently, yes.

40

And you answered that question by reference to an event, his retirement. That's so, isn't it?---Yes.

If I tell you that his retirement was around about the start of 2018, end of 2017, that would be consistent with what you just told the Chief Commissioner, that your recollection is that he started to attend around end of 2017, start of 2018?---Yes. With Mr Gary Sawyer, yes.

10 Thank you. Do you remember yesterday you were asked some questions about one of those attendances at the Nield Park café, being the one on 25 January, 2019?---Yes. I think so.

And you were shown some photos?---Oh, yes. Yes.

Chief Commissioner, could Exhibit 43 be put up on the screen so that I may ask this witness some questions?

THE COMMISSIONER: Yes.

20 MR LLOYD: Page 164, being the first page of that exhibit. Is that on your screen now?---No.

I see.

THE COMMISSIONER: Can you see the photograph now?---Yes, I can, Your Honour. Yep.

MR LLOYD: Thank you. You can see that photo on that screen?---Yes, I can.

30

Now, I just want to understand, on the left-hand side of the photo, I think you've identified that's you in the black?---Yes.

Talking to Mr Sawyer on your left?---Yes, correct.

The two gentlemen up the end, that is the one to Mr Sawyer's left and then the one sitting next to the gentleman, the first gentleman being the checked shirt - - -?---Yes.

40 Is it right that those two gentlemen were not ordinarily members of this group which sat down for coffee?---That, that's correct, yes.

And did they just attend on that day for the first time, do you recall?---Yes.
My recollection is I think they came to see one of the other members there.

Now, can I just ask some questions about the geographical features of where
you're sitting at this café? Could photograph number 166, the next in the
sequence, be shown?

10 MS KING: Excuse me. This is Ingrid King speaking remotely. We are
unable remotely to see the pictures that are being shown to the witness.

THE COMMISSIONER: Yes. The photograph is up there. I think that's
166.

MR LLOYD: Oh, I'm sorry, Chief Commissioner. I heard very faintly Ms
King saying that remotely the photograph couldn't be seen. That does not
trouble me but I wondered whether it troubles - - -

20 THE COMMISSIONER: Sorry, what do you want done, Mr Lloyd?

MR LLOYD: I don't want anything. I just heard Ms - - -

THE COMMISSIONER: You don't want this photograph?

MR LLOYD: No, no. Sorry. I just heard Ms King saying the photograph
couldn't be seen for those appearing remotely and I don't know whether - - -

THE COMMISSIONER: Oh, I see.

30 MR LLOYD: - - - you were waiting or those assisting you were waiting for
that to be dealt with.

THE COMMISSIONER: Thank you. We'll check that out. What's
happening there? Mr Darams, you might just - - -

MR DARAMS: Yeah, we're just making some enquiries as to whether -
we're making those enquiries into whether the sharing, the photo has
already been admitted into evidence as Exhibit 43 and so is on the public
website but that - - -
40

THE COMMISSIONER: Yeah.

MR DARAMS: But in any event we want to make sure that those who are participating remotely - - -

THE COMMISSIONER: Right. I think we might check, Mr Darams. I understand everyone now should have it on their screens.

MR DARAMS: Can I just ask - - -

10 THE COMMISSIONER: Including those counsel from remote locations.

MR DARAMS: Yes, I might invite Ms King, if she can indicate whether she can now see it.

MS KING: I can now see it. Thank you.

MR DARAMS: Thank you. She can now see it.

20 THE COMMISSIONER: You proceed, Mr Lloyd.

MR LLOYD: Thank you, Chief Commissioner. By reference to this photo, Mr Colacicco, I just want to understand something about the features of this café. Is it the case that it's located adjacent to Henley Marine Drive on what might, is known as The Bay Run?---Yes, it is.

And if you wanted to get access to the café, you walk from Henley Marine Drive through an outdoor section that might be called the front of the café?
---That's correct.

30 And then you walk into the café and there's seating to the left and right when you first enter.---Yes, correct.

And behind that area, when you first walk in, is a fairly large kitchen?
---Yes.

And the café's got a number of staff members, waiters, waitresses, chefs, the like?---Yes.

40 And it's a table service affair? You get things delivered to your table?
---Yes.

And when you go in that first section, with tables on your left and right, you then walk around in a kind of L-shape to another section?---That's correct, yes.

And is it in that section that you were seated on this day?---Yes, that's where we always sit.

And we can see from here that the table you're at is not the only table in that section?---That's correct.

10

And that table you're at is, obviously enough, in full view of other tables in that L-shape section?---Yes.

And it's also in full view of anyone who might be sitting further away down toward the bottom right-hand corner of this photo in the café, true?---Yes, correct.

And that area behind the blue umbrella, which is not unfurled, that's a plastic drop-down kind of sheeting?---Yes.

20

And on the other side of that area is a public walkway, is that true?---It's a park, yes. It's Nield Park.

There's a little path, isn't there, just before a large park area, true?---No, it's just grass. There's a, there's a, I think a plantation of plants and grass.

That park area, as at 25 January, 2019, it's a large rectangular-type area? ---Yes.

30 Used for soccer?---Correct.

But at that time of the morning, to your knowledge, that is around 8.32, frequently used by people doing exercise?---Correct.

Dog walking?---Yes.

And at 8.32 on a Friday morning, likely – I suppose depending on the weather – to be a number of people there?---Yeah, yeah, well, yes. There, there usually is by that time.

Those people would have a clear view through that plastic into where you were sitting at your table?---Yes, if they're looking into the café, yes.

And remember you were asked some questions about an envelope that was in one of Mr Sawyer's hands?---Yes.

And I think in fairness you said, in answer to those questions, you had no recollection of it, didn't know what was in it, et cetera?---That's correct.

10

Can I just ask you, you must know something of your own personality or practice at the time as at January 2019. If the suggestion is that inside the envelope, for example, in Mr Sawyer's hands, that that came from you and there was something contained in it by way of a financial inducement or the kind, do you think it's likely – having regard to what you know about the features of this café and you know about your relationship with Mr Sawyer – that you'd be doing that, that is handing an envelope like that over, in a public place like this?---No, well, firstly, I, I don't even know, I didn't know the envelope was there, but, or what, what it was, what it is. But, no, of course not.

20

And it wasn't like, Mr Colacicco, you didn't have opportunities to see Mr Sawyer in a slightly more secluded or private place than in a public café, is that true?---That's correct, yes.

Same goes for the mayor?---That's correct, yes.

Those are my questions.

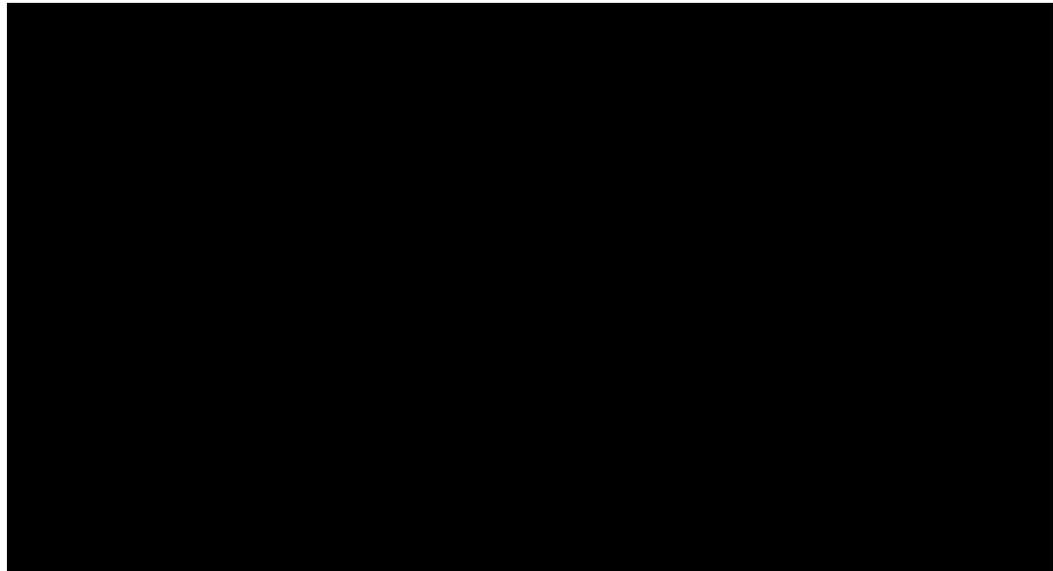
30 THE COMMISSIONER: Thank you, Mr Lloyd. Yes. Yes, Mr Leggat.

MR LEGGAT: Thank you, Chief Commissioner. Mr Colacicco, I understand your evidence includes that you take annual holidays with your family overseas and in particular to Italy. Have I understood that right?
---Yes.

Those annual holidays have not included Mr Tsirekas as part of the annual family holiday group, have they?---No, not my family. Not, not going there together, no.

You've described a very close friendship with Mr Tsirekas with which he agrees and thanks you. However, there have been no joint business dealings with him ever, have there?---No.

10



20 THE COMMISSIONER: Well, you were just asked about what your observations were.---Oh, okay. Sorry, yeah.

Don't speak for others if you – do you follow what I'm saying?---Yes. Okay, sorry, Commissioner. Yeah.

I think in fairness to the person you're talking about, you should just confine your observations to your own - - -?---Yeah. So basically that was it. It was, I was, yeah.

30 MR LEGGAT: Just to explore that a little bit further, it was your understanding that during this period Mr Tsirekas' ex-wife - - -

THE COMMISSIONER: Mr Leggat, I'm sorry to interrupt you.

MR LEGGAT: Yes.

THE COMMISSIONER: It just strikes me that that last segment of evidence, there's nothing wrong with in terms of its probative value, but in fairness to the person who's at the receiving end of those comments,
40 especially if the witness has digressed and talked about what others were

saying, I think that the evidence should be suppressed from publication in the interests of that person.

MR LEGGAT: That seems entirely appropriate.

THE COMMISSIONER: Whether the comments are accurate or not accurate, I think just in terms of people named in evidence who, as a side wind, as it were, may be damaged by evidence, unless there's a good reason for it to remain public, I am inclined to suppress it from publication. Do you
10 want to be heard on that or do you oppose that or - - -

MR LEGGAT: Agree, agree completely.

THE COMMISSIONER: Yes, all right.

MR LEGGAT: Thank you.

THE COMMISSIONER: I'll just I'll have it noted then. In relation to the witness's evidence in relation to [REDACTED], I
20 make an order pursuant to section 112 of the Independent Commission Against Corruption Act suppressing that evidence from publication or communication.

