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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION VERDI

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY, 22 JULY, 2014

AT 1.47PM

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

THE COMMISSIONER: Yes.

MS MITCHELMORE: Yes, thank you, Commissioner.

10 Mr Hendry, we were just dealing with your phone conversation with Mr Cassidy after you'd done your initial scoping of the, the Hotel. Are you able to recall whether in that conversation you had any discussion with Mr Cassidy about the condition of the Hotel?---Oh, I didn't have any discussion about condition, no.

No. And did you have any discussion with him at that time about the potential for redevelopment?---Ah, no.

Did you have any discussion with him at that time about the price, the potential price?---No.

20 At the stage of having this second conversation with Mr Cassidy you hadn't yet obtained any information about the tender is that right?---No, correct.

So you then went and, and sought that information is that right, after this conversation with Mr Cassidy?---After this, yes.

Are you able to recall how long this second conversation went for?---Ah, no, I can't recall, I can't recall.

30 No. Just trying to, to get the timing, Mr Hendry, call charge records obtained by the Commission for Mr Cassidy's mobile phone indicate that there are two calls that he made to your mobile number. The first was on 9 November, 2005 but for only 30 seconds. There was a second call on 11 November, 2005, the call duration for that was 16 and a half minutes. Are you able to recall by reference to, to those timings, first of all dealing with the 9 November 30 second phone call, was your first conversation with Mr Cassidy longer than 30 seconds?---Um, look, I'm only surmising but you can only say hello in 30 seconds, I, I - - -

40 So, so it may be that, that his call to you was the phone call on 11 November, the duration of which was 16 and a half minutes?---Um, it could have been but I, I, I can't recall, I can't recall any details of the, that conversation.

Yes, but I'm just trying to get the timing. Is 11 November - - -?---Oh, I can't, I can't even recall the 11th, whether 11 November is, is the, you know, that time.

THE COMMISSIONER: Mr Hendry, sorry, I understood you to say that Mr Cassidy rang you out of the blue and you hadn't heard from him - - -? ---Yeah.

- - - from him for some time?---Yeah, yeah.

10 What we're interested in is if there, if there is this call from Mr Cassidy to you on 11 November is it more likely than not that that was the point in time when the conversation occurred about the Hotel?---More likely than not, yeah.

MS MITCHELMORE: Thank you.

Now you understood from the advertisement, Mr Hendry, that the tender was being managed by Forsyths?---Ah, that's correct.

Yes. And it's the case that the point of contact in the advertisement was Mr Stephen Hall?---That's correct.

20 And you made an inquiry with Forsyths on 16 November, do you recall making an inquiry?---Yes, I recall.

If I can show you Exhibit V31 and in particular page 219 of the brief. This isn't your document, Mr Hendry, but it's a running sheet that was maintained by Forsyths in relation to the tender. I can show you page 219 of that brief sorry, of that, of that document. There's a reference to your name at number 26, do you see that?---I see it, yes.

30 And do you recall speaking to Mr Hall on 16 November?---I, I, I recall I would have spoken to Mr Hall - - -

Yes?--- - - - because he was the reference on the tender in the advertisement.

Yes. And is it the case that you were sent by Mr Hall a Deed of Confidentiality?---Ah, I was, yes.

Yes. And if I can show you that document, it's page 261, it's been tendered, Commissioner.

40 THE COMMISSIONER: Yes, is V32, yes.

MS MITCHELMORE: It's V32. Yes, thank you. V32. Is that your handwriting on that document, Mr Hendry?---It is.

And is it your signature at the bottom of the page?---It is.

And it's been witnessed by, is that your wife's signature?---My wife, mmm.

Yes. Now is it the case that looking at the fax header that you've returned that early on the morning of 17 November?---Um, well, I've dated it 16 November.

Yes?---Um, I can't see on this particular 261 where it says the 17th but I returned it pretty – from recollection I returned it pretty quickly.

Yes. And indeed, the, the running sheet that you've got there has the indication that they've - - -?---That indication as well, yes.

10

- - - received it on the 17th?---Yeah.

Is it possible they received it on the 17th notwithstanding you've dated it the 16th?---Ah, it is possible they received it on the 17th, yeah.

Yes. And after returning the Confidentiality Deed is it the case that you were then provided with documents about the tender and about the Hotel? ---Ah, yes.

20

So if I could show you Exhibits V27 to 29, I'll just show you some, some documents, Mr Hendry, to get you to confirm that this is what you received. So you have there an information memorandum in relation to the Hotel, is that right?---That's correct.

And that's Exhibit V27 and you also have conditions of tender, is that right? ---That is correct.

And you have a copy of a contract of sale?---Yes, that's correct.

30

Yes?---Yes.

Is that the information that you recall receiving, Mr Hendry?---Ah, to the best of my recollection, yes.

Yes. Do you recall receiving any other information?---Um, no, I don't recall receiving any other information.

40

If I can take you to page 189, Mr Hendry, which is in the information memorandum, Exhibit V27. There's an indication there that the tenders close on 25 November?---That's correct.

And that was the same closing date as had been in the advertisement, is that right, do you recall?---To, to my best recollection it is.

Yes. Page 190 of that document, Mr Hendry, refers to just in relation to matters of history that the Hotel was purchased by the, the University of New England Union, do you see that?---I see that, yes.

And there was a reference to this being a sale by tender. That's consistent with your evidence, isn't it, about what Mr Hendry had told you about the University owning the Hotel?---Ah, what Mr Cassidy said.

Sorry, what Mr Cassidy told you?---Yeah, yes.

Yes, I'm sorry?---Mmm.

10 And you're of course aware at this time that, that Mr Cassidy was the Chancellor of the, the University?---I was, yes.

Do you recall whether there was any delay in your receipt of these documents?---Um, ah, there, there was a, I do recall there was a delay, yes.

And do you recall having a conversation with Mr Hall on or about the closing date in relation to the tender?---Um, I recall I had a conversation but I, I don't recall what the content of that conversation was but I did have a conversation.

20 With him on, on or around that time?---On, on or around that time, yes.

And is it the case that you submitted a tender for the closing which in the document is indicated as 4.00pm on 25 November?---Um, ah, that's, what, what document are you talking about here?

I'm sorry. So just taking you back- - -?---Yeah.

