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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 FRIDAY 29 APRIL, 2022

AT 10.00AM

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THE COMMISSIONER: Mr Darams, there are going to be some modifications to sitting hours next week. I have other functions that I have to attend to. I think what we'll do during the course of the day is to print up any variations to the sitting hours next week. I did have a commitment on Monday morning which will prevent me from sitting before midday on Monday, so I'll say not before midday on Monday. And as to other variations in the program, as I said, during the course of the day, we'll have a document produced for the benefit of those interested. Very well. Are we ready to proceed?

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MR DARAMS: I am, subject to one other housekeeping matter, Chief Commissioner, I need to attend to. Yesterday when I tendered volume 2, I erroneously referred to it being Exhibit 3. It should be Exhibit 4.

THE COMMISSIONER: Right. Well, that correction will be made. Now, I'll have the witness resworn.

THE COMMISSIONER: Yes. Thank you, Mr Furlong. Yes, Mr Darams.

MR DARAMS: Thank you, Chief Commissioner. Might the witness please be shown volume 1.2, page 9. Mr Furlong, you will recall you were asked some questions yesterday about this draft motion that was sent by Councillor Kenzler?---Yes, Mr Darams.

10

You made some amendments to that draft motion and sent those amendments or the motion with the amendments back to Mr Tsirekas? ---Yes, Mr Darams.

Yesterday I referred to the motion as a resolution and you I think appeared to correct me to say no, it's not a resolution, it's a motion. Do you remember doing that?---Yes, Mr Darams.

I think I understood you to say that it's only a motion until it's passed.
20 There it becomes a resolution?---A resolution of the council, yes.

Yes. Now, could the witness be shown volume 1.2, page 15? So this is your email back to Mr Tsirekas where you now use the term "resolution", Mr Furlong, and I'll come to it in a moment, but I'll tell you that the following documents are the motion which you have amended and added some paragraph to. So - - -?---Yeah.

- - - could I just understand. Are you when you send this to Mr Tsirekas, are you saying, in effect, here you go, Mr Tsirekas, here's the resolution that
30 will be passed or we want you to pass?---No. It's my incorrect use of the word "resolution". It should have said draft motion.

I see. Okay. I just wanted to get that clear.---Sure, no, that's, that's - - -

There was some issue yesterday you had with me using the terminology and I wanted to make sure that - - -?---No, that's my mistake.

So a mistake yesterday or today?---No - - -

40 Sorry. In - - -?--- - - - in, in using the word "resolution" in that email.

Now, if I could ask you to be shown page 17, please? I want to draw your attention to paragraphs 9 and 10. Could you please just read them to yourself?---Yes. So I'm, I'm aware of them. Thank you, Mr Darams.

They are the amendments that you drafted to the proposed motion of Mr Kenzler?---Yes, they are.

I think you accepted yesterday, and I just want to clarify this with you, that it was unusual for you to be asked or make the amendments of the kind that you drafted in paragraphs 9 and 10, is that correct?---I, I accept that it's an unusual circumstance, yes.

This is adding paragraphs or clauses, however you want to describe it, to a proposed motion for council, that was a circumstance that you hadn't encountered in your private practice previously? That is, you hadn't done that in your private practice?---Not in a, a matter that I was involved in, but as I said, I had done it before.

Yeah. But in terms of the matter, when you say matter you're involved in, that is a matter which you have a commercial arrangement?---Yes.

That is you're acting for a client?---Yes.

Has this happened subsequently in your private practice, that is you've been asked by a councillor to add - - -?---No.

Right. Now, the paragraphs 9 and 10, they were included and they provided benefits to your client, I-Prosperty, correct?---I think we had this discussion, Mr Darams, yesterday, and I said I didn't accept the word "benefit". What they were designed to provide was, if you like, a level playing field for our site in relation to the other sites that the council was considering in the immediate area.

THE COMMISSIONER: Well, did it effectively provide some advantage by the inclusion of paragraph 9 and 10?---Not advantage, Commissioner. It, it provided a - - -

Well, what's the utility of having put it up then? Well, perhaps let's approach it this way. 9 and 10 I think you said were drafted by yourself. ---Yeah.

What was the utility or purpose in putting paragraphs 9 and 10 forward?
---The purpose from my perspective, Commissioner, was simply to ensure that my client's planning proposal was dealt with and considered, and, and its merits considered as per points 7B and C, to a slightly lesser degree, but so that there was consistency.

So you wanted them to have an opportunity in terms of clause 7B? You wanted your client - - -?---Yeah. We had provided some of those things but what I was asking was that it be confirmed by the council that those were
10 the issues, primarily Roman numeral (i) to (ix), were the issues that our application would assessed on.

Yes. But we're dealing here with a formal process under the legislation, aren't we? That is to say moving a motion for a resolution by council.
---Yes.

It's a formal process that we're dealing with here under legislation.---Yes, Commissioner.

20 As I understood it, the matter concerning Billbergia was here being utilised, if you like, that is the matter concerning 7B, so far as it affected Billbergia, was now being, in paragraphs 9 and 10, being expanded, if you like, to include different properties, namely those that belong to I-Prosperity.---Yes, Commissioner.

And in that sense, it was seeking a formal decision of council by way of a resolution to provide I-Prosperity with the facility or opportunities that paragraph 7B stated and provided for.---Yes, Commissioner.

30 Right. So in that sense, that was enshrining, if you like, in the formal decision of council, the opportunity for I-Prosperity to have the benefit of the process set out on paragraph 7B.---I, I will accept, but, Commissioner, I don't see it that way but - - -

Well, we're dealing with a formal process here, aren't we?---Yes, we are.

That is to say the passing of a resolution by council.---Yes.

That's not an insignificant matter, is it, in the context of council functions.
40 ---No, no.

It's a solemn process because it establishes, amongst other things, the legal status of process so far as a particular planning proposal is concerned.---I, I don't know that it, that it sets a legal status, Commissioner, but it, it sets out the issues that the council are seeking to have considered or which to consider in, in assessing the planning proposal. Yes.

Yes. Not just setting it out in a letter or a piece of paper, but formally enshrining it into a solemn process of council, namely a decision of council by way of resolution.---Definitely, yes.

10

That's right. And that is significant, is it not?---Yes, it is.

Yes. So that by the inclusion of paragraphs 9 and 10 there was, was there not, an opportunity, call it an opportunity or an advantage, to I-Prosperity to have written as a matter of law the opportunity that clause 7B speaks of? ---Yes, it provided that certainty, Commissioner. Yes.

These are not trivial matters, are they?---No, they're not.

20 No. And indeed that's why the effort was put into getting these additional paragraphs 9 and 10 into the resolution ultimately to be passed.---Yes. Yes. To create that certainty, Commissioner. Yeah.

Right. And the opportunity then opened the door for a case to be made, if you like, or submissions to be made on behalf of I-Prosperity in terms of what would become the resolution.---Sorry, Commissioner, I'm, I'm not sure that I understand that last part. I, if we, if we're using the word opportunity I guess it, it creates this chance to make sure that those issues are how our application is dealt with.

30

That's right. It makes sure - - -?---Yes.

- - - that the matters set out on 7B will be considered in favour of I-Prosperity.---Yes.

Right. And that is the legal significance of having a formal resolution of council.---Yes.

40 Right. And indeed the context in which this was all occurring was really a process that had been ongoing at the behest of Billbergia for its property. Is that right?---Yes.

And plainly Billbergia would have had a similar right to have these matters set out in 7B considered in its interest.---Yes, Commissioner. That was the purpose of that initial motion.

So we end up with a situation where a process that was initiated and related to Billbergia in respect to its land became the vehicle also, not just for Billbergia to have those matters in 7 considered, but it also became, by the addition of paragraphs 9 and 10, a vehicle which also provided that
10 opportunity, or that right, set out in the resolution to another company, namely I-Prosperty, in respect of different land to Billbergia's land.
---Correct, Commissioner. Yes.

And that's why I think, is it not, you properly considered yesterday that this was a highly unusual process?---Yes.

It was not common.---No, it's not common, Commissioner.

And you had never encountered this sort of situation before in your life, I
20 imagine?---Not, as I said, not where I'd been involved in the project but, certainly.

So long as you have been associated with this council, that's Canterbury Council or its forebears, you had never encountered this situation before?
---Oh, I had encountered it when I was working for the council, Commissioner, but not, not subsequently.

But you hadn't had this identical situation, had you, of one company, in relation to its land, is following due process in relation to its development,
30 and then by some side wind, as it were, paragraphs are added in to the benefit of a completely different company or entity in relation to completely different land?---No, Commissioner, not in, not in the sense of a two different corporate entities, but in many cases when I was on the council, councillors would suggest a proposition and then other councils would suggest that, other councillors, I should say, might suggest that it be applied to a wider, you know, precinct or location - - -

Well, that's a different - - -?---And to be - - -

40 - - - situation, isn't it, because that's dealing with the scope or operation of a resolution, not conferring additional benefits on some other entity that's not

the subject of the due process concerning particular land?---No, Commissioner. To me, what that is doing, no matter which the circumstance, is seeking to apply the same process, procedure, controls, whatever you want to call it, to an additional location.

For another entity?---Definitely.

Yes. All right.

10 MR DARAMS: Now, Mr Furlong, just so I'm clear, in light of some of your answers to the Chief Commissioner, you accept therefore that the inclusion of paragraphs 9 and 10 in the draft resolution proposed motion - - -?---Yeah.

- - - if passed, would have, passed on those terms, that is, including 9 and 10, would have provided a benefit to I-Prosperity, your client?---Yes, Mr Darams. It's different words but, yes, we had the benefit then or a set of rules.

20 If the resolution wasn't passed in those terms, that is, including paragraphs 9 and 10, I-Prosperity would have had to have their planning proposal – withdraw that. If it wasn't passed in those terms, what was the consequences for I-Prosperity's planning proposal?---In terms of whether it lives and dies, having lodged it, no consequence at all. In terms of how we then went through obtaining additional information, reports, et cetera, it would have been more difficult because there would have been a lot more to-ing and fro-ing with the council staff, creating delay. I mean, it wasn't a quick process in the end, anyway, so, but at the time, I thought it was better to know exactly what the criteria was that we would need to either update
30 our planning proposal with or indeed just work through with the council staff and consultants.

Do I take your answer to mean that one of the benefits of the addition of those paragraphs was that there was a potential time saving for I-Prosperity?---I believe so, yes.

When you came to propose those amendments, did you have that in your mind, that is a potential time saving for I-Prosperity?---Definitely, 'cause confusion would lead to delay.

40

Did you understand at that time, that is, at the time of proposing these additional paragraphs, that having this planning proposal on behalf of I-Prosperty proceed quickly was something that they were wanting to happen?---Certainly, like every applicant, yes.

Now, could I ask that the witness be shown, staying in this volume, but page, bear with me, page 17 again? I just want to draw your attention to the paragraph 10 and just ask you is the effect of this, if it was passed in those terms, would be committing council to write to the owner of 1 Marquet Street in effect asking, “What are you going to do with your land?” ‘Cause that’s a slightly different issue, isn’t it, to - - -?---Yeah.