**SUPPRESSION ORDER: IN RELATION TO THE WITNESS'S EVIDENCE IN RELATION TO [REDACTED], I MAKE AN ORDER PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT SUPPRESSING THAT EVIDENCE FROM PUBLICATION OR
30 COMMUNICATION.**

THE COMMISSIONER: I consider it to be in the public interest in the sense that the evidence is, taken at face value, harmful to the person the subject of that evidence, or referred to in that evidence. The evidence may have probative value but it, in my view, should not be made public for the reasons I have mentioned. Mr Leggat of Senior Counsel accepts and indeed agrees that it should be and I don't think any other party represented here would wish to put a contrary view, unless some application is made about it,
40 then my order will stand until further order. Yes, Mr Leggat.

MR LEGGAT: Thank you, Chief Commissioner. Mr Colacicco, Ms Tsirekas was born in 1960, you're aware of that, presumably?---Yes.

Yeah. So the events that we're speaking about in 2012 and 2013, when the divorce is rearing its head, that was happening to a man who was 53 years of age, as you understood it?---Yes, I'd say so, yes.

10 And it's fair to say he was a good, close friend of yours and you were worried about him at that time, weren't you?---Yes, certainly for the family, yeah.

You were spending lots of time with him, checking that he was doing okay, weren't you?---Yes.

Yeah. You're aware, aren't you, that Mr Tsirekas' ex-wife remained in the family home and Mr Tsirekas moved back in with his parents aged 53, that's as you understood it, isn't it?---Yes, I believe so, yes.

20 Mr Tsirekas is the only son of Greek migrant parents, is that as you understand it?---Yes.

Can you give us any insight as to the – no, I withdraw that. The separation, I'd like you to assume, occurred on a final basis in March of 2013, and at that time Mr Tsirekas was living with his parents?---Yes, I don't know the exact date but, yes, if you say that's the date, it would have been around then, yes.

30 You at the time continued to develop a close relationship with Mr Tsirekas' parents, didn't you?---Well, only that I'd see them at, if there was a function, a Christmas function at the council and, and yes, if I'd see them with Angelo, yes.

And in particular Mr Tsirekas' father was known to you to be a car detailer. That was his trade, wasn't it?---Yes, that's correct.

Yeah. You saw him over the years buying and selling motor vehicles and detailing motor vehicles, didn't you?---Well, no, I knew that was his job but I didn't know if he was buying and selling.

40 Very well. Thank you.

THE COMMISSIONER: You didn't know?---That, that he was buying and selling cars, no. I only knew that that was his profession.

MR LEGGAT: And you knew that it was something of a hobby for Mr Tsirekas' father to purchase cars and to detail them, did you?---Well, I knew that it was a hobby to detail.

Yep. And when you say detail, you're talking about detailing motor vehicles, aren't you?---Detailing motor vehicles, yep.

10

THE COMMISSIONER: Did you have any knowledge of his hobby of purchasing cars or not?---No, only once that he bought a car from Ms Fredrix and I just put them in touch.

MR LEGGAT: When Mr Tsirekas was living at home with his parents, did you at any stage have discussions with Mr Tsirekas' father where he expressed to you that he was embarrassed that his only son was living at home in his 50s? Was that topic discussed at some stage?---No, look, I, all that I can recall is that they were quite, you know, disappointed about the marriage had failed but that's really, you know, you know, like, I think we all were.

20

Did Mr Tsirekas' father express the view to you at some stage that he wanted his only son to get his life back together and to move out of the family home?---Sorry, the family home as in - - -

Sorry, the parents' home.---Well, yes, he wanted reconciliation with his, with, he wanted him to go back to his wife and family, like every parent, I suppose.

30

And he also wanted him to move out of the parents' home, was that expressed to you at some stage?---No, I can't recall that.

Ah hmm. At some stage did Mr Tsirekas say to you words to the effect "My dad's helping me out financially. He wants me to buy a place of my own so I can move out, but I don't want Therese to get her hands on any of that money"? Can you recall a conversation to that effect at some stage with Mr Tsirekas?---No, I, I can't recall.

40 There were conversations that you can recall which had those components?

THE COMMISSIONER: Mr Leggat - - -

MR LEGGAT: I'm sorry.

THE COMMISSIONER: - - - you conduct the examination - - -

MR LEGGAT: Yes.

THE COMMISSIONER: - - - as you wish, within limits of course.

10

MR LEGGAT: Yes.

THE COMMISSIONER: But on some matters leading questions devalue the evidence, as you would well appreciate.

MR LEGGAT: Yes.

THE COMMISSIONER: It's a question of what evidence that is cogent and that I feel comfortable in relying upon that is persuasive, as you would understand the reasons for that.

20

MR LEGGAT: Yes.

THE COMMISSIONER: But you proceed.

MR LEGGAT: Very well.

THE COMMISSIONER: I'm not suggesting no leading questions can ever be asked, I'm not suggesting that, but I think I've tried to convey - - -

30

MR LEGGAT: Yes, thank you.

THE COMMISSIONER: - - - in the interests of the Commission but also in the interests of the witness and yourself as to evidence being not always led. I'll leave it to your discretion.

MR LEGGAT: Thank you very much, Chief Commissioner. Mr Colacicco, just explain these events where your close friend's marriage has failed, he's in his mid-50s, he's living back at his parents' home. That's the context that we're dealing with. And exploring whether in the course of your discussions with Mr Tsirekas he was telling you about how his father was

40

helping him to get back on his feet financially. Can you remember any discussions about that from time to time?---Look, I don't recall particular discussion. However, I know that his parents were helping him in some sort of way but I don't know, but I know that his father just wanted the best for him and wanted him to reconcile his marriage and get back on his feet. And, you know, a couple of times I spoke to him about that at a function and I think one of the Christmas parties.

10 When you say "spoke to him", that's a reference to Mr Tsirekas' father, is it?---Mr and Mrs Tsirekas, yep.

Thank you.---Angelo's parents.

Just exploring your answer a little bit further. His parents were helping him in some ways. Did you form the view that one of the ways was that they were assisting their only son financially?

THE COMMISSIONER: I reject that question.

20 MR LEGGAT: Thank you.

THE COMMISSIONER: For the reason which is I think apparent.

MR LEGGAT: Yes.

THE COMMISSIONER: And we need not make it explicit.

30 MR LEGGAT: All right. Did Mr Tsirekas' father – I withdraw that. I want to move to a slightly different topic. Let me know if I haven't got this right, but the picture that I've formed, listening to your evidence, is that Mr Tsirekas and you would frequently meet up at cafés, including the Nield Park café?---Yes, we would.

All right. Was it your experience that during the time when you and Mr Tsirekas were in cafés, Mr Tsirekas would be contacted by constituents either on the telephone or in person from time to time?---Yes, he would.

40 Can you recall from time to time saying to him words to the effect of "Stop putting yourself out for everyone. Stop taking all these calls. Just enjoy your coffee and give work a break"? Conversations like that you've had with him, have you, that you can remember?---No, look, no. I, I can't recall

any of that but, you know, it was common that we would be at a café or just chatting and, you know, being that he had the status of the mayor, a lot of people would come up to him and sometimes introduce themselves and, you know, just, but I never really, you know, there was times when it, if we were just in discussion, people would come up but, you know, he'd, he accepts a lot of calls. But no, I, I never said anything like that.

And was it apparent to you, from what you could hear of the telephone calls, that they were calls where Mr Tsirekas has his mayor's hat on, so to speak?
10 Do you understand the question?---Yes. There was occasions where people would ring him about that but I didn't know the content of the conversation.

Have you ever known him not to take a call from a constituent or for him to say, "Look, I'm, I'm too busy. Ring me back later," like that, when it was a constituent who was seeking his time?---Look, I've, I've, I've heard many times, I don't know the content of conversation, but I've heard him say, "Look, just ring my office, speak to my secretary and make an appointment," or that but I don't know what it was about but I presume it was about something to do with council.

20 All right. You are aware that he has been the popularly elected Mayor of Canada Bay Council for most of the last two decades. Is that as you understand it?---Yes, that's correct. Yes.

All right. And is it your view that part of the reason why he continues to get elected as mayor is because of his style of meeting with people informally on occasions, like at the café with you?---Look, I, I can't talk for the, the whole community but obviously he's been elected by the community but, yes, he was very approachable, a lot of people do like him because he had that approach and, yes, I, even, you know, being at the café, a lot of people would stop him to talk to him and - - -

30 When you say he's very approachable, what do you mean by that? What did you see?---Well, like I think, because he's, he's had a lot of involvement in the local community with the water polo rugby, the Dirty Reds and that, a lot of people would stop and talk to him and, you know, come and say hello.

You were aware of his involvement with the Wests Tigers Rugby League as well, weren't you?---Yes.

40

You and he, I understand, and correct me if I'm wrong, would clash from time to time because you might be described as a dyed-in-the-wool Roosters supporter, is that right?---Yes, that's very true.

And he was a Tigers man.---Yes.

Yeah. The horse shares that you owned, they tended to be with the Eastern Suburbs Roosters Rugby League Club friend of yours. That's right, isn't it?---Some were, yes.

10

And there was a Waterhouse connection through Elias, was it?---That's right. No, no. Through her son-in-law.

Through son-in-law. What was his name?---Luke Ricketson.

That's Luke Ricketson.---Yep.

He played first grade for the Roosters?---That's correct, yes.

20

Now, Mr Tsirekas has never owned horse shares with you or any entities with which you've been involved, has he?---No.

Chief Commissioner, I wonder if it might be displayed on the screen, please, the newspaper article that Mr Darams kindly agreed to tender. It's concerning Mr, it's relevant to Mr Tsirekas' resignation from council and his attempt to get elected to federal parliament. Mr Darams, would you be able to – I don't know the number. I apologise for that. There we go. Mr Colacicco, I'd like you to assume that this is an accurate copy of the text that was set out in the Inner West Courier on 17 May, 2016. Can you just read that to yourself, please, and let me know when you've read that.---Yes.

30

Now, your close friendship with Mr Tsirekas survived him being a Labor man and you being a Liberal man. Is that right, have I got that right?---Yes.

Notwithstanding that you probably didn't want to see him elected because that would be a vote for the Labor Party, nevertheless, you helped him in his election behind the scenes to some extent, didn't you?---Yes. To me it wasn't about the party, it was about my friendship with, with Angelo and his family.

40

Yep. And that friendship was sufficiently close to overcome party political differences, is that what you're describing?---Yes, that's correct.

Now, leading up to his decision that's described there in the newspaper to, quote, "walking away from the role he's held for 14 years for a tilt at a federal seat", he spoke to you about how he'd like to have a crack at a federal seat prior to him making the decision, didn't he?---Yes.

10 Yeah. And from time to time he would have discussions with you about what a significant change in life it would be for him and how he had some concerns about whether or not it was the right thing to do. He had discussions like that with you, didn't he?---Yes, he did.

