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18/05/2022

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pp 01287-01331

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION TOLOSA

Reference: Operation E17/1221

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 18 MAY, 2022

AT 2.00PM

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

THE COMMISSIONER: Yes, Mr Darams.

MR DARAMS: Could the witness be shown volume 4.2, page 227? Could I just ask you, Mr Sawyer, to read the email you sent to Mr McNamara and Mr Osland, copied into Mr Walton on 3 March, 2016?---Yes. Yes, I've read it.

10

Do you remember this email that you sent?---Yeah. I do, I do remember asking that question.

I want to ask you a couple of questions about the content of the email. The first question is, where you refer in the second line to 227 Victoria Road, was that an error and you meant 231?---Yes, yes. You're correct.

20

The second question I have is, are you able to explain to us what your particular, if I can describe it this way, concern is that you had at this stage in relation to the potential sale of 231, or the negotiations for the sale of 231?---Yes. The, from what I recall, the department put out some guidelines in relation to what council should consider moving forward with the pending amalgamations, and part of that, those guidelines were that you weren't, you needed to give some fairly strong consideration to making any decision that virtually would be a legacy for a future council coming in, such as, you know, getting into debt or, you know, I don't know, making commitments that would, you know, possibly impact on a future council or a, a, that, that may have been elected after the mergers all took place. So given, at that date, we were, we were being nominated to be merged with

30 Burwood and Strathfield Council, I just wanted to make sure that any decisions that the council made going forward took into account the guidelines that the department had put out.

30

Was one of those considerations issues you were interested in understanding was whether Canada Bay Council could continue negotiating for the terms of the possible sale of 231 Victoria Road?---Yes. It was, as I said, that correct is made and the other one, we, we had 41 Hospital Road that was in a similar situation. And also we had a, a master plan for the Five Dock, for Five Dock where the Waterview Street car park, we were looking at moving

40 towards putting a strategy together to have that car park redeveloped.

40

Yeah. I don't want to get you too distracted on those other matters, I just want to focus on any concerns you had about 231 in particular. A concern you might have had as at 3 March as to whether or not in fact council could continue in those negotiations, that's one concern you had, is that right?
---That's right.

Presumably probably a stronger concern you had was whether council could actually conclude the negotiations for the sale in those circumstances?
---Yeah. That's correct.

10

Could I then ask you to be shown page 226? So you sent the email and I want to show you a response. So Mr McNamara responds to you on 4 March, copying in Mr Osland – sorry. Sending it also to Mr Osland but copying Mr Walton.---Yes.

Have you had the chance to read that?---Yes.

Now, in terms of the concerns that you might have had the day before, did Mr McNamara's response, as least in relation to 231 Victoria Road, go
20 some way to alleviating those concerns?---Yes, it did.

So then you send - I take it's a reply to Mr McNamara. You say, "That's a good start."---Yes.

Were you looking for anything further or in addition to what Mr McNamara said in order to satisfy your concerns about the sale and the negotiation for 231 Victoria Road?---Well, I, I think I was, you know, awaiting a response from Mr, Mr Osland as well but that to me was when I had, when I was reading the guidelines that to me sort of satisfied the inquiry that I was
30 making as far as being able to move, that we could continue to move forward.

So if I could just understand your evidence. You had some concern about the ability to continue the negotiations and therefore conclude the negotiations for a potential sale. That's the concern you had, correct?---
Yes. I, I, well, I wanted clarification. Well, yeah, basically are we, are we on the, are we still - - -

Are we able to continue with this negotiation and potential sale of 231?
40 ---Yeah. The, within the guidelines.

In light of the proposed amalgamations that had been - - -?---Proposed.

- - - proposed at that time?---Yeah.

A number of proposed in there but in any event the proposed amalgamations. Do you get a response back from Mr McNamara that in addition to your further consideration of the guidelines assisted you with your concerns or assuaged any concerns you had?---That's correct.

10 If I could then ask you to be shown volume 4H, page 191. Could I just ask you to look at this first page.---Right.

Do you recognise this type of document from reviewing the first page?

---Yes, I'm aware what, what it, what the document is.

The direct dealing protocol document, is that something that during your employment with or as the General Manager at Canada Bay Council you had some involvement with prior to this one involving 231 Victoria Road?

---No. This was a one-off.

20

So you hadn't been involved in any direct dealing protocol document before this date?---That's correct.

So this was the first time that you were being asked to be involved in that process. Is that right?---That's correct as far as I recall.

I take it in those circumstances you were careful to read the document to understand what was required.---Yeah. I can't recall that but I, I would have read that document.

30

If I can just ask you a little bit more about that. You're the General Manager of Canada Bay Council.---Mmm.

That's right?---Yes.

At this time the most senior employee in the council.---Yes.

You're presented with a document outlining a process which you understood should be applied in relation to disposing council property.

40 ---Yes.

You understood that the protocol was among other reasons prepared or drafted for probity issues.---Yes.

It set out a number of steps and processes to be followed to ensure the proper probity principles were applied in relation to the disposal of council property.---Yes.

Especially in circumstances where it wasn't being proposed that there would be an open tender for the property.---That's correct, yeah.

10

This was going to be a direct dealing between - - -?---Direct dealing.

- - - members of council and a member of the public.---Yes.

I suggest to you that in those circumstances given that you hadn't been involved, as I understand your evidence before, you would have been careful because of the nature of your role, because of who you are, being an experienced council executive to read this document and understand what was contained in the document. That would be a fair assumption, wouldn't it?---Yeah, I, I would have read the document.

20

Well, are you suggesting that you wouldn't have been careful to note what was contained in the document?---Well, I, I would have read it, so, yeah, I - - -

So my question was slightly different. My question was, yes, you can read something but I was suggesting to you that given your role, given your experience, given the nature of this transaction, that is a direct dealing with a member of the public, given the importance of the protocol in terms of the probity of the transaction, you would have been, when you read it, careful to understand what was being set out in the protocol and the obligations of the parties under the protocol. That must be right, Mr Sawyer?---Yeah. Yeah, I, I'd agree with that.

30

THE COMMISSIONER: Mr Sawyer, is this right, that with the public assets or council assets, generally speaking the approach should be to go to the competitive market, such as an auction or some such process, in order to ensure that value for money is obtained as a matter of probity and public interest. Is that right?---Yes.

40

But having acknowledged this Commission's, as this memo does, recommendations in respect of direct dealings, firstly, as halfway down the document, it indicates that direct dealing is really an exception, if you like, and there should be some unique circumstances to justify not going to market?---Yes.

10 And all that's directed towards getting, to permitting direct dealing in circumstances that are regarded as somewhat unique and such matters are set out under the heading Subject Site, but to ensure that value for money is achieved, notwithstanding that it is a direct dealing arrangement with one prospective purchaser. Is that right?---Yeah, that's correct.

Yeah. And I suppose particularly so when you've got developer interests who are interested in buying council land, it's important that councils act properly so as that they won't be, as it were, out-manoeuvred by anyone, be they property developers or otherwise, but they must ensure that proper value is obtained no matter who the purchaser is?---Yeah.

20 Is that right?---Yeah, that's correct.

I mean, that's the whole rationale, as I understand it.---Yeah.

But do you agree with that?---Yes, I do.

Yeah. Thank you.

MR DARAMS: Could I ask that Mr Sawyer be shown page 195 now? Mr Sawyer, that's your signature under your name?---Yeah, that's correct.

30 The date next to your signature is 18 May, 2016. Was it your practice at this time in May 2016 to date a document, if you were asked to date a document, at or about the time you signed it?---Yeah, that would have been right.

40 So we can assume a couple of things, can't we, based upon you signing this document on 18 May, 2016? The first of those assumptions is that to the extent that there was any concern that might have been expressed by you earlier in March about the ability to proceed with the negotiations, that concern had dissipated by this stage?---That's correct.

Because you understood clearly that this was about a continuation of the negotiations?---That's correct.

The second thing that we can assume is that you had read and agreed to abide by the terms of the direct dealing protocol document?---Yes.

That's right?---Yes.

10 You also would have understood that when you read this document that the other responsible officer in the organisation was responsible under the dealing protocol was Mr Walton. That's correct?---Yeah, at that time.

Yeah. He hadn't actually signed the protocol at the time that you had signed it?---No, that's correct.

But it was always intended that he was going to be the other officer of council to sign it?---Yes.

20 Consistent with the fact that you understood at that time he'd been delegated the responsibility for dealing with it?---Yes.

Could I ask that you be shown page 193? Given that you've read the protocol, as I understood your evidence, or you accepted before, carefully, but you've also agreed that you did read the protocol by acknowledging it. You obviously read what was required or set out in paragraph 8, among other things, is that right?---Paragraph 8, which is - - -

Negotiation Protocol.---Negotiation Protocol, yeah. Yes.

30 In reading that, one of the things you would have appreciated, which is that set out in the third sentence of the first paragraph, where it says "Discussions during face-to-face meetings should be minuted by the parties and provided to each other in writing following the meeting confirming the discussion as a true record of the meeting." Do you remember reading that?---I don't remember reading that but it's, it's there, yep.