- - -to page 189 of the document- - -?---Yeah.

30 - - -that's in front of you?---Yeah.

So that indicates that the close of tenders was the 25th at 4.00pm?
---Correct.

Is it the case that you submitted a tender before that time?---I, I submitted a document um, which was a um, I suppose you'd call it a heavily-qualified tender.

40 But you did that after the 25th. Is that right?---Um, I can't recall. Unless I saw the document I can't, I can't- - -

Yes, of course. Well perhaps I can show it to you. It's Exhibit B35?
---Yeah.

It's page 320. And, Mr Hendry, is this the document that you recall sending to Mr Hall in relation to the tender?---It is, yes.

And you'll see it's dated 27 November, 2005?---Yes.

And it appears to have been faxed on that date from, from your premises. Is that right?---That, that is correct.

And just looking at the personal details just at the top of that page, they are or were the details that were current for you at that time?---ah, that's correct, yes.

10 Yes. Now, looking at the second page, Mr Hendry, is it the case that you sent a copy of this, looking underneath your signature, that you sent a copy of this to Watson McNamara and Watt?---Um, I don't have a recollection of, of doing it but I've said there cc Watson McNamara and Watt so I, I, I ---

You would assume that you did?---I would assume I did, did send it to them, a copy, yes.

20 Yes. Do you recall why you did that?---Um, no, I don't. Is there some reference to them?

They were the solicitors acting on the purchase, Mr Hendry?---Yeah, yeah.

Now, the, page 320, Mr Hendry, you've indicated that you received the information in relation to the tender on 22 November and then some further information on the 25th. Do you see that?---I see that, yes.

30 Which you considered to have placed your opportunity to tender at a disadvantage to those who had, who lived locally. Is that right?
---Um, it, it was very tight in relation to reviewing all this documentation and being able to put in a, you know, an informed tender.

Yes. And over the page in the first full sentence on that page you've noted that it didn't contain what you considered to be sufficient information for any potential purchaser to carry out adequate due diligence?---Yes.

And that was the opinion having reviewed the information in the time that you had available. Is that right?---Yes.

40 And notwithstanding those issues you've enclosed with the letter on page 322, you enclosed a tender form- - -?---Yeah.

- - -which indicated a price of \$3.5 million. Is that right?---That's correct.

But it was subject to certain terms?---Um, it, it was subject to certain terms but um, I'd suggest those terms were pretty, pretty um, ah, significant terms in that they required satisfactory financial due diligence and completion of legal due diligence which were fundamental to being able to put in, you know, a, a real bid, if you like.

I see, that they were fundamental to your- - -?---To me they were anyway.

To your, yes, I see?---Yeah.

And as you say, there's a number of matters, this is on page 324 at the top right-hand corner, a number of things that had to be, had to be done in your, in your view- - -?---Yeah, yes, correct.

10 - - -in order to make an informed bid?---Informed bid.

Yes, and they included that – looking at the last of those conditions, Mr Hendry, is that one that related to being informed about the bid?---Um, I don't know what you mean by that.

I'm sorry. Consent of the vendor to sell the property to a special purpose company?---Yeah.

Is that - - -?---Yes.

20

- - - something that related to the bid, to being informed about the bid, or was that something that was separate to that?---No, that was more a, um, a condition, if you like, in the sense that it wasn't – I, I was seeking, um, notwithstanding I was putting my name on there in a personal capacity.

Yes?---I wanted to have the flexibility to be able to look at how best to structure the, the purchase if I was successful.

30

Yes?---And, um, I didn't think it, um, it was, um, from my perspective, the best structure to have when the asset was actually in my name. So, I was looking at just giving, putting a, a heads up, if you like, that I would want to put it in another structure if I was successful.

Yes. Well, you've indicated as you said to Mr Cassidy that you would put in a tender but, but you wanted partners?---Well, that's, that's part of it.

Yes?---But, but it, it was, um, it was always going to be some form of structure.

40

Yes. I see. On page 321, just taking you back to your letter, Mr Hendry, you've indicated that you remained very interested in the property but you required at least a further two to three weeks - - -?---Yeah.

- - - to carry out the adequate due diligence and you'd expect that to apply equally to all other bona fide purchases?---Yes.

Is it the case that given the terms to which your offer was subject, there was an issue, wasn't there, as to whether or not this was a tender within the

meaning of the conditions of the tender, as they'd been put?---Um, could you just expand on that a bit for me, please?

Yes, of course. Well, perhaps if I can take you to page 302, so this is in Exhibit V28, so, just back – taking you back to the conditions of the tender?---Page 302.

Sorry, 102, Mr Hendry?---Sorry, 102.

10 Yes?---Oh, okay.

It's in the conditions of tender?---Yeah, yep.

And you'll see that in clause 2 there was a requirement to lodge, lodgement of a form in the manner specified would constitute an offer?---Yes.

And clause 4 of that document set out the manner in which a tender was to be lodged?---Yes.

20 And that, that included lodging a cheque?---Yes.

And that wasn't something that you'd included. Is that right?---No. That's correct. Right.

And it also included that you had to execute a counterpart of the agreement?---Yes.

And you had executed a counter part – I'm sorry, a counter part was the contract of sale for land?---Yes.

30 Wasn't it?---Yes.

So, and that wasn't something that you included either?---And that wasn't - - -

Is that right?---Correct.

And you stipulated a series of conditions in annexure A to your document? ---Yes.

40 Which, as you say, were highly conditioned?---Yes.

So, so there was an issue with this document, wasn't there, as to whether or not it was in fact a tender - - -?---Yes.

- - - within the conditions of tender?---Yes. Yes.

And it's the case, by reason of that, Mr Hendry, that you weren't at this stage really on risk because you hadn't at this stage made an irrevocable offer within the meaning of the conditions?---That would be correct, yes.

Now, in light of your criticisms of the level of information in the information pack, how did you settle on a figure of \$3 and a half million?--- Ah, well, I, I had originally done some, um, research on, on property sales of Hotel sales and I, I just come up with a number. I mean, the way I looked, the way I was looking at this was, um, because I had conditioned it so headily I basically was trying to stay, stay in the game, if you like.

Yes?---Um, so, I understood that I probably could've been knocked out in, in a sense but, but what, what I was looking at doing was saying I could've put \$13 and a half million there because I had the conditions there.