- - - paragraph 9. Do you accept that?---Yes. Yes. The, the, the council had, since 2015, in relation to planning proposals for this component of, sorry, for the, what they called the Station Precinct, had expressed a concern that the properties, this five or six properties, were not all in the one ownership. That’s not really a matter in relation to a planning proposal because the rights, the development rights go with the land, so if everybody’s got the same development rights, it’s actually better and fairer. So at that stage 1 Marquet was still unaligned, for want of a better word, and the council still had the concern that it, it didn’t want to leave someone out.

Just coming back from your client’s perspective, at this time your client wanted, because of those issues, it wanted to purchase 1 Marquet Street. ---Oh, it wanted to tidy up the site, yes.

It wanted to purchase 1 Marquet Street.---As a preference, yes, but it could have gone without it.

30 Didn’t you – sorry, just say that again to me. It could have gone without? ---It, it, it could have developed without that. It wasn’t, it wasn’t necessary to redevelop the overall site to have that property.

Is that right, Mr Furlong? Isn’t it the case that your client needed to purchase 1 Marquet Street in order for its development proposal or planning proposal to be accepted by council?---As I said, Mr Darams, in 2015 the council had resolved to exclude all of those properties from the overall planning proposal because it had a concern.

40 But what about this time in May 2016 when you were proposing this amendment?---That property was still not in an aligned ownership.

Yes. But hadn't your client been informed at this stage that it was required to or needed to purchase 1 Marquet Street in order for its planning proposal to be accepted by council?---As I said, the council had previously resolved that way. And my, my clients were looking at buying all of that overall parcel, yes.

THE COMMISSIONER: Well, your clients, that's I-Prosperty, always had the property at Marquet Street we're talking about under consideration as a
10 Commissioner, you would square it all up and have it together.

It would make it a better development.---Yes. But at the same time, if it's not dealt with in a planning sense in the same, you create areas of difficulty in trying to achieve those purchases, and people holding out and, you know, making it difficult for more money. So it causes all sorts of issues to have a block right in the middle that isn't enjoying the same development rights.

But if there's a single lot that hasn't been acquired by an intending
20 developer, in the ordinary course that would likely to be resolved through market forces, wouldn't it? That is to say that the owner of that lot knows that the developer's interested in completing the parcel of land and will, accordingly, want a premium. And that's market forces and that happens all the time.---Correct, Commissioner.

Yep. And there's nothing wrong with that.---There's nothing wrong with it

Well, that is market forces.--- - - - in a commercial sense, but it does cause
30 issues if you're trying to redevelop a site.

Well, it would cause issues for the developer.---Yeah.

And the developer may succeed in negotiating a resolution of that by throwing more money at it, that commonly occurs?---Correct.

So from the council point of view, that's really, in the situation such as we're contemplating here with I-Prosperty's proposal, that was a matter that I-Prosperty had to deal with. It had to decide are we going to negotiate
40 or is that owner adamant he loves the place and he's never going to - he's going to be carried out.---And that can occur, Commissioner, and there are

provisions certainly through the Land and Environment Court where you make all the right approaches in terms of price and offer, or offer and price, and if that owner doesn't come to the party, then you can develop around it. And that happens many, many, many times all over the place.

Right. Well, that's because a court's not going to, as it were, deprive the owner - - -?---No.

- - - who's holding out.---No.

10

They're entitled, as you say, if it was your house or my house - - -?---Yeah.

- - - and you wanted to live there, there's, you can't get a developer or a council leveraging a situation through a court process - - -?---Not at all.

- - - to get them out.---No, that's right, I agree.

No. So, it comes back to this market forces question. Many cases, perhaps most, it works because people are prepared to move if they get a good price.

20

Is that right?---If, if you get - - -

In your experience.---If you get more money and, and you're not terribly genuine in your original wish to live there forever, yeah.

Yes. Yeah. Yes.

MR DARAMS: Mr Furlong, can I come back to one of your answers, as I recall you saying, that you suggested that the planning proposal or the development on behalf of your client, I-Prosperty, could have proceeded without purchasing 1 Marquet Street?---Yes, Mr Darams, through that very process that I was just talking to the Commissioner about.

30

That's what I wanted to clarify with you, is that there was another process, you could go to the Land and Environment Court, you could do all sorts of things in that respect?---Well, we don't, we, we wouldn't have to go to the Land and Environment Court. What we would have to do would be make the offers to the owner in accordance with the principle set out by the, the Land and Environment Court, which is using registered mail and having the sites valued and offering approximately, say, 10 per cent above market value, all of that sort of stuff. And if they're doing it formally, usually through a firm of lawyers, and if at the end of that process the owner came

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back and said, “We’re not interested. We’re going to live here forever in the shadow of your building,” then we would go back to council and say there are all of our attempts, primarily to the planning staff. Most likely they would put a report up to council saying, in this case, “I-Prosperity have done exactly what the Land and Environment Court has set out. They cannot purchase the land, therefore their planning proposal can only remain” – actually, there was another opportunity. “Their planning proposal at the moment remains without that land.” However, the council, in dealing with rezonings and, and the planning proposal, as it does many times when it
10 does its own LEP, can change the development rights over any property, it doesn’t need the owner’s consent because it’s not a building construction application, it’s simply a planning application that goes with the land. So either way, either I-Prosperity could have continued on the four lots or the council could have included the fifth lot as part of its own normal planning process. And that’s quite common.

You said four lots. As I understand the evidence, that I-Prosperity had five lots but they were trying to acquire the sixth lot.---Correct. Because 4 Mary Street was separated from 357 and 9 Marquet Street, but number 1, which
20 was the corner block.

THE COMMISSIONER: So I take it that a development situation I-Prosperity was in, they would clearly prefer to be able to buy rather than having to go to the Land and Environment Court and pursue the whole of the process you outlined a moment ago?---Well, it, it would, yes, Commissioner, but the process is pursued with council. The, the involvement of Land and Environment Court is simply to set its principle - -
-

30 Yes, to set it up, yes.--- - - - of how you’ve got to go about it.

But then again, there was issues of delay and further - - -?---Oh, definitely.

Yeah. Especially when it has to go back to council and council has then got to reconfigure things and - - -?---Definitely.

MR DARAMS: In a short description, the quicker way for your client to proceed would be to get - - -?---To buy it.

40 Get to buy it.---Regardless of the price.

Yep. Could the witness be shown volume 6.9, page 25? I want to draw your attention, Mr Furlong, to the entry on page, sorry, where that hand is on the right-hand side, so 28 May, 2016. This is from Ms Li to you. She says “Hi Furlong. Just received an email from Tony McNamara. He replies me council won’t support our planning proposal if not cover six sites.” So just a couple of questions about that. Firstly, do you recall receiving this from Mr Li?---Well, not particularly, Mr Darams, but I, I accept that I obviously received it, yeah.

10 When Ms Li is referring to the six sites, she is referring there to include 1 Marquet Street?---Yes.

Can I suggest, you received this on 28 May, 2016. What I wanted to ask you is that it appears to be the case that the receipt of this email certainly – sorry, I shouldn’t say “certainly” – was related to the inclusion of paragraph 10. Correct?---Correct. It was related to the whole proposition because the first part says Tony doesn’t want to proceed with the planning proposal.

20 Sorry. I just want to be a bit clearer. The paragraph 10, can I suggest to you, was included in order to deal with at least part of what this text message to you said?---Yes.

So we can assume that, even though you don’t recall it now, we can assume based upon the time that this was received, the reference to not supporting the planning proposal unless it covered all sites, that that receipt of this resulted at least in part in you drafting paragraph 10?---Definitely.

30 The effect of paragraph 10 though was, as I said before, committing council to write to the owner of 1 Marquet Street and, in effect, that is council inject itself into this process on behalf of your client in some respects?---You could look at it that way. That was not my intention. The intention, council had already involved itself in the ownership of this land by its previous resolutions and, and saying if you don’t get the land, you don’t get, we’re not going to process your planning proposal. So it’s seeking to get clarity. That was the purpose of 10.

40 But council hadn’t resolved previously to write to the owner of 1 Marquet Street and raise this issue about whether they’re going to sell their land? ---No. True. But it had made its resolution, which is, you know, the formal determination of the council that without that land, the thing doesn’t proceed.

THE COMMISSIONER: No, but dealing with an issue that would concern two parties, namely I-Prosperty and the owner of, was it number 1, was it - - -?---Yeah, number 1, Commissioner, yes.

- - -number 1 Marquet Street, council injected itself into the issue between those two in the sense that it was buying into a possible sale of the property by incorporating paragraph 10 and that's unusual, isn't it?---I didn't see it that way, Commissioner, and - - -

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No, you may not have and I'm not suggesting you did see it that way at all. I'm just looking at the wording of paragraph 10 and the email to which your attention's being drawn on the screen now. It does seem that the effect of that in 10, was to have council speak, as it were, on an issue, which is an issue concerning I-Prosperty and the owner of 1 Marquet Street?---You could read it that way, Commissioner, yes.

20

Well, accepting you say it wasn't your intention, but I'm not concerned with that, just looking at what happened. Why would a formal decision of council, which is to become a resolution, be addressing something that was really peculiarly an issue that arose between developer and property owner and it was not an issue about which council should be speaking in the resolution?---Commissioner, from my perspective, it is an issue that council should concern itself about in looking at a planning proposal for the majority of the surrounding land of that site.

30

Could I ask you, as at the date of this resolution, how far had I-Prosperty got with its proposed development in terms of an application to council for planning approval?---We had lodged I think on or around 24 or 26 May, Commissioner, so - - -

So this is just a few days before the letter, sorry, before you drafting the paragraphs 9 and 10?---Oh, yes. Our, our planning proposal was in by then.

But how long before you drafted these paragraphs had I-Prosperty's application for planning approval been lodged with council?---About a week or so, I think, Commissioner, yeah.

40

A week? One week? So within a week of it lodging its application to get a planning approval, I take it council hadn't processed their application because it takes time.---Well, Commissioner - - -

No, just answer my question for the moment, a step at a time. You say I-Prosperity had gone to council for the proposed, their proposed development for a planning approval one week before these paragraphs have been drafted?---Yes, Commissioner.

Right. So plainly council didn't have, wouldn't have processed their application because it was so fresh and new. It had to be allocated, probably, to staff in the council and these things take time.---Oh, hadn't
10 processed it, but had formed an opinion.

No, yeah. But here this paragraph 10 is being drafted at this very early stage to deal with an issue that was solely an issue between developer and owner of 1 Marquet Street.---No, Commissioner, from my perspective of clause 10, item 10, whatever you want to call it, is in direct response to Mr McNamara's advice, Mr McNamara being the director of planning for the council, that unless the planning proposal included that land, it was not going anywhere.

20 That's right.---But that's, that's the purpose behind point 10.

Well, and Mr McNamara was quite right in saying that.---No, he wasn't.

Well, he was a very experienced man, wasn't he, Mr McNamara?---Well, yeah, we, we both are very experienced.

And I know experienced people can make mistakes, like all of us.---Oh, of course we can.