Many of those discussions around that point in time – that is 17 May, 2016 – were conducted over mobile telephones as well as in person, that's right, isn't it?---Yes, would have been, yeah.

20 And because it was such a momentous decision for Mr Tsirekas to take, he would sometimes call you many times a day during that period to talk about the decision that he was about to make. That's right, isn't it?---Well, he'd call me. I don't know how many times a day we'd talk about that. But, you know, I, there was, you know, a factor that he, I think he had to give up his Greek residency and I said to him have a good think about it, but that was basically just chatting, chatting as friends, yes.

30 It was clear to you during that time that he was looking for your support and needed your reassurance on a daily basis. That's right, isn't it?---Well, yes, we, you know, whenever we saw each other we'd speak about it. But I don't know if it was on a daily basis but we'd speak about other things, football more than anything.

You might not remember this, but Malcolm Turnbull, the Prime Minister of Australia, announced the election on 8 May, 2016. Can you recall Mr Tsirekas phone calls to you on and after 8 May, 2016 becoming more frequent about this topic of him potentially throwing his hat into the ring? ---No, I couldn't recall exactly the dates, but we spoke about it a fair bit.

40 I'd like you to assume that on 30 April, 2016 Mr Tsirekas received formal endorsement from the Labor Party in anticipation of an election being announced within the foreseeable future. Can you remember Mr Tsirekas talking to you about the fact that he was seeking endorsement and then

talking to you after he had been endorsed on 30 April, 2016?---Yes. Well, if that was the date, yes, we did, because obviously his close friends were, you know, were, were going to help him with, with the campaign and support him.

And part of that support was taking phone calls from him to help him through the, what might be called the jitters of the resignation of his employment with council and resignation from the mayoralty as well, is that right?---Yes.

10

You gave evidence yesterday about a development application for [REDACTED], Russell Lea. Can you remember that topic?---Yes.

You might not have noticed it yesterday, but the letter of 23 February 2018 was addressed to [REDACTED]. There's no reference in that letter to someone called Chris. There appeared to be yesterday some sort of eliding of someone called Chris in the letter to the person on the letter was addressed, which was [REDACTED]. Is it your recollection that [REDACTED] was the project architect for Chris and his father, and Chris was the owner, or one of the owners, of [REDACTED] [REDACTED]? Have I got that right?---Yes, I believe, I believe so. I don't know Mr [REDACTED] myself.

20

Right. Now, as a real estate agent you're aware of the DA process and the DA timing to some extent, aren't you?---Yes, that's correct.

We know from the letter to the project architect, Mr [REDACTED], of 23 February, 2018 that the development application was lodged on 6 December, 2017. You're aware, aren't you, that 40 days after that date the council is deemed to have refused the development application because it has failed to make a determination. You're aware of that, aren't you?---Yes.

30

Or putting it in other words, by the end of January 2018, the developer had an appeal right because of the slowness of council in having failed to determine the matter in a timely fashion. That's as you understood it? ---Yes. Well they would have, yes.

We see that the development application was approved on 12 June 2018. We've done the calculations and to us that seems to be 210 days after lodgement of the DA. Did you hear the evidence given by Mr McNamara

40

where he said 100 days was the acceptable delay in council at this period of time? Can you remember that evidence?---I, I read that, yes.

Yeah. The DA was approved in a letter of 12 June, 2018 from Narelle Butler. It was drawn to your attention that you said to Mr Tsirekas in writing, when the DA was approved, “You are a champion,” and you said that what you were conveying by that was you were saying thank you. Is it the case that the expression “You are a champion” is one that you use from time to time when people open doors for you or bring you a cup of coffee
10 just the way you like it, is that right?---Well, it is. I mean, it was just, as I said yesterday, it’s just saying “thank you” or “You’re a champion” or whatever, it’s just a bit of talk. I mean - - -

Chief Commissioner, will you excuse me a moment.

THE COMMISSIONER: Yes.

MR LEGGAT: Chief Commissioner, thank you, those are the questions.

20 THE COMMISSIONER: Yes, thank you. Yes.

MR DARAMS: That concludes Mr Colacicco’s examination.

THE COMMISSIONER: Yes. Mr Colacicco, just one matter. You were asked I think this morning about the use of your Sydney Cricket Ground tickets?---Platinum – yes, yes.

And you were asked yesterday about this by Counsel Assisting and gave evidence. It was put to you – he was talking about the meeting at the Nield
30 Park café, you may recall. There was questions put to you about that meeting and there was some photographs taken - - -?---Yes.

- - - of people, including yourself at that meeting. In that context Counsel Assisting put to you, this is page 1182, “Mr Sawyer never gave you back any tickets to the SCG, did he?” and your answer, “Not that I’m aware of.” That was your recollection. At the time you gave that evidence, you had no recollection of that? That seems to be your answer, “Not that I’m aware of.”---No, look, there was, I recall that Mr Sawyer took his grandson, I
40 think, to one of the games. I don’t know if it was the Big Bash or something. He wanted to take his, and I offered my tickets and I think he used them. But I don’t recall the time and date, no, I don’t.

So does your answer still stand? That is that you were not, you're not aware of him giving you any tickets to the SCG on that occasion?---No, not, not, I can't recall that, sorry.

You're agreeing?---Yep.

You stand by the answer you gave that you are not aware of it?---Yes.

10 Not that you're aware of.---No.

Okay. Sorry, you don't want to modify that? That's your evidence?---No, no, I don't - - -

I just want to make it clear I'm receiving your - - -?---No, I've, the cards are in a little black thing which sometimes I have in an envelope. However, they're in a little black SCG pouch that, if I've given the tickets, I'd hand over the tickets. Or sometimes if you can print them off the internet and just hand them over, you just fold them up and hand them over.

20

All right. Thank you.---Yep.

All right, nothing further on that?

MR DARAMS: Nothing further, Chief Commissioner.

THE COMMISSIONER: Any other requirements?

MR DARAMS: No, no further requirement.

30

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

You're excused.---Thank you very much.

THE WITNESS EXCUSED

[10.58am]

40 MR DARAMS: Chief Commissioner, I call Mr Gary Sawyer.

MR LLOYD: Chief Commissioner, may I just raise something before that happens?

THE COMMISSIONER: Yes, Mr Lloyd.

MR LLOYD: Thank you. You obviously remember, Chief Commissioner, yesterday the questions about the four photographs in Exhibit 43, subject also to some evidence today, of some evidence today. We presently do not
10 understand there to be any allegation before this Commission that Mr Sawyer received any financial inducement or reward that was not the – no such allegation was raised in the opening statement and is not being put, as we understand it, at the moment before this Commission. But having regard to Counsel Assisting exploring the topic yesterday, and some of the questions, we accept open questions put to Mr Colacicco, if there is to be any exploration of that particular point with Mr Sawyer, we wish to have access to any other photographs taken on that day that the Commission holds, and I'd like very briefly to be heard on that. But perhaps the anterior
20 point before I spend time developing that point is it may be that we're boxing at shadows, as it were, in the sense that if no questions are to be put to Mr Sawyer about the topic and no allegation advanced to him of any wrongdoing connected with what appears to be that envelope in one of his hands at the café on that date, then it's just unnecessary for me to do anything more.

THE COMMISSIONER: So what's your application, Mr Lloyd?

MR LLOYD: Well, my application is for access to all of the photographs, but I only need to develop that in the event that, contrary to paragraph 4(c),
30 4(f), I'm sorry, of the opening statement, if what is now being put before this Commission is that there is any wrongdoing associated with that event on the part of Mr Sawyer, then I wish to proceed. But if Counsel Assisting tells me or tells the Commission that there is no such allegation, then I need not bother.

THE COMMISSIONER: Mr Lloyd, the first question as to whether there is or is no allegation made in the scope and purpose of the public inquiry, if there is evidence before the Commission that involves persons who have relevantly been involved, either in development processes or meetings with
40 persons against whom allegations have been made, then the Commission is not only entitled but must pursue its investigation into any relevant activities

that involves anyone, whether there's allegations made against them or not. You have observed that there's no allegation that Mr Sawyer received financial benefits, and that is the case. However, as you know, commissions of inquiry are living, growing organisms, in effect, and there's no set case, as it were, that's defined by anything like pleadings and so on. Then it's well accepted in the authorities, the Commission, an inquiry of this kind is entitled to follow the evidence wherever that may lead. It may lead to allegations at an intermediate point during the course of an inquiry, but that depends, of course, on the evidence that is elicited from other witnesses and other sources.

As to the access to other photographs, the Commission does, as you know, release in advance of the actual hearing various sources and aspects of evidence, and that's been done in this inquiry. It has not put on the public website other material that has been obtained and acquired during the course of investigations that precede this hearing. The Commission makes a conscious decision as to what evidence will be made public upfront and what evidence will not. That is part and parcel of the methodology that this Commission validly employs, given the nature of the task in establishing any conduct that might be corrupt conduct. It's in the nature of the inquiry that the Commission selects that material that should be put out in the public forum early in the piece and evidence that should not. And these photographs have partly been produced. There are other photographs, you tell me, in forming a set of these photographs. The decision's been taken not to release any other photographs than those that have already been tendered. But it would seem to me, at the end of the day, I will have to make a decision as to whether in fairness they should all be released to the parties at an appropriate time, which is not now. That's the view I take. So you're quite entitled to make application if Counsel Assisting doesn't himself initiate a tender of any additional photographs that make up the set of photographs which have been partly deployed in the examination of Mr Colacicco.

MR LLOYD: Chief Commissioner, we accept that reservation, everything that you've just said. May I just briefly be heard about the timing of the release, though?

THE COMMISSIONER: The timing of it?

MR LLOYD: Yes.

THE COMMISSIONER: Yes.

MR LLOYD: Because we had understood from the decision that the application was refused, not just that the refusal was based upon not now but perhaps later. But, in any event, just to make it plain, my application is that as a matter of observing the duty of procedural fairness, that these particular photographs should be released to Mr Sawyer now before he gives evidence. And I just wish to say this about that. The procedural guidelines, which you'll be well aware and familiar with, draw a distinction
10 as a matter of construction between the rights of affected persons and witnesses. Telling you things you already know, Chief Commissioner. Clause 6 talks about the rights of affected persons to be given either material that's adverse to them or exculpatory. Now if, sorry. I may have got that wrong. It's clause 4 that deals with that. Clause 6 deals with witnesses.