Yes?---So, I, I just – that, that was the sort of, that was my thinking.

So, you were factoring in, to some degree, giving a bid that was sufficiently attractive to ensure that you stayed in the race?---To stay in the race. Part of my recollection was that Mr Hall wanted me – he was testing me for my, my bona fides as to whether or not I was a, "tyre kicker or not."

I see?---So, I – that was my, that's my recollection.

Yes?---So, this, this was a way of invoking that view.

But nonetheless with a series of very - - -?---Highly - - -

- - - extreme conditions?---Conditions. Yes.

In relation to going forward with, with that offer?---Yes.

Now on the, 28 November, so, this is the Monday, so, the day after you've sent your fax on 27 - - -?---Yeah.

- - - do you recall receiving a response from Mr Hall?---Ah, I, I would've, I, I received a response. I can't recall exactly what Mr Hall said but I, I received a response, yes.

So, if I can show you, perhaps, Exhibit V36, page 325 of the brief, do you recall receiving that fax?---I, I recall receiving it, yes.

Yes. And, and there's a reference to – and this is Mr Hall's handwriting, the annotations, do you recall receiving a phone message from him on your mobile?---Um, I don't, I, I don't recall receiving one now, no.

But in this document you're instructed that any tender will need to be accompanied by a cheque for the deposit?---Yes.

And an executed contract of sale?---Yes.

So, they were two of the things that were missing from your original - - -?---
Yes.

- - - offer of 27?---Yes.

10 So, in other words by 2 December you had to make a firm offer and put up
the money?---Yes.

So, in effect you had from Monday afternoon - - -?---I, I had a, a week.

- - - until the Friday?---Friday, yeah.

Yes?---Not even a week, but, yeah.

Yes. So, effectively Tuesday to Friday?---Friday. Yes.

20 Yes. And can you recall what you did during that period?---Ah, a lot of
bloody work. No, I, I spent a fair amount of time just analysing or doing
more research, if you like, into how I was going to value this Hotel.

Yes?---Um, I had, I had looked at the, the numbers that were actually in the
information memorandum and I had concluded that, um, that the Hotel was
losing money, so, I, I was looking at it from the point of view that, that this
Hotel had no goodwill, did not have any goodwill, so, how, how was I going
to, how was I going to value that asset given, given those circumstances?
30 Um, and so I came, I looked at it from a, a net asset basis. I looked at it
from, you know, I looked at it and, and said, well, what, what does the
memorandum say it, it is? It's got poker machine licences, it's on a main
retail thoroughfare, it's a big building on a big block of dirt, and so I, I
looked at how, how might I value the, the, the assets of the, um, of the Hotel
on that, on that particular basis.

Yes. You've indicated it was a big block of, of land. Is that right?---Ah
hmm. Yes.

40 Is it the case that at this point you were considering the potential to, to
develop that land?---No. It was more – that was more about, um, how, how,
how you might value the property as opposed to looking at development. I
mean, I hadn't even, I didn't even know I was gonna win this project, win,
win this tender.

Yes?---That wasn't, that wasn't in, in my thinking per se.

Yes?---The size was more around, okay, what, what sort of value could you
get in the current market for a, a, a building this, of this size?

I see. Okay. Do you recall anything else you did in that week?---Um, I, well, I, I, I spent a fair amount of time just looking at all those aspects because as you said earlier, um, I hadn't been in the hotel game so I, I was doing some backend research if you like and just looking at how I, how I might come up with this value.

Yes. Do you recall whether you went up to Armidale?---Um, I certainly went up to Armidale to, to, to see, to see the property, yes.

10

Yes. And I think one of the matters that you indicated to Mr Hall as to why you wanted an extension was so that you could inspect the premises?---Yes. Yes. Yes.

So, is it the case that between 28 November and 2 December you went up to Armidale?---Yes. Yes.

Do you recall how long you went for?---Um, I, I, I recall I went for the day, I went for the day.

20

I see. And do you recall what you did on the visit?---Um, yes. I ah, I met um, um, Ms Panini (as said) at the, at the Hotel um, and I um, I talked with her about um, how the financial information had been put together for the information memorandum ah, because my, my recollection was that ah, the financial information had um, in, in the information memorandum had some notes which were suggesting to me that the Hotel was part of a group of assets the University um, had and that these, these financial numbers had actually been extracted from those information so that it wasn't actually, they didn't actually have numbers for the Hotel itself. And for me that was sending alarm signals because you then had to make an evaluation as to whether or not those numbers were a true reflection of the Hotel or, or the, or the biggest asset that they were incorporated with.

30

Is there any reason why you didn't ask for that information from Mr Hall? ---Um, well, Ms Panini (as said) was there as a representative of um, the, the University Union.

I only ask because Mr Hall was the person who was running the tender and the information memorandum had come from him?---The, these were questions that came after um, I'd, I'd, I'd received the, the tender documentation- - -

40

Yes?--- - - -and I'd done my numbers on that.

Yes?---And I was going, I was going to um, Armidale so it made sense that if I was seeing Ms Panini (as said) there I would ask her.

And is it the case that she referred you back to Mr Hall?---I can't, I can't recall.

Is it possible that she referred you back to Mr Hall?---She, she may have.

Is it possible that she did that without answering your questions?---Um, I, the only thing I can recall is that the discussion wasn't very long - -

Yes?--- - - -with Ms Panini (as said).

10

Yes?---So um, it could, may well have been that she referred me back, back to Mr Hall.

Yes. Now, do you recall did Ms Paini show you around the Hotel?---Ah, no, she um, introduced me to ah, Mr Snell, Steven, Steven ah- - -

Steven Snell?---Steven Snell, yeah.

20

And he was the then manager of the- - -?---He was the, he was the manager, yes.

Yes. Do you recall Ms Paini asking you at all in the course of your discussion about your interest in the Hotel why you had an interest?---No, I don't recall.

Now, you submitted on 2 December a tender form, contract of sale and cheque to Mr Hall. Do you recall doing that?---Um, I, I recall putting together a package.

30

Yes?---Um, I didn't recall how I got that to Forsyth's.

Yes?---Um, from earlier this morning I can see that it went to Forsyth's in, I went to Forsyth's in Armidale as opposed to Tamworth.

