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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 TUESDAY 31 MAY, 2022

AT 2.00PM

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

THE COMMISSIONER: Is Mr Tsirekas there?

MR DARAMS: Chief Commissioner, we need to for planning purposes, interpose Mr Sawyer to conclude Mr Sawyer's evidence.

THE COMMISSIONER: Oh, I see.

MR DARAMS: So I've got to tender one document and then there are some questions for Mr Sawyer by Mr Leggat, from Mr Leggat and also Mr
10 Lloyd on Mr Sawyer's behalf.

THE COMMISSIONER: All right. Thank you, Mr Sawyer. Hello, Mr Sawyer.

MR SAWYER: Commissioner, how are you?

THE COMMISSIONER: Do you take evidence on oath or affirmation?

MR SAWYER: Oath.
20

THE COMMISSIONER: Thank you. I'll have my associate administer that.

THE COMMISSIONER: Mr Sawyer, on the last occasion you gave evidence I think you sought and I gave you the benefit of a declaration under section 38 of the Independent Commission Against Corruption Act. The declaration I made on that occasion continues to apply to your evidence today.---Thank you, Commissioner.

10 MR DARAMS: Chief Commissioner, could I tender volume 6.15, pages 36 to 39, which is a text message from Mr Bartolotta to Mr Sawyer, dated 20 May, 2016. That will be Exhibit 55.

THE COMMISSIONER: Exhibit fifty?

MR DARAMS: Five, 55.

THE COMMISSIONER: Nine. Yes. Those pages of volume 6.15 will become Exhibit 59. That is pages 36 to 39.

20

MR DARAMS: 55, sorry, Commissioner. Exhibit 55.

THE COMMISSIONER: Sorry, 55, is it? Sorry. Exhibit 55, yes, thank you.

#EXH-055 – TEXT MESSAGES FROM JOHN BARTOLOTTA TO GARY SAWYER DATED 20 MAY 2016 VOLUME 6.15 PAGES 36 TO 39

30

MR DARAMS: I didn't have any further questions for Mr Sawyer.

THE COMMISSIONER: Yes. Now, who wants to cross-examine?

MR LLOYD: Chief Commissioner, if it's suitable, I've discussed this with Mr Leggat, for me to go first?

40 THE COMMISSIONER: Yes. You've provided a note of the matters you want to deal with?

MR LLOYD: We have, Chief Commissioner. If it's of any assistance, I estimate I'll be somewhere - - -

THE COMMISSIONER: Yes. If you have a further copy there.

MR LLOYD: Ms Avery-Williams says it can be re-sent to the solicitors assisting if that would assist. I'm not sure that we've got a paper copy with us.

10 MR DARAMS: I think, Chief Commissioner, you might have just been handed a copy of the questions.

THE COMMISSIONER: Oh. Yes, thank you. Yes, I grant leave.

MR LLOYD: Thank you, Chief Commissioner. Mr Sawyer, you know, but I will state this for other people's benefit that I am appearing here for you, correct?---Correct.

20 In May of 2016, did you have a usual or common practice about arranging meetings with people who had business with the council?---Yes, I did.

And could you just describe what that practice was?---If someone wanted to have a meeting with me, they would either contact my PA or if they, if they contacted me directly, we would arrange a, a time that was suitable, depending on the matter that was to be considered and I would then speak to whatever officer had been involved with that particular matter and arrange for them to, to be at the meeting, see what their availability was and then we would try and find a suitable time for all parties to meet.

30 And was your practice to try and accommodate people who had legitimate business with council where you could?---Yes, it was.

Now, I want to ask you some questions about the way in which the meeting with Mr Bartolotta came to be arranged. Do you understand?---Yes, I do.

In asking you ultimately some questions, just understand that I want to remind you some evidence that's been given by you and others in the sequence of events. Do you understand?---Yes.

40 And at times I'm going to ask you to make an assumption about some things you mightn't know, but I'll ask you to assume, for the purpose of the

question, that what I'm saying to you is right. Do you understand the process?---Yes, I do.

Starting with 18 May, do you remember that Mr Darams has already asked you about on that day you signing the direct dealing protocol?---Yes, I do.

Did you have an understanding in your mind at that time about why it was or what the justification for dealing directly with Mr Bartolotta was as opposed to marketing to the open market?---Yes, I did.

10

What was it?---He was the owner of 227 and the person who was most likely to be the most interested in obtaining the site at 231.

And do you remember having a view about whether it was in the interests of council or not to deal directly with him?---Yes, I do.

And what's your recollection?---Yeah. The, the view was that that would give, more than likely give council the best outcome for, for the sale.

20 I just want to remind you that there's some evidence, tell me whether or not you can remember this, that the council had made a counteroffer of 2.25 million and you were told about this on or about 18 May?---Yeah, I think that's correct. Yes.

Okay. I want to remind you next in sequence of some evidence you've given about a discussion with Mr Walton on 19 or 20 May. You've already told the Chief Commissioner that Mr Walton said he wanted some leave. Do you remember that?---Yes, I do.

30 Do you remember why it was that he was saying he wanted the leave?
---Yeah, I believe he was feeling a, a bit stressed and just wanted some time away from, from the office.

And you've told the Chief Commissioner that in response to that request, you said to him that he should take as long as he needed to get himself right. Do you remember that evidence?---Yes, I do.

40 On 20 May, I want you to make some assumptions about these things. Just before I do that, it's right, isn't it, that you don't have a present recollection about what occurred on that day as between you and Mr Bartolotta and you and Mr Osland. Is that right?---Yeah, that's correct.

I want you to assume that Mr Bartolotta on 20 May left you a 98-second voicemail message which you retrieved shortly after about 12.38pm.
---Okay.

I want you to assume that in that voicemail message, Mr Bartolotta said that he'd been dealing with Mr Walton about the purchase of 231 Victoria Road and he'd emailed him that morning to discuss and finalise that deal. Make that assumption?---Yes, I can.

10

I want you to assume in the voicemail message, he told you that in response to that email to Mr Walton, he'd got an out of office notification.---Yes.

Next I want you to assume he told you in the voicemail message that he was eager to finalise the purchase.---Yes.

I want you to assume that he told you that earlier that morning, he'd called Mr Walton, left a voicemail message but hadn't been given any response by Mr Walton.---Yes. Okay.

20

And I want you to assume he told you that in those circumstances, he wanted to arrange a meeting with you instead of Mr Walton to try and finalise the purchase. You understand?---Yes, I do.

Next you've already been asked about this by Mr Darams, but you had a nine-minute conversation with Mr Osland at about 1.23pm on that day, 20 May. Do you remember that?---Yes.

30

Now, when you say "yes" you're agreeing - - -?---I remember - - -

- - - you remember being asked about it?---I remember being asked about it, yes.

I think you told Mr Darams that you didn't presently have a recollection of what was discussed?---That's correct. That's correct.

40

Just knowing what you know about your own practices at that time and assuming that you got that 98-second voicemail message shortly after 12.38 on that day, do you have a view about whether it's likely you would have raised with Mr Osland the things Mr Bartolotta had told you in the voicemail message?---Yes, I believe I would have.

And do you have a view about whether you would have discussed with Mr Osland in that nine-minute conversation logistical arrangements about meeting Mr Bartolotta?---Yes, I believe I would have.

Does it sound like the kind of things that you would have been likely to do or not likely to do in your role using your usual practice at that time, that is discussing with Mr Osland trying to have a meeting with Mr Bartolotta?
---Yeah, most likely, be a thing I'd most likely do.

10

Could I ask you to assume at 1.33pm, that is just after that phone call finished with Mr Osland, you left a voicemail message with Mr Bartolotta about meeting with him the following Monday.---Yes, I'll assume that.

And you know – and I think it's been tendered by Mr Darams today – that you got a text message back from Mr Bartolotta essentially confirming a 3 o'clock meeting on the following Monday.---Yeah, that's correct.

Now, I'll remind you of one other thing and then ask you a question.
20 You've already told the Chief Commissioner that around this time there was the spectre of a merger.---That's correct.

Now my question. Making the assumptions I've asked you to make and remembering the events in the sequence that I've drawn to your attention, do you think that, based upon your usual practice, arranging to meet with Mr Bartolotta at 3 o'clock on the Monday would have been consistent with your usual practice or not consistent with it?---Yeah, that would have been consistent.

30 Can I ask you then to turn to the next topic, moving on to the events at the meeting itself. Do you understand?---Yes.

You've already told the Chief Commissioner in answer to questions from Mr Darams that you didn't have a recollection of that meeting, that's right?
---That's correct.

You know from the material that there's some evidence that it occurred at 3 o'clock on that day, the 23rd?---Yes, that's correct.

40 That's 3.00pm. Could I ask you, what was your usual practice, where you were attending a meeting of this kind with a direct report at the council,

about having a briefing or any meeting with that direct report before the meeting?---Yes, what I, what I would do is always invite the person who was involved with the – the person who was attending the meeting to arrive at my, in my office 15, 10 minutes earlier and give me some background information or bring me up to date where things were at prior to the meeting.

How long had Mr Osland been your direct report as at 23 May, 2016, approximately?---Maybe seven years. Seven years.