40 That, I'll call that a statement of principle, or that proposition, is not only appropriate but quite sensible, isn't it, in relation to this type of negotiation or discussion that might occur, that is in relation to the disposal of council property?---Yes.

I take it that, to the extent that you were a participant in a face-to-face meeting, you would have understood from reading this document, but also agreeing to abide by the terms of the document, that you had a responsibility to record the terms of the discussion that took place?---Yes.

That's right?---Yes.

10 The next - so you clearly would have understood that if you'd sat down and negotiated, or had some discussions about the terms, part of your obligations was to ensure there was a minute taken of the record of those conversations, first thing?---That's correct.

Secondly, it was part of your obligation to ensure that a copy was provided to the other side so that the parties were, in effect, at one and there was no dispute about what had been discussed and agreed?---Yes.

Do you agree with that?---Yes.

20 Put aside the protocol, but that would also make sense, wouldn't it, just as a general proposition, when you're negotiating with a party in any event, absent this protocol?---Yes.

Yeah. The next paragraph you would have noticed was that all communication between the parties should only take place between the individuals from each party that are identified at the end of the document. ---That's correct.

30 So you would have understood that what that meant is it would be Mr Walton and yourself on behalf of the council, correct?---At that time.

At the time, when you say "at that time", you mean at the time - - -?---At the time I signed the document.

Yep. Likewise, the other party who signed it was, or a party of the document, was Mr Bartolotta?---Yes.

40 Yeah. Did you appreciate the importance of the persons being identified as the parties to the document? One of the importance of that happening is that that person would agree to comply with those obligations, including the negotiation protocol?---Yes.

Yeah. Can I suggest to you then that it would, if there was to be any change to those responsible persons, or the parties to the document, you would have ensured that the documentation was updated to make sure that only those persons who are identified in the document, and secondly had agreed to its terms, participated in those negotiations, is that right?---Well, it would have, the, the document itself would need, would need, would have needed to be updated by the other person who took part in those negotiations.

But you – you signed the document.---Yes.

10

You signed it knowing what the terms of the document provided for and required.---Yes.

You understood the importance of the fact of someone being identified as one of the parties.---Yes.

So we're clear, the importance you understood was that the person who was identified as one of the parties to the document would sign it so that they would then also agree to the negotiation protocol, among other terms.

20

That's right?---Yes.

What I want to suggest to you is that as the general manager, most senior employee within the council, that if you came to know that there was to be some change to those parties you would want to ensure before negotiations continue that that additional person or the change made that they had this document, they had agreed to it and signed to it because otherwise you wouldn't be, could I suggest to you, compliant with your obligations under the document?---Well, the, the carriage of the actual sale of the property, as I said, had been delegated down to John Osland and I'd signed the document. I would have signed it on the 18th of the 5th, handed it back and whoever on the 24th or 23rd whenever we had the, the meeting or whatever that should have been signed. It must have been overlooked or something.

30

Are you able to answer my question now though?---Yes, sorry.

Can you answer my question?---What was the question?

I was suggesting to you, putting this proposition to you that as the general manager of the council, as someone who had already signed the protocol, who had read the protocol, who understood the importance of a person being identified as a party to the protocol, including signing the protocol to

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ensure that that person also complied with the obligations of the protocol, I'm suggesting to you that you should have and would have ensured that if there was to be any change to the parties to the protocol that those changes be made before the person becomes involved in the discussions or the negotiations in the protocol. Do you understand that?---Yes, I understand that.

10 Yeah. What do you say about that?---Well, I, I suppose, yeah, I probably should have had that person sign, sign that document before we sat down to have that meeting.

THE COMMISSIONER: The person being?---Well, if Kent Walton wasn't going to be available, John Osland should have signed that, signed that document. Should have signed at the time.

Either John Osland or if there had been a separate delegation then the other - - -?---Yes.

20 - - - person although I don't think there was a separate delegation in this case.---No.

No.---No, there wasn't.

I think the only delegations were to Mr Osland and then Mr Osland to Mr Walton.---That's right.

30 But anyway, you say that if there's any change in personnel, in accordance with the protocol that's something that should have been noted, signed off on, but in this case I think you earlier said it may have been overlooked. So am I - - -?---That's - - -

Am I putting it correctly?---Yeah, no, having a look at it that's must have what happened, must have been what happened.

40 So I suppose is this right, the rationale behind a protocol such as this, that is to say where there's been a change of personnel for example, it should be noted because it's part of the accountability process to have a record as to who the person was, and signing off on it establishes beyond any doubt if any questions are raised we know who was there and who was - - -?---Yes.

- - - part of the negotiation?---That's correct.

Yeah.---Yeah, I would have signed it off and sent it back to Kent Walton to sign, to sign his particular part of it, so, yeah.

MR DARAMS: Now, you have referred just a short time ago to I think you said the 23rd or the, or May, a meeting. Is that right?---Yes, that's right.

Now, I'll come and ask you some questions about that in a moment, but when you refer to this meeting on 23 May, are you doing that based upon a
10 memory or recollection you have of the meeting?---Based, based upon the information I've got from the proceedings as to the date of, the date of the meeting and - - -

Based on something you've heard in these proceedings?--- - - - and, and, yeah, followed up.

THE COMMISSIONER: Based on the evidence here, in this matter?
---Yeah. That's correct.

20 Yes.

MR DARAMS: 23 May, you accept, is a relatively short period of time after 18 May, 2016. You accept that?---That's correct.

What I wanted to suggest to you is that given that you hadn't, I'm right in understanding your evidence, you hadn't signed one of these direct dealing documents before this period of time?---That's correct.

So it's the first time that you had been asked to sign one of these documents,
30 you've read it carefully, you understood it. What I was going to suggest to you is it's unlikely that you would have forgotten by 23 May that you had actually signed this direct dealing document and agreed to abide by its terms. Is that right?---No, yeah - - -

It's a fair assumption to make, though, isn't it?---Yeah. Yeah.

Just before I come and ask you some questions about 23 May, you became aware on 20 May that Mr Walton was taking a period of leave?---Yes. Yes, I had a conversation with Mr Walton. I don't know whether it was 20 May
40 or 19 May but I, I had a conversation with him about him wanting to take some leave.

THE COMMISSIONER: I think was the expectation, I think we've seen this in another document, that he was taking a couple of weeks off at that time. Does that accord with your recollection?---Yeah, it wasn't, I don't think he was specific in the amount of time he needed off, as far as a couple of weeks or a week. It, it was more he, he said he just needed time away to sort of, you know, you know, clear his head a bit and, and, and get himself right. He, I don't think he'd, he sort of gave any indication that it was going to be a couple of weeks, like, and, as it turned out, it, it, it wasn't a couple of weeks, it was - - -

10

You understood he was talking in terms of a short break?---Yeah, well, I think what I said to him was, "Take as long as you like to get yourself, get yourself right," you know, make him feel right, so - - -

MR DARAMS: So is this your recollection? You've had a conversation with Mr Walton either on 19 or 20 May about the leave?---Yes.

Did you understand that he would have some conversation in addition to you with Mr Osland?---Yes.

20

That would be natural, given, excuse me, he reported directly to Mr Osland?---Yes.

It would also be natural because he'd have to tell Mr Osland about what things were going on or, or the like, so Mr Osland might do whatever he had to do in terms of covering the absence?---Yes.

Can I just ask that you be shown volume 4H, page 162? Do you see this email from Mr Osland? It seems to be an email to a number of persons, including yourself, advising people about Mr Walton's sick leave?---Yes.

30

It appears from this email that what Mr Walton, sorry, Mr Osland has indicated, at least by this time, that Mr Walton would be having a few days sick leave?---Yes.

So is that consistent with the conversation that you had had with Mr Walton?---No.

No. Because Mr Walton didn't discuss a day or anything like that with you?---Mr Walton didn't discuss, yeah, a time frame and, and also I don't

40

know if he was taking sick leave or, or he was, I don't think he specified sick leave, he said "leave". So I'm not sure whether it was sick leave or annual leave or whatever.

So what appears to have happened is that either after your conversation with Mr Walton on the 19th, so the preceding day, or earlier on - - -?---On the 20th, yeah, whatever it was.

10 He's subsequently had a conversation with Mr Osland and had a different conversation with him about the period of time and maybe the nature of the leave, is that right?---Yeah.

That's what that appears to be.

THE COMMISSIONER: In any event, whatever information Mr Osland was working on, in this memorandum he was putting forward that Mr Walton was having a few days' sick leave.---Yeah. that's what he's - - -

20 Whatever information he was working, that's what he wrote, so yeah.

MR DARAMS: Now, one of the matters we spoke about earlier was this process of delegation, particularly in relation to responsibility for 231 Victoria Road. Your evidence before was that you delegated that down to Mr Osland, correct?---Yes.