Yes, yes. Is it possible you submitted the documents in person?---Yes.

And the purchase price in the contract was \$2.65 million?---Yes, yes.

40

And the cheque was for \$265,000?---65,000, yeah.

So 10 per cent?---Mmm.

And you accept that that's a significant decrease in the purchase price that you'd put in your original letter to Mr Hall?---Highly conditioned tender.

Yes, highly conditioned tender, if we can call it a tender?---If we call, if we call it that, yes, yes.

And what do you say caused you to submit a tender significantly lower, was it the additional research that you'd done?---Yes.

Looking at the conditions of your- -?---There were, there were two element. One was the research I had done, but two also was looking at the Hotel itself, physically looking at the Hotel um, it was um, it was, it was a tired, I'd describe it as a tired building. So I mean that also had an impact on or influenced me in just looking at, you know, what, what's the final number I'm going to put on this thing.

10

Yes.

THE COMMISSIONER: Mr Hendry, can I just ask you, why, why was it that you formed the view that the, that the Hotel had absolutely no goodwill?---It was losing money.

Well, it might have been losing money but I'm not quite sure whether we're talking about the same thing. I always understood references to goodwill to mean that the business has a customer base?---Ah, well- - -

20

And whether or not it loses money, that might have something to do with bad management, but goodwill in the sense that it had a customer base? ---Goodwill normally means – to my mind goodwill means a premium because, you know, there's some value add there and- - -

So you were actually referring to the, to the profit that the- -?---Yes.

The profit or otherwise, not whether or not it actually had potential for improving the customer base of the Hotel?---Yes. I, I, I was just looking

30

--- You were looking at the profit and loss?---I was looking at the profit and loss.

Right. Thank you.

MS MITCHELMORE: And just going back, Mr Hendry, to the conditions that you placed on your original offer of 27 November?---Yes.

40

And if you wanted to go back to that document, that's, it's page 320 of the brief?---Yeah.

V35 is the Exhibit. Just looking at the fourth page of that document, is it the case that you had undertaken what you considered to be satisfactory legal due diligence?---No, not really.

And what about satisfactory inspection- -?---No.

--by a registered building inspector?---Ah, no. All I had done really was I'd done the financial, I'd done the financial due diligence.

So you'd done satisfactory financial due diligence?---Yeah, yeah.

So the third. But you hadn't actually done any of the other- -?---No.

--matters?---No.

10 And it was legal and financial due diligence I think your evidence was earlier that you considered to be fundamental?---Well, well it was fundamental in the sense that those were the conditions that I put in there on the 27th.

Yes. But ultimately you, you put in a tender- -?---Ultimately I made a commercial decision, when I worked out that this Hotel was not making any money or, and where the profit and loss was loss as opposed to profit.

20 Yes?---Um, that then sent me on a line of looking at how do I value the asset other than factoring in any sort of, in inverted commas, premium for customer base or anything like, anything else.

Yes. And you've indicated that by reason of your walkthrough you were aware of the state of the Hotel at the time?---Mmm, yes.

And was that something that you say you factored into the revised price? ---It, it had a, it, it had a um, influence, it influenced me just looking at the, at the condition of the property, the amount of money that may need to be spent on doing a refurb.

30 I see.

THE COMMISSIONER: Mr Hendry, wasn't, given that none of the conditions with the exception of the financials have been carried out at the state at which you actually did make an offer, none of those conditions had been undertaken by you, as it were?---Yeah.

40 And you said that the Hotel was losing money and the Hotel was in a poor condition. At this stage you say that you were effectively in it on your own. Is that the position at that point in time?---I'm, I'm, I'm, I'm in it, I'm in it on my own at the moment, yeah.

So what, what, why go ahead with a tender at all, given your natural aversion to risk?---Well, I, what I, I, I thought that when I valued it I would value it on a -- and there would have been a cost if, if I was the one who was left and the only one owning, owning the property um- - -

Well, that was, well, according to what you said so far, that was a very real prospect, wasn't it, because you'd put in a tender- - -?---Yes.

- - -on the basis that you were going to purchase this Hotel and at that point in time you had no one who had in effect committed to a partnership with you?---Correct, correct.

So you were going to be left, let's face it- - -?---Correct.

10 - - -holding the baby- - -?---Correct.

- - -if this went ahead?---Yes.

And I'm just curious, given your aversion to risk- - -?---Yep.

- - -why you, why you wanted to do that at all, why you wanted to go ahead with a tender at all?---Well, what um, when I had that um, first discussion with John and he hadn't, and he didn't say that he was going to be in there or not, but I'd worked, I'd worked with the guy for 20 years so in the back
20 of my head my perception was that I'd at least have one partner.

So when, when you submitted this tender you were, you were in effect banking on Mr Cassidy having some interest in the Hotel?---In, in, in my mind I thought that at the end of the day Mr Cassidy would be involved in the Hotel.

Right?---And that was, that's, that's me.

30 MS MITCHELMORE: Mr Hendry, did you have any discussions with Mr Cassidy between being notified of the extension on 28 November and submitting the, the final formal tender on 2 December?---Look, I, I can't recall having, I can't recall having any discussions with him during that period.

Is it possible that you did?---It's, it's, it's possible. Um, I can't recall, I can't recall having any discussions with him.

40 Now the phone charge records obtained by the Commission indicate a, a brief, again 30 second call, from Mr Cassidy's mobile to your mobile on the afternoon of 28 November. Do you recall any conversation with him on that day?---No, no, no.

What about on 1 December, the date before you submitted the tenders?
---I, I can't, I can't recall, I can't, I can't, I can't recall.

Again, call charge records that the Commission has obtained indicates that there were a number of conversations, well, sorry, a number of calls placed

from Mr Cassidy's mobile to your mobile on that day. The, on one occasion or two occasions you spoke or there was a call for a brief duration?---Right.

For one minute and 30 seconds respectively?---Right.

But on another occasion the call was placed and it continued for about half an hour on 1 December?---Mmm.

10 Now if you're speaking on the day before the closing date for the tender - - - ?---Yeah.

- - - for a period of half an hour - - -?---Yeah.

- - - you would have been discussing the Hotel and the bid you were proposing to make wouldn't you?---Ah, I – well, I can't recall what I was talking to Mr Cassidy about at that time but that's a, a reasonable assumption I'd, I'd say but I just can't recall what, what we talked about.