10

Did you have experience in dealing with him at briefings of the kind you've just told the Chief Commissioner about? That is, briefings before meetings of the kind you attended with Mr Bartolotta?---Yes, over that period of time we had a number of meetings which we attended together, and at those briefings bring me up to speed before we sat down with the person.

Based upon your experience and what you observed of Mr Osland's practice at those briefings, was it that he told you about the key relevant things or that he didn't tell you about those things, to your knowledge?---No, he, he told me exactly what, where things were at with the, with the key relevant things.

20

I want you to make an assumption about a communication that you are not copied into – do you understand what I'm doing?---Like an email or something like that? Yep.

I'm asking you to make an assumption about something. I'm not suggesting to you that this was an email sent to you. Do you understand?---Okay, yes, yes.

30

I want you to assume that on 19 May – that's two business days before this meeting – Mr Osland had received an email from Mr Walton telling him that in his view, that's Mr Walton's view, a price for the sale of the 231 property over \$2 million would be a good result.---Okay.

Can you make that assumption?---Yes, I can.

Based upon your experience of pre-briefing meetings with John Osland, do you think it is likely or not likely that he would have mentioned Mr Walton's view to you in that meeting?---Yeah, more than likely he would have.

40

Did you regard that, from what you know and I've asked you to assume, that information about Mr Walton's view about price as being a relevant matter to the meeting?---Yes, I would have.

Would you go as far as centrally relevant?---Could you repeat that, please.

Would you go as far as centrally relevant or very important?---Yeah, I think it was a key, a key element.

10

Now, making the assumptions I've asked you to make, I want to ask you this question. If at the meeting with Mr Bartolotta either you or Mr Osland had – making all of the assumptions I've asked you to make, including about the pre-briefing with Mr Osland – indicated to Mr Bartolotta that an offer of 2 million wouldn't be recommended but that an offer of more than 2 million may be recommended, would you think that that was an appropriate or inappropriate thing for you or Mr Osland to have done?---Appropriate.

20 Can I ask you something then about the events after that meeting? Making the same assumptions that I've asked you to make about the sequence of events, including the pre-briefing events I've drawn to your attention, if either you or Mr Osland became aware that an offer of 2.1 million was made, would you regard it as being appropriate or inappropriate for you or him to have supported a sale at that price?---Yeah, appropriate.

Can I ask you about the settlement period? You know that the settlement period in the offer was expressed to be 18 months, don't you?---That's correct.

30 Or earlier if a DA could be approved?---That's correct.

Is there anything about the length of that settlement period that is of concern to you if you make the assumption that what was being proposed was a licence agreement by which the council could use the 231 property until the sale settled?---Sorry, could you just - - -

I'll withdraw that and I'll ask it again.---Yes, please.

40 If you assume that what was proposed as part of the purchase was that council would get a licence to use 231 Victoria Road until the sale settled, is there anything about a settlement period of 18 months that you regard as

being uncommercial or unattractive to council?---No, that would have been, yeah, that would have been a benefit to council.

Why?---Because the area in question for the parking of cars and the community buses, whatever, would have, would have provided a, a benefit to council during that period.

10 What about if the deposit, as you know, was proposed at 5 per cent? Is there anything about that rate of deposit that you regard as being unattractive or inappropriate from council's perspective?---No. I, I don't see that that's unattractive.

Can I ask you – oh - - -

20 THE COMMISSIONER: Was it not customary though for a deposit to be made on the basis of 10 per cent of the value? I mean, in general terms that was the convention, wasn't it, at the time?---Yeah. Commissioner, I, I'm not in the real estate business at all but I, I know from personal experience that, with some properties that I purchased over time, 5 per cent was accepted.

That's your personal experience with your own private purchase?---That's right, that's right.

However, the evidence is that generally speaking the sale of a commercial property, 10 per cent was the norm. I want you to assume that's the effect of the evidence.---Ah hmm.

30 If that be so, why would a body like the council accept only half a deposit, normal deposit, namely 5 per cent? Would there not have to be some particular reason or circumstances to justify it?---Well, it might have been part of the overall agreement that included the licence, you know, the amount that was paid, the, you know, the, the time the DA might have taken and, and approved. So, yeah, I, I, I can't say exactly.

40 But in respect of formal accountability processes, you would expect if there was such a reason that there would be some documentation noted in council's files, would you not? If there's something that's not the norm, you would expect some sort of record to be maintained on the file so that council can justify its position if called upon to do so?---Well, yeah, there might, there may, may well have been. Well, not may well have been but I,

I thought the, the purpose of the, what we're talking about was, was looking at the overall package involved with the sale of the property that, that was being put forward by the owner of 227. And that was then put to council for determination.

Okay, thank you.

MR LLOYD: Thank you, Chief Commissioner. Can I just ask you, Mr Sawyer, about your view about the usualness of this particular transaction, noting the evidence you've given about the direct dealing protocol. Was this a usual transaction where council would be selling property but effectively only dealing with one potential purchaser?---Well, I, I think it's the only, the only one that I dealt with in my time at council, so I couldn't say it's a, a usual practice.

Can I just do this. I'm just going to put this to you and you can either agree or disagree. What you're dealing with here is a proposed transaction where the council has got some commercial advantage in the sense that it knows that this particular lot has got a special characteristic or feature to the proposed purchaser because of the ownership of 227. Is that true?---Yes.

But there's also a corresponding difficulty for the council in terms of its position in the negotiations in that this particular lot, 231, may be quite unattractive to any other person other than this purchaser. Is that fair?---That, no, that's fair, given the easements that were on the site.

Can I just ask you finally then about some things arising out of the photographs you've been asked about at the café in January of 2019?---Yes.

I think you know that at least one of those photographs shows you holding a white envelope?---Yes, that's correct.

And I'd just ask you about some things if it is to be suggested that in that white envelope there was money or any inducement and you were being asked to take some sort of bribe or illegal inducement or anything of that kind. Do you understand?---Yes, I do.

What was your financial position as at January 2019?---Yeah, relatively comfortable.

Well, you'd retired?---Yes, I'd retired.

Do you own your own house?---Yes, I do.

Do you have a mortgage?---No.

Do you own an investment property?---Yes, I do.

Was that encumbered by a mortgage?---No.

10 You had money in the bank, cash?---Yes.

Now, in terms of your family arrangements, you were married at that time?
---Yeah, that's correct.

For how long?---47 years.

Children?---Three.

Grandchildren?---Seven, two to come.

20

Right. As at that time or is that now?---2016, no, that's, that's now.

2019 we're talking, January 2019.---2019? Yeah, seven.

And enjoy spending time with your children?---Yes, I do.

Grandchildren?---Yes, I do.

30 Right. Just think carefully before you answer this one. You enjoy spending
time with your wife?---Yes, after 47 years, I think she's got used to me.

Can you think just looking at what you know about your own mind and
motivations, can you think of any reason that you could identify and tell the
Chief Commissioner about if you can, why you might have been interested
in taking some money from someone for illegal or in an illegal
circumstance, like a bribe?---No, I can't.

And I take it you say that that was not what was happening?---Exactly.

40 Those are my questions.

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

MR LEGGAT: Thank you, Chief Commissioner.

THE COMMISSIONER: Mr Leggat, I grant leave on the basis that I understand the proposed cross-examination should take about 15 minutes.

MR LEGGAT: Commissioner, our request identified 45 minutes - - -
10

THE COMMISSIONER: I'm sorry - - -

MR LEGGAT: - - - but I'm more than happy to limit that to 20 minutes.

THE COMMISSIONER: Well, I've got a document here. I don't know if it's the - - -

MR LEGGAT: It's paragraph 1, second sentence.

20 THE COMMISSIONER: Sorry?

MR LEGGAT: Paragraph 1, second sentence "proposed cross-examination will take around 45 minutes".

THE COMMISSIONER: No, I'm sorry. You're looking at a different document, I think. I'm looking at an email between yourself and Counsel Assisting. It hasn't got a date on it, unfortunately. Anyway, Mr Leggat, we'll see how we go. 20 minutes.

30 MR LEGGAT: Yes. Thank you. Mr Sawyer, you were General Manager at Canada Bay between May 2006 and about June of 2018, is that – that's right, isn't it?---That's correct. Officially I wasn't in the, at the council chambers from January 2018.

Yes. And during that time you had two mayors, did you? Mr - - -?---Yes, I did.

Mr Tsirekas was mayor for most of the time, wasn't he?---Yes, he was.

40 Can you recall, when councillors were joining the council for the first time, that they went through a briefing session in which the provisions of section

232 and 226 of the Local Government Act, relating to the role of councillors and the role of the mayor, were explained to those councillors as part of that briefing process for councillors?---Yes, I can.

You'd be aware that section 226 – I'll start with 232. Section 232 of the Local Government Act sets out the role of a councillor, and section 232(1)(d), "The role of a councillor is to represent the collective interests of residents, ratepayers and the local community." That was something that was brought to the attention of councillors, wasn't it, that role as set out in the Local Government Act?---Yeah, that was part of the training process.

Similarly I suggest to you, and correct me if I'm wrong, is that section 232(e), "The role of a councillor is as follows, to facilitate communication between the local community and the governing body," that was another matter that was brought to the attention of councillors and emphasised, wasn't it?---Yeah, certainly the, those elements of their role was, would have been covered in the training program.