You understood Mr Osland then delegated that down to Mr Walton?---Yes.

30 The authority to determine that delegation down was within Mr Osland's capacity as director?

MR LEGGAT: Chief Commissioner, I raise to object, it's only this. There's perhaps limited utility in the cross-examination because it appears to be based on a misunderstanding of the way that section 378 and 381 of the Local Government Act apply in relation to delegations. I just raise that so that we don't waste much time on dealing with something that is not soundly based.

THE COMMISSIONER: Yes, thank you.

40 MR LEGGAT: Thank you.

THE COMMISSIONER: We'll take that onboard.

MR DARAMS: Just focusing on the evidence you've given about delegations, which I had understood was in terms of the responsibility for the negotiations of the sale on behalf of the council of 231 Victoria Road. I'm right about all that, the evidence you've given, that when you were talking about delegating down, you were talking about the responsibility on a day-to-day basis for - - -?---Yes.

- 10 All right. One of the matters, I understand you accepted before, was that Mr Osland would have the authority to determine whether to reallocate Mr Walton's responsibilities and delegations whilst he was on leave?---Sorry, repeat - - -

Mr Osland would have the responsibility if he delegated something to Walton, he would also have the authority, Mr Osland, to determine who else might take those delegations when Mr Walton was on leave?---That's correct.

- 20 Yeah. Could I just ask that you be shown volume 4H, page 164? Now, this appears to be correspondence from Mr Osland on 20 May at or just before 12.21pm where he says, "Kent", being Mr Walton, "is on leave for at least two weeks." It says, "In his absence, please, and effective immediately, provide Brad Roberts with Kent's delegations." He also says a number of other matters. Do you see that there?---Yes.

Mr Roberts was another employee in Mr Osland's team, is that right?---He was in Kent Walton's team.

- 30 He was in Kent Walton's team. Was he the 2IC to Kent Walton?---2IC, yes.

So in terms of the decision made by Mr Osland, at least in that first bullet point there, "provide Mr Brad Roberts with Kent's delegations", that would be, given Mr Roberts' role, that would be not an unusual decision or step taken by Mr Osland?---No. It was, no, it was his 2IC, so, yes.

Was this decision that Mr, or the decisions evident in this email correspondence or logged by Mr Osland, was that something that he had to raise with you first before he did this?---No.

40

THE COMMISSIONER: Mr Roberts, who's mentioned as having Mr Walton's delegations, do you recall what position did Mr Roberts hold at that date?---He was, he was the officer under Kent Walton and he looked after specific areas in the property, in the property portfolio. He was probably more, more looking after the, the leasing perhaps and the operational side of the, of the Property Department.

And he was also involved in other property-related matters?---Yes. Yes, he would have been, Commissioner.

10

Yes. And in terms of Mr Osland's decision to provide him with Mr Walton's delegations, you consider that you have been quite appropriate? ---Yeah. Well, there might have been day-to-day things that Kent was looking after that he could not just leave and sit and wait, he needed to have someone like Brad, Brad to be aware of them, and, and take them over and keep them ticking over while, while he was off.

Yes. Thank you.

20 MR DARAMS: Can I just ask you a few questions about the circumstances as of May 2016 in relation to 231 Victoria Road? Now, the property was being used as a council car park for council vehicles?---Yes.

I take it there was a, at least a need or a desire to continue using that car park for a period of time thereafter?---It was convenient to, to park the cars there given the closeness of the council chambers but, yeah, it, it was more a convenience factor involved for people who came to work. The managers used to park their cars there and it was closer than having to park down the bottom of Drummoyne Oval or whatever and walk all the way up the hill.

30 There was a convenience factor for the managers and also we kept our community buses there because, again, there was a convenience factor for buses and they weren't parked out in the street.

So there was certainly some use that council could and was putting the property at that time?---Yeah. It was, yeah, more convenience than, than, you know, that was, that was the use.

40 Was there anything pressing or such that required, at least on behalf on council, from council's position, that it had to dispose of that property, 231 Victoria Road?---Well, I, I think it was identified in the property strategy as a, an asset that wasn't giving us full value for its value. It was an

unproductive sort of asset. It was encumbered by easements that, that restricted the use of it. You had to provide, leave space on the site for access for 227.

Well, let me come about it a slightly different way. As at 20 May, 2016, was there any matter that was pressing or urgent from the council's perspective that necessitated council to continue the negotiations for the sale of that property in the absence of Mr Walton?---Yes, I think there was. I think it was important, where we only had one prospective purchaser for that site, who was really the only, the only person that site had value to, was the person who owned 227. So to continue those, where the negotiations were at, to continue those on to see whether or not there was able to be agreement reached. I think that was an important - - -

Why couldn't those discussions have waited until the return of Mr Walton? ---Well, there was no, no reason to wait. It was, we're still having discussions. Mr Osland was the director at the time. I assumed he was on top of where they were at and it was a matter of, you know, having those discussions.

My question was why couldn't those discussions wait until Mr Walton's return?---Oh, they could have.

Now, do I take it from your answers that you're the person who determined that the discussions for the negotiation, the discussions and the negotiations for the sale of 231 should continue whilst Mr Walton was on leave?---Yes, I suppose that's correct.

THE COMMISSIONER: Can I just ask you about the negotiations that had been or were being conducted by Mr Walton who I think you've earlier indicated was in your view a very competent person in his job.---Yeah, that's correct.

Is that right?---Yes.

And in negotiations there's obviously usually a range based on valuation input that's been received by both sides.---Yes.

And that happened in this case. Is that right?---Yes, there was - - -

There was valuations on either side - - -?---That's right.

- - - as you understood it?---Yes.

Yeah. And the last offer that was put was put before Mr Walton went on leave and it was put by him in the offer I think you've been taken to earlier. On 17 May, 2016 you may recall a letter written to Mr Bartolotta putting a counter offer of 2.25 million.---That's correct.

And that's where it stood as at the time he went on leave.---That's right.

10

Yeah. Although there's always a range, perhaps slightly lower or a bit higher, for whatever reason Mr Walton's assessment of the right offer by way of a counteroffer seems to have been 2.25 million.---Yes.

Did you have any discussion with him about that figure or whether he's, and why he had put that figure or had you just left it to him to exercise his expertise and judgement?---That's right. At that time it was, I left it to him to continue the negotiations.

20

And you would have expected somebody in his position, is this right, to have struck what he considered was the appropriate counteroffer to put with a view to achieving what he's expected, namely, an offer that represented in his judgement proper value from the council's point of view?---Yeah. I, I, I think that with these negotiations that go on - - -

Well - - -?--- - - - there's, there's always that offer, counteroffer, offer, counteroffer until there's an agreement reached, so Mr Walton's offer I thought was a fair way to start that process off.

30

Yes. But in terms of whether or not he was of the view that even though there's always a range, the right number to achieve value for council was 2.25 million?---Yeah, that was his - - -

One can infer that?---Yes.

And you had no discussion with him as of 20 May as to whether that was put, the view to perhaps coming down or whether he had taken the stand "that's the figure I think council should stand on" in terms of this being a direct dealing transaction?---No, I think, my understanding - - -

40

No, but had you had any discussion with him- - -?---No, no, no, Commissioner.

- - - as to what he considered represented 2.25 million?---No.

Whether he believed that it was in a range or not, that's the figure he chose to put by way of a counteroffer and - - -?---Yeah. That's correct.

10 - - - it may have been, but you don't know because you haven't discussed it with him - - -?---That's correct.

- - - that he took the view that that was the right number?---Yeah.

Is that right?---The right starting point.

Okay.

20 MR DARAMS: Now, just on 20 May, 2016, had you met Mr Bartolotta before then?---I can't, I can't recall. I, I think I may have met him at the, at the start in 2015 when he came in to, to see whether council would be interested in starting the process of negotiation for the purchase of 231. I, I can't recall exactly that I did meet him face-to-face or whether it was a phone call or, or whatever. But I think I, I'd spoken to him or, or met him around that time.

Back in 2015 at the commencement of the process?---Yeah, it would have been towards the start of the process.

30 But it wouldn't be the case that you had a number of conversations or discussions with him after that period of time, up to 20 May, 2016?---Yeah, not that I recall.

I just want to put a chronology to you and see whether you agree or have got any comments about the chronology of what occurred, which appears to be the case. So Mr Walton goes on leave at about on or before 20 May, 2016? ---Yes.

40 Later on the morning of 20 May, you get a call, well, I say "morning" but round midday, just after midday, you get a call from Mr Bartolotta? Do you remember the call from Mr Bartolotta?---No, I don't remember the call but

I, I do have a, a text message that I received later in the day where I've obviously rang him back and left a message for him.

Yes. So when you say you got a "text message", why do you say that? Is that 'cause you've got a copy still on your phone?---Yes.

I see. Is it just one text message from Mr Bartolotta?---Yes.

Is the date of the text message 20 May, 2016, is it?---Yeah.

10

Do you know what time the text message is?---Later in the day.