20 Can you think of any other reason why you would have been speaking to him for half an hour on 1 December?---No.

THE COMMISSIONER: Can I just hark back to the question I asked you a minute ago, Mr Hendry - - -?---Yeah, yeah.

- - - where you ended up acknowledging that in the back of your head you understood Mr Cassidy was going to be a partner in this Hotel, can I just come back to that, having heard that you did have this half hour phone call on 1 December, 2005 - - -?---Yeah.

30 - - - does it assist you in determining whether or not you in fact went into the tender on 2 December in the knowledge that you would have a partner? ---I, I can't say I, I can't say at that stage that I, I had a partner.

Well, then what would have been point of the discussions with Mr Cassidy about, about the Hotel?---Yeah, I can, yeah, look, I can't recall, I can't recall what we discussed on the, on the 1st, I can't recall it.

40 Mr Hendry, can I make it perfectly clear, because we – in the event that we have to make findings based on your evidence you need to understand what the inferences are - - -?---Yeah.

- - - available, what inferences are available from the combination of circumstances that have been put to you?---Yeah, look, look, it's more likely that - - -

No, I just want to make it clear so we're all - - -?---Yeah.

- - - we're all the same page. You, you need to take into account that the inference is very strongly available that the half an hour conversation on 1 December was in fact about the level of the bid and what should be tendered as it were having regard to your inspection of the Hotel and that that discussion took place with the expectation that Mr Cassidy was going to be a partner in the purchase so all I'm saying is that that's the inference that's available from those circumstances?---Yes.

10 Do you want to comment in relation to that or not?---I, I think that's a fair enough inference.

MS MITCHELMORE: It's the case isn't it, Mr Cassidy, that - - -

THE COMMISSIONER: Mr Hendry.

20 MS MITCHELMORE: I'm sorry, Mr Hendry, that you would have wanted to give Mr Cassidy some idea of the price to make sure he was comfortable with, with investing?---Um, I, I wanted to – it was my price um, because I was the person who was putting in the tender I wanted to be totally comfortable with, with what, what the price was um - - -

But it was the case that otherwise if you, if you weren't discussing the price with, with him - - -?---Yeah, yeah, no, no, I agree, I agree with what you say.

You were committing, you were committing him to a not insignificant financial outlay potentially - - -?---Potentially.

30 - - - where you didn't know what he might be prepared to pay?
---Potentially, yes.

And that could have left you significantly exposed on a venture in which you - - -?---It could have, yes.

- - - had no experience?---Yeah, it could have.

And you didn't want to undertake on your own?---Yes, yeah.

40 Is that right?---I agree, yeah.

And you knew from your inspection that significant funds would be required to refurb, is that right, to refurbish the premises?---Ah, I could see that significant funds could be required to refurb, yes.

Or to redevelop potentially?---Or, or to redevelop, yes.

But they, that would be in addition to the price - - -?---Correct, correct.

- - - that you were paying for the asset?---Correct.

Yes. And as a highly experienced and conservative - - -?---Yeah.

- - - former chief financial officer you just wouldn't have submitted a tender would you unless you knew with a high level of certainty what your contribution was going to be and how it was going to be financed?

---Correct, correct.

10 And do you have a recollection of telling Mr Cassidy that you were proposing to submit a tender of \$2.65 million?---Um, I, I – more likely than not I, I did say that that's what I was going to do.

And it's likely that you did so in this phone call?---Ah, more likely than not it was, yes.

And do you recall whether Mr Cassidy indicated one way or the other about the figure?---I don't, I don't recall, I don't recall.

20 Is it possible that he did so?---It, it's possible he did so, it's possible that he didn't but he possibly did so.

In your experience with him if he thought an offer was too high or too low would he tell you?---Um, he, he – more likely than not he would, yeah.

And he's not going to leave you to commit him to - - -?---Yeah, more likely than not he would.

30 He's not going to leave you to commit him to a figure that he's not happy with?---Yes.

Did Mr Cassidy tell you in this call that he was aware of how many tenders had been made?---Ah, I, I don't recall, I don't recall.

Is it possible that he did so?---It, well, it could be possible, yes.

You don't have a recollection of whether he did or not?---I don't have a recollection of it, no, no.

40 Is it possible that he told you what the amounts of the tenders were?---Ah, it's, it's, it's, it's possible um, but I just can't recall, I just can't recall.

Is it also possible that you discussed in this conversation now that you'd seen it what you might do with it in terms of refurbishment or redevelopment?---Um, I think that was probably a bit premature just in terms of, yeah, I, I – that was a discussion that we had later in um, in the month I would suggest, not, not at this time.

But there may have been some discussion because of it?---There may have, there may have, it's possible, there may have been, I can't, I can't recall, I can't recall.

But it's the case isn't it that you were factoring or having to factor in additional funds - - -?---I was - - -

10 - - - in order to refurbish the Hotel?---I was, had to factor in additional funds for refurbishment, I had to factor in additional funds for whatever else was going to be done with the Hotel.

Yes. And that may be something that Mr Cassidy would have been interested in if his exposure was going to be more than the purchase price, there would be an additional in your mind figure to deal with refurbishment?---There would have had to be, yes.

Now you've indicated that you submitted the tender visiting the office of Forsyths - - -?---Yes.

20 - - - in Armidale?---Yeah.

And if I can just show you page 329 of, of the brief which is part of an exhibit, yes, Exhibit V37, and that's your handwriting on the cover page, Mr Hendry?---It is, yeah.

And at page 329 you'll see you've dated the, the document 2 December and there's a - it's been witnessed by someone called Fay Weis?---Weis, yes.

30 Do you know Ms Weis?---No, no.

Do you recall having the document witnessed?---I don't recall having the document witnessed, no.

And then on the subsequent page there's a cheque. Is that right?---That's correct.

And that's a cheque, a personal cheque?---It is, yes.

40 At 330, and then on page 331 you'll see that's your signature on, on the contract?---It is.

And it's been witnessed again by Ms, Ms Weis, or, Weis?---Yes.

So, that is on 2 December a tender that complies with the conditions of tender?---Yes.

And is it consistent - actually, can I show you page 339 of the brief? This, Mr Hendry, forms part of the conditions of sale, and I just wanted to point

out to you – there's a hand written amendment at the bottom of that page.
Do you see that?---Yes. Yes.