And the way it was covered in the training program, I suggest to you, is to point out that there was an Act called the Local Government Act, that there was a section, section 232, which set out the role of councillors, and they would be taken through each of the provisions setting out what the role of the councillor was. That's what happened, wasn't it?---Yeah, I'm pretty sure that would have been covered as part of that induction process.

Now, the role of a mayor is described in section 226. So that includes in 226(h) "to promote the effective and consistent implementation of the strategic plans, programs and policies of the council". Now that's something that you were aware as being a description in the Local Government Act at all relevant times, do you agree with that?---Yeah, that's in the Act.

Now, Mr McNamara, the Director of Planning, gave evidence to the effect that Mr Tsirekas, from time to time, asked the directors of council to walk around the streets with Mr Tsirekas and to have coffee in coffee shops during council business hours. Were you involved in any of those walk around the streets or coffee in coffee shops with the directors and the mayor from time to time?---Yeah, it wasn't so much walk around the streets, but certainly we, we did meet, I think it was the Thursday, Thursday morning, in different locations throughout the city for a briefing on, give the mayor a

briefing on some of the, the issues, current issues from each of the different areas.

And in your view, was that or was that not one way of performing – excuse me, I’ll try again. The activities that you just described, in your view was that one way of performing the roles required under section 226 and 232 of the Local Government Act?---That was one way.

10 All right. I’ll move to something slightly different. In the time that Mr Tsirekas was at council and you were employed by council, did he ever apply what you regarded as inappropriate pressure to you professionally?
---No.

During that period, did he ever ask you to act in a manner that, in your opinion, was inappropriate?---No, not that I can recall.

Let me move onto something else. You are aware that the general manager has a vital role in relation to the negotiation and entering into of voluntary planning agreements under the Environmental Planning Assessment Act.
20 Are you aware of that?---Yes.

During the time that you were at council as general manager, you familiarised yourself with the council’s VPA policies, or what’s known as the planning agreements policies, is that right?---Yeah. At that time, I, I, I would have for sure.

Yep. Now, can you recall learning about, in this context, the concepts of value capture and value uplift?---Sorry, value capture and value uplift?

30 Yes. As part of the planning agreements policies.---In regard to addition to floor space, height, are you talking about? Yes.

Yes.---Yes.

Yeah. What was your understanding of how the City of Canada Bay planning agreements policy worked in terms of value uplift and value capture in that regard?---I, I think council had the view that floor space wasn’t for sale, just simply for the benefit of, of the dollars. There had to be some, like, community benefit, public domain upgrades, or whatever, that
40 justified any increase in FSR or height. That’s, yeah, just broadly what I can recall.

And can you remember a provision in the City of Canada Bay planning agreements policy, you probably won't remember the number, but 4.4.5, whereby 50 per cent of the value that the developer would benefit from, as a value uplift, was a target for council to obtain for the community as part of the negotiation of a VPA?---Yes. From recollection, from what I recall, I think that was the target, yes.

THE COMMISSIONER: Sorry, could you just repeat that? I missed it.
10 ---Sorry. From, from recollection, I, I think that was the target that, that Mr Leggat's referring to, I think that was in the policy that he's referring to.

MR LEGGAT: Can I assist you that in your role as general manager you thought it was entirely appropriate to bargain hard for council with a developer in order to come as close to that target as was possible from time to time?---We engaged registered valuers to, to assess all that, you know, the, the, the value, the value capture and whatever and we were guided by the advice we received from them.

20 THE COMMISSIONER: When you say "advice", advice from whom?
---The registered valuers. I think we had BEM, I think, were the, the valuers that we used to, to guide us on that.

Thank you.

MR LEGGAT: So, for example, if Billbergia was obtaining a benefit in value through an increase in height or floor space, which was producing, according to your valuers, a value uplift of \$200 million, then your target was to obtain \$100 million worth of community benefits for council, that's
30 right, isn't it?---As a, as a general rule, yeah, like - - -

THE COMMISSIONER: I take it that in deriving these benefits, it's not a straightforward matter. It involves a complex formula.---No, it's not, it's not as, not as simple as, it's not as simple as – you have quantity surveyors, you have valuers, you have a whole lot of professional people involved in that process that, you know, provides council with, with that advice. And there's factors involved that, you know, you add in, you take out. So, as I said, we, at the end of the day we're always guided by the, the, the valuer as
40 to what was fair and reasonable, and, yeah, I, I understand what Mr Leggat's saying, but it's, I don't believe it's as clear cut as saying 200 million, 100 million sort of thing, so - - -

MR LEGGAT: I'll use Billbergia as an example, but if the VPA that you were negotiating was with I-Prosperty, you would adopt a similar approach, wouldn't you, in terms of looking at the benefit to the valuer from the increased height and the increased floor space. You would then send that to your valuers to endeavour to qualify the value uplift and then you would aim for 50 per cent of that as a target.---Yeah, that's, yeah, roughly how it was done.

10 And similarly if there were, you were negotiating during this period a VPA with Prolet, you would adopt the same approach?---Yeah, there was, there certainly was an approach that was consistent.

Thank you. Let me move on to something entirely different. You have never owned a horse with Mr Tsirekas, have you?---No, I haven't.

Neither, to the best of your recollection, has your son ever owned a horse with Mr Tsirekas?---No, he hasn't either.

20 All right. Now, you were asked a number of questions about a delegation or a series of delegations. Have you ever seen a specific delegation for the property at 231 Victoria Road?---No, I haven't.

Is it your view – and correct me if I'm wrong – that any delegations that may exist in relation to the sale of council property are what might be described as general delegations to specific officeholders, like directors or another officer of council, rather than directing a delegation by reference to a specific property address?---I'm not – could you just repeat that question again, please, Mr Leggat?

30 Yes. I'll go back a bit. You've indicated that you're not aware of any specific delegation in relation to the sale of the 231 Victoria Road. What I'm doing is building on that and suggesting to you that it's more likely that the sale of properties generally by council were the subject of general delegations to particular directors, rather than being tied to the identification of particular properties?---Yeah, the sale of property was excluded from the delegations. The, the, the officers who, who prepared documentation and reports for a sale of a property that would then need to go to council for council to make a decision on the sale of a property, they would have had
40 delegation to undertake that work, like engage valuers, negotiate with the, with the owners of the adjoining properties or whatever. But the sale of

property itself was not part of the delegations. That's excluded. It's a, it's a council, it's a council function.

THE COMMISSIONER: In this particular case, we're talking about, the sale was placed in the hands of Mr Walton, is that right, and he had worked on it over a period of time?---That's correct.

And then he seeks leave, and I suppose he's got to take annual leave at some stage, as well, during the course of the year?---Yeah.

10

But if, for some reason, that person is not in a position to continue the chain of events relating to a sale of council property, so that it has to go to somebody else, would there not be some form of delegation to deal with that particular circumstance?---Well, the, the actual, the actual delegation, the formal delegation of council would, I said doesn't apply to the sale of the property but it would probably, probably be, it, it's probably better described as something that's tasked rather than delegated as far as the, the terminology goes, but it, it, it would have been the director or the manager. Mr Walton was the manager and the director was Mr Osland. So the authority would have been between the, the two of those.

20

But then again if Mr Osland passes it on to Mr Walton, it's not a delegation of mere mechanical functions. It also, am I right, involves, according to Mr Walton, authority to, for example, negotiate on price?---Yeah. That would have been part of his job description, I would have thought, yes.

And if Mr Walton, for some reason, said, "I'm going to down tools now," then the authority to continue negotiations and so on would have to go through some formal, I would have thought, delegation or whatever you want to call it, authorisation - - -?---Yeah.

30

- - - so that there's a record in council that now the functions associated with whatever Mr Walton was doing would be authorised to be conducted by somebody else?---That's, yeah.

I mean, whether you call it delegations or authorisation - - -?---Yeah.

- - - there'd have to be some form of formal handover which makes it clear from the record that now this person has the authority to negotiate, for example?---That's correct.

40

All right.---Yeah.

Okay.

MR LEGGAT: Thank you, Chief Commissioner. Mr Sawyer, in the course of those questions and answers, you reminded me that, of course, it was council's decision whether or not to sell 231 Victoria Road, that is the decision of the councillors. That's what you were indicating, wasn't it?
---Yeah, that's right.

10

That it wasn't a matter for Mr Walton or Mr Tsirekas or yourself or anyone. It was a decision of the majority of the councillors. Correct?---Yes, that's correct.

20

You gave some evidence at page 1314 and 1315 of the transcript, where you said this quite frankly, and my learned friend Mr Darams asked you a question where he said, "Look, council might accept \$2.1 million?" And you said, "As I said, I can't recall that meeting. Can I just say that it, that it wasn't my practice to pre-empt anything council would do or say." What you're referring to there, I suggest to you, correct me if I'm wrong, is the fact that it was the councillors' decision whether to accept 2.1 million or whatever figure the councillors thought was appropriate. Is that what you were endeavouring to get across at this stage by saying it wasn't your practice to pre-empt anything council would do or say?---Yeah, that's correct. It was a council decision.

30

And then at page 1315 at the top of the page, you continue. And you say, "It wasn't, it wasn't my practice to pre-empt in any conversation what the council decision might be on any matter because it's really, I couldn't, I couldn't predict which way they'd go on anything." Now the "they'd go" you're referring to the elected councillors, aren't you?---Yeah, that's correct.