What does the text message say?---Something along, along the lines of "received your message, I will see you at 3 o'clock on Monday".

20

So could I just ask the witness to be shown volume 4C addendum, page 9? I just want to draw your attention, see the item 37, 20 May at 12.38. It appears to be a, sorry, it's a call from Mr Bartolotta to you. The duration is 98 seconds. Now, do you recall whether that was a message left by Mr Bartolotta, or was that a conversation you had with him?---I think it must've been a message.

Right. And when you say you think it must have been a message, why is that?---Because I ring him back later in the day and left him a message.

When you say you rang him back later in the day, is that based upon the fact that you looked at a text message that you've just referred to that indicated that there was some call between you and he?---Yeah. That I, that he was responding to my, to my message.

30

So if we just ask you to look at item 45.---Yes.

So that's at 1.33 on 20 May. So that looks like you've left a message that you're referring to.---Yes. It must be.

Now, then we see 46 and 47, now it's possible those are two separate entries or this could be a duplicate entry and so it's an error. But I want to ask you, there's one text message, is that right?---Yes.

40

Did you receive that around about 1.43?---Yeah. I can't remember the exact time that it was – yes.

You saw this message in the last day or two, have you?---Oh, probably the last few days.

Have you got your phone with you?---No.

No.---I have got my phone but I don't know if it's on that.

10 Right. So the message basically said, "Yes, I'll see you at 3.00pm."---The message said something along the lines "I've received your message. I will see you at 3.00pm on Monday."

So it appears that this is what's happened, Mr Bartolotta has contacted you to arrange a meeting with you, which you would have understood to be a continuation of the negotiations for the sale of 231?---Yes.

You didn't understand that Mr Bartolotta had any other business before council as at 20 May?---No.

20 It then looks like, if I could draw your attention to item 42, it looks like you've had a conversation, a relatively long conversation – I should say relatively long. Compared to the other entries, it's relatively long, 543 seconds, almost 10 minutes. Do you recall having a conversation with Mr Osland to that length on that day?---No I don't. I don't recall, like having a conversation for that, or what it was about but - - -

Do you accept that you and Mr Osland met with Mr Bartolotta on 23 May? ---Yeah I, I haven't got a clear recollection of that meeting at all but from what I've seen, yes, we - - -

30

What you've seen, you mean from the evidence you've heard in these proceedings?---No, no. From my own memory.

Okay. What do you remember of the meeting on the 23rd?---On the 23rd, yeah, not, not a lot about, about the meeting at all.

Sorry, you just said "from what I've seen". That's what I was trying to understand.---Sorry?

40 We might be at cross-purposes now.---All right.

I was asking you about the meeting on the 23rd. You met with Mr Bartolotta with Mr Osland?---Yeah. So, yeah, apparently so, yes.

Well when you say “apparently so” - - -?---Yeah. I, I haven’t got a clear recollection of that meeting but - - -

Do you have any recollection of that meeting?---No, not really. But I, the, from the proceedings that have happened and listening to, to what’s gone on, I, I do, you know, from Mr Bartolotta’s evidence or whatever, I, I
10 believe that, that the meeting must have, must have occurred.

When you say you believe that the meeting must have occurred, that’s because Mr Bartolotta gave that evidence and you don’t have a recollection that it didn’t occur, is that right?---Yeah, that’s right.

Do you have a recollection that it did occur?---No, I, I just don’t recall, I don’t recall that meeting as such, so - - -

Another possible alternative is that a meeting was arranged or intended to
20 occur but didn’t for whatever reason, didn’t occur. That’s another possibility?---A possibility but, yeah.

THE COMMISSIONER: Do you accept in the context of these calls on 20 May that the reasonably long conversation you had, item 42, at 13.23 with Mr Osland, could quite possibly have related to the negotiations over the sale of 320, of the car park, council’s car park?---Yes, it might have been to get some background information off John. It might have been also a couple of other things. But it might have been to see whether John was available for, for the meeting or to get some background information off
30 him in regard to the, the, the sale of 231.

And I think it was after this time that you communicated, that is after the 13.23, after that, that day, that you I think sent a message through to Mr Bartolotta that you’d meet with him on the Monday the 23rd. Is that right? ---Yeah. And, yeah. And John, John was - - -

I’m sorry?---I was going to say that, that conversation would have been to, to see if John was available, I would have thought, for that meeting.

40 MR DARAMS: So this seems to be, and tell me if you disagree with it, but Mr Bartolotta contacts you, tries to contact you, leaves a message?---Yes.

You understood he was trying to arrange a meeting with you?---Yeah, I'd assume that was part of the message he left.

Yeah. You have then contacted Mr Osland to see whether he would be available to be involved, as well?---I, I assume that's the, the reason for that call we had.

Part of the reason for that call?---Yeah.

10

You then contact Mr Bartolotta again, and leave him a message identifying a time?---Yes.

3.00pm the following Monday?---Yes.

He sends you a text back, acknowledging you've left a message and that he'll see you at 3.00pm?---Yeah.

20 So why did you decide on 20 May that it was necessary to continue the negotiations with Mr Bartolotta in the absence of Mr Walton?---Well, I can't recall why, why I decided that but Mr Osland was available and he was his director and he would have been fairly up-to-date with where things were at and - - -

THE COMMISSIONER: But the leave arrangement for Mr Walton was not that Mr Osland would step in by way of him exercising authority over the sale of the car park. It was Mr, sorry, Mr Brad?

MR DARAMS: Roberts.

30

THE COMMISSIONER: Roberts. Thank you. It was Mr Roberts who had been delegated that authority. That's correct, isn't it?---Well, no, not really because the director, the director is responsible, ultimately responsible for his whole department, so he is the senior person in that department who would have carriage of everything unless, unless he specifically asked someone else to step in.

40 Having regard to this particular matter, the arrangement had been that all matters that Mr Walton was in charge of would be under the authority of Mr Roberts until Mr Walton's return. That was the arrangement, wasn't it- - -? ---Yeah - - -

- - - that the delegation was made on that basis?---Yeah. It's not the, in my, like I wouldn't have thought that that would override the director's ability to - - -

I'm not talking about overriding Mr Osland's ability. I'm just simply saying the arrangement that had been put in place was firstly the functions being performed by Mr Walton would be delegated to Mr Roberts. That's the first point. Is that right?---Right.

10

Is that right?---Well, I don't necessarily agree with that, Commissioner.

Why not?---Because there's, you know, the words, the word used of delegate is, is when it relates to, you know, the day-to-day operational roles that Mr Roberts would have in regard to, you know, taking those, those, responsibility for those of Kent Walton. That that is, would be something that I would expect would happen, but for something more important as far as where Kent would have, Kent would have been having discussions with his director, not with Brad I would have thought, about the sale of the property given the nature of that. So, and from what I gather John was the, the person who, who, the senior person who should have been involved in, in that type of a job, you know, to, to do that.

20

Accepting what you say there for the moment, the position however existed as at the 20th was that Mr Walton had been dealing with the sale as the officer responsible and conducting the negotiation. Is that right?---Yes.

It was anticipated that he would not be away for a lengthy period of time but that he would be away for some days or some period of time, maybe up to 10 days or something like that. Is that right?---Yeah, yep.

30

You've already said to Counsel Assisting that there was no particular reason that was pressing that would be dealt with before his return. That's right, isn't it?---Yes.

Is that right? That's right, isn't it, that's what you said?---Yes, that's what I said.

And that if it could be, if it was a matter that was very much in the hands of Mr Walton there's no reason why he wouldn't remain in charge of the matter. He'd be back before, in a number of days, whatever the days be.

40

No reason to take it out of his hands at that point so far as the council is concerned. Why would in those circumstances the normal course follow, and that is to say that the man in charge of this, who has been conducting the negotiations, who formulated the counteroffer and put it in writing quite recently to 20 May wait and see and let him finish, if there is to be any more negotiations let him do them as he's the responsible officer?---Yeah.

Is there anything illogical about that? In fact I'm putting to you that's what should have been done. Do you agree?---Um - - -

10

MR LLOYD: With respect, Chief Commissioner, I object on the basis that it should have been done by who?

THE COMMISSIONER: Sorry, just - - -

MR LLOYD: I'm sorry. I object.

THE COMMISSIONER: Just move your microphone a bit closer to you.

20 MR LLOYD: I'm sorry. I object on the basis that with respect the question should include "should have been done by who" because one of the problems with a question that Mr Darams has asked and also a question that you've asked, Chief Commissioner - - -

THE COMMISSIONER: Mr Lloyd, I'll put it again. I'll reformulate the point. I think, Mr Sawyer, we got to this point. I think the evidence is now that the transaction on behalf of the council from the 1st through to 20 May was in the hands of Mr Walton who you regarded as a very competent officer.---Yes.

30

Is all that correct?---Correct.