30 But he was making it plain that, from his perspective, the proposal would not be accepted – that's the planning proposal – if there hadn't, if there wasn't six sites. He's making that perfectly plain.---Yes, he's saying what we lodged.

Yeah, okay. But he wasn't suggesting that council then should speak in a resolution, that council should determine whether or not the owner will sell. Because that was a matter for the developer.---I wasn't asking that the council determine whether the owner would sell to I-Prosperity. The purpose of 10 was to simply clarify, after all of those years, what the
40 owner's intention was.

But why have it incorporated into a resolution of council?---Because, as I said, in order to then activate the process set out in the Land and Environment Court principle, there is a reason for doing that, because the council has said you guys work out how this works, and if you don't, if person B doesn't want to sell to person A, so be it. But we need to know and I needed to know so I could then go back to Mr McNamara and say, right, our planning proposal is in, it's legal, it's legitimate, we have made all of the following requests formally to buy this land, and this has been the response.

10

Yes, well, what I'm troubled about is this. Mr McNamara says it won't get through unless they have six sites. Council's not concerned as to whether they get six sites or not, and so that's the concern of the developer who's going to be seeking a favourable outcome from their planning proposal application.---Yes.

20

You don't have to tell developers, council doesn't have to write into a resolution to make it known to the developer this is what it would have to do, be done – that is, you'd have to buy – because it would be taken that a developer would know that and they'd be advised, well, that's the process, as you say, in the Land and Environment Court, if that has to be used, that's the route. Nor would they have to, in a resolution, tell the property owner, "Look, there's a developer coming along with a fresh application. He or it probably needs to buy your property." Council doesn't have to go to a property owner and make that inquiry.---No, it doesn't, Commissioner.

Well, why would, in this case - - -?---Because it had - - -

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No, wait a minute.---Sorry.

Why in this case would the council not only be concerning with it but actually enshrining in a resolution by it this question of council speaking, as it were, to the property owner "Are you going to sell?" when that's an issue for the developer, not for council, at that point?---Because, Commissioner, it had enshrined exactly that in its resolution of 2015. I, I had no part in that.

Yeah. But the resolution of 2015 wasn't focused on number 1 Marquet Street, was it?---No, it was focused on all of those lands.

40

Yeah, yeah.---And but, but the primary focus of that component of the council's resolution was if you don't have all the land, when, when – sorry.

Because no single owner has all the land, we are excising this land out of what is the precinct planning rules. So you leave those properties at, at a much lower opportunity than the rest of the precinct.

You see, the effect of putting clause 10 was to almost be introducing into the scenario that council now was interested to know whether the property owner at 1 Marquet Street was going to sell, and that that was being put into a formal resolution in order to provide support for I-Prosperty in actually getting that land. Now, what do you say about that?---I, I certainly,
10 Commissioner, had no intention of, of seeking the council's support.

But that's the effect of it though, that would be the effect, would you agree?---No. I, I believe that what it would do would be say to the owner in order for all of this land to achieve the same level of uplift, it needs to be included. Now, if it's not included, if the owner came back to council and said no, that's fine. Council would take no further action. We would then go through the processes I set out in accordance with the principles from the Land and Environment Court, and depending on that outcome we would go back to council and say we've bought it or we've used all the requirements
20 that we're supposed to and we haven't been successful, therefore we still wish to pursue our planning proposal.

MR DARAMS: Your client could have written to that owner of 1 Marquet Street and asked the same question.---Oh, I'm sure they did, Mr Darams.

Do you know that they did?---I'm pretty sure they did because they ended up buying it.

THE COMMISSIONER: Well, why would you put it in the resolution?
30 That's the point. This is a formal decision of council by way of a resolution, which we I think are all in furious agreement is a solemn process.---Yes, Commissioner.

Why put a reference to an enquiry to the owner of 1 Marquet in a resolution when it's already been put in a letter and wouldn't need to put it in a resolution?---I can only respond in the manner I have, Commissioner. It was meant to, on my behalf having written it, it was just meant to be a determiner of certainly. Nothing more, nothing less. What people - - -

40 Well, when you drafted – sorry. Go on.---What people may have considered it to be, I, I can see where your point is coming from, but

certainly I didn't consider that as being an outcome or, or, or what I was seeking to get.

I think I tried to make it clear, I'm not trying to impute to you that you had some specific purpose. I'm simply analysing the effect of having incorporated such a matter in a resolution of council. That's all we're examining at the moment.---Yeah.

10 And when you drafted clause, paragraph 10 I should say, and having drafted paragraph 9, did you send that to council or the other councillors, or did you send it to Mr Tsirekas?---I sent it to, back to the mayor, Commissioner. I, I don't have any record of emailing it back to Councillor Kenzler but I then spoke to it that night at the council meeting.

20 Could you just explain then, given that this was a matter that was going to be, or proposed to be, part of the formal decision of council by way of resolution, why would you not communicate it and send a copy to the council who would be eventually required to consider and decide this matter and send a copy to the councillors who would, in formal process of council, be called upon to consider it, and not do that but only send it to Mr Tsirekas? Can you just explain any rationale behind that?---Most likely that lack of judgement at the time on my behalf, Commissioner.

Sorry, I couldn't - - -?---Lack of judgement on – I would have had no problem providing it to all the councillors, but at that stage in the afternoon I most likely didn't have time.

30 But at the time you drafted this, you obviously had very considerable experience in both planning matters generally but also planning matters within Canada Bay Council.---Yes, Commissioner.

So knowing better than most, I imagine, most of us about how these matters are dealt with, I'm just trying to understand whether there was any reason why you decided to send the paragraphs 9 and 10, as drafted by you, only to Mr Tsirekas and not to send directly to council for Mr McNamara's attention, perhaps, and other councillors?---Nothing that I can particularly recall. I wouldn't have sent it to Mr McNamara but - - -

40 Well, to council, I said, perhaps marked for attention to Mr McNamara. ---Sure. Because the council's, as I recall, the council's business paper didn't have Councillor Kenzler's complete - - -

Sorry? Didn't have council - - -?---Didn't have the, the proposed motion from Councillor Kenzler in it, I don't think. But, regardless of that, I knew that I was attending the council meeting and speaking, and I guess I gave myself a fair chance of being able to address the issue to councillors and answer their question.

But the ones, the people who need to have a fair chance to assess it, of course, are the councillors?---The councillors, yes.

10

Yeah, councillors.---And, and they are who I would have spoken to at, on the night.

Well, so the councillors in advance of the night when the matter would be dealt with could consider it, so they had a fair opportunity. The councillors who you'd expect to be on the mailing list, if I can put it that way, would be Mr Kenzler, the mayor and there were about three other councillors or three or four, were there?---There are, there were nine. At the time, council had nine.

20

Nine. Right. So you've got nine councillors. Why not bring them into the loop, as it were, well prior to the night on which they'll be called upon to consider it?---No particular reason, Commissioner, simply, I can't remember the time of the day that I went back to Councillor Tsirekas. I'm pretty sure I had a meeting at 4.00 that afternoon. It was just timing. And I knew that I had been given the opportunity to speak at the council meeting, so I would take the councillors through what I was asking at that meeting and answer any questions that they would have at the time. So it didn't occur to me not to and it didn't occur to me to. Mr Kenzler knew what we were proposing, anyway.

30

So Ms Li's email to you about Mr McNamara's email saying he won't support, et cetera - - -?---Yes.

- - - that was on 28 May, 2016?---Yes.

Was it shortly thereafter that the mayor stepped down or resigned to run for a federal seat in parliament?---I, I don't remember - - -

40 You don't know?---I don't remember the - - -

You don't remember - - -?---I don't remember that particular, I know he stepped down while he was a candidate, but - - -

You can't recall the timing aspects?---Whether it was, I can't remember when the particular federal election was. I think it might have been 2019?

Well, Counsel might take you to that in a moment.

10 MR DARAMS: Just following on from that, the question I had is did you know at this time that you were drafting the resolution, the amendment, sorry, to the motion, that Mr Tsirekas intended to resign from council and run for the federal seat of Reid in the 2016 election?---I can't remember if it was at that time, Mr Darams. I do recall that before he resigned, whenever that was, we did have a conversation about that and I did indicate to him that having read the Electoral Act, I didn't think the Electoral Act said you needed to do that, but, presumably, he and the Labor Party had their own advice and he chose to do that.

20 So you recollect some conversation before he resigned?---Yes.

So if I suggest to you that he resigned on 1 June or thereabouts, 2016, obviously, the conversation preceded that?---Yes.

Preceded you making the amendments to the draft motion?---May have been at the same time, I don't know. I don't recall.

30 Do you recall having a conversation around about this time that you were – sorry. I'll come back to it. You obviously had a conversation with Mr Tsirekas on 31 May - - -?---Yes.

- - - about you drafting amendments to the motion.---Yes.

Are you suggesting that perhaps the conversation about him resigning from council was in that conversation as well or before that time?---It may have been, Mr Darams. I just don't recall the timing.

40 THE COMMISSIONER: Mr Darams, there's no secret about it. Do we know what the date was that Mr Tsirekas resigned from council to run for the federal - - -

MR DARAMS: We do have it, I believe.

THE COMMISSIONER: All right. We'll come to it when - - -

MR DARAMS: I believe it's 1 June. It might be 2 June.

THE COMMISSIONER: 1 June, 2016 or 2 June, '16.

MR DARAMS: Yes, one of those two dates.

10 THE COMMISSIONER: One or the other, but we'll have it confirmed.

MR DARAMS: We will. I think you answered this question already but I just want to make sure that I understand it. You didn't provide a copy of the amended motion to Mr Kenzler?---No, I have no, I have no record, Mr Darams, of doing that, so I'm presuming I didn't.

20 Do you remember – or, sorry, did you speak with Mr Kenzler and say, irrespective whether you've provided him a copy, said, "These are the two paragraphs that I have drafted to the proposed motion and provided to Mr Tsirekas and read them out to him"? Did you do that?---I don't believe – sorry, no, I'd spoken to Mr Kenzler, as I said, once before lunch that, lunchtime that day and once in the early afternoon, which I think predated my – must have because I was on my way back to my office and I would have done the amendments in the office. But we had a conversation about what I was asking him to agree to include, yes.

30 Yes. Do you, in terms of your attendance at the council meeting that evening, what recollection do you have of that meeting that night?---Oh, I, I, I remember being there, clearly. And there were two other people speaking. They were both representatives of Billbergia. From my memory, they went first and I spoke after them.

Can you assist us with the process at the council meeting? Is this draft amended resolution handed out to the councillors or is it put on a screen? How do you talk to it?---The process at Canada Bay, as it has been for a while, is electronic. So at some point that all of the – the original motion, as it appears in the business paper, would have been automatically put to the council like happens here. Then - - -

40 THE COMMISSIONER: So you mean that it would have electronically been sent?---Yeah, the screens in front of each councillor.

Before the, some, what, days before the meeting or - - -?---Oh, no, on, on, on the night, Commissioner.

On the night.---As, as you come to the item.

