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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION TOLOSA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 19 MAY, 2022

AT 11.30AM

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THE COMMISSIONER: Yes, Mr Darams.

MR DARAMS: Yes, Chief Commissioner. We'll continue with the examination of Mr Sawyer.

THE COMMISSIONER: Yes. Very well. I'll have Mr Sawyer resworn before proceed. Mr Sawyer, if you wouldn't mind just, you took an oath yesterday as I recall it?

10 MR SAWYER: Yes.

THE COMMISSIONER: If you wouldn't mind, I'll re-swear you.

MR SAWYER: Yeah.

THE COMMISSIONER: If you can stand and my associate will administer it.

THE COMMISSIONER: Yes. Thank you. Just take a seat there.

MR DARAMS: Mr Sawyer, your evidence yesterday, you accepted, as I understood your evidence, that on 20 May, 2016, Mr Bartolotta called you, in effect, out of the blue?---I, I got a message, I think, I got a, I got a text message.

10

From Mr Bartolotta?---Yes. I think, sorry - - -

When you say you got a text message, are you referring to the text message you've still got on your phone?---Yes.

Going back before you received that text message, that is back in time on 20 May, you received a call from Mr Bartolotta. Do you remember that?---I, I didn't speak to him. He, he, he - - -

20 The call was received on your phone. He left you a message?---Yeah, yeah, he, he - - -

You called him back?---Yeah, I, I'm pretty sure that's what happened.

You then, you don't recall the conversation between you and Mr Bartolotta, do you?---Well, we didn't have a conversation. I think it was a message, message to message - - -

30

As a consequence of that message to message - - -?---Yes.

- - - you organised a meeting with Mr Bartolotta on 23 May?---Yeah, I don't, yeah, yeah, 3 o'clock. Yeah, three, yeah, that's right, sorry, 23 May.

The person who organised the meeting on 23 May was you?---Yeah, I think so.

You involved Mr Osland in that meeting on 23 May?---Yes, Mr Osland was there.

40 But you involved him in that, that is, you spoke or went to Mr Osland and said, "I'm going to have a meeting on 23 May. I want you to come to that

meeting”?---Yeah, I’m pretty sure that must, must have been what happened.

Mr Osland didn’t just appear at the meeting - - -?---Yeah.

- - - unannounced. You knew he was going to be at the meeting?---Yeah. As I said, I can’t recall, I can’t recall the meeting.

10 As I understood your evidence yesterday, there was as of 20 May, as far as the council was concerned, there was nothing pressing or urgent that required council to continue with the negotiations or conclude the negotiations with Mr Bartolotta over the sale of 231 Victoria Road?---No, not that I was aware of.

20 Because there was no urgent need on the part of the council to conclude or continue the negotiations over 231 Victoria Road, there was no reason that you can recall as to why those negotiations or the conclusion of the negotiations couldn’t have waited until Mr Walton returned?---When you say “couldn’t have waited till Mr Walton returned” that was, I, I didn’t know when Mr Walton was returning. So at that time, I didn’t know how long he was going to be off for.

So do I understand that to mean that you decided to one, continue the negotiations and, two, to conclude those negotiations whilst Mr Walton was on leave because you didn’t know when he was going to return. Is that how I understand your evidence?---No. The, the, my understanding was the purpose of the meeting was to let Mr Bartolotta, Bartolotta, give us, like update as to where he was at with the, with the negotiations.

30 Was that your purpose when you arranged the meeting?---Yeah, from what I can recall.

Did the purpose of the meeting change at any stage?---I can’t recall. I, I can’t recall how it, how it went.

Could I ask the witness be shown volume 4H, page 193? I showed you this yesterday, Mr Sawyer. In particular I drew your attention to paragraph 8. Do you remember that?---Yes, I do.

40 I want to draw your attention again to the third sentence, that one starts “Discussions during face-to-face meetings”.---Yes. That’s correct.

You didn't take any minute or note of those discussions you had on 23 May, 2016, with Mr Bartolotta, did you?---No, not that I can recall.

Why didn't you do that?---I just didn't do it.

But why not?---Well, normally I don't take minutes.

But you signed this agreement, or the protocol, on 18 May, correct?

10 ---Correct.

You read and understood the terms of the agreement when you signed it?

---Correct.

You, I think you accepted this yesterday, understood and accepted this obligation to take these notes, that's right?---Sorry, to take - - -

To minute the meetings, the face-to-face meetings.---Well, I wasn't the only party there.

20

But you were the only party who had signed this protocol on behalf of the council, correct?---Correct.

So you had an obligation under this protocol.---Right.

You didn't ask Mr Osland to sign the protocol before you had the meeting?

---No, that's right.

Why didn't you ask him to sign the protocol before the meeting?---I don't

30 think his name was on it.

THE COMMISSIONER: I'm sorry, I couldn't hear that.---I don't know if his name was on it.

MR DARAMS: His name wasn't on the one that you signed but isn't that another reason or more of a reason why you would get the protocol amended to include his name and have him sign it so he would also agree to comply with these obligations?---Well, that was an oversight.

40 So we have, well, notwithstanding he didn't sign it, did you ask Mr Osland to make notes of this meeting?---Not that I can recall.