Thank you. That there is no circumstance whatsoever known to you that would have required the council to deal with the matter on 20 May or 23 May prior to Mr Walton's return. That's correct too, isn't it, that's your evidence?---Well, I, I, excuse me, Chief Commissioner, but there was no, I, I wasn't aware that there was any time constraint on Mr Walton's absence. When I spoke to Mr Walton on the 20th, the, the conversation was along the lines that, you know like, take as much time as you need, given the
40 circumstances that you've, you know, we've chatted about, until, you know,

you feel that, in your own person thing to be right. So the, the length of time that Mr Walton was off, at that point, wasn't finite.

No.---It was sort of open ended and, and, you know, so, you know, people go off on leave and, and if things, you know, need to be done or, or, you know, move along, that, that's just, you know, what, what happens in, in places. Like, it wasn't like we were looking to finalise or whatever at that point in time. We were just having another conversation or an opportunity for a counteroffer to be put and if Mr Walton was back after, he, he would
10 have been able to take carriage of that again.

So you say there was no intention when setting up the meeting for Monday the 23rd to conclude negotiations, but to perhaps take then a step further but wait and see if it should be left for Mr Walton if he's not going to be away for very long to finish it off?---Well, that's right.

Right, okay. And I think again, as at 20 May, there was nothing that you're aware of that was pressure on council to get the job done, get the contract done. I think you've earlier said twice now that nothing comes to your mind
20 that would require it to be dealt with urgently.---Not that I can recall, no.

No. From the council's point of view. So, one approach that could have been taken, I'm suggesting at 20 May, would be to say, well, "Have you talked to Mr Bartolotta just to see if he's asked for a meeting to act on the basis that you're not going to conclude the matter, we will he hear what he has to say and we'll take it onboard and get back to Mr Walton to see if he thinks another counteroffer should be put"? That sort of approach was the one that recommended itself, did it not, as of 20 May, I'm talking about?
---Well, that's, you know, I, I can't recall the message that, that Mr
30 Bartolotta left or whatever but it was - - -

Sorry?---I was going to say that's the, the, the step was basically we'll have the meeting and see where we're at.

Yeah.---And see where we go to from here, it was - - -

That's what I'm saying. You find out what he wants to talk about, so give the man a hearing, so see you Monday.---Yeah. That, I - - -

40 But that was for from a decision to say we'll meet with him on Monday and conclude the matter without any reference to Mr Walton, as to whether he

would be back tomorrow or – that approach wasn't in mind?---No, not at that point.

No. Thank you.

MR DARAMS: Another alternative when Mr Bartolotta called, or reached out to you, would be just to simply say to Mr Bartolotta, "Look, Mr Walton's on leave at the moment. I don't anticipate him to be away very long. Contact next week." Why didn't you do that?---I didn't know if he
10 was going to be back next week.

THE COMMISSIONER: You could soon find out, couldn't you, by making an enquiry, "Is he going to be away for long or will he be back next week?"
---Well - - -

MR DARAMS: Are you suggesting that when Mr Bartolotta contacted you, the decision to made was to proceed irrespective of Mr Walton's unavailability and the period of time? That's the decision you made?---No. I, what I'm saying is that we made the decision to hear what Mr Bartolotta
20 had to say in the company of the director of that department, who I believe would have been briefed by, by Kent, would have known of Kent's offer, know what Kent's offer was and, and to see whether or not there was any, any acceptance of that offer or movement on that offer.

When you spoke with Mr Osland, given you were his manager, you would have expected if you'd said to him "John, we're going to have a meeting" or, "I want to have a meeting with Mr Bartolotta, I want you to attend it," you expected him to comply with that direction or request?---No, I would have asked him if he was available.
30

But you would have expected him if you had said to him, "We're going to have a meeting. I'd like you to come along," you would have expected him to say "yes"?---If he was available, yes.

Yeah. It's clear, though, isn't it, that you were the one who decided to involve Mr Osland at this stage, as well? When I say "this stage" on 20 May?---Yes.

THE COMMISSIONER: Sorry? Was that a yes or a no?---Yes.
40

It's just it has to be recorded, that's all.---Sorry.

That's all right.---Sorry.

MR DARAMS: Given that you signed the direct dealing protocol two days beforehand, why didn't you ensure Mr Osland signed the protocol or have an amended protocol signed?---Probably didn't think of it.

10 You couldn't have forgotten about the protocol given you signed it two days before and you understood the importance of the document?---Well, the document, once it was signed, would have gone back down to the depot

20 Yeah. My question was you couldn't have forgotten about signing the document two days before, given the evidence you've said before about the importance of the document, the probity, the requirement that the parties to the document comply with the negotiation protocol. You clearly had decided to involve Mr Osland in negotiations. You understood that he should then be a party to this agreement because of his obligations, as well. Why didn't you say before anything happened "you've got to sign this direct dealing protocol" because there's no way that you would have forgotten about that document in two days, is there?---No, it didn't cross my mind, to be honest.

THE COMMISSIONER: Is it possible that you were acting on the basis simply, look, this is just to give Mr Bartolotta an opportunity to say what he wants to say and then we won't be concluding anything today, so we'll stand it over, as it were, until it can be dealt with properly?---Well

30 I'm just seeking to ascertain whether that may - - -?---Yeah, no

- - - explain why you didn't sign it?---No. I appreciate that, Commissioner. And, to be honest, I, I can't recall exactly but it was, it was, the meeting was more, more to hear whether, what Bartolotta was, you know, wanted to, to talk about or, or what he wanted to ask us or where he wanted to go with it more than, more than anything else.

40 MR DARAMS: How long did the meeting go for?---I can't recall.

Who did all the talking in the meeting?---I can't recall.

Did Mr Bartolotta go through a sort of chronology of offers and counteroffers and the like?---I can't recall but from the proceedings, I believe that is the case.

When you say "from the proceedings" you "believe that's the case" are you saying because you heard Mr Bartolotta say that or because when he said that, that triggered something in your memory of this meeting?---No, 'cause I heard him say that that's what happened.

10

Basically, you're saying because Mr Bartolotta gave evidence that's what happened?---No, I'm saying that that's what I heard.

Sorry. You heard Mr Bartolotta say that?---Yes.

Sorry. I apologise.---I'm sorry.

I might be at cross-purposes with you.---Yeah.

20 I was asking you about whether Mr Bartolotta went through a process in the meeting with you and Mr Osland where he outlined the chronology of offers, et cetera.---Yeah. I, I can't recall.

You can't remember that?---No.

But you heard Mr Bartolotta say he did that?---Yes.

But him saying that didn't help you recollect now about whether that actually happened?---That's correct.

30

You've got no independent recollection whatsoever?---No.

THE COMMISSIONER: Did Mr Osland speak at the meeting?---Again I've got no -- sorry, I, I, I don't recall the details of that, that meeting.

MR DARAMS: Did either you or Mr Osland say anything to Mr Bartolotta to the effect "Look, council might accept \$2.1 million"?---As I said, I can't, can't recall that meeting. Can I just say that it, that it, it wasn't my practice to pre-empt anything council would do or say.

40

THE COMMISSIONER: Sorry, I couldn't hear you.---Sorry - - -

Not your practice to - - -?---Pre-empt a council decision. So I wouldn't have said that council would – did you say that council would accept that offer? Yeah. It wasn't my, it wasn't my practice to pre-empt in any conversation what the council decision might be on any matter, because it's really, I, I couldn't, I couldn't predict which way they'd go on anything.

10 MR DARAMS: Well, did you say to Bartolotta words to the effect that if he put in an offer of \$2.1 million, then you or Mr, you and/or Mr Osland would recommend council accept that?---As I said, I can't recall, I can't recall the conversation at the meeting.

Do you recall whether Mr Osland – do you recall whether Mr Osland said anything to the effect to Mr Bartolotta that if he put in an offer of 2.1 million, then that he would recommend that council accept that offer?---No, I can't recall that.

20 THE COMMISSIONER: Would you regard it as being improper of him if he did in fact say that at this particular meeting, given what we know about the negotiations up to that point?---I think that if, if he was negotiating that, yeah, I think it would have been at that point more to listen to Mr Bartolotta and see what his offer is. And it may have been that he's giving them an indication, but I don't recall that that happened.

I don't think you've quite dealt with the point of my question. I think you made it clear that you understood that – take a step back – that you acted on the basis that you'd give Mr Bartolotta a meeting so that you could hear what he has to say. He either accepts council's offer or he might put another counteroffer. Is that right?---Yes.

30 But the meeting in your mind was not for the purposes of entering into further negotiations with him, that's right?---That's right.

Right. It was not to hold out that if he puts, that there might be another figure if he, that might do the deal. It was not a meeting for that sort of approach to be taken.---Yeah, that, that was - - -

Is that right?---Yeah. I - - -

40 Yeah, what I'm – is that right?---Yeah, I think that was the intent.

I'm simply saying I understood from your evidence that you set up the meeting to give Mr Bartolotta an opportunity to say what he wants to say, and then the matter could be taken back and dealt with in accordance with due process. A decision later made perhaps whether there might be another counteroffer. Is that right?---That was the intent.