Now, it can't be as a matter of construction, in our respectful submission, the position that the question of whether material is exculpatory is the sole preserve of the Commission because otherwise that would mean, that's the ultimate determination and when the report-writing phase comes. At this
20 stage now, there must be a process envisaged by the guidelines that it's not the sole preserve of the Commission to work out whether material may be exculpatory. In this particular case, and accepting that this is an inquiry, as you said, with respect, correctly, it's entitled to follow the evidence. And part of the critical functions of this Commission would be to routinely withhold material. We don't dispute any of that. On this particular issue, though, what we are dealing with is an allegation, if it is to be pursued, of utmost gravity. It's criminal wrongdoing at its highest. It's involving a witness, my client, who, I think you already know, there's medical evidence which is not in dispute, which means that he has problems with his memory.
30 Next, as we understand it, the only basis for these allegations are the four photographs. There is no witness who's said anything which would - - -

THE COMMISSIONER: Sorry? I just missed that last bit.

MR LLOYD: Sorry. The only basis for this allegation to be pursued so far is the four photographs. There's no witness who's come along to say that there is even a skerrick of evidence to support this. It is based upon four photos. We know from other sources of evidence that the routine is for this group to meet at 7.00am and we know the photographs are taken some time,
40 varying times, around 8.20, 8.30am in the morning. So the sequence of what other photographs show in any fact-finding on this critical point if it's

to be pursued is critical. And we are, with respect, entitled as a matter of fairness to see that sequence of photographs to see what else can be taken from them that may be exculpatory. And we respectfully say that in order, the content of that duty of fairness would require them to be given to Mr Sawyer, so he can look at them before he's asked about them.

And, finally, we can't identify any good reason why that sequence of photographs wouldn't be released at this point. There doesn't seem to be anything to be gained from them not being released. Now, it may be that
10 there are things that the Commission knows that we don't, that detract from that point but, at the moment, on what we know, where we haven't got a single witness who says that there is any wrongdoing associated with the envelope or envelopes, and it's just based upon these four photographs. The criticality of that material to the exculpatory evidence point in section 4 of the guidelines, in our respectful submission, requires them to be released at this point.

THE COMMISSIONER: Mr Lloyd, I'll call on Counsel Assisting maybe just to make any submission that he wants to make in light of what you've
20 said. I'm not talking about this case but I'm talking in general, just to test this issue of procedural fairness, about which I will say something separately in a moment. If somebody's handed an envelope, it may be that the person to whom it is handed is the intended recipient but it may be that it is not, that he's being requested to take the envelope to give it to somebody else, for example. An entirely innocent explanation. So it's not to be said that there is a specific allegation that's not been, as it were, raised in the scope and purpose, alleging an allegation of wrongdoing against your client. This is part of the factual matrix, like it or not, that the Commission has to deal with, and in terms of the timing of the release of the full set of these
30 photographs, that is a matter entirely within the province, the responsibility of this Commission to determine the appropriate timing.

The rules of procedural fairness as I said I'll say something about in a moment, but the rule of procedural fairness are not set in stone and apply in this Commission or any commission of inquiry, as it does for example in the Supreme Court, as you know, of course. Procedural fairness rules will be tailored to, and accommodate, the need of a Commission inquiry. There is no set rule of procedural fairness that applies, regardless of the subject matter or the circumstances of an inquiry by an anti-corruption agency, or
40 by any commission inquiry for that matter.

So, I just want to make it plain that this is what we're dealing with here. We're not dealing with an allegation at the moment against your client. We are dealing with a factual inquiry. It is the province of the Commission to determine when information is put in the public sphere. The Commission is always mindful of its responsibility to ensure exculpatory evidence is produced in a similar obligation that rests on a prosecuting authority. That obligation is taken very seriously by this Commission. So far as the timing of it, I have foreshadowed my, subject to anything Counsel Assisting may say, it will be my intention that all these photographs come into evidence,
10 that is to complete the whole set. Should you require the opportunity to speak to your client to get instructions on any photographs that have not yet been tendered, of course you will be afforded that opportunity. But the position remains, it is for this Commission to determine the timing of the release of information to the public sphere.

MR LLOYD: Thank you, Chief Commissioner. I hope you just - - -

THE COMMISSIONER: I just simply wanted to say those things to give you some context in which this issue you've raised, and I understand why
20 you're raising it, should be considered and then determined.

MR LLOYD: Thank you, Chief Commissioner. And I hope you didn't take anything that I said to indicate that I was contending that Commission does anything other than take its obligations seriously, because that was not the submission.

THE COMMISSIONER: Thank you, Mr Lloyd. Mr Darams?

MR DARAMS: Chief Commissioner, I would only be repeating, the
30 matters I would raise would only be repeating what has already fallen from the Chief Commissioner, in your statements, but I would reiterate that if there becomes a stage where Mr Lloyd requires some time to get some instructions from his client, then I will not stand in the way of that application.

THE COMMISSIONER: Thank you, Mr Darams. The application that's been raised by Mr Lloyd I do not propose to give a detailed or formal on reasons, though I will do so if I am asked to do so in due course. It is important, however, that I do record something as to the basis upon which I
40 am now proceeding. The issue concerns whether or not additional photographs to those that presently constitute Exhibit 43 should be made

available to the next witness, Mr Sawyer, in advance of him giving evidence. A number of submissions have been made by Mr Lloyd and he's very concisely put the basis for his application. Reference has been made in that respect to the rules of procedural fairness, to the fact that there's no specific allegation raised in the scope and purpose of the inquiry in respect of Mr Sawyer, and that in accordance with the rules of procedural fairness, section 31 of the Act that deals with the obligations to ensure that exculpatory evidence is provided, that exculpatory evidence is produced in an inquiry such as this.

10

I have, in relation to this application, considered the fundamental matters that are important, and that is firstly the Commission is obliged, for a full inquiry in the public interest in this matter, to gather in all relevant evidence, whether it be inculpatory or exculpatory potentially to anyone, and that procedural fairness rules do have to be observed in the ultimate disposition of this matter. However, as I have said in the course of submissions, the rules of procedural fairness are not fixed, nor do they apply in this Commission as they do in a court of law. Commissions of inquiry are flexible and they develop over time. There is need for a commission such as this to deploy what methodology/strategies that it considers is essential for the effective and proper conduct of a public inquiry. The authorities – and there are a number – well support the flexibility of the rules of procedural fairness to the proceedings of a commission of inquiry, given the nature of an inquiry as against inter partes litigation, and given the nature of serious issues that need to be determined by a commission of inquiry acting in the public interest. And those principles include not only the entitlement but the need for a commission of inquiry, in conducting its proceedings, to consider the appropriate timing at which material should or should not be made available to persons who have been given leave to appear on behalf of affected persons and on behalf of witnesses.

20

30

I do not propose to direct or require the production of the additional photographs that may be described as companion photographs to those in Exhibit 43, dealing with the events depicted in Exhibit 43, at this point in time. I have indicated to Mr Lloyd of Senior Counsel that my inclination is, as I've stated, that all photographs should go in so that there's a complete set of them, but that that should be considered at a later point in time. I'll hear submissions if there's any issue about why that should not be the case. If there's a requirement for counsel to consult with his client about any additional photographs that come into evidence, then that opportunity will certainly be given.

40

The issues to which the photographs relate give rise to a number of possible different alternative interpretations, and there's no presumption that the photographs by themselves unequivocally establish any particular fact other than that envelopes in question were present on the occasion. The circumstances in which that came about have yet to be fully investigated. Accordingly, we'll proceed with the calling of Mr Sawyer.

10 MR LLOYD: May it please the Commission. On a more mundane matter, Mr Sawyer will seek a section 38 declaration, and the effect of that section has been explained to him.

THE COMMISSIONER: Yes, thank you, Mr Lloyd. Yes, Mr Sawyer. Thank you, Mr Sawyer.

MR SAWYER: Good morning.

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

20 MR SAWYER: Yes, Commissioner.

THE COMMISSIONER: There's a Bible there and I'll have my associate administer the oath.

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

Mr Sawyer, I understand from counsel that he's explained to you that there are provisions in the Independent Commission Against Corruption Act that entitle the witness to object to giving evidence. The rationale for that being
10 that the evidence then, once objected to, can't be used in other proceedings in the future of any kind. You have an understanding of that?---Yes, I do.

And that there is, however, an exception to what I've just said, that is the protection doesn't apply in the event of an offence by a witness under the Independent Commission Against Corruption Act such as giving false evidence. The evidence can be used in any prosecution for an offence under the Independent Commission Against Corruption Act of that kind. That is, could be perjury or any other offence under the Act, but otherwise the protection does operate. You understand what I'm saying?---Yes,
20 Commissioner.

Thank you. You do understand that although a declaration that you give evidence on objection is made, that a witness must nonetheless answer all questions truthfully. You understand that?---Yes, I do.

Yes. And if you are required to produce any document or other item, you are still under an obligation to do so. You understand that?---Yes, I do.

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

**DIRECTION AS TO OBJECTIONS BY WITNESS: THANK YOU.
PURSUANT TO SECTION 38 OF THE INDEPENDENT
40 COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY THE WITNESS, MR SAWYER, AND**

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

10 THE COMMISSIONER: Mr Sawyer, we'll proceed now with taking evidence. Counsel Assisting will ask you some questions. If you would do two things for me. If you'd just carefully listen to the questions and respond directly to the point of the questions. And, secondly, if you could speak into the microphone without being right on top of it.---Sure.

It'll make it easier for people at the back of the room and myself to hear what you're saying.---Okay, Commissioner. Excuse me.

Yes, Mr Darams.---Clear my throat. Sorry.

20

There's water there if you want it, and tissues.---Yeah, I've got some water. Thank you.

MR DARAMS: Could I start by asking you to give us your full name.
---Gary Sawyer.

You're currently retired, is that right, Mr Sawyer?---That's correct.

30 Immediately before your retirement you were employed as the General Manager at the Canada Bay Council?---Yes.

Were you the general manager for the entirety of your employment at the Canada Bay Council?---Yes.

When did you commence employment?---May 2006.

When did you cease your employment?---Officially ceased employment was June 2018 but I left the office and around January 2018.

40 Were you on some kind of leave between late January and June 2018?
---Yes, I, I took long-service leave and the council appointed a new general

manager late December, and he was on annual leave in January so he didn't take over till about the 29th, so there was no crossover between us and there was a bit of a gap there where an acting general manager had that role.

When you say December the new general manager was appointed, that was December 2017?---Yes, sorry. I said '18, did I? Yes, sorry.

No, you didn't say a year. I was just clarifying it was December 2017.

---No, thank you. No, no, that's right.

10

Was that general manager who was appointed after you Mr Gainsford?

---Yes, it was.

In that period between late January 2018 and June 2018, were you called upon to do any work or perform any services for the council?---No.

One would hope, and I would assume you didn't attend council chambers during that period of time?---Definitely not.

20 Did you resign from council in order to retire from work?---Yes, I did.

Did you do any paid work after you had resigned from council?---Yes, I did. I was asked to review some documents for a, a planning proposal for the Arnott's site down at North Strathfield.