Okay.---The report and the motion is there for the councillors to consider. Then during my, I think Billbergia's submissions would have been simply to proceed with reactivating their planning proposal, obviously, and during
10 my address to the council, I would have suggested or requested that the councillors considered the inclusion of additional paragraphs and take them to what I was proposing in those paragraphs. And at some point that amended draft would have been put on the screen. I'm not sure if, if the mayor proposed that or one of the staff. I don't quite know. I can't recall from when I worked there exactly how that interaction happened, but it would have been there for the councillors while they were considering that item.

MR DARAMS: So the draft of the motion, as prepared by Mr Kenzler on
20 the 30th, was in the electronic papers?---I'm not sure and, you know, 'cause I, I just, I simply don't recall. We'd have to have a look at what was the business paper for that night. As I said, I think the business paper carried a very similar resolution – well, sorry, motion, but I'm not sure if it carried all of the parts of Mr Kenzler's amended motion.

THE COMMISSIONER: So the business paper is the paper prepared by council staff to circulate to councillors so they can attend to agenda items?
---Yes.

30 Right. And as I understand what you said, the business paper would have, or did, I'm not sure what your recollection is, have contained reference to the proposed resolution as drafted by Mr Kenzler?---It, it would have the report of the planning staff, Commissioner, and a recommendation, whether the planning staff's recommendation was in the same terms as what Councillor Kenzler proposed, I am not sure. And the reason I'm not sure is because the email that I got from the mayor incorporated Councillor Kenzler's suggestion of the resolution or the amended motion that he wished to put the council. I think that's what it says.

40 Yes. But I'm just trying to ascertain, the business paper that you referred to, addressed, is this right, what I might call the original proposal of Mr

Kenzler, the one he had drafted?---I'm not sure, that's what I'm saying, Commissioner.

Oh you're not sure.---I'm not sure that if - - -

But then, in any event, after the council went into session on the evening of 30 May, you addressed them and was it during your address that you produced the paragraphs you had drafted?---Yeah. I, I can't actually recall, Commissioner. What, what happens is that the item is called and, and, and I
10 know that most councils, including Canada Bay now, deal with items for which there are people wishing to speak. So you'll get up and they go through those items and then they go back to the business paper and deal with those. Now, I can't remember if that was the process at the time in 2016, or it's been more recent than that.

So these are the possibilities, that what had been circulated by staff to councillors for the agenda item concerning Billbergia, may have been the, what I call, the original terms of the resolution that Mr KENZLER had produced?---No, I don't think so, Commissioner.

20

Well, do you know?---Not, not off the top of my head without going back to looking at that agenda but - - -

Okay. In any event, is it the position that the paragraphs you had drafted in item 10 were introduced at the council meeting?---Yes, Commissioner.

Right, okay. So that was their opportunity to read what you had proposed? ---Yes, Commissioner.

30 And then deal with it?---And ask me any questions about it while I was - - -

Yes. And listen to you.---Yes.

And you were proposing that they adopt this course of action as set out in, sorry, that they would adopt paragraphs 9 and 10?---They would include them in, in the ultimate resolution, yes.

So that if councillors did deal with it in that fashion, then they wouldn't have had any explanation about paragraph 9 and 10 other than your
40 explanation?---Oh, they, they may have on the night and I don't recall, Commissioner, but it would be unusual not to. They may have asked - - -

Indeed, indeed.--- - - -Mr McNamara to comment.

Well, what I'm asking is whether, as you introduced paragraphs 9 and 10 at the meeting that night, the councillors had the benefit of hearing from you?
---Yes.

And you addressed them. But the councillors wouldn't have had the benefit of being addressed by anybody else on those paragraphs?---No,
10 Commissioner. They would have had the benefit. Whether they exercised it or not, I don't recall. I'm asking Mr McNamara, as the director of planning, in relation to those paragraphs.

What, at the - - -?---At the meeting, yes.

At the meeting.---Through the mayor.

And prior to then, and plainly we'll look at the minutes to see what happened, of course, but was the only person, by your recollection, who
20 actually addressed the terms of paragraphs 9 and 10 was yourself?
---Initially, yes.

Right, okay.

MR DARAMS: Did you have a conversation when you provided the amended motion/resolution to Mr Tsirekas where he told you that he would support that resolution/motion in those terms?---I actually don't remember, Mr Darams, but I was hoping he would.

30 Did you expect that he would support it?---I was hoping that he would share it with other councillors prior to the meeting, yes.

Sorry, just when you – so you were hoping he would share it with other councillors?---Yes.

Did you have that conversation with him? Did you say, "Here, look, here it is. Can you go and speak to other councillors about it?"---Not in those words. I don't think it would have been particularly necessary, but - - -

40 Did you expect that he would support the resolution/motion in those terms?
---I most certainly hoped he would, yes.

Did you expect that he would do so based upon your interactions with Mr Tsirekas up to that point in time? That is, dealings you had had with him about the Rhodes development?---As I said, I was hoping that he would. I, I don't believe we had a discussion about what his vote would be.

I'm just, I'm not asking, I'm asking about your expectation of what he would do when you provided him with this amended motion/resolution. Did you expect he would support it based upon the interactions you had had with Mr Tsirekas up to that point in time in relation to this Rhodes development?---As I said, I, I certainly hoped he would have supported it. There wouldn't have been any point going through the process if not.

THE COMMISSIONER: Would proper process have required him to inform his fellow councillors there's going to be an amendment proposed and here it is?---I don't know that proper process at that point is, is in play, Commissioner. Certainly before the council meeting the councillors usually will meet before that, before the meeting. It would have been, my expectation would have been, yes, that he showed it to the other councillors.

Well, leaving matters of principle to one side for the moment – not that they're unimportant, they are of course – but in terms of common fairness, you'd expect he'd share it with the other councillors?---Oh, I certainly hoped he would, Commissioner, yes.

Yes, and that's why - - ?---That's the whole purpose of it.

- - - you would hope that fair process would be applied so that nobody's left in the dark.---No, sure.

MR DARAMS: So you expected that he might share it with his fellow councillors?---Yes.

You hoped that he might share it.---I hoped that he would, yes.

So if you hoped that he would support the resolution, is it also the case you expected that he would support the resolution?---I guess in terms of the process, Mr Darams, yes, there wouldn't have been any point proceeding if, if he didn't support it.

40

Now, I want to ask you, I want to move to something slightly different. Could I ask that the witness be shown volume 1.4, page 9. Mr Furlong, I asked you some questions yesterday about this chronology in this document, and yesterday we had some technical issues, I'm afraid.---Yes.

They seem to be fixed today, for want of a better description. I wanted to draw your attention to the entries on 17 December, 2018, and 19 February, 2018, and then February 9, 2019. Could you just read those to yourself. I need to then show you the next page, but once you've finished reading
10 them, I'll do it.---Yes, Mr Darams.

Could I ask you be shown the next page. You can see the entry for 19 February continues. Now, just going back to page 9. Having now read those, and if you need to, please read the other entries - - -?---No, no.

- - - but are you able to assist us or explain to us what's happening with this planning proposal at this stage?---Yes. I, I can, Mr Darams.

Based on your experience of having dealt with the planning proposal at this
20 stage?---No, no. I can explain it more or less precisely but it's, there are, are few little parts to it. The council in May 2018, as you know, resolved to proceed with the planning proposal, that the planning proposal proceed to what's called Gateway, which is a, a name for a process in the Department of Planning that allows the planning proposal to go on exhibition. In making that determination, council also said but before the council puts it to the Department of Planning, we want the following things addressed in the paperwork. So we took that onboard and we then embarked on a process of achieving those things, one of which was council said have the objectives of the voluntary planning agreement set between the parties. Council's general
30 manager took the view that that meant finalise the voluntary planning agreement and for I-Prosperty to sign it. That took some considerable time to negotiate, get valuers' reports on values of land and all sorts of things. So that took probably the majority of the time between May 2018 and let's say 9 December, 2018, just picking dates in here - - -

Sorry to interrupt you. That period of time between May and December, sorry, what took up the majority of time, getting - - -?---Dealing with the voluntary planning agreement - - -

40 Negotiating the terms of it?---Negotiating it and getting it to the point I didn't think we had to do but the general manager indicated that he wanted

it to be a signed document before he would agree to put the, the Gateway application before the government. But that's not what the council's resolution said, but, anyway, it, it wasn't worth having an - - -

THE COMMISSIONER: This is the VPA?---Yeah. It, it, it wasn't worth having the, the argument. Sometime in that period - - -

MR DARAMS: Sorry. The period May to December?---Between, roughly between May and, and December '18, the government or the Minister for
10 Planning issued a ministerial direction that said if a council is dealing with, in, in general terms, if a council is dealing with a planning proposal and has not dealt with it prior to, I think it was 1 July that year or 1 August, I can't remember, then before it agrees to send the planning proposal to Gateway, it must put that proposal before its Local Planning Panel for that panel's advice. We said, and the council's planning staff agreed, that ministerial direction did not apply because the council had dealt in terms of its resolution to proceed prior to, I think it was 1 July, but I, I'd have to check the document to know exactly. The council then put that, council's
20 planning staff, strategic planning staff went to the Department of Planning with, with that position, which ostensibly they agreed with, and the Department of Planning said, no, look, it's too hard, just do it. So that's why on, well, just, sometime between, I don't remember the exact dates 'cause it was December/January but during that period between December 2018 and 19 February when the council had a meeting and made its determination, the planning proposal went before the Canada Bay Local Planning Panel. Now, that panel, that panel in the, in the course of dealing with planning proposals, is not a determining authority, is simply an advising, advisory authority to the council. So we went to the meeting. We
30 addressed the panel. The panel made its resolution that it had concerns with the planning proposal and that - - -

Sorry, just is that what's referred to in the 23 August - - -?---Yes.

That's right?---I didn't realise it was that early but - - -

So you're not talking January or late December 2018?---No. Sorry.

You're talking back in August?---It was in August that we, we went before the panel.
40

Yeah.---But the process of finalising the VPA and all those other things - - -

Was happening at - - -?---Was happening and, and slowing everything down anyway, and then that last entry suggests that, well, the one on the following page, I can't remember which one, suggests that the Department of Planning then also said to put it back to the panel again. I'm not sure why.

Sorry, just so I'm clear, which entry are you referring to, the 17 December entry?---If you go over the next page. Oh, no, sorry. Correct, Mr Darams, 17 December.

10

THE COMMISSIONER: Can I just clarify, what was the panel concerned about initially?---It was concerning, Commissioner, about the points in - - -

About?---On 23 August, in terms of departure from controls, interruptions, stepping down of the building to the foreshore.

I see.---Those sorts of more planning considerations that we had been dealing with the council about for some considerable time. So then, in February, the council had to reconsider its previous decision to agree to put the planning proposal back to Gateway. So it was just another administrative step but that had in fact held up the council submitting the Planning Panel, the planning proposal to the development for all of that time.

20

MR DARAMS: Now, you obviously had some involvement with Mr Tsirekas in relation to the Kenzler motion. Did you have any involvement with Mr Tsirekas and the resolution set out on 19 February?---I'm not, off the top of my head, I'm not sure, Mr Darams. We may have, but basically the, the 19 February resolution was acknowledging that the thing had been to the Planning Panel and was endorsing the council's previous decision.