Yeah, that's right. And that would be in accordance with proper practice.

MR LLOYD: Chief Commissioner, I do object.

10

THE COMMISSIONER: No, just a moment, Mr Lloyd.

MR LLOYD: I'm sorry.

THE COMMISSIONER: I'm just dealing with this question.

MR LLOYD: I know. I object to it, with respect.

20 THE COMMISSIONER: Yes, I know you do. I'll give you a ruling in a moment. I think you said that you set up the meeting to give Mr Bartolotta an opportunity to say what he wants to say.---Yes.

That's right. But it was not a meeting in your mind set up to continue negotiations. Is that right?---That's right. That's, yeah.

Yeah. And in that context I'm putting to you it would be inappropriate for anybody from council who's at that meeting to be suggesting that there might be another figure that could seal the deal.---Yeah, and as I - - -

30 You'd agree with that?---Well, as I suggested, I don't know what unfolded at that meeting.

I know you don't.---And how, and how that then got to that point. But that wasn't the intent at the start of the meeting.

No, no. It wasn't the intent to go and give Mr Bartolotta a hint or a suggestion as to what amount of money might secure the transaction, is that right?---Not, not when it was set up, that's for sure.

40 And what I put to you is it was not appropriate in the event for anyone at the meeting to do that, to give him a hint - - -?---I, I hear what - yeah.

- - - as to what it might, what might do the deal.---Yep, I hear what you're saying, Commissioner.

Because as to, if you're going to put another counteroffer or indicate another figure, it's something that has got to be determined in accordance with proper practice. You'd consult with Mr Walton, or if it was to be Mr Osland because Mr Walton was going to be absent for a longer period of time, to sit down and decide, well, do we negotiate further, is that right?
10 ---Well, yeah, it's up to Mr Bartolotta to take it from there.

Now, Mr Lloyd, I think I've moved beyond the question you objected to.

MR LLOYD: I'm sorry, and I should make it clear, my objection extends to every question asked after the one I objected to. The basis, Chief Commissioner, is, with respect, I have not objected to a whole range of questions on this topic on this basis, but it has become a genuine problem with this witness not having been shown the document at page 158 of volume 4H. And I don't want that for present purposes put on the screen
20 because it may be, Chief Commissioner, you want to deal with this objection in the absence of the witness. But where we are now, where, Chief Commissioner, you put questions – and similar questions have been put by Counsel Assisting – of impropriety by anyone from the council with respect to the conduct of this meeting in the absence of what plainly is about the most critical document in the chronology, it's just the quality of the evidence is badly affected and there is a significant absence of fairness to the witness. Because as you properly, Chief Commissioner, have said more than once in questions, one thing that might have been appropriate here is to wait for Mr Walton to come back, to get his view. Well, without drawing
30 the witness's attention to that document and asking those questions - - -

THE COMMISSIONER: Just remind me, firstly, what is 158?

MR LLOYD: Certainly, I just didn't - - -

THE COMMISSIONER: Sorry, Exhibit 4H, 158.

MR LLOYD: Yes. I'm not trying to be coy, I just didn't – unless, I'm happy to deal with it in the presence of the witness, but it's, I'll - - -
40

THE COMMISSIONER: Well, we'll see how far we can go with it.

MR LLOYD: Certainly. It's an email from Mr Walton to Mr Osland on 19 May at 2.37pm.

THE COMMISSIONER: Oh, I think I know the one you're talking about.

MR LLOYD: Mr Walton gives Mr Osland his opinion.

10 THE COMMISSIONER: Is this the one that refers to indicating a range or something like that?

MR LLOYD: Well - - -

THE COMMISSIONER: Oh, look - - -

MR LLOYD: In a sense he says - - -

20 THE COMMISSIONER: I think, Mr Sawyer, it might be better if you wouldn't mind just waiting outside for a moment. We'll have a talk about this document and we'll get you back shortly. Thanks. Would you bring that document up, would you?

MR LLOYD: And, Chief Commissioner, my junior, Ms Avery-Williams, reminds me there's a screen outside. I'm sure Mr Sawyer won't look at the document.

THE WITNESS: I'll go for a walk, Commissioner.

30 THE COMMISSIONER: Yes, you go outside, Mr Sawyer.

MR LLOYD: Page 158 of volume 4H.

THE COMMISSIONER: Yes.

40 MR LLOYD: A number of the questions, Chief Commissioner, have been built on what, with respect, is a reasonable assumption, that in order to move this forward as a negotiation, one would need to know or have an appreciation of Mr Walton's position, and that might be a good reason to wait for whatever period of time - - -

THE COMMISSIONER: I accept that.

MR LLOYD: And we have here a communication the day before these relevant events, on 20 May, where Mr Walton makes it plain what his view is. "Anything greater than 2 million would be a good outcome for us." It affects centrally the notion of any impropriety involved by Mr Osland or Mr Sawyer being involved in progressing the negotiation in the absence of Mr Walton because they knew his position.

THE COMMISSIONER: Well, Mr Lloyd, I think there's two stages in this.
10 Firstly, the witness has agreed with me, this was not a meeting for negotiations. It was to give the man a hearing, and there's no criticism about that. But whatever the position be on this day, there were to be no negotiations, there should have been no negotiations on the basis, firstly of the witness's evidence, that the purpose of this was to listen to what he had to say. Secondly, as to putting a counteroffer, an offer different, if there is to be one, from what council had already put, 2.25, is a matter for Mr Walton, unless of course Mr Walton was going to be absent for a long period of time and was unavailable. This was not an opportunity for others to take the negotiating role, and that's perfectly plain on the evidence and
20 what flows from that is another thing. But the price is just but one factor in what in due course came to be the final situation as you're aware.

MR LLOYD: With respect, Chief Commissioner, to not put to this witness an absolutely central piece of information, that Mr Osland knew about Mr Walton's view about the appropriate price, being one of the key factors in any negotiation, and then to say to him there's impropriety in moving this forward in circumstances where Mr Walton is away for an unspecified period, it's either unfair or the evidence that one receives from Mr Sawyer, without having drawn that to his attention, would be valueless, in our
30 respectful submission.

THE COMMISSIONER: But whatever was said as to Mr Osland on this particular occasion, this was not an opportunity to negotiate. He's accepted that it would be wrong to use it as an opportunity, as it was, for a purpose that was not the intention of Mr Sawyer when he set it up.

MR LLOYD: Well, with respect, he accepted that without having drawn to his attention that he day before the meeting, Mr Osland, that's Mr Walton's superior, knew Mr Walton's view about price. And so in those
40 circumstances, and again, learned Counsel Assisting put a sequence of events at one point, a chronology, which I'm not suggesting for a moment

this is deliberate, but omits probably the most relevant event in the sequence, being the knowledge on the part of the director about the absent Mr Walton's view about price. May I also draw, in terms of the unfairness point and the valuelessness of this evidence, without drawing attention to the proper sequence of events, Mr Walton, on the 20th, even though he's on leave, and this isn't drawn to his attention either, this witness, at page 166, sends an email to a number of people, including Mr Osland, forwarding on an email chain about the negotiations - - -

10 THE COMMISSIONER: Wait just a second. We'll just bring that document up. Is that 4H, 166?

MR LLOYD: 4H, page 166.

THE COMMISSIONER: I'm sorry, what part of this are you - - -

MR LLOYD: If Your Honour – sorry – Chief Commissioner, if you look at the top, Kent Walton to James Sullivan, who's heavily involved in this, cc'd Bradley Roberts and John Osland. The first thing is "FYI below." The
20 "below" is the chain which culminates in Mr Bartolotta's email to Mr Walton of 7.02 that morning asking to discuss, "Do you have time to discuss and finalise?" So the proper sequence, on the 19th at 2.37, Mr Osland knows Mr Walton's view about price.

THE COMMISSIONER: I'm sorry. I don't see how this bears on the issue that you've raised.

MR LLOYD: Well, Chief – sorry.

30 THE COMMISSIONER: The only statement here by Mr Walton, well, there are two statements. One is the first two paragraphs that don't seem to relate to this transaction - - -

MR LLOYD: No, the, it's only the first.

THE COMMISSIONER: - - - then the statement he made to Mr Bartolotta, 11 May at 1.13pm, is that the one that you're referring to?

MR LLOYD: No, the, in the email from Mr Walton, the only relevant part
40 of that is "FYI below" that is the first one, but the immediate one underneath that in the "FYI below" plainly the FYI relates to the email

chain, which puts Mr Osland on notice that as at first thing on the 20th, Mr Bartolotta is trying to arrange with Mr Walton “a time today to discuss and finalise” with respect to the counteroffer. To put a proposition to a witness that it’s improper to continue negotiations when Mr Osland knows that what has culminated with Mr Walton’s dealings is at 7.02, the other side wants “to discuss today and finalise” it just doesn’t, with respect, it may be that Mr Sawyer, if he’s had this chain drawn to his attention and the relevant events, says, no, it still wouldn’t be appropriate to actually negotiate in light of all of that communication but to ask him about things without drawing to his
10 attention what had been going on with his direct report, Mr Osland, is

- - -

THE COMMISSIONER: Well, as at the date of this email from Mr Walton, 11 May, to Mr Bartolotta - - -

MR LLOYD: No, it’s the one above that, I’m sorry.