Who asked you to do that?---The name of the company, well, the, the actual architect for that was Adam Huang, who I'd known from my days at Kogarah Council, and he'd asked me if I could look over those documents for them.

30

You said North Strathfield. Was the planning proposal in relation to land within the Canada Bay Council?---Yes, it was.

Do you know any other people that might have been associated with that planning proposal? You've identified one individual, but any other individuals?---In relation to the, the owners of the site or whatever?

You were asked to review a planning proposal.---Yes.

40 You identified - - -?---Adam, Adam Huang, who was the architect, who was the one driving the, the development down there, the proposal, yes.

Yes. Did you know any other people who might have been associated with that redevelopment?---I didn't know them personally, no.

Did you know the names of any other persons?---Jimmy, Jimmy, it was, the, the company, the overall company was the Yuhu, Y-u-h-u, company who, who had purchased the land down there.

10 Yeah. Just my question though was, did you know any other individuals, putting aside - - -?---No.

No.---No.

I want to go back to before you commenced with Canada Bay Council. Did you indicate that you were employed at some stage before by Kogarah Council? Was that immediately before you started at Canada Bay Council? ---That's correct.

20 Were you employed as the General Manager at Kogarah Council immediately before you commenced at Canada Bay Council?---That's correct.

How long had you been the General Manager at Kogarah Council?---Six years.

So from about - - -?---1999.

1999 to - - -?---2006, yeah.

30 Did you have any period of time off between leaving Kogarah and starting in May at the Canada Bay Council?---No. Not that I recall, no.

How long had you been employed altogether with Kogarah Council? ---Close to 20 years.

So six years, approximately six as general manager?---Correct.

40 What were the other roles that you had with Kogarah Council?---I was Director of Planning and Environment for about three years.

THE COMMISSIONER: Sorry, what was the last one?---Director of Planning and Environment for three years.

Oh, yes. Thank you.---And I was Manager of Health, Building and Development for three or four years and I was a senior building surveyor when I first started there.

MR DARAMS: What qualifications of you have, Mr Sawyer?---I've got qualifications in environmental health and building and human resource management.
10

Human resource management?---Yes.

Is that a diploma or something of that effect?---Yeah, a diploma.

When did you obtain that?---St George TAFE.

Just back to the position of General Manager at Canada Bay Council, in effect, you were the most senior employee of council?---That's correct.
20

All of the other employees and staff of council reported to you?---That's correct.

Whether they did it directly or indirectly, they reported to you, ultimately? ---Yes.

You had a number of direct reports. That's right?---That's correct.

The direct reports including the Director of Planning. Is that right?---Yes.
30 Yeah.

Was that for the entire period of your general managership?---Yeah. That's correct. Tony McNamara was there when I started.

So Mr McNamara was the Director of Planning for the entire period and he reported directly to you?---Yes.

Mr John Osland, was he the Director of Technical Services and Operations?---Yes, he was.
40

Was that for the entire period of your general managership?---No. I think, I don't think John started in that role until a couple of years after I'd started.

So about 2008?---Yeah, round that time - - -

Was he employed as a director for the entirety of the balance of your period of employment?---From what I recall, I think John worked there as a manager, may have left and gone into, into another and then he came back, applied and came back later on as a director.

10

Do you recall when he came back as a director?---It was about, around that time, 2008,'09 or whatever, so he was only there for a short time initially, from what I recall, when I started or just after I started, then he left and then a couple of years later, he came back and took on the director's role

THE COMMISSIONER: Just when you're ready. Is that a convenient

- - -

MR DARAMS: I'll just finish this last question. Am I right then that from
20 either 2008, 2009 when Mr Osland came back as a director or in the director position, he reported directly to you as a director from that point on?
---That's correct.

For the entirety of your, the balance of your general managership?---Yeah, that's right. That's right.

That might be an appropriate time.

THE COMMISSIONER: Mr Sawyer, we're going to take a morning tea
30 break, so we'll resume at about 10 to 12.00.---Thank you.

I'll adjourn.

SHORT ADJOURNMENT

[11.31am]

THE COMMISSIONER: Yes, Mr Darams.

40 MR DARAMS: Mr Sawyer, I think we concluded just before the adjournment with you, I think, accepting that Mr Osland, when he came

back to the council in about 2008/2009 and was appointed as a director, reported directly to you as a director for the balance of your employment as a general manager at the council.---Yes, that's correct.

You understood, as the General Manager of the Canada Bay Council that your position empowered or entitled you give directions to employees to do certain tasks?---That's correct.

10 I take it that during your period as a general manager, you did give directions to various staff of the council. Is that right?---That's right.

Can I suggest to you that when you gave a direction to an employee, provided it was within their capability, you expected them to carry out that direction?---That's correct.

20 Was it also your expectation that they would do that, was that also based on the fact that you had done that during your employment as the general manager and employees had carried out those directions you had given to them?---Yes.

Yeah. So there's an understanding, based upon the fact that you are ultimately the most senior employee?---Yes.

Correct?---Yes.

There's an also an expectation based upon practice, that is you having given directions to employees and then those employees fulfilling those directions?---Yes.

30 Was it also a part of your understanding, you might have obtained from that human resources training you undertook, that employees were required to follow directions of their managers?---If they were lawful and reasonable.

Lawful and reasonable direction is the terminology, that's right.---Yes.

40 So if it was something that was within their capabilities and within their role of their employment, and you weren't asking them to do something unlawful, your understanding is, from your training, that they had to fulfil that direction?---Yes.

If they didn't fulfil the direction, again this, I suggest to you, is based in your human resources training, if they didn't fulfil the direction, they wouldn't be complying with a lawful and reasonable direction, that's right?
---Well, unless they had a proper reason as to why they didn't do that.

Absent a proper reason for following it, if they didn't follow the lawful and reasonable direction, we've ticked that box, just understand that. If they don't do that then it's a possibility that they expose themselves to some sort of disciplinary action?---Not always. The, it depends on the reason they
10 didn't follow it, but I, I understand, I understand what you're saying. Yeah, yeah, like if they refuse to do what's asked and haven't got a, a, a reason, a reason why they didn't, they just refused to do it, well yeah.

If they don't have a valid excuse for not following the direction then they expose themselves to some form of disciplinary action?---That's correct.

Some of that disciplinary action could also include the termination of employment?---Yeah. Depending on the nature of it.

20 I just want to go back now to when you were the General Manager of Kogarah Council. It's the case, is it not, that someone contacted you to ask whether you would be interested in applying for the role of General Manager at Canada Bay Council?---That's correct.

Was that person Mr Fitzgerald?---Yes, it was.

What position did Mr Fitzgerald have at that stage?---I think he was the General Manager of Botany Council.

30 That's Mr Peter Fitzgerald, that's right?---Yes, that's right.

Did you, did that approach come by way of telephone call?---Yes.

Did you indicate on that first call that you weren't interested in applying for the role?---Yes, I did.

Did a subsequent approach come to you in relation to whether you were interested in applying for the role?---Yes, it did.

40 Did that approach come from Mr Fitzgerald again?---Yes, it did.

Was this Mr Peter Fitzgerald?---Yes, it was.

How long had you known Mr Peter Fitzgerald at that stage? Sorry, did you know Mr Peter Fitzgerald?---Yeah. Yes, I did know, I, I did know Peter, Mr Peter Fitzgerald.

How long had you known him at that stage?---2006, I couldn't give you an actual length of time but I had, I had met him because the general managers of the Southern Sydney region used to meet on a regular basis in what they used to call the SSROC group and Peter Fitzgerald was, being the General Manager of Botany, was part of that, that group and from the time I was
10 general manager, probably in 2006, I don't know if, if he was General Manager of Botany in 2006, but from the time I became general manager I attended those meetings of that, that group on a regular basis and he, he would have been there at the time, you know, for a certain part of that time, if not all that time, I would have thought.

Did you understand that Mr Fitzgerald contacted you about your interest one way or the other in relation to the general manager role at Canada Bay
20 Council at the request of Mr Tsirekas?---No.

You didn't understand that?---No.

Do you understand that to be the case now?---Sorry, when you say I didn't understand it, I was, I was never told that that was the case.

Right. Do you agree that now to be the case, that Mr Fitzgerald approached you at the request of Mr Tsirekas?---It would have been a possibility, yes.

30 Well, is that your understanding that that's what did happen?---Yeah, more than likely.

Can you tell me when you came to that understanding?---It's, it's probably, it may have been even early in the piece where because I've been in the same position as a general manager, where the, the mayor of the day asked me, has asked me, "Is there any person you would, you would suggest might be a suitable candidate for the position?" so, and, you know, you, you might be able to put a name forward that you think might be a suitable candidate that, for a, for a position in the future. So what I'm saying, I suppose, is that
40 you don't get someone to ring you up unless someone might have put your name forward as a possible suitable candidate.

Do I understand that evidence to be that, firstly, you don't understand that Mr Fitzgerald contacted you at the request of Mr Tsirekas?---Not in the first instance, I'm not, I wouldn't be sure, I wouldn't be able to say that was the case, no.

What about in the second instance?---Well, again, I wouldn't, I wouldn't know whether or not he had spoken to Mr Tsirekas or not, but, yeah. I can't, I can't say that I, I knew for sure.

10

Well, did you have some suspicion based upon any conversation you had with Mr Fitzgerald?---No. It was more just asking me whether or not I was interested in, in the position. And when he rang again, he said, "Have you given it any more thought?"

So Mr Fitzgerald, to the best of your recollection, didn't disclose or tell you that he was making these inquiries of you on behalf of Mr Tsirekas?---No.

20 Right. Have you ever had a conversation with Mr Tsirekas in substance or to the effect that Mr Fitzgerald had contacted you at the request of Mr Tsirekas?---No.

Did you know Mr Tsirekas at this time, that is, in 2006 when you were approached to gauge your interest in the role of general manager as - - -?
---Yes. Yes, I did.

30 How long had you known Mr Tsirekas?---I'd known him, we, we, we played touch football against one another at the local government touch football competition days and I'd also met him at local government conferences that were held annually. The touch football days were held annually and the local government conferences, annual conferences were again a yearly event. And I had met him at both of those occasions.

So there were occasions of some form of local government annual conference?---Yeah.

40 You'd also met him, what, 'cause he was an opponent in relation to touch football. Is that - - -?---That's right. He, he worked at Canterbury Council and I was at Kogarah Council but I had previously worked at Canterbury Council before he started and I knew a number of the guys from Canterbury Council. So we would socialise in between games or whatever. And I, I, I

think I, that's where I, you know, probably got introduced to him at that time. So I, I had met him in that - - -

So you'd met him before 2006. You can't recall how far back you had met him, but the occasions in which you had met him were either these local government annual conferences or in this pseudo-social setting of sporting events between local council sporting teams?---Yeah. Yeah, that's right.