30

Well, I guess what I'm asking you is that in relation to, let's say, the Kenzler motion, you rang Mr Tsirekas, had a conversation with him, you added paragraphs to a motion which is effecting or benefitted your client's planning proposal. Did you get on the call to Mr Tsirekas in relation to 19 February and say to him, "Look, this is what you need to do, get this thing going. This is outrageous," and things to that effect?---Oh, probably I would have spoken to him at some point about the delay but it wasn't the council's doing, so - - -

40

No. Did you tell him what he should be doing about this?---No, I don't think so because there's nothing he could do until we satisfied the State Government requirements, which we'd spoken to the planning staff about. We didn't actually do anything, we just had to, apart from turning up at the Planning Panel meeting, we just had to wait its course. In the end we had to, several times, update the paperwork because of the administrative delay that we were suffering.

10 You said you had – oh, I'll come to this in a moment. I just want to ask you to clarify something in your evidence yesterday. If I could ask you to be shown volume 6.8, page 266. Chief Commissioner, I'm going to a slightly different topic now. I'm just enquiring whether it would be an appropriate time to take a short break.

THE COMMISSIONER: Yes. All right. Well, we'll take the morning tea adjournment. We'll take about 15 minutes. I'll adjourn.

20 **SHORT ADJOURNMENT**

[11.24am]

MR DARAMS: Mr Furlong, just before the adjournment, I was taking you to, I want to take you to something, just to clarify in my mind some of the evidence you gave yesterday. May I ask that you be shown volume 6.8, page 266?

THE COMMISSIONER: Page?

30 MR DARAMS: 266. Mr, show the message under the last message on the page. If we can scroll up? Mr Furlong, you recall that I asked you some questions yesterday about this entry from 3 December, 2015?---Yes, Mr Darams.

The one that says, "Okay, I'm with David Furlong and the mayor. I thought if you were around Burwood, drop in." This is a message from Mr Chidiac to Ms Li on 3 December, 2015. So, as I recall your evidence yesterday, you were listening in to the evidence given by Ms Li and the questions I asked her about that?---Yes.

40 That then caused you to look in your diary about this time 'cause you didn't recall it when it came out or when the evidence was being given. When I

asked you yesterday, you said, I've asked you, "Can you tell me about the occasion?" And you've said, "It was a Friday evening. It was the same evening at the Christmas party for the Mayor of Burwood." Do you remember that evidence?---Yes, Mr Darams. That's correct.

As I had understood other evidence you gave that in order to give that explanation yesterday, you looked at your diary?---Correct.

10 Now, 3 December isn't a Friday. It's a Thursday evening. So what I just want to understand and clarify from you is whether you're mistaken about the date of the Mayor of Burwood's Christmas party in 2015 or whether you're mistaken about the day because the first thing I asked you yesterday, your first response was, "It was a Friday evening." So - - -?---My apologies, Mr Darams. It, it is a Thursday. Correct.

Right, so - - -?---I have the calendar entry there.

20 So your calendar entry shows you attending the Mayor of Burwood on the Thursday evening?---Thursday evening, not the Friday. My apologies.

Thank you. I just wanted to clarify that. Now, you were asked some questions, Mr Furlong, yesterday about Mr Chidiac and his involvement in the Rhodes development or Rhodes project.---Yes.

30 As I recollect the effect of your evidence, it's that, your evidence yesterday was that until you got access to what you call the restricted content in this proceedings, you didn't have any understanding that Mr Chidiac had a commercial engagement with I-Prosperty?---That's correct, Mr Darams. To the best of my recollection, no, I didn't.

I understand the effect of your evidence yesterday in relation to your understanding of Mr Chidiac's involvement in the Rhodes project between 2016 and 2019, it was really that he was an interested local in the Canada Bay area who would raise issues about this planning proposal from time to time?---Effectively, yes.

40 So he might do that in conversations that you would have with him? If he called you about something else, you might end up talking about the Rhodes project?---Yes.

You might run into him at events or something like that where he would raise it with you, as well?---Yes.

You also recollect there being an occasion where you went to dinner in 2018 with Mr Chidiac, Ms Li, Mr Tsirekas and Mr Huang?---Yeah, and, and, one other Chinese guy who I didn't know.

10 Right. Now, just so I can understand your understanding of his involvement in the Rhodes project, putting aside whether he – that is, Mr Chidiac – was being paid, you did understand from your interactions with him, that he was a part of, for want of a better description, the I-Prosperity team in relation to the planning proposal?---Not until much later in the, well, not as a, a part of I-Prosperity but I became more and more aware that there was an association, particularly after the, the dinner in, in May. And, as I said yesterday, what had been explained to me by Ms Li as a, a casual meeting when all the parties were in Shanghai, it, it became more apparent that it was more than that.

20 Yeah. But just focusing on your interactions - - -?---Yeah.

- - - with Mr Chidiac before May 2018, you must have understood that he was a part of the I-Prosperity team, whether or not he was being paid for it like you were and like Mr Bowers was.---No, I, I don't know that I had that understanding, Mr Darams, at that time.

30 So what about, was there a change in your interactions with Mr Chidiac after May 2018 or just your understanding?---No, I don't think there was a change in my interactions with him. Whether they were more regular, I, I don't recall, but - - -

So just going back to this changed understanding you got from this dinner on May 2018, what was the change? Just that Mr Chidiac knew Ms Li? ---Oh, it became apparent that there was an association that was probably a bit more than just a casual meeting in a hotel lobby. But it didn't concern me a great deal because by that stage the council had resolved to proceed the planning, with the planning proposal. And not much of it really occurred because, as I said, my underlying understanding was the advice from Ms Li that they had met casually while they were all overseas.

40 Did you understand from your interactions with Mr Chidiac during 2016, that period 2016 to 2019, that he was acting for or advising Ms Li or I-

Prosperity?---I don't know whether I understood or not. I, apart from having the casual conversations with him that I did at the time I asked him to assist with Ms Li very late in the process, I don't remember any further interaction. He didn't come to any meetings. I didn't need his input to seek any meetings with council staff or, you know, as, same as any other planning application, not only in Canada Bay but in any council. I'd ring them directly.

10 What about based on your interactions with Mr Tsirekas in this period, 2016 to 2019? Did you come to understand that Mr Tsirekas had some particular or special interest in the I-Prosperity planning proposal?---No more than, than I would expect from the mayor of a local government authority when you have a fairly substantial application before you. I didn't envisage that -- no, I'll put it this way. There was no reason for me to assume that there was anything other than the times I rang the mayor and asked for his advice or help or what we should, how, how I should go about getting a meeting, whoops, sorry, getting a meeting with council. There was nothing that rang big bells in my head, no.

20 Yep, I see. And that was throughout that whole period, 2016 to, say, middle of 2019?---Effectively. A little bit different after the May 2018 dinner, but same as Mr Chidiac.

When you say a little bit differently after the May 2018 dinner, sorry, what do you mean by that?---Oh, just that it appeared that the association was, as I said, more than just a casual meeting in a hotel lobby, but - - -

So you're - - -?--- - - - it still didn't set off any alarms in my head.

30 Sorry, when you say the association was more than just a casual meeting in a hotel lobby, you're referring to now Mr Tsirekas' association with I-Prosperity?---They were obviously more aware of one another than I first realised.

Yeah, sorry, my question, though, was more directed to your observations of the relationship between Mr Tsirekas and I-Prosperity.---Nothing more than, than that observation, that there was obviously some form of association. But I, I didn't see it as anything particularly strong or - - -

40 Well, what was your observation of this association?---They all knew one another.

And that was the extent of it, was it?---Based on the advice from Ms Li, yeah, but I didn't think any more about it.

So just so I'm clear about all this, your understanding was the association between Mr Tsirekas and I-Prosperty was that they knew each other and that was based upon conversations at this - - -?---Yes.

- - - event in May 2018?---Yes.

10

Is that the only dinner you've been to with Ms Li, Mr Chidiac and Mr Tsirekas?---I believe so, yes.

Could the witness be shown volume 6.9, page 1? Sorry, page 2, my apologies. Now, Mr Furlong, this is an extract from a SMS chat group extracted from one of Ms Li's devices. Now, this extract shows a group comprising of yourself, Mr Brower, which should be Mr Bower, Mr Harrison, JC, which is Mr Chidiac, and Ms Li, from around – if we go to page 3, please – 19 August, 2016. Now, can you assist us as to – well, firstly, do you remember being included in a message chat group that included Mr Chidiac in August 2016?---No. Not, not particularly, Mr Darams, but I obviously was. I'm not saying I wasn't but I have no recollection of it whatsoever.

20

All right. Do you see Ms Li says, "Hi all. We confirm to meet at Canada Bay Council, 11.00am, twenty secerd [sic] August, next Monday"?---Yes. I can, I can see that reference.

30

Do I take that if you received messages from Ms Li you would have read them?---Oh, presumably, definitely. Yes.

Well, you were engaged at this stage, sorry, you were engaged for financial reward from I-Prosperty.---Yes. I'm, I'm, I'm sure I would have read it, yes.

Yeah. That seems to – just on that, again, we're 19 August, 2016. Mr Chidiac is involved in an exchange or a group set up by Ms Li that included yourself. I take it the other two are architects. Is Mr Harrison an architect? ---Urban designer or architect, yes.

40

Urban designer.---Yes.

Did that pique any interest in your mind as to why Mr Chidiac, concerned local resident, was included in a group with I-Prosperity's town planner and architect and urban designer?---Well, I'm not necessarily sure, Mr Darams, who JC is.

I see.---They're certainly not part of the design team. Mr Huang is obviously from I-Prosperity.

10 THE COMMISSIONER: I take it became evident over time Mr Chidiac was also displaying interest in the I-Prosperity development project at Rhodes?---Sorry, Commissioner?

Did it become evident over time that Mr Chidiac was displaying a particular interest in the I-Prosperity proposed development at Rhodes?---Oh, general interest, yes.

And the same could be said, I think you have said, but same could be said about Mr Tsirekas.---Oh, definitely, yes, as the mayor, yes.

20

MR DARAMS: Now, could the witness be shown page 6? Again, these are messages, at least this time it's not including Mr Harrison, but it's including yourself, Mr Chidiac and Mr Bower, Brower. This time from March 2017. If we can scroll down to the last message. So this one is - - -

MS KING: Chief Commissioner? Chief Commissioner? This may have been identified by Counsel Assisting, are these from a WhatsApp system or from the WeChat system, these records?

30 THE COMMISSIONER: Yes, Mr Darams?

MR DARAMS: I believe these are SMSs, so not a WhatsApp or a WeChat.

THE COMMISSIONER: Does that satisfy your query?

MS KING: If it's an SMS, just to clarify, the witness, if you are in an SMS group, you do not know who the other members of the SMS group are. It is only on certain applications such as WeChat or WhatsApp where a person becomes aware that you're part of a group.

40

THE COMMISSIONER: Yes, well, I suppose if it's an SMS and it's, as it were, CC'ing to a group of people, obviously it's then there's a group communication going on.

MS KING: But there isn't a group communication. That's precisely - - -

THE COMMISSIONER: In this particular case, yes.