Is that your handwriting?---That is my handwriting, yes.

And that was the condition that was in similar terms to the last of the
conditions that you put on your - - -?---Correct.

- - - letter of 27 November. Is that right?---That's correct.

10

And the purpose of that was to enable you to establish a, a company or a
trust for you to put the, the Hotel in the name of. Is that right?---That is
correct.

And that would enable you to have other persons involved?---Multiple
partners.

Including Mr Cassidy. Is that right?---Yes.

20

Is it the case, Mr Hendry, that on 5 or 6 December you were notified that
your tender was successful?---Ah, yes.

Can I show you page 326 of the brief? Do you recall having a phone
conversation with Mr Hall to tell you about that?---Ah, not specifically but
the content of it I agree with, yes.

Yes. And is it possible that you, you spoke to, or, do you recall speaking to
Mr Cassidy on the afternoon of 5 December?---I, I don't, I don't recall, I
don't recall.

30

Is it possible that you did?---It's, it's possible, yes.

To, to tell him that you, you had succeeded in the tender?---It's possible,
yeah, it's possible.

Did you meet with him, with Mr Cassidy at some point after that?---After
what?

40

After you were successful on the tender?---What, what day are we talking?

Well, is it the case that after you succeeded on the tender you went back up
to Armidale?---Oh, yes, yes.

And is it the case that you met with Mr Cassidy in the course of that visit?---
Yes, yes.

And again is it the case that you went up and back in a day?---Yes.

Now if I can show you page 357 of the brief, this is a, a press release, Mr Hendry, from 9 December 2005 in relation to the sale of the Hotel. Thanks. You're quoted in the release as saying, With the assistance of a local manager and potentially a local investor, I'm committed to continuing to run the Tattersalls as one of the premier hotels in Armidale?---Yes. Yes.

Do you recall Ms Paini consulting you about the terms of the, of the release?---Um, I recall, I think I recall Ms Paini sending this to me.

10 I see?---For, for comment, I think, from memory.

I see?---Yeah.

So, you, you looked at it before it was released. Is that right?---Yes.

Now, there's a reference there to, to a local manager. By the stage of this release can you recall if you had a manager lined up for the Hotel?---Um, it's, it's, it's a bit early, I think, from my, you know, my recollection would be it's a bit early for having a, a manager identified.

20

And you've also referred to potential investors, potentially a local investor. Do you see that there?---I do.

You were referring to anybody in particular there?---Well, to, to my mind it was Mr Cassidy, John.

Yes. It was the case, wasn't it, that by this time, 9 December or at this, on this day, you had a meeting with Mr Walker, an accountant?---Yes. Yes.

30 And was Mr Walker an accountant that you had or had managed your affairs previously?---He had, he had, yes.

And it's the case that on 8 December, the day before the release went out, you'd met or you'd asked for a meeting with him. Do you recall ringing him and requesting a meeting?---I, I would suggest I, I would've had to have done that to have a meeting with him on 9.

Yes. And you met with him, I suggest, on 9, at quite early in the morning, 8.00am?---We're early starters.

40

Yes. And had Mr Walker previously acted in relation to Vercot?---Um, look, I, I can't – he, he certainly has acted for Vercot but I can't recall exactly when he started acting for Vercot.

Yes. It may have been after this time?---It, it, it may have been after.

Yes. Do you, do you know whether he also dealt with Mr Cassidy's affairs?---Um, again, the timing, I, I, I understand he, he was looking after

John's affairs but exactly when he actually started looking after John's affairs I, I, I can't recall.

Can't recall. What do you recall of, of the meeting with Mr Walker on 9? Do you have a recollection of that meeting?---Um - - -

This is your first meeting with Mr Walker?---Was it the first meeting?

10 Yes?---Ah, it, it was just to discuss in general terms the, ah, the success of wining the Tattersalls Hotel and how it might be structured, how, how, how the entities might be structured to own the Hotel.

Yes. And, and by this time you'd had a discussion with Mr Cassidy about what level of respective interests you would have in the Hotel?---To my - I would have, yes, yeah.

Because it's the case, isn't it, that you gave Mr Walker an indication of what your respective levels of interest would be?---Yes. Yes.

20 Is that right?---Yes.

And can you recall what that, what that was?---Um, I, I'd, I suggested to him, um, two thirds, one third, or I suggested to him that if we, we were, if we were successful in getting another investor, um, that it'd be a third, one third, one third, but for the purposes of the meeting it was one third myself and two thirds John.

With the potential, as you say, for, if you found another investor - - -?--- Investor.

30 - - - they could take half of Mr Cassidy's - - -?---Half.

- - - and then you'd each have a third?---Have a third.

Is that right?---Yes.

Is it possible that you spoke to Mr Cassidy about that on 1 December in your half hour phone conversation?---Oh, I, I, I can't, I can't recall, I can't recall.

40 THE COMMISSIONER: It was obviously some time before 9 December, though?---It was, it was before 9 December. Yes.

Yes?---Yes.

MS MITCHELMORE: And in your meeting with Mr Walker you've referred to Mr Cassidy by name. Is that right?---Yes.

It wasn't a secret in your mind that he was investing and he'd agreed to invest?---It was, yes, correct.

And in broad terms that the structure you discussed was setting up some unit trusts?---Yes.

Is that right? And they would hold the assets of the splitting up the property and the operational side. Is that right?---Correct. I mean, Mr Walker suggested that that's the way we might set it up.

10

I see. So, it was the case that this initial meeting you were just giving him some information about what the - - -?---Yeah.

- - - assets and business was?---This, this is, this was, you know, it was a, it was a Hotel and this broadly was, um, potentially the shareholding, could he come up with a structure that provided flexibility to add partners that provided, um, um, a level of, um, um, risk cover in relation to indemnities and all those sorts of things and was, um, also tax efficient. There was a whole number of parameters - - -

20

Yes---? - - - that, that I asked him to, to look at.

Yes.

THE COMMISSIONER: Ms Mitchelmore, can I just ask you to pause for a minute?

MS MITCHELMORE: Of course.

30 THE COMMISSIONER: I think you'll be some while with Mr Hendry, will you?

MS MITCHELMORE: Yes. Yes.