Did you socialise with Mr Tsirekas outside those occasions before 2006?

10 ---No.

Mr Tsirekas introduced you to Mr Colacicco after you commenced as general manager at the Canada Bay Council. Is that right?---I'm not sure if he, if he introduced me to Mr Colacicco or I, I'd met Mr Colacicco just at a function that we had.

When you say a function we had, do you mean to say a function that was organised by the Canada Bay Council?---Yeah, that's correct.

20 At which members of the local community might - - -?---Be in attendance.

- - - be in attendance.---Yes.

Are you able to assist us now as to what type of function that might have been?---We used to have the annual Mayoral Christmas Party.

Is the best of your recollection now that if you were, if you had, the first time you met Mr Colacicco was at the Mayoral Christmas Party. Is that right?---I haven't got a clear recollection that that was where I met him but I
30 would have met him at one of, a function that the council had or, or (not transcribable) I would have thought.

Can you recall at the time that you met Mr Colacicco whether he was friends with Mr Tsirekas at that stage?---Yes, he was.

He was. Was your understanding in that regard based upon something that Mr Colacicco said to you?---I can't recall that, that happening but I, I would say that I realised they were, they were friends or they knew one another quite well.

40

Well, the next question I was going to put was, was it based upon, that is this friendship understanding that you had, was it based upon something Mr Tsirekas told you about Mr Colacicco at or about the time you met him?---No. It was more that they were socialising together and seemed, you know, just seemed to be, you know, friends.

10 When you say they seemed to be socialising together, was that based upon your observations of seeing them socialising?---Well, at the Christmas party, you know, like people would talk together and, and mix and things like that and, yeah.

You formed the, the impression you obtained from observing the interaction between Mr Tsirekas and Mr Colacicco was that they were friends.---That's correct.

You subsequently came to understand that they were in fact friends.---Yes.

20 Did you come to understand that they were quite good friends?---Yeah, probably, yes.

Yeah. After you were introduced to Mr Colacicco you started socialising with him independently of Mr Tsirekas. Is that correct?---Yeah, there have been times, yes, where we have socialised independently. I don't know how. Like I know that we've, we've been, yes, yeah, we did start to socialise independently, yep.

30 It's also the case that you socialised with Mr Colacicco with Mr Tsirekas as well after you were introduced to Mr Colacicco.---Yeah. I can't recall exact times or whatever but, yeah, there would have been times where we did.

You can't remember exact times, dates and the like, but you do remember there were occasions where you and Mr Tsirekas and Mr Colacicco, could I suggest your families, that is your wives and partners also socialised together?---Yes.

40 Do you recall there being a Christmas event in the early, or around, well, after you were introduced to Mr Colacicco but before 2012 where you and your wife and Mr Colacicco and his wife and Mr Tsirekas and I think his now former wife attended a Christmas function at Mr Mercuri's house?
---No, no, I can't, but we did attend a Christmas function at Mr Tsirekas's house.

Sorry. So the individuals that I've just referred to - - -?---Mentioned, yes.

- - - mentioned went - - -?---And Mr, Mr Mercuri.

Mr Mercuri was there.---And his wife was there too.

Was this at the house where Mr Tsirekas lived with his then wife I take it?
---That's right. January 2012.

10

So it was January 2012?---Yes. I remember that date clearly.

Why is that?---Because David Warner scored a century between tea and stumps in the cricket and it was in Perth or something like that so it was later in the day and we rode it home, or the guys did, rode that home so - - -

THE COMMISSIONER: A memorable moment.---It was a very memorable moment. So it was, yeah, it was, it was, that's why I recall that particular day.

20

MR DARAMS: Is it also the case that at some stage by or in 2012 you started in a syndicate of owners with Mr Colacicco and others in relation to the purchase of racehorses?---No.

Sorry?---No.

30

When was that?---It wasn't a syndicate, they were individual owners, and we all bought, or I bought a share in a racehorse called Northern, I remember the name Northern Glory and my son bought a 2.5 per cent share and Frank Colacicco – it was initiated through a phone call Frank received at that function actually, at that event, where he was offered the share. And it wasn't a syndicate and I think I, I might, I might have even said it was a syndicate earlier because that's how I thought it was, but everyone was an individual owner of that share.

Right. In relation to your ownership in the horse, Northern Glory, so the opportunity came via or through Mr Colacicco, is that how I understand your evidence?---Yeah, that's correct.

40

What, you had this discussion, do you say, "Are you interested, Gary," and taking a share or part-share in this horse?---He had a phone call about

asking him, from Luke Ricketson, asking him if he wanted to be a part-shareholder in the horse and I was there with him and he, he, he asked if there was any other shares and he said, "Do you want to come into this, be a part-shareholder in this horse as well?"

So Mr Colacicco asked you whether you wanted to take some share in the horse?---Yeah. That's right.

10 Did you understand that that was an independent share, or was it a part of what was being offered to Mr Colacicco or you just didn't have the details of that?---No. It was, it was, yeah, no, I think it was independent, like we all paid, it wasn't - - -

I accept that you paid for it but what I was trying to understand is whether Mr Colacicco comes to you and says, "Look, I've been offered 10 per cent. I'm happy to take it, but why don't I split my 10 per cent and you can have 2.5 per cent and your son can have 2.5 per cent", or you don't have that detail?---Yeah. I haven't got that detail but, yeah.

20 Just in relation to, so there's the purchase price for the ownership share, is that right?---Yes.

Were there ongoing costs associated with the ownership?---Yeah. There were, there were training, there were training fees, Gai Waterhouse Racing, sent you an invoice for the training fees and all fees associated with, with the horse, nomination fees, you know like carting, taking the horse to the, the track and all that stuff. There were ongoing fees for that, for that that, you know, we were invoiced for.

30 Were those fees sent to you directly or did it come through Mr Colacicco? ---No, sent to me directly.

You arranged the payment of those fees directly yourself, that is?---That, that's right.

Do you know how long you owned that horse for?---A couple of years.

40 Did you sell it – I take it you disposed of your shareholding in the horse, is that right?---The horse was sold.

The horse was sold so, what, all of the owners disposed of their interest at the same time?---Yeah. That's my understanding, yeah.

Did the owners in Northern Glory then purchase another horse?---There was another horse that we were, we, we did have a share in that probably come out of the, the, the money that was in balance from, from that Northern Glory, and that horse was named What Is He Good For?

What Is He Good For?---Yes.

10

Was it good?---No, it didn't get a start, didn't get to the track, didn't get a start and it got sold fairly quickly after that.

In one of your answers just now you said "we". Do you mean to include Mr Colacicco and your son in that as well?---I was talking about my son more than that, but Mr Colacicco was in that horse as well.

You knew that Mr Colacicco was also in that horse?---Yes.

20

I take it you would have had conversations with him about potentially buying in or purchasing part of that horse?---I think my son would have had those conversations with him because my son's, my son was the, the one who sort of was, you know like, the, the driver of the, you know like, the horse ownership type, type situation.

So was your son involved in some form or another in the horseracing industry?---He, he'd always harboured this, this ambition of owning or part-owning a horse that would win a Group 1, one day. And so he was, he, he's always been keen to have a share here and there with, in, in a horse that might, might achieve that.

30

But was your son involved in some way other than that in the horseracing industry?---Yeah, he worked for the Australian, ATC, Australian Turf Club.

Did he work for the ATC at the time of the Northern Glory purchase?---I'm not too sure if he was with the ATC at that time. He, he worked with, you know, worked with the Commonwealth Bank for a while, he worked with JBWere for a while, he worked with, yeah, I'm not too sure exactly at that time if he was with the ATC. He spent three or four years with the ATC but it might have been a bit, even a bit later than that.

40

I see. Am I right to assume that you introduced Mr Colacicco to your son or your son to Mr Colacicco?---Yes, that'd be right.

Is it the case that throughout the time that you've known Mr Colacicco, you would also otherwise socialise with him, for example, catch up for a coffee, from time to time, or a tea or whatever other beverage?---Yeah, probably did, yeah.

10 Well, do you remember whether you did or not?---I can't remember exactly
- - -

I'm not asking for dates and times - - -?---No.

- - - but just whether or not you recollect there were occasions during your friendship that you've caught up, for example, had a coffee or a tea?---Yeah, as I said, I, I can't recall. We, we used to talk on the phone a lot. I, yeah, like, we, we could have done. I'm - - -

20 Don't have any recollection now?---Yeah, we, we, we could have had a
coffee or whatever but, generally, in, in, yeah, yeah, we probably, like, we
may have done for sure.

You just referred to talking on the phone. I think you were going to say a lot. Is that right, that you would talk to Mr Colacicco on the phone a lot?
---Well, yeah, generally, we'd chat either about the horse or rugby league or whatever. It was more a, a phone conversation than a, than a coffee catch-up sort of thing.

30 What about text conversations or text exchanges between yourself and Mr
Colacicco?---Yeah, we, we did, we would have had some text messages.

Social-type things, sharing horse tips or things about horses?---Yes, no, we, every Saturday, the, the phone would, would go off with the tips that he had either from Gai Waterhouse Racing or whatever that would come through. And there was, must have been a group text or whatever, I, or Frank sent it out to the people he was associated with, so - - -

40 Do you recall when that – I withdraw the question. Can we assume that that sharing of the tips commenced about the time that you had purchased the horse or did it commence before that?---Might have, might have even commenced even later, later than that but, yeah, I, I - - -

Can you recall when?---No, I can't exactly recall then, but it's - - -

But at some stage, the relationship developed where he was also then sharing - - -?---Yeah, I, I, I think it would have - - -

- - - racing tips?--- - - - initiated with, you know, like, because of the, the interest in the, in the horse and whatever, initiated either sometime later than that when we, when we, you know, didn't have the horse.

10

So you'd get a message, what, every Saturday morning with, "Here's some tips"?---Yeah.

What about mid-week tips?---No. No.

What about having dinners with either Mr Colacicco and his family or, and your family? Did that occur, as well?---I recall that we had one dinner at our place when, when Mr Tsirekas was still married to his previous wife

- - -

20

So this would put it before 2014. Is that right?---Yes, yes.

So you hosted a dinner at your place, is that right?---Yes.

Your wife and you?---Yes.

Mr Colacicco and his wife attended.---Yes.

Mr Tsirekas and his then wife attended.---Yes.

30

Were there any others there that you can remember?---Yeah. Mr Mercuri and his wife.

Do you agree that by no later than 2015 that you and Mr Colacicco had become close friends?---Yeah, we've become friends for sure.

What about close friends by this stage?---I don't have too many close friends. I've got probably three or four what I'd call close friends, so he was a friend.

40

So at this stage in 2015 did you regard him as one of those close friends?
---No. He's a friend.