THE COMMISSIONER: It’s the one about, yes.

20 MR LLOYD: Mr Bartolotta to Mr Walton, 20 May, at 7.02. It’s the one where, on that very morning, Mr Bartolotta’s trying to arrange with Mr Walton a meeting today to discuss and finalise and Mr Walton is telling Mr Osland “FYI below” that is, “By the way, I’ve been negotiating, as you know, Mr Osland, about 227, the other party wanted to meet me today and finalise but I’ve got to go on weeks of leave.”

THE COMMISSIONER: But, Mr Lloyd, I may be missing something but on 11 May, Mr Walton’s telling Mr Bartolotta that he’s “hoping to have something to you in writing this week in relation to council’s expectation
30 for value of the site”. Now, stopping there, we know that on 17 May, Mr Walton on behalf of the council had formulated and put in writing the counteroffer which he sent to Mr Bartolotta of 2.25 million. That’s the chronology. And so that was going to be sent through to him. It was sent through to him. And he says “from that point, we can meet to discuss once you’ve had a chance to consider it”. So there’s nothing there, no representation being held out, other than “I propose to put an offer to you” which he did on 17 May.

40 MR LLOYD: No, the one – sorry, Chief Commissioner. If you go above that, there’s - - -

THE COMMISSIONER: Above where? To what?

MR LLOYD: Above where, the 11 May email that you'd made reference to, someone's helpfully putting the cursor in the middle of the page. Forwarded message, John Bartolotta - - -

THE COMMISSIONER: So this is John Bartolotta now writing to Mr Walton?

10 MR LLOYD: Correct, and that - - -

THE COMMISSIONER: And Mr Bartolotta is saying, "Received your counteroffer, thank you, do you have time to discuss and finalise?"

MR LLOYD: That is one of the most critical pieces of context
- - -

THE COMMISSIONER: Why?

20 MR LLOYD: - - - in terms of a question to Mr Osland that the next business that it would be improper to negotiate. He knows that his direct report, Mr Walton, is on leave for an unspecified period and the other party wanted to meet with Mr Walton on the 20th to discuss and finalise.

THE COMMISSIONER: But at this time of the email being sent by Mr Bartolotta to Mr Walton, Friday, May 20 at 7.02, the message there is "I have your counteroffer" that's the written counteroffer, he said he would, and he thanks him for that. "Do you have time today" that's the Friday "to discuss and finalise?"

30

MR LLOYD: Yes.

THE COMMISSIONER: That could be interpreted, for example, to say, do you have time today to have a discussion about your counteroffer and then finalise it, in other words, can we meet to discuss your offer, which I might accept and then finalise it once we get all the other terms around it settled.

MR LLOYD: With respect, I agree, that's a proper reading.

40 THE COMMISSIONER: Yeah.

MR LLOYD: But what it is is Mr Bartolotta clearly saying he wants to continue the negotiation that day.

THE COMMISSIONER: No, he's not.

MR LLOYD: Mr Osland, well, he was talking about finalising it.

10 THE COMMISSIONER: All he's saying, all Mr Bartolotta's saying, he's got the offer, he obviously regards it seriously, as worthy now to have further discussions. Now, those discussions might be Monday. I'll accept your counteroffer but I want to talk to you about other terms as well and then we'll wrap it up. That may well have been his intention for all we know, but it's open to that interpretation, is it not?

MR LLOYD: Oh, certainly, I – that's the interpretation we would suggest.

20 THE COMMISSIONER: So what comes from this exchange, this brief exchange of saying, "I will send you a, I'm proposing to send you an offer this week." He does. John Bartolotta says, "I've got it. Could we meet today to talk about" - - -

MR LLOYD: "To discuss and finalise".

THE COMMISSIONER: "Have time today to discuss and" – it doesn't say discuss what, but just "discuss and finalise".

30 MR LLOYD: Well, with respect, Chief Commissioner, it's plainly to discuss and finalise, to discuss the counteroffer and finalise the deal. That can't - - -

THE COMMISSIONER: We don't know what it means, do we?

MR LLOYD: Well - - -

THE COMMISSIONER: It could cover a range of things. That's my point.

40 MR LLOYD: Well, may I just say, one thing that would be relevant is what Mr Osland understood from this. But this witness is being asked about whether Mr Osland behaved improperly and there by implication he allowed that improper behaviour.

THE COMMISSIONER: That brings us back to the first point you've raised, and that's a matter I'll hear Counsel Assisting on and we'll deal with it.

MR LLOYD: May it please the Commission.

MR DARAMS: There are two points I wanted to address. The first point was about the chronology that has been suggested somehow was put – my interpretation – unfairly to Mr Sawyer. I don't accept that the way that I've
10 presented the chronology based upon the records, and I believe accepted by Mr Sawyer, is unfair at all. I've mapped out the chronology and Mr Sawyer has accepted, as I understand it, that, yes, there were calls. He's had regard to his own records and accepts that he must have reached out to Mr Bartolotta, proposed a 3.00pm meeting, which Mr Bartolotta responded to on a text message accepting that meeting. So in terms of the chronology, there's no unfairness in what's been presented.

Secondly, in relation to the proposition about the correspondence being brought to Mr Sawyer's attention, the questions that I asked Mr Sawyer
20 were more directed to what he could recall about the meeting and the conversations. And my assessment of the evidence is, in relation to this meeting, Mr Sawyer has no recollection of what was discussed. I've tried to test that with Mr Sawyer as to whether there were other conversations or other matters that he's heard in evidence that might have assisted his recollection, and it's clear that it hasn't.

In terms of the Commission's questions, my submission is that there isn't anything inappropriate or unfair about the questions or any prejudice to Mr Sawyer because what the Commission is entitled to ask in light of Mr
30 Sawyer's evidence, that when he was arranging this meeting Mr Sawyer was doing it for a particular purpose, to hear what Mr Bartolotta might say, and I think Mr Sawyer accepted that it wasn't for the purpose of continuing negotiations. And another quite properly and quite fairly proposition's been put in relation to the role of Mr Walton and the like. And I'll come back later on to continue those questions. But in terms of the process and procedure of the council in this negotiation, the questions to Mr Sawyer as the general manager as to whether certain conversations were appropriate or inappropriate in his view were entirely legitimate, they can be put. And Mr Sawyer can give his evidence as to whether he regarded saying something to
40 the effect, well, we'll take 2.1 million, based upon Mr Sawyer's own volunteered answer, to the extent that I think he proffered this, that "I

wouldn't do that and that wouldn't be our practice to suggest or propose some figure in the negotiations" is the way that I understood that evidence, because that evidence came out when I was putting to Mr Sawyer, "Well, did you say" substance, to the effect, "council will accept 2.1 million?" testing the evidence that's already come in this proceeding about what had happened here. So in my submission, none of the questions, one, render any unfairness, two, are inappropriate in the nature of an investigation such as this and testing the evidence. And the third point is that they, in my submission, they flow from evidence actually given by Mr Sawyer.

10

THE COMMISSIONER: Mr Lloyd, I think what I'll do is this. The question as to whether in all the circumstances it was appropriate or not for Mr Osland to, if he did as alleged go as far as he did, whether it's appropriate or not is ultimately a value judgement to be made on the whole of the evidence by the Commissioner. Mr Sawyer is qualified to give his opinion on the matter and I think what I'll do is, we will have the document, the exhibit shown to Mr Sawyer, that is Exhibit - sorry - - -

MR LLOYD: Page 158, Chief Commissioner.

20

THE COMMISSIONER: Sorry, what's the reference? 158, all right. Exhibit 4H, 158 - - -

MR LLOYD: Yes.

THE COMMISSIONER: - - - shown to Mr Sawyer and then give him the opportunity of expressing his view in the light of that.

MR LLOYD: May it please the Commission.

30

THE COMMISSIONER: Very well. Well, we'll have Mr Sawyer back. And that document can be brought up on the screen while we're waiting. Thank you, Mr Sawyer. Just before we resume, Mr Sawyer, one matter I want to raise, we've had a good deal of discussion in questions since lunch about the meeting of 23 May with Mr Bartolotta, with yourself and Mr Osland being present. The meeting was set up by arrangement with you, as you've given evidence. The intention was to give, as you've explained, Mr Bartolotta an opportunity to put what he wanted to say to council. It was not, I think you've said, intended that it would be a negotiation on that day. So far as Mr Osland, in the event that he gave some indication about what might be the right price, if I can put it in those terms, I asked you whether

40

intention behind holding the meeting was appropriate for him to venture into negotiations. There's one document that's on the screen now, you should read it. It's a memo from Mr Walton, Thursday, 19 May, to Mr Osland. Feel free to read that.---Yes, Commissioner.