THE COMMISSIONER: I'm just noticing Mr Newlinds is here for Mr Griesz.

MR NEWLINDS: That's right.

40 THE COMMISSIONER: And I don't think we're going to get to Mr Griesz today.

MR NEWLINDS: Thank you, Commissioner. Could we ring our learned friend's solicitor tonight and try to get a - - -

THE COMMISSIONER: Yes. I think – yes, certainly. It'll be some time tomorrow but that's the best we can do at this stage and I think that might also go for Mr Stein if he's here.

MR NEWLINDS: All right. I'll pass that on if I see him.

THE COMMISSIONER: All right.

MR NEWLINDS: Thank you for your courtesy.

THE COMMISSIONER: Thank you.

10 MS MITCHELMORE: Yes, thank you, Commissioner.

Can I just show you, Mr Hendry, this, this isn't your note of the meeting but can I show you just on the screen page 358? And you'll see that that's – if you take it from me, these are Mr Walker's notes of the meeting?---Mmm.

And as you say or as you said there's a reference to, to you and Mr Cassidy and what your interests would be. And is it the case that what Mr Walker has otherwise noted are the types of matters that you were discussing in this initial meeting?---Yes.

20

So, things like finance?---Yes.

And he's noted that it would be funded all from own resources?---Yes.

And control – so, equity percentage?---Yes.

And reporting what the lines of reporting would be. Is that right?---Yes. Yes.

30 And then there's some discussion of what the structure would be?---Yes.

And whether there was capital gains issues?---Yes. Yes.

And capital expenditure. Was there discussion about the refurbishment or, and funding that would be required for that?---Um, well, he, he's put those words there.

Yes?---So, I, I suspect that some, there were some words about it.

40 Yes?---But I, I can't recall what - - -

You don't have a recollection of that?---Of – no.

And is it the case that Mr Walker gave you Mr Stein's – the details for Mr Stein?---He did.

And Mr Stein was a lawyer at a firm called Brown Wright and Stein?--- That's correct.

Is that right? And was that so that you could obtain some legal advice around the structure that you ultimately might select?---Yes. He, he suggested that Mr Stein was the, um, the person to see in relation to the putting in place the legalese for the, for the structure.

Yes. Okay. And do you recall speaking to Mr Cassidy on or around 9 December?---Um, I, I, I don't recall, I could have but I, I don't recall.

10 Call charge records from the – obtained by the Commission – indicate a 12 minute phone call on 9 December from Mr Cassidy's mobile to yours some time after the meeting at, at 8.00am, it was an early meeting as you said? ---Right. Yep. Yep.

Is it likely you would've spoken to him about the meeting that you'd had with Mr Walker?---I, it is, it is possible, yes.

It's likely, is it?---It's likely. Yes.

20 Now on the – can I show you page 361 of the brief? This is a letter written from you to Mr Simon Griesz. Do you see that?---I do.

And Mr Griesz was a, a lawyer with Mr Stein at, at Brown Wright and Stein. Is that right?---That's correct.

And you've sent him a counterpart of the, the contract for purchase. Is that right?---Yes.

30 And the tender document, so, perhaps also the conditions of tender, and you've indicated that you wanted to retain that firm to act as the buyer's solicitor?---Yes.

So they were doing the conveyancing part of the transaction for you. Is that right?---The, the conveyancing and the seeking, seeking the liquor licence.

I see. Yes?---With, with Mr Griesz.

Yes?---And Mr Stein was looking at the structure of the, the trust deeds, so he's looking at that side of it.

40

I see. So, there were two - - -?---Two, two, there was two teams.

Two teams as it were, yes?---Yes.

And there may have been some cross over as between the teams, but they were doing those two things?---Correct.

Now you'll see that document's dated 13 October 2005. Is that just a big mistake on your part?---Yeah, yeah, that's a mistake, yeah, that's - - -

Yes. The 13 December would be - - -?---Yeah.

Yes?---A lot going on that week.

10 Yes. And it indicates, Mr Hendry, that you were, Looking forward to discussing the transaction with you tomorrow. Do you see that at just at the bottom of that - - -?---Yes.

Yes?---Yes.

Do you recall meeting with Mr Griesz and or Mr Stein on 14 December?---Um, I, I recall I, I, I met both gentlemen.

Yes?---Um - - -

20 So, you had a meeting and the two of them were present?---Um, I, I, I think the, the first meeting I had was with Mr Stein.

I see, yes?---On the, on the, um, on the trust structure.

Yes?---And then whether it was immediately after or not I can't recall but then I, I would've had a discussion with Mr Griesz pretty soon after.

I see. Was it on the same day as you recall?---I honestly can't recall, I can't recall.

30 Yes. It, it may have been on the same day?---It may have been on the same day.

You just can't recall?---Yeah.

Yes. And is it the case that you discussed, or, do you recall what you discussed in relation to the structure?---Um, he - it, it - the, the discussion was around, um - Mr Walker had come up with a structure.

40 Yes?---And that it was - could Mr Stein put that in place, if you like.

I see. And this was the Unit Trust structure?---The Unit Trust. Yes. Yes.

So, the, the property is held by corporate trustee with Unit Trust - - -?---Trust - - -

- - - sitting underneath that?---Correct.

And similarly you had a - - -?---Corporate trustee.

- - - trustee, corporate trustee for the operation side?---For the operation.

And you had unit trusts, or a - - -?---Under, under that - - -

Or a unit trust?---A unit trust under that.

Just one unit trust sitting under that?---Correct.

10 And one of the unit trusts would be your interests?---Correct.

Is that right?---Yes.

And the other unit trust would be Mr Cassidy's interest?---Correct.

And then with the operating trust, sorry, the operating trustee - - -?---Yes.

- - - there was only one unit trust under that?---Yes.

20 And you and Mr Cassidy would both hold units - - -?---Yes.

- - - but in accordance with your - - -?---The same proportions as was in the owner, owner of the assets.

Yes. So, with the unit trusts in the property you would have a third entitlement and Mr Hendry, sorry, Mr Cassidy - - -?---Mr Cassidy.

- - - would have two thirds?---Two thirds, yeah.