Why didn't you do that?---I think we were there to listen to what Mr Bartolotta had, had to say about where things were at.

Are you suggesting by that answer that that sentence that starts "Discussions" didn't apply?---No. No, I'm not suggesting that. I just can't recall, I can't recall the, the meeting or how it, how it progressed.

10 But my question was, you're not suggesting by your answer as to the purpose of the meeting that somehow because of that purpose this obligation in this sentence did not apply? You're not suggesting that at all, are you?
---No.

20 Likewise the next paragraph, "All communications between the parties should only take place between the individuals from each party that are identified at the end of the document," by involving Mr Osland in the communications that happened on 23 May, in circumstances where you know he hadn't signed this document or wasn't named on this document, you must have appreciated that that was, well, at best, a description of breach of that obligation?---Well, I didn't think about that at the time. Mr Walton was away and Mr Osland was his senior, the director who had knowledge of what, what had been happening in regard to this. So, yeah, it was a, an oversight in regard to that document.

I just want to understand though when you say it was an oversight, can you help me out because I understood your evidence that when you signed this document on 18 May, 2016, it was the first time that you had, is that right, signed one of those types of documents on behalf of council before?---Yeah. I, I think that is correct.

30 You understood, based on your evidence that you've given, that this document was an important document and the protocols contained in the document were important at least from a probity perspective?---Yes.

So I just want to understand how it is that you might have forgotten or acted by way of oversight in relation to the obligations under this document?
---Yeah. I honestly can't tell you.

40 It seems to suggest, because you can't tell us why, that you have signed this document, you've read it, you've agreed it, you've understood the importance of the document, and then effectively just put it out of your

mind a few days later.---No. No. I, I forwarded it back for the, there was still, it still had to be signed off by Mr Walton.

Sorry, I was just focusing my question, and I apologise if you didn't understand this, I was focusing this question, my question, sorry, on your obligations under the document, which you had signed and agreed to abide by. It suggests, or it seems, based on your evidence that, notwithstanding you only it a few days before 23 May, you've somehow forgotten all about it or just put it out of your mind.---Yeah. I don't recall why I did that but - -

10 -

THE COMMISSIONER: Just on that, just so that you can deal with in the course of evidence. If it was suggested, for example, that you did not follow the protocol by signing off on it, as has been put, that you intentionally did not sign it, how would you respond if such a proposition were put?---That I, sorry, Commissioner, if I - - -

I'm just raising this so that you can respond to it in evidence.---Yes.

20 If it were put that your failure to follow the protocol and sign off on it and follow the protocol in its terms was intentional, not just an oversight, if such a proposition were suggested, how would you respond to it?---Yeah. It certainly wasn't intentional to not take notice of the, of the protocol in the, in the, in the document. I, I don't know why, when I have a look at it now, that, and have a look again when it's brought to your attention as to why I didn't adhere to what was in there at the time.

All right.---So it's, yeah, it, it's something that I, I didn't do.

30 Thank you.

MR DARAMS: Was there a degree of, if I can describe it this way, haste in trying to conclude the negotiations and discussions with Mr Bartolotta to ensure that this matter was brought before the council meeting on 31 May? ---Not that I recall.

All right. Did Mr Tsirekas ask you to ensure that this matter came before the council on 31 May?---Not that I recall.

40 Did someone on behalf of Mr Tsirekas ask you to ensure that this matter came before the council on 31 May?---No, not that I recall.

Did Mr Bartolotta ask you to make sure that this matter came before the council by 31 May?---I, I had that conversation with, I had the conversation obviously at that meeting but I can't recall - - -

Sorry. When you say you "had that conversation at the meeting" are you saying you had a conversation with Mr Bartolotta that you now recollect at the meeting on 23 May that he, Mr Bartolotta, wanted this before council on 31 May? Is that what you're now saying?---No, I'm not saying that at all.
10 What I'm saying is that at that meeting, there would have been conversations had, but I can't recall that there was, what, what they were or what they were, what they were about.

Did Mr Frank Colacicco ask you to ensure that this matter came before council on 31 May?---No, not that I recall.

You're adamant in that, are you?---Yeah, I didn't find out Mr Colacicco's involvement until proceedings.

20 My question was a little bit different, though. My question was did Mr Colacicco ask you to ensure that this matter came before council on 31 May?---No, not that I recall, no.

You're adamant about whether or not you had that conversation with him? ---I'm, I don't recall having that conversation with him.

Is it possible you might have had a conversation to that effect and you just don't remember now 'cause you don't remember or recall a number of these events - - -?---Yeah.
30

- - - around 20 May and 23 May. That's right?---Yeah. Yeah, that's right.

That's a fair description of your evidence, isn't it?---Yes - - -

So it's entirely possible that you had a conversation or some exchange with Mr Colacicco where he did ask you to have this matter brought before council by 31 May and you just don't recall now?---No, well, I, I just don't recall that happening.

40 Well, what I'm suggesting to you it's because of your, and I don't mean this in a pejorative sense but your lack of ability to recall these events of 20 and

23 May, a possibility is that Mr Colacicco did ask you to have it brought before the council on 31 May and you just don't recall it now?