40

And you use the expression "I couldn't predict which way they would go on anything." The "on anything" that you're referring to, that includes, does it, and correct me if I'm wrong, that includes decisions in relation to planning matters affecting, for example, Billbergia, Prolet or Joseph Chidiac? That wasn't an exceptional case, was it, where you knew exactly what council would do in relation to such planning matters?---Well, the, I suppose what I was referring to there is that quite, on quite a number of occasions the councillors would listen to representatives from the community, speak on

different items at times and that could sway the councillors when they, they, they heard things first-hand on impacts on, on people or, you know, especially relating to planning proposals or DAs or whatever, or add conditions in or whatever. So it was my practice never to pre-empt the outcome of what a matter went to council because, you know, sometimes that can change on the night.

And in the course of that answer you use the expression “matters going to council”. That would include planning matters and development
10 applications, is that what you were intending to include?---Yeah. That’s correct.

It would also include matters like the sale of council property, is that right?
---That’s correct.

We can move on. Chief Commissioner, I wonder if we might please have displayed volume 4H at page 1, please. Mr Sawyer, I’d like you to assume that this is a note provided by Mr Kent Walton. Now, can I draw your attention – you’ll see what he’s speaking about from that top dot point. The
20 site was owned by Canada Bay Council, used as a car park for admin fleet staff. So this is clearly 231 Victoria Road, isn’t it, as you’d understand it?
---Yes. I, I’d, given the, the, the next line down where it says, “The car park is included, some land owned by 227,” I’d assume that it’s adjacent to 231.

Yep. And have a look at the third dot point. “The site was included within a property strategy that I prepared, 2011/2012, see attached document, which included site particulars, zoning details and recommendations for dealing with the property in the short and long term.” I would like you to assume that this is Mr Walton’s document and when the – the reference to
30 “I prepared” is a reference to Mr Walton preparing it. Do you understand the assumption I’m asking you to make?---Yes, I do.

If you continue down. Perhaps, Officer, if you might scroll through to page 4, please. Now, you will see, and I would like you to assume, Mr Sawyer, is that in that third dot point when Mr Walton says, “The site was included within a property strategy that I prepared in 2011/2011,” I’m now going to show you the property strategy that he prepared. Now, that’s the first page there and you’ll see it’s relating to 231 Victoria Road and if you could please, on the screen, go to the next page. You may or may not have seen
40 this before, Mr Sawyer, but see Mr Walton’s document, the second-last paragraph under Site Constraints, “Council is aware of possible

contamination of the soil below ground of the subject site,” et cetera. Then the last paragraph, “It’s recommended that suitable testing and site investigation be undertaken this site when council’s ready to deal with the site.” Now, in earlier answers you spoke about site constraints and you spoke about the easement and the rights of way as being relevant site constraints. Were you aware during your term as general manager of this particular site constraint relating to contamination that we see set out in Mr Walton’s document?---No, I wasn’t.

10 Is it or is it not your view that such a site constraint ought to have been brought to the attention of a potential purchaser so that the value of the land could be properly ascertained?

THE COMMISSIONER: Mr Leggat, how can this witness answer that question? He’s not a valuer. And the hypothetical purchase doesn’t really assist him. But the other thing is, is there any information as to the extent of this contamination?

MR LEGGAT: Yes, there is.

20

THE COMMISSIONER: Yeah, but you can have contamination of various grades, as we all know, different types of contamination. Some are mandatory. You have to have them investigated. Asbestos is one example. Others may not be in that category of urgency or in terms of it being mandatory to have the investigation. He suggested that there be one done.

MR LEGGAT: Yes.

30 THE COMMISSIONER: But he didn’t know whether you’re talking about something serious here or whether it, you know, is going to really affect value or not. I mean, you know, I think the fact of some contamination of the property from what was a use before of a dry-cleaning business - - -

MR LEGGAT: Dry-cleaners, yes.

THE COMMISSIONER: - - - we’re not going to go on an exploration in these proceedings about those sort of matters.

40 MR LEGGAT: Very well. I take that on board and – yes.

THE COMMISSIONER: I mean, contamination is one thing but we don't know what it was, you know – is this a serious issue that needed to be thoroughly investigated by some specialist agency to get to the bottom of it or was it not of that order? We don't know.

MR LEGGAT: Yes, it was. This – Chief Commissioner, we'll deal with it in submissions in more detail, but the Commission has the development consent conditions that were imposed on the development of this site, which required extensive decontamination of the site. And we know the evidence
10 is that it was about \$2.5 million worth of work that was needed to be carried out.

THE COMMISSIONER: Well, we can look, all of that can be established in the documents.

MR LEGGAT: Yes. Very well. Let me deal with this because this is important. You agreed with a description of Mr Walton as being competent during the time that you were able to supervise his work. If you had been aware of this particular site constraint and his recommendation about
20 suitable testing and the failure to carry out what he'd recommended, would that have influenced one way or the other your view as to his competence? ---No, not, not really influence it. I always found Mr Walton to be, you know, very competent at the way that he managed that property portfolio. And, you know, I don't know what – I can see that obviously there's, there may have been some issues with, with the site, but I think it would need more investigation than, than to just, you know, I suppose view Mr Walton as not being competent because of this, this item here. Sorry, that's my phone, Commissioner. I left it in my bag.

30 I think that's your phone, is it?---Yeah, sorry about that. I left it in the bag.

All right. I think it's being taken care of. So when you gave the answer you weren't aware of the matters Mr Walton had set out in his property analysis, so I was just giving you an opportunity to consider whether that may affect your previous evidence. Now, I want to draw your attention to two other pieces of evidence. Now, I might be able to shorten this if you can remember it, but can you remember seeing an email where Mr Walton returned to work and said to the, what appears to be the council receptionist, "I don't want to take any calls from people." Can you remember seeing that
40 evidence or should I get it on the screen?---No, I, yeah, sorry, Mr Leggat, I,

I, I don't recall seeing that, that email or, or whatever from Mr Walton at all, so - - -

We'll just have that turned up now because I just want to ask you the same question in light of what I'm about to show you, does that have an impact one way or the other on your view as to – Exhibit 4H, please, page 145. Thank you. All right. That's all right. We'll do it in a different order. So this one is to do with holding costs. Read Mr Walton's email to Mr Sullivan on 10 May at 9.47, please, and in particular the – just let me know when you've read it.---Yep.

Now, you'll see Mr Walton's statement there, "I think the parties' views are a long way apart on value at this stage, but again we're not the ones who have holding costs to deal with." Now, does that suggest to you that what Mr Walton is communicating to Mr Sullivan is that he was aware – he, Mr Walton – was aware that the potential purchaser of 231 Victoria Road had holding costs to deal with and that there was a potential commercial advantage to council in moving the matter slowly rather than expeditiously? Is that's what's being communicated?

THE COMMISSIONER: That's your interpretation.

MR LEGGAT: It is, yes.

THE COMMISSIONER: No, no. If you're going down this road, you put it properly. Mr Leggat, what are we embarking on here? Some sort of reputation damage exercise, are we? I mean, this witness has given his evidence about the competency. Well, I suppose all of us say things we shouldn't say sometimes, but that doesn't mean we're not competent. I mean, really and truly, it's a long bow, isn't it?

MR LEGGAT: I'll take that onboard.

THE COMMISSIONER: I mean, the man is said to have been competent and Mr Sawyer has not shifted from that position and I would think this exercise is not going to be helpful.

MR LEGGAT: I'll take that onboard. I'm nearly there, Chief Commissioner. Does having that statement by Mr Walton brought to your attention have an impact one way or the other on your view as to his competence?---No.

All right. Finally, let me ask for page 177, please, to be displayed.

MS ALDERSON: Sorry, Commissioner, can you hear me?

THE COMMISSIONER: Yes.

MS ALDERSON: Ms Alderson for Mr Walton. I don't understand what we're doing here. The witness has answered the question, Commissioner, I
10 just don't understand where we're going with this.

THE COMMISSIONER: Yeah, well that makes two of us.

MS ALDERSON: Thank you.

MR LEGGAT: It's usually not a valid ground of objection that counsel doesn't understand where we're going.

MS ALDERSON: Well, that would be relevance, Commissioner, if I need
20 to spell it out.

MR LEGGAT: Let me deal with this. You are aware of the email communication between Mr Walton and what appears to be the receptionist and he says, "I might get a few less calls if no-one knows that I am here." That's in response to the receptionist asking whether or not his presence at work should be identified or not. Were you aware that that was something that Mr Walton did on this occasion?---No, I wasn't but looking at the date, I, I would say that that was around the date that he did return to work, around that date, and he might have had a lot of, a backlog of work to try
30 and catch up on. And so to, to get through that, he might have asked to hold his calls so he could get on, on top of the, the backlog.

All right. And that was, in your view, an appropriate way for council to deal with the public? Is that what you're saying?---Well, he, he had a, a, a 2IC that, you know, could have taken calls if he wasn't available, I would have thought or even the, the, the secretary.

All right. Let me move on. Were you aware during your time as general manager that an efficiency review was undertaken in relation to delays and
40 that council was found to be performing very badly when compared with

other councils in terms of the routine delays for development application being processed?