Just a friend.---Yeah.

Was Mr Tsirekas one of your close friends by 2015?---No. He was a friend.

Just a friend. What about Mr Mercuri?---Yeah, a friend.

10 Do you still socialise with Mr Colacicco?---Only mainly the Friday morning, Friday morning - - -

You still attend the Nield Park catch-up if I could call it that?---No.

You've stopped attending that?---Yes.

When did you stop attending that?---Following the, the hearings here. There was, I went away for six weeks over the Christmas period. I came back and went back there for one, for one catch-up because I needed to see
20 Carlo.

Carlo Ianni?---Ianni, yes.

What did you need to see him for?---Carlo, Carlo's, is a retired panel beater and I damaged my car and I wanted some advice from him as to whether or not I should, how I should approach the actual repairing of it.

Something along the lines whether it's better for you to go and get it fixed generally or go through insurance?---Yeah, whether, whether the damage
30 was such that it was only going to be a couple of hundred bucks so I didn't pay the excess or whether or not he felt that you needed to replace, as it did happen, needed to replace the whole door and I had to go through the insurance, the NRMA insurance. Pay the excess and get it repaired.

You refer to the cessation and you'd had a Christmas break. You're referring to the Christmas break last year. Is that right?---That's right.

So you were still attending these catch-ups throughout, COVID permitting, throughout 2021 and 2020. Is that right?---Yeah. There was, there was,
40 there was a break because of COVID at certainly different times, yes, but, yeah, yep.

Do you still, are you still in telephone contact and text contact with Mr Colacicco?---No, not, not - - -

When did you stop doing that?---Probably about four or five weeks ago.

Four or five weeks ago. Why did you stop four or five weeks ago?
---Because of the present, well, because - - -

- 10 Because of the context of these Commission proceedings?---Because of the context of the hearings, yes. Although I must say the blocking of the, of the text of - - -

THE COMMISSIONER: Sorry, having trouble hearing you.---Sorry?

Just keep your voice up a bit.---Oh, the, the blocking of the call. We still got a couple of text messages about the racing thing that came through after we blocked the call. I don't know how that happened or whatever but - - -

- 20 MR DARAMS: Did you make a decision to block Mr Colacicco's call, sorry, number on your phone. Is that right?---Yes.

Did you make that decision in discussion or conjunction with Mr Colacicco or you just did that yourself?---No.

So that's why you raised the fact that you've blocked his number but you still get messages sometimes?---Yeah, and why I don't know but - - -

- 30 Can I just ask you why you blocked his call? I know you've said, you've given some reference to the context of this proceeding or this Commission investigation but - - -?---Well, it, it was to make, to make sure that we kept the integrity of the – not that I'm suggesting that Mr Colacicco would have breached that at all, but it was more to make sure that it didn't, nothing untoward happened or, or whatever.

But before you blocked his number you were in contact with Mr Colacicco, is that correct?---Yes, that's correct.

- 40 Did you block that call, or contact, with Mr Colacicco, what, after this public inquiry was announced in April, is that right?---Yeah. I can't

remember the exact, yeah, date. It was because my wife and I talked about it and she was the one who, who actually pressed the button.

I think you said before that it was about four or, four weeks ago or something, four or six weeks ago?---Yeah. About that time.

Okay. Just back to Mr Tsirekas and your relationship with Mr Tsirekas. Did you socialise with Mr Tsirekas outside work or work functions? And you don't need to tell me again about the Christmas get-ups or the lunches at, sorry, the dinner at Mr – sorry – the Christmas function at Mr Tsirekas'.
10 I'm focusing on different occasions.---No. It was primarily, because we, we did have a, a number of work functions or events that happened, and there was a number of those where our wives were also there, it was primarily those type of events where we, we socialised. I'll give you an example. The Concord Hospital used to run, say, opera down at Rivendell, which was on the Parramatta River, and it was a function to raise money for the, for the hospital, that we used to attend, and our wives used to attend. So it was on the Saturday night, they would have the opera down by the, on the water,
20 like, on the water down there, and it, just an example of a night, a night out which was a social night, but a work night where, yeah, you, you would socialise.

So that was, in that period, what from 2006 through, in the period between 2006 to 2014?---Yes.

Because you mentioned Mr Tsirekas' wife. What about other occasions where you might socialise with Mr Tsirekas? For example, would you go out and catch up with him for a drink after work or - - -?---We wouldn't have a, we wouldn't have a, like, go out and have a drink after work. There
30 might be on a Friday, or whatever, we would have a, a drink before we left work, we'd have a - - -

At the council chambers?---Yeah, at the council chambers.

Is that something, what, you host in your room or you host in a boardroom or - - -?---Oh, we, we had a, a meeting outside my office that, you know, some of the staff used to come in on a, on a Friday afternoon, if there was, you know, something that we, we'd do, we'd have a, have a drink on a
40 Friday afternoon after work and, and, yeah, Mr Tsirekas would come in at that time, or we would go into his office and have a drink in there, finish up

on Friday and, you know, talk about what's happened or what was going to happen.

Did you catch up for lunch with Mr Tsirekas when you were the general manager?---Yeah, occasionally.

10 Did that start after you commenced at the general manager? Sorry, I'll probably be a bit clearer about that. Did those occasional catch-ups start relatively soon after you commenced as general manager or did it start at a later period in your employment?---Oh, no, it was, it was, again, Mr Tsirekas was employed with Canterbury Council up until 2013, I, I think, and so it would have been after that if, if he was in the, if he came in during the day or if he, during his mayorship, he was hungry and didn't have a sandwich, we, we might pop out and grab a sandwich or something and, and have a coffee or something like that.

I want to just move on to something different now. I want to ask you about the sale of 231 Victoria Road that council owned property in 2016.---Yes.

20 The responsibility for the negotiations on behalf of council for that sale were delegated to Mr Walton. Is that correct?---Yeah, delegated through Mr Osland to Mr Walton.

So you delegated it to Mr Osland. Is that - - ?---Yes. That's how the delegation worked.

I see. So you'd delegate to Mr Osland, who then you understand delegated to Mr Walton?---Mr Walton, yeah. He was the Manager of Properties.

30 Mr Walton reported to Mr Osland?---Yes.

So indirectly reported through to you?---That's correct.

Negotiating the terms of sale of council property, was that a matter within the remit or responsibilities of Mr Walton's position at the time as Manager Building and Property?---Yes, he, he was the one who looked after that.

40 THE COMMISSIONER: Was Mr Walton regarded as a competent officer?---Yes, he was. Yes, he was. And he, I worked with Mr Walton at Kogarah Council - - -

Sorry? I missed that?---I worked with Mr Walton at Kogarah Council.

Did you?---And, yeah, so I was pleased to have him onboard.

Yes. Thank you.

MR DARAMS: Can we assume from the answers you've just given that in terms of handling the sale on behalf of council, you had faith that that was something that Mr Walton could handle on his own?---Certainly, Mr Walton
10 was capable of handling that.

Was there anything up to this point in time, and when I say "this point in time", I suggest 2015 when the negotiations started, was there anything that stuck out in your mind as suggesting that, in fact, Mr Walton wasn't capable enough of handling this sale?---No. No.

I just want to ask you some general questions about the property at 231 Victoria Road. Do you understand that prior to 2015, that council had tried to acquire or made inquiries about potentially acquiring the property at 227
20 Victoria Road?---I didn't recall that but through the proceedings here, I've learned that that was part of our property strategy.

When you say you didn't recall that, you saw some documents in the context of these proceedings and you had seen that at some stage before 2015, it was a part of the council strategy to see whether it could acquire 227?---I, I heard Mr Walton's evidence on, on that particular matter.

So is this right? You had no direct involvement in those dealings - - -?
---No.

30 - - - as best you can recall?---That sounded like it was part of our property, long-term property strategy for the, for the city - - -

Was that property strategy something that you understand Mr Walton had formulated or had some input into?---He certainly would have had some put into, I would have thought.

Who else might have formulated that?---The, his predecessor was a gentleman by the name of Tan Vo and I, I'm not too sure when he left and
40 Mr Walton came onboard but there were discussions I know I had with, with him about developing a property strategy over, you know, for the city,

for the, for the longer, for the longer period. And so I, I think it may have been initiated in his time and then Mr Walton would have taken it further.

Seen the strategy applied or sought to apply the strategy in his role as manager?---That's right.

So is that how I understand that evidence?---Yeah.

10 The property at 231 Victoria Road was being used by council as a car park.
---Yeah, it was being used as a car park for staff and was also being used as a car park for our community buses.

It was being used in that manner in 2015 and 2016. Is that correct?---Yes.

It continued to be used in that manner for some period of time after 2016. Is that also correct?---Yeah. My understanding it was until the, the property was actually sold.

20 Do you recall when the property was actually sold?---No, I, I can't recall, can't recall the date that it was sold.

Does November 2018 ring any bells, around that period of time?---I, I can't recall the exact date but probably, yeah, no, I, I can't recall the exact date of that, no.

What about an approximate date? Does the approximate date - - -?---Yeah, that, that could - - -

30 - - - of November 2018 sound about right?---Yes, yep, yep.

Because you understood there was an original 18-month settlement period.
---Settlement period, yes.

That was subsequently extended up to six months. Is that in accordance with your recollection?---Well, I wasn't at council at the time they sought the extension so - - -

You had left by that stage.---That's right.

40 But you understand there to be, an extension was granted.---I understood that from the, from the proceedings here, yes.

From these proceedings. I just want to ask you some questions if I might. Could the witness please be shown volume 4.2, page 234. I'll just ask you to look at this, Mr Sawyer. Let me know when you want to have a look at the last page or the next page.---Yep.

I'll just show you the next page.---Yes.

10 Could I ask that you be shown the preceding page, page 234. This letter is addressed to you. I just want to ask you about your process at the time. It's a case that Mr, you understood at this time that Mr Walton had been delegated through Mr Osland - - -?---Yes.

- - - responsibility for conducting the negotiations?---Yes.

I take it then because of that understanding you have looked at this correspondence and passed it on either directly to Mr Walton or to Mr Osland?---Yeah. I don't recall seeing that correspondence. It might have even been directed directly to, to Mr Walton.

20

Just can I understand that. When you say it might have been directed directly to Mr Walton, do you mean that the letter came into council obviously addressed to you but someone might have filtered it so to speak, maybe a PA or someone else, and said oh, this is something that Kent's dealing with. Is that what you're suggesting?---Yeah. All the, all the, well, the majority of the correspondence that comes into council is, is directed to the general manager and either the Records Department then filter that out to the relevant person or, or persons responsible or if it is something that they think should come to me my PAs would again probably have a look at that or, you know, I can't recall seeing it. So I might have even passed it on but I can't recall seeing that, that document.