MR LLOYD: I object, Chief Commissioner. That is not a fair question. It can't elicit useful evidence, with respect. He does not have a recollection. He has said that at least 20 times. And inviting him to speculate - - -

THE COMMISSIONER: Yes. All right. Mr Lloyd. Yes. I think we should move on.

10

MR DARAMS: Mr Sawyer, could I ask that you be shown volume 4.2, page 250? Could you just look at this document, please?---Yes.

Have you seen this document before?---Yes.

Have you seen it before these proceedings?---I probably would have if, 'cause I was at that council meeting. I recall seeing it through these proceedings but - - -

20 But it's likely that you would have seen it at the council meeting on 31 May?---Yes.

Just in relation to these author initials, they stand for Mr Osland?---Yes.

Was it Mr Osland's practice to provide you with a draft of any report that he was proposing be put before council before he did put it before council? ---Yes, we would have seen a draft report.

30 So that was his practice, was it, Mr Osland's practice?---I, I think the, it was the practice that we'd get all the, the business paper.

When you say "we" do you mean you and councillors?---No, the executive.

The executive. So you would have seen this before the meeting or a draft of this before the meeting on 31 May?---Yeah, I'm - - -

Do you recall now whether you did review this before the council meeting on 31 May?---I can't recall if I reviewed it before 31 May but I certainly would have seen it.

40

Just going back to this period of time, that is May 2016, was it your experience of councillors or the council at that time that if the council executive put a report before council with recommendations in the report that council would be adopting those recommendations? Was that your experience?---Not, not necessarily. Like in, in a, you know, a number of cases that would, that would certainly be the case, but the councillors certainly debated a whole lot of the, the issues that were raised in reports. Sometimes deleted some of the recommendations, sometimes added more, expanded them, retracted them. So depending on the, on the item or the, or
10 the nature of what was being reported on, the debate and the, the outcome of that debate would certainly change the recommendation.

So if I could just understand this, your experience at that time was that council executive or senior staff would prepare reports for council that had recommendations in them.---Yes.

Sometimes there was debate over those recommendations.---By the councillors.

20 By the councillors.---Yes.

That debate might reject or accept or modify a recommendation.---Yes.

Or result in that happening.---Yes.

It wasn't your experience at that time that if a recommendation went up that it was just simply accepted by the councillors.---In some cases it was depending on the nature of what the item was. You know, sometimes the, the report itself would recommend that council receive a note of the report.
30 It was more an information-based report.

Understand that.---Yeah. So, so, yeah, so that would more likely just go through without comment if the information in there they were, they understood or happy with so - - -

If I could ask you to have a look at the next page. Look at the recommendations.---Yes.

40 Did you understand the recommendation in effect was that council was being asked to agree the terms of the sale that had been identified or referred to in what was called there the attached report?---Yes.

That's by way of the use of the word "endorse". Is that right?---Yes.

Is that the wording, the word "endorse", is that a standard form of words that the council was using or was that more a standard form of words that Mr Osland was using in his reports where he might make recommendations?---Yes. I don't know if it was a standard, like it's, everyone has their own style so I don't know specifically that, that that was, yeah, like it would have been Mr Osland's words in that regard, yes.

10

Am I right if I put this relatively broad proposition to you in relation to the sale of 231 Victoria Road. Without this recommendation in this form being put to the council on 31 May, the sale wouldn't have, or the terms of the sale in accordance with that attached report wouldn't have been endorsed by council at that stage, at that point in time. That's right?---Yes.

In effect this report was a precursor or a precondition for the finalisation of the, at least the significant terms of the sale. Correct?---Yes.

20 If we go back to the meeting on 23 May, someone must have made a decision to prepare this report and have it put before council on 31 May. You accept that, don't you?---Yes.

Did you tell Mr Osland to prepare this report at some stage after 23 May and ask him to put it before the council?---Yeah. I, I can't recall.

If you had given that direction to Mr Osland to prepare a report for the purpose of being put to council on 31 May, you would have expected that he would follow that direction, wouldn't you?---Yeah. We would have had a discussion about it.

30

Do you accept that this is another point in time, if I could use that as a description, where you could have, in effect, put on hold any further negotiations or progress of the disposal of 231 Victoria Road until Mr Walton had returned from leave?---Oh, that certainly would have been a, yeah, an option.

Can you assist us as to why that option wasn't chosen at this point in time? When I say "this point in time" I mean now after 23 May, because that's when this occurred.---Not that, not that I can recall.

40

Can we assume that the answer you gave before in relation to there being no pressing urgency or need on the part of the council to have this report before – sorry – pressing need to have this matter progress in Mr Walton’s absence, that evidence would apply to this point in time as well, is that right? So after 23 May there was no pressing matter or need, as you saw or understood it, for this report to have been put before council?---Not that I, not that I’m aware of. Not that I can recall.

10 Were you aware at this time, that is after 23 May, whether there was any pressing need or urgency on the part of Mr Bartolotta to have the matter brought before council on 31 May?---There may have been but not that I recall, no.

I think I understand your evidence about this but you hadn’t been involved in the disposal of property on behalf of council in this manner before this particular transaction, had you?---I think I, I mentioned before, I, I wasn’t sure of the time, but Mr Walton and I were involved in the sale of a toilet block in Ramsay Road but I wasn’t sure if it was before or after the sale of this. So there wasn’t, there’s only two that I recall, actual sales of council
20 property. In the period that I was involved.