THE COMMISSIONER: Mr Leggat, you can't do it that way. It would involve the witness being taken through a review and the comparison with other councils and determine what matters the report's referring to or the review is referring to and then, I mean, I can take almost - - -

MR LEGGAT: Chief Commissioner, I was just trying to - - -

10

THE COMMISSIONER: - - - take it on notice that all councils have got delays as most organisations do, depending upon the volume of work at any one given time. I mean, let's assume that there were delays in the council. Let's assume that they were lengthy.

MR LEGGAT: Yes.

THE COMMISSIONER: So what? Where do we go with that?

20 MR LEGGAT: It casts some lights on the email of Mr Walton stating that he's not going to be available to take calls.

THE COMMISSIONER: I don't think so, Mr Leggat.

MR LEGGAT: Very well. That's fine. I'll move on. I want to deal very briefly with Mr Tsirekas' management style. I'm advised, and correct me if I'm wrong, that Mr Tsirekas would routinely chase you up about delays that were occurring with mum-and-dad developers in relation to the progress of their development applications. Is that a fair comment?---Yeah, he, he
30 would ask me from time to time if I could find out what was holding them up.

And correct me if I'm wrong, but, from time to time, he would ring you on the weekend about matters like if a toilet was locked at one of council's parks? He would bring that to your attention and ask you to do something about it on the weekend?---Yeah, that's correct if, if he received a call that required one of our outdoor staff to attend and, you know, address an issue or whatever, he would, he would make that call to me and I'd have a look and see who was rostered on. And I would be able to contact the person
40 who was rostered on and get them to attend to whatever the issue was, yes.

You worked with a number of mayors over the various councils during your long role in local government in New South Wales. Would it be fair to say that Mr Tsirekas is a very hands-on mayor who is very proactive and has an open door policy as his style of management and leading?---Yeah, he's certainly very engaged with the community.

Chief Commissioner, thank you.

THE COMMISSIONER: Yes. Thank you. Mr Darams?

10

MR DARAMS: No further questions for my part.

THE COMMISSIONER: Yes, thank you, Mr Sawyer. You may step down. You're excused.---Thank you, Commissioner.

THE WITNESS EXCUSED

[3.10pm]

20 MR LLOYD: Chief Commissioner, if it's no discourtesy to the Commission, may we be excused?

THE COMMISSIONER: Yes, certainly.

MR LLOYD: Thank you.

THE COMMISSIONER: You are excused. Yes, Mr Tsirekas?

MR DARAMS: Yes, we'll continue with Mr Tsirekas.

30

MR DARAMS: Mr Tsirekas, you recall before the luncheon adjournment we were going through – I was asking you some questions about earlier evidence given today and compared that with evidence you'd given in March this year, do you remember that?---Yes.

10 Earlier today I asked you whether you agreed that you should have declared a conflict of interest arising out of your relationship with Mr Furlong as at 31 May, 2016, and today you said, "No."---Mmm, yes.

Do you recall that you gave a different answer, in effect, to that question on the 8th of, sorry, on the 22nd of, 24th of March this year?---Yes.

20 Which of the versions of – sorry, which of those answers is correct? That is, do you say that your evidence today, that is you shouldn't have declared or you weren't required to declare an interest in relation to Mr Furlong as at 31 May, 2016, or the evidence you gave on 24 March that you said you should have declared the conflict of interest arising out of your relationship with Mr Furlong?---If I can explain, I think today's reflection on the relationship that I did have with Mr Furlong, that there was no need to declare an interest.

So your evidence now is, on further reflection, as at 31 May, 2016 you say there was no basis for you to declare a conflict of interest arising out of your relationship with Mr Furlong?---Correct.

30 Chief Commissioner, could I also ask that the suppression order or the declaration under section 112 that was made on 7 April, 2020 [sic] be varied so that I might ask Mr Tsirekas about some evidence he gave on that occasion?

THE COMMISSIONER: Again, Mr Darams, you say it's desirable and necessary to do so for the exposition of the issues?

MR DARAMS: It is. So this is the one made on 7 April, 2022.

40 THE COMMISSIONER: In respect of the direction I made under section 112 of the Independent Commission Against Corruption Act on 7 April, 2020 [sic], I vary the direction so as to permit Counsel Assisting to refer to

the evidence in the compulsory examination on that date with the witness, Mr Tsirekas.

VARIATION OF SUPPRESSION ORDER: IN RESPECT OF THE DIRECTION MADE UNDER SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT ON 7 APRIL, 2022, THE DIRECTION IS VARIED SO AS TO PERMIT COUNSEL ASSISTING TO REFER TO THE EVIDENCE IN THE COMPULSORY EXAMINATION ON THAT DATE WITH THE WITNESS, MR TSIREKAS.

MR DARAMS: Now could I ask that Mr Tsirekas be shown page 1175 of the transcript of the compulsory examination? Just to give you some context, Mr Tsirekas, I draw your attention to line 9. You see I asked you the question, “On the last occasion you were here in your compulsory examination you will recall I asked you some questions about a draft council resolution that was sent to you and other councillors by Neil
20 Kenzler on 30 May, 2016. Do you recall those questions?”---Yes.

Then I put to you “You accepted on the last occasion that you forwarded that draft resolution to Mr David Furlong. That’s correct?” “Yes.”---Yes.

Then I said to you, “You accepted that when you forwarded that draft resolution to Mr Furlong you knew that he was acting for I-Prosperty at that time.” Do you see that?---Yes.

Then can I jump over to line 29. I then also asked you some questions about
30 whether or not you should have declared any conflicts of interest in relation to the circumstances on 30 May and 31 May. Do you recall that? You said “Yes.” Could I then go over to the next page? I just want to pick it up again at line 29.

THE COMMISSIONER: Sorry, what page?

MR DARAMS: So page 1176, line 29. So I picked up the question again. “Now, as I indicated you were here on the last occasion, you accepted that as at 31 May you had or you should have disclosed an interest in relation to
40 Mr Furlong. Do you remember that?” And you said, “At the time or at the last interview?” You queried that and I said, “When you were here on the

last occasion.” You said, “The last occasion.” “You accepted that as at 31 May, 2016 you should have disclosed or declared an interest in relation to Mr Furlong.” You said, “Look, I can’t recall whether it was he that I was referring to when I should have declared an interest or not.” So then I put the question “Well, let me just help, can I help you out?” “I can’t, yeah, if you can.” Then line 34, “So I put this question. So the question, Mr Tsirekas, ‘You’ve said in hindsight, it should have been, you should have disclosed a non-pecuniary interest, correct?’” Then you said “Okay.” Then I set out the further questions and answers you gave on the earlier occasion.

10 So, “You say, ‘Correct.’ I then say, ‘When did you come to that view in hindsight?’ You said, ‘Very recently when I re-read the code of conduct.’” “Right.” “I then said, ‘Right. Now, having done that, can you tell me what it was you should have disclosed a non-pecuniary interest?’ You say, ‘A conflict of interest.’” Go over the page. “Which is based upon being a financial or pecuniary or non-pecuniary. Correct?’ You say, ‘Correct. Yeah.’ And ‘Now you’ve identified a conflict of interest?’ ‘Mmm.’ ‘Tell us what the conflict you have assessed existed on 31 May, 2016.’ You then say, ‘Relationship with David Furlong.’” “Mmm, yeah.” So I’ve repeated the evidence you’ve given on the earliest occasion, so to assist you on – that

20 is on 7 April, 2016. Sorry, 7 April, 2022. Then I ask you “So I want you to expand.” You say “Yeah.” Then “And just explain the nature of the relationship?” Then you say “Well, that conflict was non-pecuniary interest conflict because I knew the person. I may have been confused with, but it should have been a non-pecuniary conflict.” So on 7 April, 2022 when I asked you about this again, you’re identifying that you should have disclosed or declared the conflict of interest in relation to Mr Furlong and your relationship with him, that’s correct, isn’t it?---That’s what I’ve said there.

30 Then if I could pick up the questioning at line 32. “So you accept you should have disclosed a non-pecuniary interest?” “Yes.” “You identified that as being the relationship with Mr Furlong, correct?” You say, “Yes.” Then I ask you “Can you explain why you should have disclosed the relationship with Mr Furlong? What was the basis of that relationship?” Then you say, “He, he was someone that I’d known and he was someone dealing with the application.” Then if we can go over the page. I asked you, “When you say ‘dealing with the application’, do you mean I-Prosperty’s - - -” and you say “Yes” “ - - -development application before council?” “Yes. Yes.” Now, just stopping there and pausing there, those

40 circumstances that I’ve just outlined to you, asking you about why you should have disclosed the conflict of interest, those circumstances hadn’t

changed, that is as at 31 May, 2016 you knew Mr Furlong, that's right?---I knew of Mr Furlong, yes.

No, you knew Mr Furlong, that's right?---I knew of Mr Furlong, yes.

You knew that he was acting on behalf of I-Prosperity?---Yes.

You knew that he was acting on behalf of I-Prosperity in relation to their planning proposal that has been lodged with council, that's correct?---Yes.

10

So none of those circumstances have changed, have they?---Well, I don't know if we put the application in.

But you knew he was dealing with them on behalf of that?---I knew he was assisting them as, as the planner.