You've read that memorandum?---Yes, Commissioner.

10 Does that in any way effect your opinion as to whether or not this was an occasion, that is I'm talking now about the meeting with Mr Bartolotta on 23 May, the occasion on which it was appropriate or not to embark on any form of negotiation with Mr Bartolotta at that meeting?---Sorry, Commissioner, I missed the first part of that question.

20 I'll put it again. In light of the matters I've said, that you set up a meeting and the purpose of the meeting was to give Mr Bartolotta an opportunity to say what he wanted to say. I think the effect of your answer also was you agreed that it was not an occasion to enter into negotiations with Mr Bartolotta, to give him a hearing. I put to you that it was, in those circumstances not appropriate or proper for Mr Osland to venture forth with a suggested figure that might conclude the transaction.---Right.

I think you agree with me but I just want to give you the opportunity of reading that memorandum from Mr Kent to see whether that affects your evidence in any way or not about those matters?---No. No, I understand what it's saying. No.

All right.---Okay.

30 Now, I see the time. Have you concluded your - - -

MR DARAMS: Not of Mr Sawyer just yet.

THE COMMISSIONER: How much longer approximately do you think you might be?

MR DARAMS: Oh, it wouldn't conclude today. Probably - - -

THE COMMISSIONER: Oh, I see.

40 MR DARAMS: Yeah, unfortunately.

THE COMMISSIONER: All right. You press on until 4 o'clock.

MR DARAMS: Yes.

THE COMMISSIONER: Just, I'm sorry, Mr Sawyer, just to give you some forewarning, it looks like we can't finish your evidence today but we will finish it in the morning. Does that occasion any difficulties for you?---No. I just - - -

10 I mean, if it did, I can change the time.---No. That, that's fine, Commissioner.

All right.---I'll just won't have to look after my grandson for the first hour or two, so that will be - - -

I'm sorry, I missed that.---I won't have to look after my grandson for the first hour or two, which would be a bonus.

20 Oh, well that's very important.---Thank you.

I'm happy to - - -?---Yeah, no.

- - - fix a time that does work in with your commitments.---No, no. That, no, I would rather come and finish it up.

All right.

MR DARAMS: As at 20 May, 2016, did you know Mr [REDACTED] ?
---That's a good question insofar as when we were doing the Five Dock
30 Town Centre proposal, like, looking to work towards a master plan, Mr [REDACTED] has partnered with Woolworths or whatever and had either spoken to, and I think it was either Mr McNamara and myself about what council was looking to achieve on that site because that was, I, I had met him, that was probably the first time I, I had met him and it was only in regard to the Five Dock site and it was only, I think from memory, an enquiry as to what council was looking to achieve from that site because we were looking to get a supermarket as part of an overall development at that time and he, he had, had some agreement with Woolworths, or was looking to get some agreement with Woolworths as part of a later submission to put in for that
40 site. So I think, and I don't know whether that was prior to 2016 or not, it might have been a little bit earlier, a little bit later than that or, or I can't

remember the exact date. But I had met with him once, or maybe twice about, about that particular master plan.

So my question was, did you know Mr [REDACTED] as at 20 May, 2016 and I've discerned through your answer, the answer is you don't know because you don't know if you had met him after 2016 in relation to this Woolworths transaction or whether you had met him beforehand?---That's correct. I, and that was, as I said, it was just a, a meeting to talk about that particular site.

10

To the extent that you had met with him, it was limited to, what, one or two meetings, whenever that happened?---Yes.

So you didn't know him very well at this stage?---Not at all.

You obviously knew Mr Colacicco very well as at March 2016.---Yes.

Did you understand, as at 20 May, 2016 that Mr Colacicco or companies associated with him was one of the intended purchasers of 231 Victoria Road?---No. Not at all.

20

Do you deny that he, before this time, that is 20 May, 2016, do you deny that he told you that he was interested in purchasing this property?---Yes.

Did you have a conversation with – I withdraw that. Did you know before or at this time, in 20 May, 2016, that Mr Colacicco was, or a company associated with him, was intending to purchase 227 Victoria Road?---No.

Do you deny having any conversation with him to that effect where he told you that?---Yes.

30

Do you deny having a conversation with anyone else where they told you that Mr Colacicco was one of the parties interested in purchasing 231 Victoria Road?---Yeah, I can't recall anyone talking to me about that at all.

Do you deny that Mr Tsirekas told you that Mr Colacicco was one of the parties interested in purchasing 231 Victoria Road?---Yes.

Do you deny that Mr Tsirekas told you that Mr Colacicco was one of the parties interested in purchasing 227 Victoria Road?---Yes.

40

Yep. Did Mr Colacicco ask you or request that you proceed with the sale or the negotiations for the sale of 231 Victoria Road whilst Mr Walton was absent?---No.

Did anyone on – I might come back to this. Did anyone ask you, other than Mr Bartolotta, did anyone ask you to proceed or progress the discussions and negotiations over the sale of 231 Victoria Road while Mr Walton was on leave?---Not that I recall.

- 10 The decision that you made, sorry, the decision made was your decision alone, is that right?---As far as having the meeting on the 23rd, yes.

Yeah. Based upon the approach by Mr Bartolotta?---Bartolotta.

Do you recall any of the conversation you had with Mr Bartolotta as to why he was seeking to progress the discussions or negotiations?---No, I don't. I don't. I don't recall any conversation with him about it. I just know that he was seeking a meeting.

- 20 Does that mean that you don't recall there being any conversation or does that mean you don't recall any conversation with Mr Bartolotta where he indicated that there was some urgency on the part of, well, himself in trying to conclude the negotiations for the sale of 231?---Yeah, no, I don't, I don't recall that, I don't recall talking to him on the Friday. I think it was just the, the message, and I don't recall, like, the Monday meeting what was, what was raised there. I, I, from, from the proceedings, I, I think he's, he just wanted a yes or no.

- 30 I'm just trying to understand the events, then. So you don't recall any conversation between you and Mr Bartolotta on 20 May where you discuss, at least from his perspective, the need to progress the sale, negotiations for the sale, whilst Mr Walton was on leave?---No.

No. If I understand your evidence, before 20 May you believe you may have met Mr Bartolotta once?---Yeah. That's what I recall.

So then you get this call from Mr Bartolotta on 20 May almost – this is my description – out of the blue, so to speak. Is that right?---Yeah, it would have been.

40

So you say that no one contacted you and gave you, in effect, the heads-up that Mr Bartolotta might call?---No. Not that I can recall.

So it seems to be the case then that you made the decision to contact Mr Osland and see whether he would come to a meeting with you on 23 May based potentially on a voice message left by Mr Bartolotta on 20 May. Is that right? Is that how we understand it?---That's how I think it, it, it may have happened, yes.

10 You don't recall before going to Mr Osland whether you made any investigations independently of Mr Osland in relation to correspondence that might have passed between Mr Walton and Mr Bartolotta?---No, I may have asked Mr Osland in that phone call if he - - -

You don't have any recollection?---No.

Sorry?---No.

20 You may have asked Mr Osland but you don't recall the conversation - - -?
---I can't recall.

- - - with Mr Osland?---No.

Commissioner, I note the time. Just in relation to tomorrow's public hearing, could I indicate that there's a need to start slightly later, the public hearing tomorrow, at 11am. If we could proceed then? And then - - -

THE COMMISSIONER: So what time are you suggesting?

30 MR DARAMS: 11am tomorrow.

THE COMMISSIONER: 11.00?

MR DARAMS: Yes.

THE COMMISSIONER: All right. Well, I'll say not before 11am tomorrow, to resume the hearing. Mr Sawyer, I hope that benefits you and your grandson?---That's fine. Thank you, Commissioner.

40 MR DARAMS: There's also a requirement that we announce some further dates for the sitting, being 23 May, 25-27 May - - -

THE COMMISSIONER: Sorry? I'll just get those again. 23 May?

MR DARAMS: 23 May, 25, 26, 27 May, however, and 1, 2 and 3 June but the Commission won't sit on 24 May or 30 or 31 May.

THE COMMISSIONER: So I think, is the net effect of that is that the program originally set has been varied so that we will not be sitting on the 24th, the 30th and the 31st?

10

MR DARAMS: Yes. So we were originally intending to conclude on 20 May but because of the matters that have unfolded, we won't conclude the public hearing. We need further hearing dates, so we'll need 23 May. We can't sit on the 24th, won't be sitting on 24 May, the 25th, 26th, 27th and then 1-3 June to conclude the hearings.

THE COMMISSIONER: Thank you. Yes. Thank you. Right. Well - all right, Mr Sawyer, we'll have you back tomorrow then for an 11 o'clock start tomorrow.---Thank you, Commissioner.

20

Thank you. I'll adjourn.

THE WITNESS STOOD DOWN

[4.03pm]

AT 4.03PM THE MATTER WAS ADJOURNED ACCORDINGLY

[4.03pm]