So you had this meeting in 23 May, 2016, which I understand, based in your evidence, was not to continue negotiations but to hear Mr Bartolotta out. Is that a fair description of your evidence?---Yeah.

That was the purpose of setting up the meeting?---Yeah. He wanted to come and, and, and, yeah.

30 Are you able to then tell us why or assist us with the reasons why, after that meeting, this report was prepared and put before council on 31 May?
---Yeah. I can’t recall what, what happened at the meeting but - - -

What about after the meeting?---Yeah, no. Sorry.

Did you have a conversation with Mr Tsirekas after the meeting where he asked you to have a report prepared and put before council on 31 May?
---No, not that I recall.

40 Did you have a conversation with, or exchange, a communication exchange with Mr Colacicco where he asked you to ensure that a report was put before council on 31 May?---No, not that I recall.

Do you recall any conversation or exchange you had with Mr Bartolotta after 23 May where he asked you to ensure the report was put before council on 31 May?---No, I can't, can't recall.

Did you have a conversation with Mr Osland after 23 May where you asked him to ensure that a report was prepared and put before council on 31 May? ---Well, I can't recall but I'd say that we did have a conversation because the report was prepared.

10

Yeah, my question was slightly different. I understand that the report was prepared but do you remember telling Mr Osland or saying to Mr Osland make sure you have the report prepared and put before, so it can come before council on 31 May?---I can't recall the circumstances that that might have happened but it's possible that there was.

So it was possible that you did say to him make sure a report is prepared and put before council on 31 May? Are you saying it's possible?---Well, the report was there so it's, I'm saying it's possible.

20

That you told him to ensure the report was prepared and put before council. ---No, not that I told him to ensure the report was prepared but we had a discussion about obviously the sale or whatever, and from that he's prepared a report that's gone before, before council.

Do you recall having any conversation with Mr Tsirekas about the recommendations in that report at or before the time that this matter went to council on 31 May?---No, I don't. No, not that I recall, no.

30

Do you recall whether you had any conversations with anyone else other than say Mr Osland and perhaps other administrative staff of council at any stage after 23 May where you discussed the contents of this report that was going to be put before council on 31 May?---Not that I recall. The, like the business, the business paper's prepared and viewed by, you know, the executive and then forwarded out to the councillors on the Thursday and then is available to the public on the Friday so that's a, the sort of, was the normal procedure.

40

Do you remember when the counteroffer from Mr Bartolotta arrived or came after the meeting on 23 May?---It must have, well, it must have come

in early, what was the 23rd, a Monday. It must have come in the following day or whatever for the report to be done.

Could I ask the witness be shown volume 4.2, page 254. Have you seen this correspondence outside the context of these proceedings?---No.

So you've only seen this in the context of these proceedings. Is that right?
---I can only recall seeing it in the context of these proceedings, yes.

- 10 Do I take that answer to mean that you don't recall having any conversation with Mr Osland – I shouldn't say that. Do you recall having any conversation with Mr Osland about the terms set out in this letter dated 24 May, 2016?---No, I don't but I believe I would have.

Why do you say you believe you would have?---Well, I'm sure if he got that, that offer, he would have, would have let me know as part of the report and would have attached it to his report.

- 20 Do you have any recollection of having this conversation with Mr Osland or are you just simply saying you expect you would have had some conversation with him?---That would have been the normal practice to, when he put the report or when, when it was attached to the report, that it'd come through to the executive, yeah, but - - -

So was the normal practice that you would sit down with Mr Osland and discuss the reports that he had prepared and you believe based on that practice you then would have discussed these terms?---I'm, yeah, I'm sure that would have been the case, yes.

- 30 In the context of him preparing the report, attaching the terms to the report, the report is being considered before it's being put to council?---That's right, yes.

But you don't recall any conversation before he, that is, Mr Osland, prepares the report?---No, no, I - - -

So you don't recall any conversation where you sit down with him and he says, "Look, I've received this counteroffer" - - -?---Yeah, the - - -

- 40 - - - "after the meeting on the 23rd, here are the terms," then you, you and he go, "Well, what do you think about this? What about that term?" Do you

recall any of that kind of discussion?---I don't but I, that, that more than likely would have, would have occurred if he would have got that offer

- - -

Well, why do you say "it would have more than likely occurred"? What do you base that on?---Well, if he received the, received the offer like that, he would have, I, I would have thought, spoken to me about it.

10 What I'm asking you is why do you think that? If this is the first time that you've been involved in one of these transactions, and I'd suggest that's the first time that you've been involved with Mr Osland in that respect, what gives you the basis to, in effect, speculate or think that that's what happened if you don't have a recollection of it happening?---Well, I believe, given the, the, the meeting that, that we, we obviously had, that he would have raised it.

Sorry? Which meeting? Are you talking about 23 May meeting?---Yeah. That's right.

20 So your belief that you discussed this offer after it was received on 24 May and before the report was prepared is based on the fact that you'd had a meeting on 23 May?---No. What I'm saying is if he, if he received that offer on 24 May, I would, would have thought that he would have spoken to me and let me know.