30

So, notwithstanding it's addressed to you, there's a likelihood that you wouldn't have seen this correspondence at the time it was sent to council because, and I'm not suggesting they're improper at all, but council processes might have, in effect, directed it to Mr Walton because he was dealing with this matter at the time, is that right?---Yeah, that may have been the case. I, I can't be certain of that, that's all.

40 THE COMMISSIONER: Let me just ask you about council processes as you understood them when you were there. In respect of the sale of 231

Victoria Road, you said the delegation was made to Mr Osland about that matter and he in turn then had delegated the matter to Mr Walton. That's right, isn't it?---Yes, yeah.

With the process of delegation, do I understand the delegation that you speak of, in terms of Mr Osland and then Mr Walton, is that the delegation is a formal process of council?---Correct.

10 The delegation carries with it the, well both the authority and the responsibility to the person by way of delegated process?---Yes, yes.

And the relevant authority and responsibility being imposed upon that officer, that officer to whom the delegation is made is also accountable for the proper conduct of it?---Yeah. That would be correct.

20 That's the whole purpose of a delegation, as I understand it, to have the authority, the responsibility, the accountability placed in the hand of the nominated officer who will always be regarded as an appropriate person to carry that responsibility, is that right?---Yes. That's correct.

Okay. So that all of that responsibility and the functions associated with it resides in the person to whom the delegation is made for determining proper process, including proper decision making in relation to the matter the subject of the delegation?---That's correct. And that's why it goes through the director first, that's why it goes through the director first, so they're aware of what the, the matter is and then, they then delegate it down to the person within their area who should look after that. But they, they're fully aware of what the matter is before they delegate it on.

30 Yes. And I take it that the officer to whom the delegation is made would be expected to take it through to its logical endpoint, unless of course the officer became, for example, unavailable for a particular reason?---That's correct.

40 And if that did come about, perhaps through illness or some other misadventure of some kind, then the process of delegation would be revised so that the task is delegated to another officer who's regarded as competent to take over, is that right?---Yeah. And that's the other reason why the director has knowledge of who or what the item is and who it gets delegated. So if an instance like you just described happens, they're aware

that they might need to reallocate that, depending on the priorities that they've got.

And the function of the director being an important one, because I suppose ultimately the responsibility comes back to the director so that it is their duty to make sure the delegation is given appropriately and maintained properly.---That's correct.

Until the task is finished, is that right?---Yes.

10

And would you expect then that during the course of the task to be performed that it is not open to somebody else to, as it were, take over the function once it's been delegated to an appropriate person?---Again, that depends on the circumstances you, you, you raised and it, yeah, normally that would be, be the case. The person who it's been delegated generally carries it onto - - -

Through to conclusion?---Through to conclusion, yeah.

20 Thank you. Yes.

MR DARAMS: You might have answered this, and I apologise, but was the delegation, was that in writing or could it just be a simple email or something to the effect?---There, there were delegation registers for each, for each of the positions that we, that we had. So the, when you say "the delegation" that would have just been an informal thing as far, it, it wouldn't have been I'm here by delegating this particular matter to you formally
- - -

30 That's what I was trying to understand - - -?---Yeah.

- - - just this process of the delegation.---Yeah.

You refer to, sorry, a delegation register, is that - - -?---Not a register so much but there was a, a formal, from what I recall, there was a, a formal list of delegations for each of the, each of the staff at, at that level is, is what they, they were responsible for.

When you say "staff at that level" do you mean director level?---Yes.

40

Also manager level?---Yeah, I, I can't recall manager, how far it went down but, yeah.

I'm just going to use an example, just focusing on the director level. Do you mean that there was some, as you understood it, some document that identified that the director would be responsible for this particular task? It might be, for example, entering into a contract up to a particular value. Other than that, they would have to go through another process. Is that the type of thing we're talking about?---Yeah, the, I, I, I recall that we had,
10 yeah, delegations sort of, a, a, a structure for how the delegations would operate.

So just going back to this particular transaction, the sale of 231 Victoria Road, the delegation you spoke of before, was that something within that, I think a more formal process or are you referring to something a little bit more fluid or a little bit less formal?---It was probably - - -

MR LLOYD: Chief Commissioner, I object only on this basis. I think what the witness has identified is two delegations and I just respectfully invite
20 Counsel Assisting in the question to identify which one.

THE COMMISSIONER: Sorry? Your objection is that it doesn't specify what delegation. The witness is being asked about the - sorry? What's that point?

MR LLOYD: Well, the witness, I thought, gave evidence of two delegations, the first one by him to Mr Osland - - -

THE COMMISSIONER: That's right.
30

MR LLOYD: - - - and the second one by Mr Osland to Mr Walton.

THE COMMISSIONER: Yes.

MR LLOYD: And the question involved one delegation. And, in fairness to the witness and also so - - -

THE COMMISSIONER: Yeah. So it should be, there's a distinction.

40 MR LLOYD: Thank you.

THE COMMISSIONER: Yes, I understand.

MR DARAMS: Yeah. So just focusing on the delegation by you to Mr Osland, was that something that was in accordance with the delegation - - - ?---Protocol sort of thing - - -

- - - protocol - - -?---Yes.

10 - - - that you were speaking of, that there was some document, to the best of your recollection, that had that in it?---Yes.

So then focusing on this particular transaction, the delegation from you to Mr Osland was in accordance with that protocol?---Yes.

20 What about the delegation from Mr Osland to Mr Walton? Do you have any knowledge of how that came out or would have come about? For example, was that in accordance with some other protocol or was it likely to be or was it something less formal than that?---Yeah, no, I can't recall how it, how it flowed, the, the protocols in place, how it flowed, flowed down but, yeah, no, I, I can't recall exactly how the, the next layer went and the next layer went. But, yeah, there was, there was certainly documentation in regard to delegations.

From directors to managers or are you saying from you to directors? ---Yeah, from council to me, from me to directors. I can't recall how far down the, the line it went after that.

30 THE COMMISSIONER: Do I understand this, though, that for obvious reasons, there was a process, a formal process of delegating authority and responsibility to an officer - - -?---Yes.

- - - say officer A and then that officer would have a discretion to himself delegate the same task to somebody else, officer B, that whether it's one or whether it's two delegations involved for the same task, it's got to be done according to some process of council, so that, as you say, the director is in the loop as to whether it's A or B who's now exercising and has the responsibility for the task, is it?---Yeah, that sums it up pretty well, Commissioner.

40 Okay. Thank you.

MR DARAMS: Just so I understand it, in terms of Mr Osland's responsibility he was also responsible to determine who he might delegate a matter down to within his team. Correct?---That's right.

So if Mr Osland had to reallocate a delegation that he'd given to one employee within his team that was within his remit to reallocate it to someone else, the delegation?---Yeah, yeah.

10 Did you understand that that did occur from time to time or you just don't know?---No, I don't know.

But you expected that that type of thing would have happened?---Yeah, in the normal, normal way things work I would expect that to happen.

Sorry, we deviated slightly. So - - -

THE COMMISSIONER: I think I distracted you. I'm sorry.

20 MR DARAMS: No, no, no distractions at all, but if we can go back to 4.2. You don't have any recollection – sorry, 4.2, page 234, the offer from Mr Bartolotta or Royale Limousines.---Yeah.

You don't have any recollection of receiving this correspondence.---No. No, I don't.

30 It's entirely possible that in fact because of the processes and procedures within council at this time that it was directed straight to Mr Walton because he was the person you understood had been delegated the responsibility for negotiating this sale on behalf of the council?---Yeah, that could have happened or it, it could have, could have come to me and I, I just can't recall it.

That was the other alternative.---Yeah.

I think you said before you don't recall getting it.---Yeah, that's right.

One likelihood is that it didn't come to you in the first place.---Yep.

40 That's a possibility.---Yep.

Alternatively it did come to you but you just don't remember now, but if it did come to you could I suggest that what you would have done would have directed it - - -?---Redirected it.

- - - redirected it to Mr Osland first then Mr Walton or would you have redirected it, could have redirected it straight to Mr Walton?---More than likely.

To Mr Walton direct?---To Mr Walton.

10

Yeah. Could I then just ask you to have a look at page 246 of volume 4.2. Just have a look at this please, Mr Sawyer.---Yes.

Mr Sawyer, just pause for one moment. I think there might be some technical issue so I just want to pause for the – sorry, the technical issue is no longer a technical issue you'll be glad to hear. Now, do you want to see the next page?---Yes, please.

Can I ask you be shown the next page.---Yes.

20

Could I ask that you be shown page 246 again. Did Mr Walton bring to you or show to you or discuss with you a draft of this correspondence before it was sent out, can you recall?---No, I can't recall that, that it, can't recall seeing that but Kent, Kent did keep me updated with things like that so he may have sent it to me but I, I just can't recall seeing it.

30 So the question I had from that is in light of the delegations to Mr Walton in relation to this particular sale, did you have any expectation that he would have to bring a draft of this before – sorry, a draft of this to you before it was sent out?---No. Kent was in, in, or managing the, the process involved with trying to negotiate a, a price for the sale of the property.

So managing that process included, did it not, that the ability to ultimately determine what is here a counteroffer to Mr Bartolotta?---That's right. At this stage they were obviously in the negotiation phase and nothing had been, got to a point where it had been finalised at this point.

40 The correspondence refers to in the sort of fifth paragraph where it says, "For the purpose of this valuation council's land has been combined to form a development. I believe its intention to undertake a development." Then the next paragraph down "guided by the valuation". The reference to the

valuation there, do you ever recall seeing those valuations that council had obtained?---No, I, I don't recall seeing any valuations.

Sorry, what's that?---I said I don't recall seeing that valuation.

Or any valuations. Is that right?---Well, I think there was a, yeah, there was another valuation that, that council had. It may have been that one where he's, there was, my understanding there was two valuations and that's from the proceedings.

10

So that's what I was going to ask you.---Yeah.

When you say your understanding that there were two valuations obtained by Mr Walton, that understanding has come from evidence in these proceedings.---That's right.

You don't have any recollection of reviewing or seeing those valuations in May 2016.---No.

20 You certainly didn't obtain those valuations in 2016.---No, not that I recall, no

It wouldn't have been a matter – excuse me. Could I suggest to you it wouldn't have been something you would have expected Mr Walton to have brought to your attention given he was negotiating this on behalf of council?---That's right. I would have thought that he would have discussed it with his director.

30 THE COMMISSIONER: Mr Darams, if you're about to move onto something else.

MR DARAMS: Yes, I am. It might be an appropriate time.

THE COMMISSIONER: We'll take the luncheon adjournment. Mr Sawyer, we'll resume at about 2 o'clock. We'll take the luncheon adjournment now.---Okay.

LUNCHEON ADJOURNMENT

[12.57pm]