You knew that he was their engaged town planner?---Well, I didn't know if he was engaged, he was assisting them on the planning issue.

20

But my question is, Mr Tsirekas, those circumstances that you described on and accepted on 7 April, 2022 have not changed, have they?---Look, look, on reflection and hearing evidence, I certainly, the, the, the friendships, how people define them, are different.

30

So, just, my question was different. The circumstances that you accepted and described on 7 April, 2022, which you explained as demonstrating why you should have disclosed conflict of interest arising out of your relationship with Mr Furlong as at 31 May, 2016, they haven't changed, have they?---Well, on, on reflection, and in understanding that there's a lot more from hearing evidence, it, it was only that I'd known of David Furlong and I knew that he was a planner but there was no relationship between me and David Furlong.

40

So is that a roundabout way of saying you now wish to change your evidence that you gave on 24 March and 7 April, 2022, and you want to commit to the explanation you've given today, that is, you do not accept you should have disclosed a conflict of interest arising out of your relationship with Mr Furlong on 31 May, 2016?---Well, I didn't really have a relationship. I'd known of David Furlong. We didn't have a friendship. I knew of David Furlong.

My question was do you want to - - -?---Yes.

- - - stick to the evidence you gave earlier today or did you want to stick to the evidence you gave on 24 March, 2022, and 7 April, 2022? Which one do you want to choose?---On, on reflection and understanding how people define friendships, I didn't have a relationship with him. I call everybody a friend.

Which evidence do you - - -?---Today's evidence.

10

You want today's evidence?---Yes. Yes. On reflection.

Now, what about Harry Huang, the founder of I-Prosperity Group? Is there any stage that you should have declared a conflict of interest arising out of your relationship with him?---Well, I didn't have a relationship with him.

Is there any stage you should have declared a conflict of interest arising out of your relationship with Mr Harry Huang?---I, I didn't have a relationship with him.

20

Is the answer to my question, no, there's no - - -?---No.

- - - at no time should you have declared? Is that what you're saying?---No, I didn't have a relationship with - - -

THE COMMISSIONER: Had you any dealings with him?---Sorry, Commissioner, what dealings - - -

Had you any dealings - - -?---No.

30

- - - with him of any kind at all?---No.

Had you ever spoken to him?---May have met him once or twice?

Well, that means you may have or may not have. What are you saying?---No, I, I've, I've, I've spoken to him once or twice, yeah.

Right. And in what circumstances?---Once I met him in the city and reviewing what's been said, I was invited to his wedding.

40

MR DARAMS: So there are two times since 2015 that you've met Mr Harry Huang?---That I can recall.

That you can recall?---Yeah.

I see. Can the witness be shown volume 1.2, page 119? The next page, please. So, Mr Tsirekas, the email chain we have on the page here is an email from you to Mr Chidiac on 19 April, 2017. Do you see that?---Yes, I do.

10

You say in the email to Mr Chidiac, you say, "Please send to Harry to see if this is okay before I print." See that?---Yes, I do.

They were the words that you typed?---Yes.

What you were saying to Mr Chidiac is - - -

THE COMMISSIONER: Mr – sorry. This is addressed to Mr Chidiac. Thank you.

20

MR DARAMS: Yes. So what you were saying to Mr Chidiac is, in effect, "Look at what's set out below, send it to Harry for him to check, that is Harry, to see if it's okay before I print it off." That's what you're saying to Mr Chidiac, aren't you?---That's what's written there.

But that's what you were asking Mr Chidiac to do, isn't it?---Yes.

30 What appears below your email and what you were – sorry, what appears below the email to Mr Chidiac and what you were sending to Mr Chidiac is a reference that had been prepared or drafted by your partner Ms Crichton. That's right?---Yes.

It was a reference that was intended or was drafted to be sent or come from you. Correct?---Yes, yes.

It's a reference for the benefit of Mr Harry Huang and his wife, that's right?---That's what's written there, yes.

40 Before you sent this to Mr Chidiac, you obviously read over the reference. ---I can't remember.

But it's likely that you did that, isn't it?---I can't remember.

But, no, no, my question is it's likely that you did that, Mr Tsirekas.---I can't recall. This is a draft.

Yes, but you're sending it on to Mr Chidiac.---Well - - -

Let me finish the question, please. You're sending it to Mr Chidiac for the purpose of him forwarding on to Harry, which I want to suggest to you and
10 you would accept this is Harry Huang, correct?---Yes, I - - -

That's obvious.---I don't know his surname, but, yeah.

We'll come back to that.---Harry, yeah.

We'll come back to that in a moment.---Yep.

But it's obvious that you must have read this because you're sending it on to Mr Chidiac to say to Mr Chidiac, "See whether or not Harry's okay with
20 what I'm prepared to say before I print it off."---Well, before I even sign it, I would have checked it. And if there were spelling errors or any information on there that would need, you know, correcting, I would have corrected it.

Well, let's go to the spelling errors. So what would you have corrected in the body of this reference?---Well, as I've said before, it's, in the first paragraph or the first line there, that "friends of mine". Well, that, yeah, that's a bit of an exaggeration, but – and the "years of knowing him" is an
30 exaggeration. So the draft would have had to be corrected.

Well, that's not a spelling, that's not in the category of spelling error, though, is it?---Well, the whole thing would have had to have been checked, Commissioner.

It's just plain wrong, isn't it?---It is incorrect. It's a draft.

Yeah.---And it was never, it was never used.

But whether it's a draft or not, you're now using the draft, aren't you?
40 ---Yep.

You're using it in the sense that you're sending it to Mr Chidiac to give it the tick, in effect, to okay it, aren't you?---Before I sign it?

No, no, no. It's not what you're doing at this stage. You've drafted the letter. You've put in these various statements. Then you say to Mr Chidiac, "See if Harry," not Chidiac, but "See if Harry is happy with it," in effect. That's what you're saying, isn't it?

10 MR LEGGAT: Commissioner, can I just object to that. You put to the witness that he drafted the letter. That doesn't appear to be the situation. It appears that Ms Crichton is the author of the letter.

THE COMMISSIONER: No, but I thought he said he, in earlier evidence, that he drafted this.

MR LEGGAT: I didn't hear that. I didn't hear him say that. I might be wrong but I didn't hear him say that.

20 THE COMMISSIONER: In any event, whoever drafted it, you were sending it to Mr Chidiac for him to send it to Harry to see if Harry's okay with it. That right? That's the sequence.---Yep. Correct, Commissioner.

The letter, you would have known, was incorrect in certain of the statements it makes.---Correct. It was never signed.

You were sending it on for an approval, weren't you?---To get, to have a look at it, yes.

30 You were looking for Mr Chidiac to get the okay from Mr Harry on this very letter that we see on the screen, weren't you?---This draft, yes.

No, you just, you weren't sending it as a draft. You wanted, you say here that you wanted Chidiac to send it, firstly, to Harry.---Correct.

And the purpose of sending it to Harry was to see if it was okay before you printed it. Correct?---Commissioner - - -

No, is that correct?---It's correct. It's correct.

40 Yes, right.---And it might have been - - -

And, and - - -?--- - - - to check the details of the letter, like - - -

But you inserted detail into it, is this not right, that's wrong?---Sorry?

Is that right?---Sorry, Commissioner, I missed that.

This letter that you sent contains statements that are incorrect.---The draft is, needs to be corrected, yes.

10 Well, why didn't you correct it? It was your draft, wasn't it? You were sending it.---I might, I might have received this draft from Harry himself giving me the details, I don't know. I can't recall.

Why wouldn't you correct it if you were sending it on to Mr Chidiac - - -?
---Commissioner, it - - -

- - - to see if he, Harry, would think it was okay? I just can't understand why you are sending something for an approval, an okay, to the person who is going to use the reference, when it's full of errors.---It is full of errors. It was never sent and it was never signed.

20 Why would you send a draft for approval that's full of error?---To have things move along, you need people to, to look at it.

To get things to move along?---And then for me to have a review of it and then sign it. But it was never sent, never used.

MR DARAMS: Mr Tsirekas, can I ask you these questions. You were forwarding this on so that Mr Chidiac could send to Mr Huang to see whether Mr Huang was happy with what you were saying in that draft reference, correct?---Yes.

30 You wanted to see whether or not that – that is what you'd set out in the reference – was going to suit Mr Huang's purpose, correct?---Yes.

Correct. I want to suggest to you, you were prepared to sign off on something that contained a whole number of lies that might, and which you understood would benefit Mr Huang, correct?---I wouldn't say lies.

Incorrect - - -

40 No, no, lies.---No, incorrect information.

Well, let's walk through all these. So you say, "Mr Huang and his wife have been close associates and friends of mine for over five years."

MR LEGGAT: I wonder if the "you say" might be rephrased, please.

MR DARAMS: Well, the draft of the reference, which you were asking Mr Chidiac to see whether Harry was happy with includes this statement. "Mr Harry Huang and his wife," name of the address, "have been close
10 associates and friends of mine for over five years." That's a lie.---It's incorrect. I, when I deal - - -

Well, how long had they been your friends and close associates for as at 2017?---Look - - -

How long had they been your close friends and associates?---They're, they're, they're, that is incorrect. And again, this information, normally when you do a reference you obtain information. People might write their own and then send it to you. So I'd have to check this before it goes out,
20 before I sign it.