Before he prepared his report where he included that recommendation. Is that right?---Yes.

30 But you don't now recall the content of any discussion, do you?---No, no, not that I, not - - -

So you can't assist us as to whether there was some discussion and debate between you and he about, for instance, the settlement period?---No.

What about the proposed exchange of 5 per cent - - -?---No.

- - - deposit? No?---No.

40 I take it then you don't recall any discussion about the proposed purchase price and whether that was a good price or not?---Like, we would have had the discussion about all those things but I can't recall them.

Do I take that to mean that you don't recall now what your position was either way on any of those terms, as well? For example, you can't recall now whether you broadly agreed or disagreed with the getting a 5 per cent deposit on exchange?---No, not, not in regard to the, the, the 5 per cent deposit.

What about in relation to the settlement period?---Yeah, I, there was a, I think in his report that I've read - - -

10

I'm just asking you to focus on your recollection of any conversation that you had with him or debate you - - -?---No. I, I haven't a recollection of the conversation but having read the report I understand, in relation to the 18 months, what that meant.

I take it then you don't have any recollection about any conversation where you might have debated the proposed purchase price with Mr Osland as well?---No, only that it was an advance on what I was shown yesterday, that Mr Walton had said anything over \$2 million was a great outcome.

20

Sorry, you're referring to the email you were shown yesterday from Mr Walton to Mr Osland on 19 May?---Yes.

You hadn't seen that email before it was shown to you yesterday?---That's right,

Are you saying that there was some discussion you now recall with Mr Osland, where Mr Osland referred to the contents of that email?---No. What I was saying, when I saw it yesterday, and seeing that today and recalling, I thought that, from what Mr Walton put in his email, that seemed to be a, a, a, a good outcome.

30

Just so I can understand that, are you saying that in light of what Mr Walton said in his email of anything about \$2 million, that's what you're referring to on the first part?---Ah hmm.

The second part you're referring to is the offer of 2.1 million.---Yes.

40

That's right, on the second part. You're making an assessment, in effect, to say, well, Mr Walton said anything about 2 million would be good, correct, on the one part?---Yeah.

The offer was 2.1 million, so that's above 2 million, correct?---Yep.

You're in effect saying that otherwise the terms are comparable, isn't that implicit in you saying that 2.1 was better than the 2 million?---I'm looking just at the dollars.

Correct. You're not taking into account, are you, the other terms that might be attached to the sale, for example, the 5 per cent deposit on exchange?

10 ---Yes.

You're not taking that into account?---No. Just looking at the dollars.

You're not taking into account the settlement period, so for example, Mr Walton's email of 19 May, anything above 2 million, that might be premised on a settlement period of, say, six months, correct?---Correct.

So you wouldn't be comparing that, you were simply comparing the headline price, 2 million versus 2.1?---That's right.

20

Wouldn't that be another – I want to suggest this to you, given Mr Walton's view that he expressed in the email of 19 May as to anything above a certain price and his experience in the negotiations to that point in time, wouldn't that be another reason why it might have been appropriate to have Mr Walton continue in the negotiations and particularly to assess and consider the counteroffer that had come back from Mr Bartolotta on 24 May with those terms in it so that Mr Walton could make this assessment?---I wasn't aware of Mr Walton's comments of the 2 million until I saw the email yesterday.

30 Are you saying then Mr Osland didn't tell you about those matters?---I wasn't aware, not that I recall.

Just going back though, you did know of the involvement of Mr Walton in the negotiations up to that point in time?---Yes.

So what I was going to suggest to you is that perhaps that might have been an appropriate reason to not conclude or continue the negotiations until Mr Walton returned, particularly when the counteroffer had come after 23 May meeting?---Yeah. Could have been a consideration.

40

Because at that stage there was no pressing urgency or need on the part of the council to conclude the discussions between council and Mr Bartolotta?
---Not that I'm aware.

The offer that Mr Bartolotta had put back to the council on 24 May had a number of terms in it. Mr Walton would have been in a good position to assess whether they represented a good value to the council, correct?
---That's correct.

10 I want to move to something slightly different now, Mr Sawyer. Could I ask the witness be shown volume 3.5, page 164? Mr Sawyer, you recognise that location, don't you?---Yes, I do.

Is that the inside of the Nield Park – sorry, is that the Nield Park café?
---Yes, it is.

I want to ask you about the persons sitting at the table. Now, starting with the person with the shorts and the black T-shirt, that's Mr Colacicco?
---That's correct.

20

Seated next to him on his left is yourself.---That's correct.

Do you know the gentleman next to you?---No, I don't.

Had you met that gentleman before that day?---No, I hadn't.

Were you introduced to that gentleman on that day?---I can't recall. I, I don't think so. Well, they might have said what his name was but he, he wasn't part of the, part of the, the group of guys that meet there. I hadn't met him before and - - -
30

Did you know who he was there to meet?---Only by looking at that photo. It looks like he was there with Mr Panuccio.

Why do you say that?---Well, he's looking at Mr Panuccio across the table there and sitting at the same end of the table as Mr Panuccio.