10 MS KING: So the witness wouldn't know that the message had been sent to other people.

THE COMMISSIONER: No. All right. Okay, well, we'll clear that up. Thank you.

MR DARAMS: Yeah, thank you for that. So just I was on page, drawing your attention to this message on 14 March, 2017. Just so we're clear, do we understand that to the extent that the messages might have been sent to Mr Chidiac as well, is it your recollection you don't remember whether they were sent to him or not?---No. No, I don't, Mr Darams. I don't have
20 WeChat or whatever the other one was.

WhatsApp.---WhatsApp. I don't have that either. To me it would come on my phone simply as a message from, in this case, Ms Li as a text and it may have a CC of someone else in it, but not that I recall. And I - - -

Yep – sorry.---Sorry, I'm just trying to look at the date.

30 So we're now talking about this one here, 14 March, 2017.---Is that the bottom one? Thank you.

Yeah.---For 14 March, 2017.

THE COMMISSIONER: So just to be clear so everyone's following this, this is an SMS and it's sent - - -

MR DARAMS: From Ms Li.

40 THE COMMISSIONER: By Ms Li. She's described as, in effect described as "owner". And it's to Mr Furlong, it's to Mr Bower.

MR DARAMS: To Mr Chidiac.

THE COMMISSIONER: And to Mr Chidiac. Right, okay.

MR DARAMS: But this message, Mr Furlong, is directed to you and Mr Bower.---Correct.

10 Yep. What I was going to ask you, do you know why you were meeting with at least Ms Li and, it appears, Mr Bower and Mr Tsirekas? Can you recall what that occasion was?---Just looking at my calendar notes and the information I provided to the Commission, Mr Darams, we were attending Canada Bay Council that evening for a structured briefing with councillors. Senior staff, Mr McNamara would have been there, Mr Dewar was probably there. It began at 6.00pm so we would have met at 5.00pm. Now, what we were meeting the mayor for at 5.00pm, I'm not sure, but certainly the workshop, as it says there, was at 6 o'clock. Or after 5.00, anyway.

20 So if I could ask you then to go to page 7. And go down to the message here. So this is a message from Ms Li to Mr Chidiac and yourself. You're the only two recipients. Now, this message says, "Hi, Joseph and David." Can I just stop there. In terms of Joseph, the name Joseph, did you know any other Joseph at or as at 9 May, 2017 who might be associated with this Rhodes development?---Not, not particularly. I, I know other Josephs, Mr Darams, but not, not here and - - -

30 So could I suggest if you received this message, you would have understood that to be a reference to Mr Chidiac, the Joseph?---It could have been. I, I'm not arguing with you at all. I don't have any recollection of it but, and I don't remember a, a discussion with, with Karen. Karen would have been Karen Lettice, one of the strategic planners at council. Paul is Paul Dewar, I would suggest - - -

Well, see, what I was going to suggest to you is that having received or read this text message, which is directed to both you and Joseph who I suggest you would have understood would be Mr Chidiac - - -?---Quite possibly.

40 - - - that this must have suggested to you that Mr Chidiac had some involvement, more than a general interest in that respect?---Quite possibly, Mr Darams, but it's not, it's a matter to do with the planning proposal but it's not one that's really grabbing my great attention. So I may have, you know, I may have just said, yeah, okay, it's a, it's a message from Belinda

and not realised that Joseph was there. But he is there and therefore I should have known that he was somehow involved.

THE COMMISSIONER: It's not put that it should have grabbed your attention but I think it's just being put forward to you that receiving an email addressed to both yourself and Mr Chidiac seems to suggest that you both were relevant persons to be addressed on the subject matter of the email or the SMS.

10 MS KING: Yes. Chief Commissioner, if we could just clarify. If it was an email, you would understand that it was addressed to several people - - -

THE COMMISSIONER: It was.

MS KING: - - - but this is an SMS message, where you don't have that ability.

THE COMMISSIONER: Yes, an SMS. Yes, so to qualify what I put, is that not the case?---I, I don't, I don't argue with you, Commissioner, no.
20 But I don't know what it's about. I'm confused.

Sure. But it carries the indication, doesn't it, that the owner, that's Ms Li, for the purposes of this communication, was concerned to bring both you and Mr Chidiac up-to-date with the recent call she had received from Karen. And it would suggest that she was addressing Mr Chidiac in relation to that matter, as well as yourself?---It would suggest that, Commissioner, yes.

Therefore that of itself suggests some form of a relationship between Ms Li on behalf of I-Prosperity and Mr Chidiac?---Yes, Commissioner.
30

In relation to this project?---Yes, Commissioner.

MR DARAMS: So, apologies if I didn't ask you this but we can assume that if you received the message from Ms Li at this stage, given you're engaged for commercial reward or reward on this project, that you would have read the message from her?---I, I, I would have read it, Mr Darams. How closely I read it, I don't know. It's a very, it's simply a message saying we're trying, we're seeking a meeting with Paul, being Paul Dewar, and Tony McNamara before they put the report back to the council meeting.
40 And I, I didn't recall ever having received advice in that regard in terms of a refusal of the planning proposal. So - - -

I guess, well, the proposition I'm putting to you, it must have been obvious to you when you read this message which is about I-Prosperity's planning proposal and correspondence - - -?---Sure.

- - - that Mr Chidiac, who was included in the message 'cause it's directed to him as well as you, that he must have had some greater involvement otherwise you just, don't you say to yourself who's this Joseph fellow and what's he being on this text message?---Yes, I agree. And, and I'm, I'm not
10 sure if I didn't say that but let's just say, yeah, look, I accept his, his name is there and if it's Joseph Chidiac, then so be it. I didn't take a lot of notice of it. It'd be different now.

Could the witness be shown page 13? So this is a message from November 2017?---Yes.

From yourself to Ms Li and Mr Tsirekas. Just read that first message.
---Yes, Mr Darams.

20 Could you assist us as to what this event was about or this matter was about?---This is an event that you, you would describe as a briefing of, of councillors not in the council but where we could explain to them where we were at in our application and they could ask us any, any questions. And Marian is, I think, I get it confused because I knew her as Marian Parnaby, I think, before she was married. I can't remember her married name. And she was a councillor on Canada Bay at the time.

So when you say this is a meeting of councillors, were they the only two, that is Mr Tsirekas and - - -?---No. I think from memory, as we discussed
30 last time I was here, there were five or six of the councillors there. I don't think, in fact I'm fairly sure, not all nine councillors were there but there was a, a reasonable spattering of the council, yes.

Do you know who invited the other councillors?---Who invited them?

Yep.---Oh, I presume Belinda. I didn't.

Now, I'll show you the next page.---Yes.

40 This is your message to Mr Tsirekas and Ms Li. "Do you still want to go to Sahara? If yes, will you book, Angelo?"---Yes

Is that because you had some conversation about arranging this, I take it, a dinner at the Sahara restaurant, is that right?---I don't think it was dinner, it was, it was catching up around 4.30 or 5 o'clock because Ms Parnaby, councillor, was on her way home from work and she - - -

Is the Sahara a restaurant?---Yes, it is. And this meeting occurred in a room upstairs.

10 Did you have dinner afterwards?---Oh, I, I don't recall, Mr Darams, but I don't think we did, no.

So just so I can understand, why was the meeting booked in a room upstairs at a restaurant in Burwood? Why not do that – wasn't there facilities at the council offices?---There may have been but it wasn't a, it wasn't like the previous briefing of the council where the council staff were there. It was a, a private briefing with, with us and some of the councillors.

20 Yes. Now, could the witness be shown page 17? So this an extract of an exchange of SMSs between yourself and Ms Li and this first entry is from 16 March, 2016. You have Ms Li saying to you "Good morning, David. This is Belinda from I-Prosperity Group. I got your contact from Angelo. May I please book your time in your earliest convenience for Rhodes project?" Now, I asked you some questions yesterday about your engagement on the Rhodes project.---Yes.

And I understood from your evidence that before they signed your fee agreement you had received correspondence or other documents from Mr Bower. Is that right?---Yes, Mr Darams.

30 Right. Can you remember when you received all that material?---Not specifically, no, but I would imagine, since I issued the fee proposal, leaving this aside for a second, since I issued the fee proposal on the 18th, I would have had the initial conversation and received the material from Mr Bower within a week or, or two weeks before that.

You've not been able to locate that correspondence from Mr Bower?---No. No.

40 Have you searched all of your records?---I have, several times.

Right. Is it possible that anything you got from Mr Bower would have been after your engagement and not before?---No, no, because in receiving the referral I would have asked what this thing was about. And he would have – and he did – provide me with his initial designs and the initial urban design report that was produced by he and Mr Harrison that went to the council before this.

10 And – I see. So that your search of your records hasn't located any of those correspondence?---Hasn't located – I have the, I have the documents, I have the reports.

But you don't have, you don't have - - -?---But I don't have an email. And that's not that unusual. I, you know, at the beginning of a process when you don't know whether or not you're going to accept the referral or work on it, I don't, I only work out of home in a small office, so I don't keep all the, all the paperwork, only the important stuff. And once the fee proposal is issued and agreed to, then I set up more formal files.

20 Yes. Could the witness – just, sorry, just on, so just so I understand the chronology of events, your evidence is that you were approached by Mr Bower before 16 March.---Before this, this date, yes.

Yeah. Provided with some documents. So you have some knowledge about the Rhodes project and I-Prosperty before you received this from Ms Li? ---Yeah, I have some background. I don't know anything. I still don't know anything about who I-Prosperty are but for all I know they could just be a holding company for the development.

30 Sorry, when you say you still don't know anything about I-Prosperty, you mean at this date here on 16 March?---Yeah, at that stage I still don't know who necessarily they are.

Now could the witness be shown page 22. Just want to draw your attention to the message on 9 May, 2016. This is a message from Ms Li to you. "Hello, Furlong. When do you have time next week? We would love to invite you to have dinner together. I will call Angelo. Come join us." Now, you respond, "Hi, Belinda. What about Thursday night, the 19th?" And Ms Li responds, "Yes, confirm with you this afternoon." And if we go over the page, messages follow on the 10th, "Furlong, Angelo is not available next Thursday until 9.00pm. He will confirm with me tomorrow morning. I will back to you by tomorrow. I would like to take you to a very

40

special Chinese restaurant. I guarantee you would like it.” Your response is, “Thanks, Belinda.” Now, just on that, do you remember whether you went to some very special Chinese restaurant around this time? This is, we’re talking May 2016, not May 2018 when you said you went to a restaurant with - - -?---No, I don’t. I don’t have any particular memory of it, Mr Darams, but if we went, we went. I’m not saying we didn’t go, but I don’t recall it.

10 I guess what I was going to ask you, could you have been mistaken about May 2018 and in fact it was May 2016 when you had this dinner?---No.

You weren’t, your certainly not mistaken about that?---No. No.

I think you said yesterday the dinner you had with Mr Tsirekas and Mr Chidiac and Ms Li was in Dixon Street - - -?---Yes.

20 - - - above the Golden Century.---I think so. If that’s, if that’s the building that has the restaurant as you look at the, from the street, it has the restaurant on the left and the escalators up on the right-hand side of the building, then that was where we went.