But all you were doing here was sending it to Mr Chidiac for him to send to Mr Huang to see if what was written in the reference below, that you forward to Mr Chidiac, was suitable to Mr Huang. You had already done that checking.---No, I didn't. I didn't even sign it.

I'm not asking about the signing it.---Sorry. Well - - -

If Mr Huang came back and said, "Yes, it's all okay," you would have
30 signed it then?---No, I would have checked it.

Well, what would you have checked it for?---For spelling errors or incorrections, Mr Darams.

Okay. But the spelling error, you might have picked up the error in his name.---Yeah.

But what about the reference to close associates and friends of yours for over five years?---Yeah, well, that's incorrect too.

40 The, that's a lie.---Well, it's incorrect. I wouldn't call it a lie.

On your evidence today, you hadn't known Mr Harry Huang at all.---I've met him a couple of times, correct.

THE COMMISSIONER: Just could I short-circuit this. If you read the second paragraph there, is any of it true?---Building Chinese community in Rhodes, that's what I was of the understanding that's why they were involved in Rhodes.

10 No, no, just – no, please, please, please, answer my question. Is any statement made in the whole of paragraph 2 of this email that's on the screen, or letter, true? Any of it?---Well, I knew it was a family, community
- - -

Don't read it out. Just answer my question.---Well, some of it would need, again, a bit of a polish.

Now would you answer my question, please. Do you want me to put it a third time? I'm inviting you to say whether anything, any statement that
20 means, in the second paragraph is true?---Again, supporting making - - -

Will you answer my question?---Yes, it, there's some parts there that are true.

Well, what part or parts are true, to your knowledge?---Trying to build stronger local linkages, particularly with the growing Chinese community in Rhodes.

Take it a step at a time. So what part of it is true?---There's a lot of
30 generalisation there but businessman - - -

Just tell me briefly.--- - - - educated - - -

I'm trying to short-circuit this.---Sure.

We can do it the long way but I'd prefer if we can try and do it in a more economical fashion. I've asked you, you know what I've asked. What's the answer?---Well, parts, as I've said, are true. The other parts - - -

No, no. Well, what part is true or what parts are true?---Well, as I said, stronger, trying to make a stronger linkage, particularly with our ever growing Chinese community in Rhodes.

Sorry? Starting where? What line, firstly? Just where the cursor is now, which reads, “appreciative of their support in making stronger local linkages, particularly with our ever-growing Chinese community”. You say that’s true, do you?---In, in Rhodes, we do have a large - - -

10 To your knowledge, I mean.---To my knowledge. That’s, that’s what - - -

To your knowledge. You knew that - - -?--- - - - that’s what they - - -

- - - Harry and his wife or partner had given their support in making stronger local linkages - - -?---As part of I-Prosperity Group - - -

Well, is that what you’re referring to there?---Yes.

20 Are there any other local linkages you’re referring to or is that it?---Well, the Chinese community there, that’s right.

Okay. Anything else that’s true in that paragraph?---Again, Commissioner, I, I, I can’t recall the conversation or where this came from - - -

I’m not asking you to do that. I’m asking you to answer my question. ---Yes. Well - - -

30 Is there anything else in that second paragraph that you say, to your knowledge, was true? You can say, “I can’t identify anything” - - -?---Well, not, no, I, I, I can’t identify anything. It may be true or it may not be true.

Well, would it be accurate to say that the whole of the second paragraph is just something that was, as it were, made up for the purposes of giving a character reference?---Not made up but probably information given to me to put in a reference - - -

By who?---Well, I don’t know who, who drafted it and who sent it on to me.

40 But who would have given you information to write that you’ve written in paragraph 2?---Well, I, I can’t recall.

Well, you just said somebody could have given it to you?---Yeah, that's right

Well, who's the somebody?---And this is - - -

No. Who is the somebody?---I, I can't recall. This is - - -

Can't recall?---This is five years ago. I can't recall.

10 But is any of that that's contained in paragraph 2 true to your actual knowledge from observation or experience of Harry?---This, this is information given to me, so I can't say if it's true or not, to my knowledge.

MR DARAMS: But it's obvious, isn't it, Mr Tsirekas, that you were seeking approval to print off the reference so that it could be used by Mr Harry Huang. That's right? It is obvious - - -?---That's right but until I checked the draft and signed it and it was never signed.

20 Yes, but can I ask you this. Who were you doing a favour for in this instance? Were you doing a favour for Mr Chidiac or were you doing a favour for Mr Huang?---Well, I don't know where this original reference came from, whether it was from Harry or Joseph.

So you were either doing something for the benefit of Mr Chidiac because of his relationship with I-Prosperity or you were doing a favour for Mr Huang because of your relationship with him?

30 THE COMMISSIONER: Or it was another possibility, it was both of those things.

MR DARAMS: Yeah.---I can't remember where the original - - -

No, no, just - - -?--- - - - reference came from. It could have been either Joseph or, or Harry.

THE COMMISSIONER: Please, Mr Tsirekas. I want to move on if we can from this subject.---Yes, Commissioner.

40 You may be relieved to hear.---Yes, Commissioner.

But I'm not going to leave it until I get a straight answer from you.---Sure, yes.

Do you understand that?---And I'm giving a straight answer.

10 Okay. The simple question was, were you agreeing to send this character reference for Mr Harry Huang's use to do him a favour or was it to do Mr Chidiac a favour or was it for both of them?---To my best of my recollection, I think I may have got it from Joseph who may have got it from Harry who sent it on, but I can't recall who actually sent the original reference.

Now you might care to answer my question. Do you remember the question?---Yes.

Would you answer it, please?---Well, to the best of my recollection it would have been for Joseph.

20 As a favour to Joseph?---Well, not as a, a favour, it's a request to assist. I, I don't consider it, doing a reference as a favour.

Who were you trying to assist?---Pardon?

Who were you trying to assist by sending this letter on?---Well, I don't know where the original came, and that's an honest opinion, but if Joseph sent it on, I was trying to assist with a reference, a draft that was sent to me by someone.

30 I'll put it a fourth time. Who were you acting to assist by being party to this character reference?---I cannot honestly recall, Commissioner, I cannot honestly recall.

Well, it's pretty obvious but I want you to acknowledge it because I'm not prepared to just assume.---No, I don't know - - -

The person who would get some benefit out of this, surely, is Harry Huang, to get his kid into the school, correct?---That was the attempt but it never happened.

But if this character reference was provided by you, it would be of some benefit, it was expected anyway at the time to have been some benefit, for Harry Huang.---I, I agree. Yes, I agree. I agree.

Is that right?---I agree on that.

10 All right. And it was, therefore you were prepared to assist him in that respect, to get a character reference, so that would increase the prospect of him being able to get his child into the school that's referred to towards the end of it, is that right?---Yes.

Okay. And why were you agreeing to assist Harry in that way?---The mayor has many requests for references and I, and I assist where I can.

20 But why of all people would Harry Huang be given the benefit of your assistance?---There is no real reason, Commissioner, out of – my honest answer is, I would assist anyone who I can with a request like this. There is, it's not the first reference I've provided. Probably the first one I did outside council, that's why it was a bit harder to do than normal.

Well, is this the position? As at April 2017, Mr Huang's company, that's I-Prosperity, had an application into Canada Bay Council?---Probably working on their planning proposal.

So, yes?---Not, not a DA application, a planning.

Okay. Yes, a planning proposal.---Yep.

30 Which would be a necessary precursor to, in due course, getting development approval, is that right? Well, part and parcel of it?---Yeah, yeah. As long as it fitted the master plan and overall strategy.

So your relationship at the time of this letter, 19 April, was a relationship you occupied the position of mayor and he occupied the position, it seems, as a financial controller for I-Prosperity.---No, I wasn't - - -

MR LEGGAT: Chief Commissioner, that's wrong factually. Remember Mr Tsirekas had resigned from council during this period.

40 THE COMMISSIONER: I'm sorry?

MR LEGGAT: Mr Tsirekas was no longer on council. He'd resigned about the - - -

THE COMMISSIONER: As at this date, was he?

MR LEGGAT: We'll just get that – Mr Tsirekas will be able to answer, but my understanding is that he's - - -

THE COMMISSIONER: I'll see if I can clear it up. As at April 2017, were
10 you on council?---No.

You were still - - -?---I wasn't on council, no.

- - - pursuing your federal campaign, were you?---The year previously, but I
wasn't on council at that stage.

You were not?---No.

Had your run for Federal Parliament run its course by then?---Finished, yes,
20 yes.

Right, right. Well, then, although then that's, well, Mr – yes, all right, well,
we have now clarified you were not then the mayor.---No.

At the date of this email.---No.

So the background, however, to this is that you had known Mr Huang,
presumably from the time you were a mayor or the mayor. Is that the
context?---Hard to say, Commissioner.
30

Well - - -?---From the time I was mayor in 2015 to 2016, there wasn't a
relationship with Mr - - -

As at April 2017, is there any other context that you could have come to
have established a relationship of some kind with Mr Huang, the I-
Prosperity application?---No, Commissioner.

There's no other relationship?---No, no.

40 It's not as if you were fellow soccer players or some other context?---Oh,
no, no.

The only context in which you would have come to know him was via the council issues?---And his role in IPG, I-Prosperity.