My question was did you know, and I assume the answer is you don't know who that person was there to meet.
40

MR LLOYD: I object to that, Chief Commissioner. It might be a minor point, but that's quite an unfair question implying a criticism of the witness. Counsel Assisting's question actually was "Why do you think he was there with Mr Panuccio?" He gave a direct and credible and logical response and then there's a chiding question that follows it. It's not a fair form of questioning in my respectful submission.

THE COMMISSIONER: I'm going to allow the question, Mr Lloyd.

10 MR DARAMS: I was just asking you whether you knew who that person was there to meet and I understood your answer to be, you gave an explanation because he was talking to Mr Panuccio you made that assessment based upon that, where he was sitting. That's right?---Yeah.

So my question was other than where he was located at the table you don't actually know who he was there to meet. You've made an assumption - - -?
---Yes.

- - - based on what you see in the photo. That's right?---That's correct.

20

Do you know the gentleman at the end of the table in the black T-shirt?
---No, I don't.

Had you met that gentleman before this occasion?---No, I hadn't.

Was he another person who had – sorry, I'll withdraw that. Was this the first time that you had attended this Nield Park and that gentleman had been there?---As far as I recall I hadn't seen him there before.

30 As I understand your evidence, you didn't attend the Nield Park café every Friday. Is that right?---I didn't, I didn't attend the Nield Park café till after I retired and then it was more when I had, after I had my heart operation I became more regular, so that was probably after July/August 2018 that I was more a regular but up until then, yeah, I wasn't, wasn't regular.

So when you say you – what about this period of time January 2019, were you going there regularly at this period of time?---Yeah, I would have probably started going more, more regular basis 'cause I, I wasn't able to exercise as much as I could beforehand.

40

So from this, at this point of time you were likely going at least every week or every couple of weeks?---Yeah, probably more regular, you know, yeah, probably every week, every couple of weeks. Certainly not - - -

Just moving on. What about the gentleman in the blue T-shirt, that's Mr Panuccio, is it?---That's correct.

You say that based on – I'll withdraw that. Just moving around further. Do you notice, sorry, do you recognise the individual with his back turned?
10 ---Yeah, that's, I'm pretty sure that's Carlo. His surname I'll - - -

Ianni, the one that - - -?---Yes.

The panel beater who you asked to look at your car?---Yeah, that's correct.

Had you, by this stage, 25 January, 2019, had you only met Mr Ianni at these Nield Park catch-ups?---No. No, I'd met him, met him before.

In relation to your vehicle?---No.
20

No.---No, he was, he was on the administrative body of one of the local soccer teams.

I see. Just at this photo, there's in your hand, in your left hand, there's what appears to be an envelope. See that?---Yes.

Did someone at that meeting give you that envelope?---I assume so, yes.

When you say you "assume so" is that - - -
30

THE COMMISSIONER: I think he said you think so. Is that what you said?---Yeah, I, I think so, or, or - - -

That's all right.---Yeah.

MR DARAMS: You didn't bring that envelope into the meeting, did you?
---I, I could have brought that envelope into the meeting or I was trying to work out what it was there, what it's there for. Because I did, with the cricket membership passes, I did bring them to return them to Frank
40 Colacicco, but I've seen the next photo where I still had it in my hand when I was getting into my car, so - - -

I'll show you, well, perhaps if I can do this. Could the witness be shown page 169? See the envelope in your left hand?---That's correct.

You can tell that's your vehicle, can't you?---Yes, yes, it looks, certainly looks like it.

10 If we can see from this photo, you're at the, what I might describe the front of the vehicle. That's right?---Yeah, the rear view, I'm in front of the rear view mirrors, yeah.

See the time taken, 8.34?---Yes.

I'll come back to these earlier photos in a moment, but just note that time, 8.34. Can you be shown the next photo, please, page 170? We see you, what I want to suggest to you, putting your keys into the vehicle?---Yes.

20 So you're opening the vehicle door. Correct?---Yes, or I could be locking it. But I take it that, yeah, if I'm getting into the vehicle, I'm opening it.

So one possibility is you're, what, locking the vehicle?---Yes.

I see. So let me, if you were locking the vehicle, would you be suggesting if you're locking the vehicle that you're getting out of your vehicle and then - - -?---Yes.

- - - walking back into the or walking into the café?---Yes.

30 Would that be the circumstances where you're locking your vehicle?---Yes.

So where you're locking the vehicle, is this right, you've attended the site wherever the vehicle's parked, you've gotten out of your vehicle?---Yes.

And then you've walked into the café to sit down?---Yes.

Would that be the only circumstance where you would be locking your vehicle in this photo?---Yeah, and I just looked at the time and I, I wasn't locking, I was, I was obviously getting back into my car.

40 That's what I was going to suggest to you.---Yeah.

If we go back to the photo - - -?---Yeah.

- - - at page 164 - - -?---Yeah. Yeah, no, I accept that.

Well, I want to be clear on all this.---Okay.

This is taken at 8.22 am?---Yes.

So it's unlikely - - -?---Yes.

10

- - - given you've got the envelope in your hand here - - -?---Yes.

- - - unless it's a different envelope altogether, but we can rule that out?
---Yes, well, I'd assume so.

So I want to suggest to you that the photos you've seen, would you accept, demonstrate you walking away from that meeting with envelope and hopping into your vehicle?---Yeah, the time would suggest that, yes.