THE COMMISSIONER: We’re talking about 2018, are we?---2018, Commissioner, yes. After the council had resolved to proceed with the planning proposal.

MR DARAMS: Can I just draw your attention – can I just ask you, are you saying you don’t have any recollection of catching up for dinner with Ms Li and Mr Tsirekas?---No, Mr Darams. Not in 2016. I’m sorry, no.

30 Right.---I’m not saying it didn’t happen, I just don’t have any recollection.

Yeah. I go to a lot of functions with clients through the course of every year and I just don’t remember this one.

40 I see. So I’ll just draw your attention to the message at the bottom of the page. So there’s an image there. Now, perhaps the witness could be shown page 64. Master Ken’s Seafood Restaurant in Dixon Street in the city. Now, firstly, do you ever recollect going to a Master Ken’s Seafood Restaurant?---Not particularly, Mr Darams, no.

Well - - -?---I'm not even sure where 63-69 Dixon Street is. I know where Dixon Street is, obviously, but where along the street that is, I, I don't recall it.

What I want to understand, or I guess a question I have is, is it possible that the restaurant you went to in Dixon Street was in fact this Master Ken's restaurant?---Not on 18, whatever the date was, in May, 2018. No. Unless this is the place that has escalators going up and down.

- 10 So just so I'm clear. The restaurant you went to wasn't Master Ken's, this is the May 2018 event, that's not Master Ken's?---I, I, well, if it, as I said, I'm not sure what the name of the restaurant is but if it is the restaurant up the higher end of Dixon Street where you access via escalators and they're private rooms, then yes. That could be where we ate in May 2018. But if it's not, no, I don't have any recollection of this restaurant.

You keep – I withdraw that. You refer to Golden Century in Dixon Street, Sydney.---Yes.

- 20 And you've referred to you look at the restaurant, there's the escalators on the right-hand side going up to the Golden Century restaurant.---No, the Golden Century you access, from memory, it's a long time since I've been there, you access at ground level but the other part of the building, on its right-hand side, if it's the one I'm thinking of, there are escalators up to another part of the restaurant or a different restaurant with private rooms and you have to be more or less taken in there, for want of a better term, escorted in, you can't walk in off the street to get a table.

- 30 I understand that. Now, could the witness be shown page 24? So these messages continue between you and Ms Li. So, you say "Thanks, sounds great. What time?" Then Ms Li tells you "7.00pm, 24 May."---Where's that one?

The second message on the page.---Oh, right, yes.

- 40 She then says "It's very nice. You will like it." Then your message response is "Hi Belinda. Please call me." Then there seems to be some other message where she's giving you her email, or an email address. Then Ms Li then says, "Furlong, Thursday 7.00pm. Do you have time? Angelo can make on Thursday."---Right.

You respond following that – can we go to the next page. You couldn't do that week, "But what about the following week?"---Right, yes.

And then Ms Li responds that Angelo has confirmed next Thursday night, 7.30pm.---Yep.

I take it, I take it again that none of these messages assist you with whether or not you attended a dinner with Ms Li and - - -?---No, I don't, I, I don't recall it, Mr Darams. I'm not saying it didn't happen. Obviously there are a
10 lot of preparations for it to happen, so I presume it did, but I, I just don't recall that particular dinner. I'm sorry.

Now could the witness be shown page 26. Now, again this is a message from the top – the first message is from Ms Li on 30 May, 2016. She says, "Furlong, we come to you at 12.30." This is on 30 May, so in the lead-up to the day that you amended or proposed amendments to Mr Kenzler's motion.---Yes.

Can you recall now any meeting or who might have attended with Ms Li
20 when she says "we will"?---Not particularly, Mr Darams. I mean, it's a, it's a meeting six years ago.

Yes. When you had meetings with Ms Li, who was usually in attendance with her if there was anyone in attendance with her?---If there was anybody there Eun Seo, I don't know how to pronounce it, S-e-o, from her office would, would join us. She's the in-house architect. That started to happen later in the process. Mr Bowers, depending what we were discussing, Mr Bowers might be there as the architect if we were working through the plans of the scheme. Because it's, we not only were lodging a planning proposal,
30 Mr Darams, we were also doing a fully detailed set of DA drawings. So there were, as I said - - -

THE COMMISSIONER: Sorry, what was the last bit?---We were also producing a fully detailed set of development application plans, Commissioner. So there were a lot of spokes in the wheel, for want of a better term, and a lot of different experts depending what we were particularly talking about.

MR DARAMS: Now if we can ask, if I can ask you to go down the page,
40 just draw your attention to this message on 17 August, 2016. Ms Li says to you, "Good morning, Furlong. Saw your email. Sorry I missed your call. I

was sick yesterday. I sent email to council for a meeting this week. Joseph is chasing Tony and Paul to organise for us. Do you have the time to catch up?" Now, again, you would have received Ms Li's text message, you would have read it.---Yes.

You would have understood that she's referring to the Rhodes development application and people at council.---Yes.

10 She again refers to Joseph, who you would have recognised as being Mr Chidiac.---Yes.

So does it, what I'm suggesting to you is that, again, this is another piece of correspondence from Ms Li to you referring to Joseph, who you understood to be Mr Chidiac.---Yes.

20 Doesn't this in your mind at this stage suggest to you – this is what you're thinking at this time – that Mr Chidiac has an involvement in this Rhodes development greater than just a local Canada Bay resident? I mean, again, Ms Li is talking about Mr Chidiac doing things, chasing things up.---Yeah, I, I agree with you, Mr Darams, but obviously he was involved. I'm surprised because I would normally ring Tony McNamara and Paul Dewar myself. So I'm not, I'm not arguing with you. Obviously Joseph had an involvement at that point in time.

You must have known that at that stage, that his involvement was greater than just someone who might occasionally ring you and talk about this type of application which is how I'd understood your evidence yesterday - - -? ---Yeah.

30 - - - and which you clarified again today. I'm just trying to understand that, Mr - - -?---I certainly should have.

I think what I'm suggesting to you is, in fact, not that you certainly should have is that you actually did understand at this time that he had, that is, Mr Chidiac, had an involvement in the Rhodes development, he was a part of the team alongside yourself and the architect and the like?---I accept your point, obviously, and that would suggest that I knew Joseph was somehow involved. Whether I knew he was part of the team, I, I don't know. But, clearly, that shows that he was involved.

40

THE COMMISSIONER: The reference in the email, 17 August '16, to "Tony" would be a reference to Tony McNamara, I take it?---I would imagine so, Commissioner, and Paul - - -

And Paul is Paul Dewar?--- - - - and Paul Dewar. Yes.

What was Paul Dewar's position at that time?---He was the, the council's strategic planning manager.

10 Right.---Still is.

Well, at that time, they're both fairly senior - - -?---Yes.

- - - well, in the context of the council very senior officers?---Yes, Commissioner. Correct.

I think it's true that Mr McNamara has served with the council for many years - - -?---Yes, he followed me, Commissioner, when I left in 2004.

20 He was well regarded?---Yes.

Same with Mr Dewar?---I regard Mr Dewar well. I, I think he's a very good planner.

Okay.

MR DARAMS: Perhaps if the witness could be shown page 27? So your response to Ms Li's text message is, "Hi, Belinda. This week is pretty tight but let me know if we get a meeting time and I will see what I can move around. David." So this is a response to try and arrange a meeting?---Is this the same trail as the previous?

Yeah, so - - -?---Okay. Yeah.

- - - this is the response to the text I took you before - - -?---Yes.

- - - sorry, took you to before where Ms Li tells you Joseph - - -?---Yeah.

40 - - - Mr Chidiac is chasing up Mr Dewar and Mr McNamara. Then Ms Li's response is, "Thanks. We'll let you know once confirmed. Should be sometime next week. Council always busy with their schedule." Then Ms

Li sends this message to you on 17 August, 2016, “Furlong, do you have a time next Tuesday to catch up? Lunch in the city, say, 11.30am? Me and Angelo and Stephen and Joseph.” Now, again, Ms Li sending you a message trying to or asking whether you’re available for lunch with Mr Tsirekas, Mr Bower and Mr Chidiac. Correct?---It would be appear to be, yes.

Do you remember meeting up for lunch with those individuals?---No, Mr Darams.

10

Did you catch up for lunch with, well, whether you remember this particular date, but did you catch up for lunch with Mr Tsirekas, Mr Bower, Mr Chidiac and Ms Li?---I don’t recall catching up for lunch with Angelo or Joseph but then certainly it is some years ago, but I could well have had lunch with Belinda and Stephen Bowers. I don’t know what else was on that day, I’d have to check, but I don’t recall a, a lunch. It may have been something while I was in town, I don’t know.

20 Yeah. My question was, and maybe you answered this but let me just make sure I’m clear on it. Don’t focus on the date here at the moment.---Sure.

Do you remember during this period of time whether you did catch up for lunch with those three individuals being Mr Tsirekas, Mr Bower, Mr Chidiac and Ms Li, so that’s four individuals, my apologies, no?---No, Mr Darams. It’s too long ago. I’m sorry.

Again, obviously you would have read this message from Ms Li, inviting you to a lunch with these individuals?---To catch up, yes.

30 Yeah. You must have, from this at least, we’ve got accumulation of these emails and, sorry, accumulation of text messages from Ms Li - - -?---Sure.

- - - involving Mr Chidiac in this Rhodes development, et cetera, or people involved in the Rhodes development. You must have appreciated by this stage that Mr Chidiac had an involvement in this project more than just a general interest in it?---I certainly should have, yes.

40 My question was, that you actually did?---Did I? I don’t, back at that date Mr Darams – I’m not saying I didn’t, I may well have, yes, but I, it just wasn’t a great concern to me at the time, I’m sorry.

THE COMMISSIONER: Did you, as at this time, we're talking about August 2016, have any understanding as to any relationship that existed between Mr Chidiac and Mr Tsirekas?---Oh yes, Commissioner, I knew that they were friends, I'd known Mr Chidiac, as I said yesterday, for quite a number of years and I knew that he and the mayor were friends.

MR DARAMS: How long – just in terms of the relationship between Mr Tsirekas and Mr Chidiac – how long had you known before this date they were friends?---Off the top of my head no idea, Mr Darams, but quite some
10 time.

It wasn't just, as at this time, it wasn't just a recent friendship?---I don't believe so, no, but I'm not knowledgeable enough to answer specifically.

Could the witness be shown page 34. I'll just draw your attention to this message from Ms Li to you on 2 December, 2016 where she says, "Furlong, do you have time to meet, Angelo, Joseph and me?"---Yes.

Do you remember whether you met with those three people around about
20 that time?---No - - -

When I say that time, I mean, around about December, 2016?---No Mr Darams, I don't, I'm sorry.