Yes. That's right. All right. Yes.

MR DARAMS: Mr Tsirekas, if I could ask you now to be shown volume 1.1, page 132. Mr Tsirekas, this is an email from Mr Thornton to you on 8 October, 2015.---Yes.

10

Now, Mr Tsirekas, at this stage, October 2015, you had been a Wests Tigers supporter for many years, is that right?---Correct.

Mr Thornton refers in the second paragraph to meeting you at a grand final luncheon. Do you see that?---Yes.

Now, Mr Thornton also introduces that I-Prosperity has been a supporter or, sorry, sponsor of the West Tigers. See that?---I think it was Planet Tel.

20 An I-Prosperity company.---I, I wouldn't know. I wouldn't know.

When you say you wouldn't know, you'd know there's any relationship between Planet Tel and I-Prosperity?---(NO AUDIBLE REPLY)

Just did – can I ask you this? So in April, sorry, October 2015, weren't you aware that on the Wests Tigers uniform there was a badge of the I-Prosperity Group?---No.

30 No. So just then going back to what Mr Thornton says. He says, he refers to meeting you at a grand final luncheon. Do you remember meeting Mr Thornton?---Yes.

So you knew who Mr Thornton was when he sent you this text message? ---That was the first meeting and he sent it on to me.

But you knew who he was when he sent it to you?---Not really, no, no. I knew, I met him at that lunch but I didn't know of him.

40 Sure. But you recall you had met him at the grand final lunch and I take it he introduced himself to you.---He introduced himself, yeah.

Then it's the case that after you received this email you arranged or your assistant arranged to meet Mr Gu, as was requested or suggested in this email from Mr Thornton?---Can I just have a quick read, please? I, I think this, this refers to the first meeting in Rhodes, the one we had - - -

Yeah. My question was that after this email, your assistant arranged for a meeting between you and Mr Gu?---I don't know who arranged the meeting.

10 Okay. Could I ask that you be shown - - -

THE COMMISSIONER: Well, you did have a meeting with Mr Gu after this letter at some stage?---There, there was a meeting at Rhodes subsequent to this with a few others.

Mr Gu was present, is that right, and you were present?---I, I think, I think he was, Commissioner. I, I, I can't recall everybody. I can remember talking to the architect more, their architect more than anybody else.

20 MR DARAMS: Mr Gu's been described as a large man or a chubby man in some of the evidence.---Yes.

Does that accord with your recollection of Mr Gu?---Yeah, I, I, yeah, there, there was a large man there, yes.

Could Mr Tsirekas be shown page 136? Just scroll down the page slightly. So I just draw your attention to Ms Gibson, her email. She responds, "Dear Veronica, further to Peter's email, would like this meeting to take place 7.30am Wednesday, 14 October, Lid & Jar café."---Mmm.

30

Now, Ms Gibson was your executive assistant, was she?---Yes.

So either you've told her or she's arranged it, looked in your diary, but this meeting was arranged?---Yes.

It's clear that, and you do recollect meeting with Mr Gu?---Again, there were a few people at the meeting. I didn't know them by name. I think I met Mr Gu before - - -

40 THE COMMISSIONER: I think the question was did you meet Mr Gu? ---If he was there at the meeting, I would have met him, yes.

Was he?---I - - -

You were there.---I know but there were a lot of people there. It was the first - - -

MR DARAMS: How many was “a lot”?---I don’t know, three or four or five. There was a few there that I can recall.

10 You recall the meeting occurring?---It did occur, yes.

Could the witness then be shown page 138? Just scroll in. So I want you to scroll down, pull the page up a bit, please? Just keep going to the top of the page. I want to see the email. So we have an email from you, from your personal email account, to Mr Chidiac on 14 October, 2015. Do you see that?---Yes.

Below is a text of an email which I’m going to come to in a moment, but what you’re doing here is that you are forwarding or sending to Mr Chidiac
20 on 14 October the email or an email that appears below that. That’s right, isn’t it?---Yes.

Now, if we look at the email that you’re sending Mr Chidiac, it’s obvious if you read this email that it was from one of the persons who you had met with earlier that day, that is someone on behalf of I-Prosperity. Correct? ---Yeah, it appears that way. Yes.

Well, it’s obvious from the email, isn’t it, Mr - - -?---Yeah, it does. Yes. Yes. Who’s that from?

30 Well, I will ask you whether you can assist us with that, Mr Tsirekas?
---Sorry. I, I, I can’t.

No. Well, it could possibly be from Mr Gu?---I, I, I can’t tell you.

Well, it’s from someone on behalf of I-Prosperity who you met with on that day?---It, it, it appears that it was someone at the meeting there.

40 There was no one else from council who met with I-Prosperity that day was there?---Not at my meeting.

No. Not at your 7.30am at the Lid & Jar café?---No, not, no.

Now, it's obvious from this email that one of the topics discussed at the meeting was I-Prosperity's purchase of properties at Marquet Street. That's right?---From, from the email, it, it appears that way, yes, that they're talking about the five sites and 1 Marquet Street.

Well, that was what you were talking to, one of the things you were talking to I-Prosperity about on that morning, correct?---There was a lot of things
10 that we spoke about and one of those was - - -

One of those was the property that they had purchased?---About council's resolution on the books, yep.

So you also discussed council's resolution on the books, is that right?
---Well, they wanted, wanted to know what was holding that, the, the development of those sites and I said, "Well, if anything's going to happen, it needs to be done in a master plan and it needs to be done in consolidation."
20

So you've got this recollection now of this meeting, have you?---Everybody that - - -

Have you got a recollection now of this meeting? You're now telling us what happened at the meeting, so you've got a recollection of the meeting?
---This is common knowledge.

Mr Tsirekas, yes or no, have you got a recollection of what you discussed at this meeting?---No, no. But from reading this, from what I've just read,
30 they've referred to securing the five sites and verbal agreement with B1, which mean they must have had an understanding - - -

No, Mr Tsirekas, I can read the email. I'm asking you, do you recollect what was discussed at the meeting or not?---No.

No, okay. I want to draw your attention to the second-last paragraph. It says, "Joseph has also engaged me this morning and we are going to meet up with him tomorrow in regards to collaboration with Billbergia." So you see that?---I can see that.
40

The Joseph that this author of the email is referring to is Mr Chidiac, correct?---I don't know.

You don't know that, it must be Mr Chidiac.---No, I don't, I don't know. It could be any Joseph.

Well, how many other Josephs than Joseph Chidiac do you know?---I didn't write this email.

10 That's not my question. How many other Josephs than Joseph Chidiac do you know?---I, I know, I know a lot of Josephs.

THE COMMISSIONER: Mr Tsirekas - - -?---But I don't know who this is referring to.

Let's not fool around with this one. You would take the reference in this email to Joseph, it has up the top, it's attributed, forward Angelo Tsirekas to Joseph Chidiac. But in any event, you would assume, would you not, that the Joseph referred to in the second-last paragraph is Joseph Chidiac.

20 Would that be a fair assumption?---I, I wouldn't like to assume, Commissioner, unless I knew and I don't want to guess.

But you knew - - -

MR LEGGAT: Chief Commissioner, there's another obvious subject - - -

THE COMMISSIONER: What's that?

MR LEGGAT: There's another obvious Joseph. I don't want to name it, but he's been, he's given evidence and he's spoken about his collaboration with Billbergia.

THE WITNESS: Oh, Prolet, so yeah.

MR DARAMS: Did you discuss with IPG or I-Prosperity Joseph Jacob in relation to Rhodes West?---I can't recall.

See, I want to suggest to you that the obvious person who you discussed, or who was discussed at this meeting with I-Prosperity was Joseph Chidiac and that's the reason why you forwarded the email to Mr Joseph Chidiac.---I cannot tell you who that Joseph refers to. It's not my email.

THE COMMISSIONER: You came to understand, didn't you, that Joseph Chidiac undertook work for I-Prosperity in relation to its proposed development?---Not at that stage, no.

No, but you knew he did formally work for or on behalf of I-Prosperity in relation to the proposed development at Rhodes East?---Not formally.

10 Right, okay. Now I'll take "formally" out. You knew that he worked for I-Prosperity?---I, he, he was, he was - - -

You came to know that, didn't you?---He was assisting I-Prosperity and I – I'm sorry.

He was assisting.---Assisting but not - - -

In what way was he assisting I-Prosperity?---At that stage, I don't know.

20 All right, later?---I think he was help, helping them with getting meetings, if there was assistance dealing with firing up on things. I think he was doing other, other things outside, as I have learnt, for I-Prosperity. He was doing many things for them, as I have learnt.

Attending meetings with I-Prosperity people at which you were present? ---No, not at council. He wasn't there.

I'll put it again. Mr Chidiac attended meetings with I-Prosperity at which you were present on occasions?---At some, at, at some meetings, informal meetings, yes.

30 Okay.---Yes, Commissioner.

Thank you.

MR DARAMS: I note the time.

THE COMMISSIONER: Very well. We'll adjourn at that point in time and we'll resume tomorrow at 10 o'clock.

40

THE WITNESS STOOD DOWN

[4.00pm]

AT 4.00PM THE MATTER WAS ADJOURNED ACCORDINGLY

[4.00pm]