20 You did give some evidence about returning cricket tickets?---Yeah.

I want to suggest to you that that's not what you were doing on this occasion?---Yeah, no, if I had that envelope there, I did, yeah, I accept what you're saying, yeah.

So just I'm clear, you weren't returning SCG members tickets to Mr Colacicco on this occasion?---Well, no, doesn't look like, we relate to that envelope, walking away there, that certainly wasn't the case. I'd already been to the cricket.

30

Sorry? You'd already been to the cricket?---Well, the cricket was on 20 January.

20 January, was it?---Yes.

You didn't use his tickets to go to the cricket though?---No. I bought, I bought the family pass.

40 But in any event, you accept that this sequence of photos show you walking out of the café with the wallet, sorry, the envelope, hopping into your

vehicle and driving – well, the photos don't show you driving away but we can assume you drove away?---And it's with an envelope, not a wallet, yes.

Yeah, I corrected myself.---Okay, thank you.

Tell us what was in that envelope, Mr Sawyer?---I don't know.

You weren't, on 25 January, 2019 employed by the Canada Bay Council at this stage?---That's correct.

10

In those circumstances it's unlikely that it would be some documents related to council business, would it?---No.

When you say "No", you accept my proposition it's likely that it's council-related documents?---Yes.

So it's not the case that someone at that table might have had a development application or some other application before council that they were handing it to you?---Not that I'm, not that I'm aware, no.

20

Just going back to this photo, can you think of any reason why the individual to your left would give you an envelope at that meeting?---No.

Can you think of any reason why that individual at the end of the table would give you an envelope at that meeting?---Which?

The individual at the end in the black t-shirt?---No.

30 Can you think of any reason why Mr Panuccio would give you an envelope at that meeting?---No.

Can you think of any reason why Mr Ianni would give you an envelope at that meeting?---No.

Could I ask that you be shown a photo at page 166? Do you see Mr – so you see Mr Panuccio. Can you think of any reason why Mr Panuccio would have given you an envelope at that meeting?---No.

40 Can you see Mr Tsirekas there?---Yes.

Can you think of a reason why Mr Tsirekas would have given you an envelope at that meeting?---No.

Just going back to the photo on page 164. Can you think of any reason why Mr Colacicco would have given you an envelope at that meeting?---No, I can't.

10 Do you recall whether there were any other persons who attended on that day who aren't identified in these photos?---No, I can't recall. Like, 8.22, the, the guys used to get there around 7.00, so there would have been, there might have been some that had already come and gone but I, I can't recall even getting the envelope or what was in it, so, on that date.

Was money in that envelope?---No.

Was that envelope given to you by Mr Colacicco?---No. I, well, I don't, I don't know who gave it to me.

20 Do you deny that Mr Colacicco gave you that envelope?---I said I don't know where I got the envelope from.

Do you deny Mr Tsirekas gave you the envelope?---Yeah, I don't know where it came from.

30 If I could ask you to go to page 169. If you just focus on the envelope, if we could expand that slightly. Now, I know you've given some evidence that you don't know what was in the envelope, but can we make this assumption, that given that there's a photo that shows you with the envelope in your hand at the meeting, there's a photo that shows you walking away from the café with the envelope and getting into the vehicle, can we make the assumption there was something in the envelope? Do you accept that?
---Yeah.

If it was empty, i.e. it was a rubbish envelope you would have just left it at the table?---Yes, I agree.

Could I ask the witness be shown page 166? See in Mr Tsirekas' left hand there's an envelope?---Yes.

40 Did you see anyone give Mr Tsirekas that envelope at that meeting?---No, I didn't.

Do you know what's in that envelope in Mr Tsirekas's hand?---No, I don't.

Could the witness be shown volume 3.4, sorry, 3.4, page 171? I'll just ask you, Mr Sawyer, the author initials on this document, GS, are your initials?
---That's correct.

Does that signify that you would have been the author of this report?---Or taken, or taken responsibility for it.

10

When you say "taken responsibility for it", do you mean that you might have asked someone to prepare the report but in effect you are speaking to the report and signing off on the report?---Yeah. I think Tony McNamara wasn't at that meeting.

My question was though that, I was just exploring this, I think you said "taken responsibility", was that what you said?---Yes.

20 Does that mean that you would need to know what was in the report, if you didn't draft it yourself, you were the person who would then talk to the report, is that right?---That's right.

So you would have had to be familiar with what was set out in the report?
---That's correct.

I'll just ask you to look at this page. Let me know when you want me to show you the next page. I just want you to get familiar again with some of the things that are set out in the report. I've only got a couple of questions about it.---Yes.

30

Could I show you the next page?---Yep. Yep.

I'll just show you the next page. I'm going to come back to that previous page in a moment, once you get familiar with the rest of the report.---Yes.

Next page, please.---Yeah. I get the gist of it now.

You've for the gist of it. If I can just show you the last page where the recommendations are.---Yes.

40

I just want you to note recommendation 1.---Yep.

“Council adopt option 1 and review the application pursuant to that.” Do you see that?---Yes.

If we go back to the preceding page, what that’s a reference to, is it not, is the numbered paragraph 1, is that right?---Yes.

10 Could I then ask you to be show page 172 again? I want to draw your attention to the second-last paragraph on the page, the one that starts “Whilst not the subject of this report”.---Yes.