Now, are you able to assist us as to why Mr Tsirekas, who at this time was no longer the mayor, was meeting or might have been meeting with you, Mr Chidiac and Ms Li? Now I accept you don't recall, but my question, you don't recall having this meeting or a meeting at this time, but my question's slightly different and I'm just asking whether you are able to assist us from
30 your involvement in this project during this period of time as to why Mr Tsirekas, when he's not the mayor, is apparently being involved in meetings that Ms Li is seeking to arrange with you and Mr Chidiac – going back, cast your mind back now sitting back, right, this is an unusual thing, Mr Tsirekas isn't the mayor anymore but is popping up in these meetings. Can you assist us with that, does any of that jog some lights in your recollection?
---Not, if I forget the last six months or six weeks, going back to 2016 – no, I don't, Mr Darams, I don't even know if he was, I'm presuming he's no longer the mayor but I'm not sure if he was a councillor or not and apart
40 from that, no, it's a perfectly reasonable question and I don't have an answer for it.

Could the witness be shown page 43. I'll draw your attention to the message at the bottom of the page. Now just stopping there, so this is a message from Ms Li to you - - -?---Yes.

- - - 25 February, 2017. Now, just for your benefit to assist you, Mr Tsirekas is no longer, sorry, he's still not the mayor of Canada Bay Council.---Right.

10 Now Ms Li says to you "Hi Furlong. Do you have time to catch up Angelo, Joseph ASAP?" Now, again, I just want to suggest to you that we're now in February 2017, we've got another example of Mr Chidiac being involved by Ms Li in correspondence with you about the Rhodes development. It's clear, isn't it, to you at this stage, Mr Furlong, that Mr Chidiac is a part of the team, he's not just a generally interested member of the local Canada Bay area asking you questions from time to time, but you know at this stage, he is onboard, he is a part of I-Prosperity and the dealings. Because you're having all these text messages.---Yep. I can't, I can't argue with you, Mr Darams.

20 Now, then Ms Li says "Hi Furlong. May you please give Angelo a call in urgent. Gary is about to leave in an hour." Now, there's obviously some degree of urgency in Ms Li's message to you. Does that jog anything in your memory about what this was all about at this time, March 2017? ---Unless, Mr Darams, unless that's the day that Mr Sawyer ceased being the general manager of the council, no, it doesn't. But further up the page, the, the, whatever they were, texts or emails, whatever they were - - -

Text messages.---Text messages. Thank you. Would seem to suggest that it's talking about the VPA.

30

Right.---Now, it could be that, that Mr Sawyer left the council at the beginning on March, I'm not sure, but that would seem to, but it could be about the second one too that talks about a workshop with councillors, because we did have two – it's clearly about some aspect of the proposal.

Can you help us why, going back to your relationship and your involvement in this development at this stage, why Ms Li is asking you to call Mr Tsirekas when he's not the mayor?---Presumably because she knew that we were friends, but apart from that I don't know.

40

Is it because you knew that she understood that if you spoke to Mr Tsirekas he might still be able to speak to people within council and get things done, even though he's no longer the mayor?---I, I can't speak for what Ms Li expected, but that could be the case. I, I don't know.

Was that your, and we're talking about your experience or understanding as at this time, even though Mr Tsirekas was no longer the mayor, he still had those relationships with people in council that if you called Mr Tsirekas, he might be able to get things done?---He may, he may have been able to ring somebody or give me a name of somebody to ring, yes.

Particularly in relation to this one here, Mr Sawyer.---Yes. I could have rung Mr Sawyer as well. So, and I may well have done so.

You don't remember whether you did that?---Not on that particular day but we had a number of meetings with Mr Sawyer and, while he was the general manager, and Mr McNamara. I had a number of conversations with him. We, we needed to obtain valuation advice and the like, which, clarifying what that was to be about specifically. But - - -

20 THE COMMISSIONER: The VPA was a matter of significance, amongst other matters?---Oh, very significant, Commissioner. It ended up having a value of about \$25 million.

And you may not recall as at March '17, but we're talking about that time now in relation to the particular communication. Just without going into unnecessary detail, do you recall what essentially was the issue about VPA and what was the concern of I-Prosperty about that issue around about early 2017?---It would have been matters, Commissioner, relating to how we calculated the value of the benefit, for example, was it per square metre floor area or was it total value of the uplift, that sort of discussion, and therefore needing advice from valuers about recent sales data, which is the way they're normally worked out.

30 And did the company round about this time or at any time have a valuer or other consultant working on those sort of issues?---Yes, we did, Commissioner. Two of the, two slides back from the one, or one slide back from the one we were just looking at mentions the valuer and he was engaged by Ms Li and I to, to do that.

40

And, again, just in summary terms at the moment, what was either the concern or the objective of I-Prosperty in relation to VPA and negotiations if there were any with council about it?---Our, our aim, Commissioner, was of course to keep it, its value as low as possible but in, in achieving that, we asked our valuer to do his stuff and then, as is usually the case, both parties agree to the valuers talking turkey between themselves and coming up with a, a base figure and then you multiply it up and you get to the value. There were other, there are other components about land that we might be giving over for public access and that sort of stuff.

10

So VPA is a multi-pronged issue. Valuation is obviously one and that requires expert input?---Yes, Commissioner.

And there are, no doubt, other specialist issues that have to be worked through?---Not really, no.

Not really? It's mainly focused on valuation - - -?---The, the valuation.

20 - - - how you go about - - -?---I think, well, sorry. Yes, mainly. But, as I said there, we had been discussing with council, you know, back to the, the wider planning proposal other, as I said, public available land and stuff.

So the consultancy that would be sort of, to use the expression, in the engine room - - -?---Yeah.

- - - trying to work out the company's case on VPA would be consultants or were consultants who were valuers?---A valuer, yes.

30 If, as you suggest, in relation to the last, I think it was an email, not sure if it was an SMS or an email, in any event, the one 1 March '17 in which the message was, "Hi, Furlong. Please give Angelo a call, urgent," you suggested in context that may well have been related to VPA?---It may well have been or it - - -

Now, how would Mr Tsirekas be able to contribute to a question of VPA, I'm assuming he's not a valuer, in relation to the Rhodes project because the email seeks, it says, "Hi, Furlong. Please give Angelo a call, urgent," so do you think it may well be related to VPA?---Only from - - -

40 How could Angelo Tsirekas assist on that issue if it is primarily, as you say, or essentially here a question of valuation?---I, I don't know, Commissioner,

apart from whether he could point us in the direction if it is the day Mr Sawyer left, that's probably Belinda's angst or urgency, but looking at the page that was previous to this, we were already in the process of having engaged our own valuer and our valuer was already doing this stuff and perhaps had already begun the discussion with the councillors and the council's independent valuer. So I'm really, in answer to your question, I'm not sure. I'm pretty sure Angelo is not a valuer.

Okay. Thank you.

10

MR DARAMS: Mr Furlong, just to assist you, you've on a number of occasions referred to the possibility of Mr Sawyer leaving council. You mean resigning from council?---Yes. Yes, I think that happened during the course of the application but - - -

Just to assist you, that's not until 2019.---Okay. So I don't know where Gary was about to leave in an hour. No idea.

20 Yeah. Now could I ask the witness be shown page 45. Again, I just draw this to your attention.---Yes.

There's a message on 14 March, from Ms Li to you, down the bottom of the page.---Sorry.

30 "What do we do about printing and going through the presentation? I thought we were going to do that at 4.00 and catching up with Angelo at 5.00." So 14 March, 2017 again, Mr Tsirekas isn't the mayor, he's not a councillor but Ms Li is involving him in a conversation with you about catching up with him. Can you assist us as to what role Mr Tsirekas was playing at this stage?---No, I can't, Mr Darams. That would seem to be a text obviously from Belinda to me. Doesn't show that there's anybody else but I don't know that. I think that is the date of the second formal briefing we had with the councillors and the staff, and printing would have been what, effectively, I was doing about making copies of the summary brief that we were going to talk to the councillors about, but I don't know why we were catching up with Mr, with Angelo at 5.00pm, I'm not sure that we did but - - -

40 THE COMMISSIONER: This is about two weeks after the communication we spoke about a moment ago where it says, "Please give Angelo a call, urgent." So, two weeks later, this is reference here to the presentation, the

presentation, do you know what that was?---Yes, Commissioner, I'm assuming that it was the presentation that we were giving to the briefing with councillors, that night, councillors and senior staff at council.

10 Sorry, in relation to what aspects, sorry?---Where we were at with the planning proposal. We went through, as I said to you before, we were also designing the building as well as doing the planning proposal and we went through a number of design iterations to overcome some solar impacts and things including putting a big hole in the building to let the sun through and we were, we would have been taking the council through where we were up to on those issues.

MR DARAMS: Now, just I'll ask you a couple of questions before we break. Now, Mr Tsirekas in this period of time, so late 2016 early 2017, is no longer the mayor. He's being involved in communications with you and Ms Li seeking at least to arrange a number of meetings. Just so I can understand that you can't assist us any further as to what role Mr Tsirekas was playing, if he was playing a role at this stage in relation to I- Prosperity's planning proposal in relation to the Rhodes development. Just going back trying to jog your memory?---I understand Mr Darams. Not 20 apart from whether he could assist us in suggesting who he might be able to talk to, and that's not only in that period that's all the way through.

But is that your recollection, that's what he was doing in this period of time?---I don't know what he was actually doing in that period.

THE COMMISSIONER: Are you talking about who he may suggest within council, associated with council?---Yes.

30 Who might be able to assist in some way?---Yes and who we should contact or talk to.

MR DARAMS: But you know all that, don't you, from your experience? ---I know a number of the staff, yes, but I don't know - - -

You know the important staff, the people who were dealing with this application, that's your role, isn't it, you're engaging - - ?---I know the planning staff, Mr Darams, I don't know all the staff in council.

40 THE COMMISSIONER: No, but leaving aside all council, I think the focus of the question really is, but you correct me if this is not right, but you were

aware as at 14 March, who were the, if I could call them, the senior or principal officers in the council we've spoke before, Mr McNamara is one, Mr - - - ?---Mr Dewar.

- - - Dewar, thank you, and others who were well known to you the sort of people who are, could be approached and asked who do we contact about X and so on. I think the point of the question is that your experience and front of knowledge about council and who's in council at this time, you don't need to get Mr Tsirekas to find out who to contact, you would know, or you
10 did know at the time?---I, I certainly would have known people to talk with and I wouldn't necessary need Mr Tsirekas to point me in the right direction, but, for example, I did not know that the Director of Engineering, and whatever other roles she had, was in charge of the property operation of the council, which came into, in detail, the VPA. But I'm not saying I sought that advice from Angelo. I, I don't, I don't recall but - - -

All right, thank you.

MR DARAMS: Just two final brief questions and I'll close this off. Mr
20 Furlong, you would accept now, wouldn't you, based upon the questions and the correspondence I've taken you to, that in fact your understanding of the relationship of Mr Chidiac and I-Prosperty, including Ms Li, was actually different from a must earlier period of time, not May 2018 after this dinner? You accept that now, don't you?---I accept there was a much stronger involvement, yeah.

Yeah. And you actually did understand that before May 2018.---I, I'll say
30 yes, Mr Darams, but I don't particularly recall, but I'm not arguing with you.

Yeah. Likewise – I'll leave it there. That's it, yeah.

THE COMMISSIONER: All right. Very well. We'll take the luncheon adjourn and we'll resume at 2 o'clock.

LUNCHEON ADJOURNMENT

[1.01pm]