You’re referring in this paragraph to the planning proposal that had just been submitted to council by or on behalf of I-Prosperity Group?---Yes.

Other than this reference to that planning proposal, the balance of this report is directed to the Billbergia planning proposal.---Exactly.

20 Your recommendations were related only to the Billbergia planning proposal.---That’s, yeah, that’s the way I read it.

That’s the way we have to read this. Correct?---Yes.

And in fact aren’t you expressly saying whilst not the subject of this report, when you say that you’re intending to indicate to council we’re not dealing with I-Prosperity in this report at this stage because we’ve only just got it? ---Exactly.

30 You weren’t, am I clear about it, you weren’t recommending to council, councillors that they somehow consider I-Prosperity’s planning proposal which had just been received along with the planning proposal of Billbergia, were you?---No, this was, this was about the Billbergia planning proposal which included affordable housing and, and public domain works.

Just bear with me one moment. Just one sort of follow-up question. In relation to council meetings, in 2016 what was the, how often were council meetings held?---They were generally scheduled for every fortnight.

40 What about in May 2016, did that change?---Sometimes it depended on, just trying to think. There was one on the 31st - - -

THE COMMISSIONER: Sorry, I can't hear you.---Sorry. There was one on the 31st. There might have been, there might have been three if there was a whole lot of business that was going on. It depended, it depended on the volume of business but normally there was two meetings per, two meetings per month or whatever depending on the volume of business that we had.

MR DARAMS: In May 2016, I think the records indicate there were five council meetings in May 2016. From your experience with council was that an unusual number of meetings to have in a month?---It was unusual but it
10 was an unusual time as well.

That's what I was going to ask you. What was the explanation for having those large number of meetings, sorry, having those number of meetings? ---Well, the merger. There was a whole, a whole process going on where councils were being merged and there was business that needed to be transacted or was trying to be transacted at that time or reports that want to be put up and, and finalised as part of that process.

THE COMMISSIONER: You said yesterday that it was mooted or
20 suggested that there might be a merger of the council with Strathfield I think you said, was it?---Burwood and Strathfield, Commissioner.

Burwood and Strathfield.---Burwood and Strathfield, yes.

As at May '15 how advanced was that as a prospect?

MR LLOYD: Chief Commissioner, I think you might mean 2016.

THE COMMISSIONER: Oh, thank you. May '16. Thank you.---On I
30 think it was May 12 the government announced the merger of a whole range of councils. We were supposed to be merged as well on that date. The only thing that, the only reason we weren't included in that merger proposal was that Strathfield Council lodged a legal challenge to, to that about early May and so we were withdrawn from that until those legal, that legal challenge had run its course so - - -

Right. Thank you.

MR DARAMS: Do I understand that to, your evidence to mean that from
40 about 12 May there wasn't any, no decision had been made or announced to merge Canada Bay Council with someone else? As you understood it was

on hold in effect whilst this other proceeding continued?---Yeah. A decision had been announced to, to merge us but the action hadn't taken place because of the legal challenge.

The legal challenge put it - - -?---Yes.

- - - put a stop to it for that - - -?---Put a stop to it for - - -

10 - - - whatever period of time?---Yeah, and no one knew how long that was going to be.

THE COMMISSIONER: I think at some later point in time, Ku-ring-gai Council challenged, and successfully, in the Court of Appeal?---Yes.

20 And that had significant consequences for the amalgamation program going ahead?---Exactly, and I think one of them went through to the High Court, Commissioner, as well. So it, it was, it was sort of like a, a really sort of, you know, crazy time in, in, if you were in a council that was merged because we were working with Burwood Council to transition. Strathfield Council didn't want any part of that at all. And the government expected us to be ready when they announced it, to start, open business the next day. So it was a, a bit of a, a crazy time during that period.

MR DARAMS: Those are the questions that I have for Mr Sawyer. Now, I understand there is some applications to cross-examine Mr Sawyer. I don't know how long they will take. I'm just indicating - - -

THE COMMISSIONER: Yes.

30 MR DARAMS: I mean, if it was a short period of time, we might be able to conclude Mr Sawyer but - - -

THE COMMISSIONER: I think there are a couple of applications here. Yes, Mr Lloyd, you want to ask some questions?

MR LLOYD: Yes.

THE COMMISSIONER: I grant leave to you to do those.

40 MR LLOYD: Thank you.

THE COMMISSIONER: Do you want to proceed with those? I think, Mr Leggat, you also have applied for leave, which I grant.

MR LEGGAT: Thank you, Chief Commissioner.

THE COMMISSIONER: So perhaps, Mr Lloyd, are you happy to go first?

MR LLOYD: Yes, Chief Commissioner, and I've discussed it with Mr Leggat. I assume no one else has applied?

10

THE COMMISSIONER: All right. Very well. Well, Mr Lloyd, I think what we might do, it's getting close to the lunch period, normal lunchtime. We'll take the luncheon adjournment and we'll resume at 2 o'clock.

MR LLOYD: May it please, Commissioner.

THE COMMISSIONER: All right. Thank you. Very well. I'll adjourn.

20 **LUNCHEON ADJOURNMENT**

[12.56pm]