30 And then with the unit trust for the corporate trustee you - - -?---The same, the same.

- - - it would be the same division. Yes. Now, is it possible at the point of, of your meetings with Mr Griesz and Mr Stein that you'd spoken to Mr Cassidy about development options for the site? So, this is around 14 December?---I, I, again I can't recall. It's possible.

Yes?---But I can't recall.

40 Commissioner, I tender that document.

THE COMMISSIONER: That's the letter to - - -

MS MITCHELMORE: Yes. The letter to Mr, Mr Griesz, yes.

THE COMMISSIONER: Yes. That will be – I'll just note the date is 13 October but it's in fact 13 December - - - ?---Of December.

- - - 2005, letter to Mr Griesz is Exhibit V40.

MR MOSES: Commissioner, is the press statement going to be handled as an exhibit as well, the press release?

MS MITCHELMORE: Sorry, did I not tender that?

MR MOSES: No, not yet.

10 MS MITCHELMORE: I'm sorry, yes, I should tender the release. I'm sorry.

THE COMMISSIONER: The press release.

MS MITCHELMORE: The press release of 9 December.

THE COMMISSIONER: All right. Well, I'll mark the press release Exhibit V40, and then the letter Exhibit V41.

20

#EXHIBIT 40 - PRESS RELEASE- SERVICES UNE ANNOUNCES SALE OF TATTERSALLS HOTEL DATED 9 DECEMBER 2005

#EXHIBIT V41 - HANDWRITTEN LETTER TO SIMON GRIESZ DATED 13 OCTOBER 2005

30 MR MOSES: Yes, I thank my friend if we could have copies of those exhibits.

THE COMMISSIONER: Thank you. Yes.

MR MOSES: We'd appreciate that.

MS MITCHELMORE: Now, Mr Hendry, do you recall after that meeting just ringing Mr Walker and just saying that he should speak to Mr Stein so you could figure out who would do what?---Yes. Yes.

40 And do you recall saying anything to Mr Walker about Mr Cassidy in the course of that, that phone call?---In, in, in what regard specifically?

Anything in specific – just in relation – did you mention Mr Cassidy in that call to, to Mr Walker?---Um, I would've identified him as, um, as the potential shareholder, if that's what you mean.

Oh, no, I'm sorry. I'm talking about – you've said that you spoke to Mr Walker?---Yes.

So, you had a phone call with Mr Walker after the meeting with Mr Griesz and Mr Stein?---What day are we talking, sorry, what day - - -

This is 14 December?---Oh, 14 December.

Yes?---Okay.

Yes?---Sorry.

10

I'm sorry?---Yeah.

Sorry to not be clear?---Yeah.

So, on 14 December - - -?---Yeah. December.

- - - after your meeting did you have a phone call with Mr Walker just telling him that he needed to speak to Mr Stein?---Um, look, again, I can't recall but it's possible, yes.

20

And it's likely at this time that you were involving Mr Cassidy in terms of the progress of your discussions?---Ah, it, it would be, yes.

As a general matter could you recall how frequently you were speaking to Mr Cassidy during this period?---Um, I, I, oh, I can't recall, I can't recall how many times.

Yes?---But I would've been speaking to him on an irregular basis, if you like, irregular meaning I don't know, once every few days, I suppose.

30

Yes?---I, I'm not sure.

Yes. It's the case isn't it throughout this process that you dealt with Mr Walker and Mr Stein and other lawyers at, at Brown Wright and Stein without directly involving Mr Cassidy in the correspondence?---Ah, yes, I, I, I basically ran the whole um, accounting, legal side of the - what needed to be done.

40 And did you do that the request of Mr Cassidy?---Ah, no, that's me, I just get in there and do it.

Now on 19 December you had a, a phone call with Mr Griesz about needing an extension of the completion date, do you recall that - - -?---Yes.

- - - phone conversation? And you may have outlined in the course of that call what the, what Mr Walker was anticipating in - - -?---Yes.

- - - relation to the structure?---Yes.

In that same conversation, and perhaps I could just show you a note, again it's not your note, Mr Hendry, but it may assist your recollection, it's page 395 but it's a, it's a dreadful copy, I have to apologise, the screen might be better, Mr Hendry. You'll see at the top of the page there's a note directly under "Attendance notice", "Proposed guy who will hold licence, he is back next week." Do you see that?---Yes, yes, I do, yeah.

10 Was that a reference to the person who would have the liquor licence?
---Um, I, I'd suggest it is, yes.

Is it the case that by this time, so this is now 19 December - - -?---Yes.

- - - that you've lined up somebody to manage the Hotel?---Ah, yes.

Is it possible that that had happened by this time?---It is, it is, yes, it is.

And do you recall who that was?---Um, it was um, ah, Phil Franklin.

20 Phillip Franklin?---Yes.

And do you recall how you came to know of Mr Franklin?---Um, he um, he was a ah, a, a friend or an associate of um, Shaun Cassidy.

I see?---Um - - -

Shaun Cassidy is?---Um, John's nephew.

30 I see, yes?---Yeah.

And is it the case that Shaun Cassidy had put you in touch with Mr Franklin?---Um, I can't recall whether Shaun had put me in touch with him um, yeah, I, I think it might have been John who put me in touch with him but, but not, not - I don't think it was Sean, I can't, I can't, honestly, I can't recall, I can't recall.

Yes, but, but you knew he was a - - -?---He was a, he was a - - -

40 He had, he had a connection with Mr Shaun Cassidy, is that right?---He had a, he had a connection with Mr Shaun Cassidy.

Yes?---Yes. He was um, managing another hotel in Armidale - - -

I see?---He had, so he had a um, a licence, a hotelier's licence which was critical to us um, critical to be able to lodge a application for a licence in the name of the new entity because I had to, I had to have a um, an approved person for the purposes of ah, making application for the licence - - -

Yes?--- - - - and that had to be, that had to be done as part of the um, it was a matter of priority - - -

Yes?--- - - - because come the end of um, January when settlement took place we needed somebody there who actually um, could – had a licence and, and, and the Hotel could continue to trade.

Yes. And it was actually a condition of the, the contract of sale that you'd entered into that you had to provide those details to the vendor?---Yes.

10

Is that right?---Um, from memory I think yes, you're right, yeah.

So that, so that they and it would be the vendor who would lodge the, the documents with the Licensing Court and get the licence organised?---Yes, they - - -

Because they would need to get a transfer, is that right?---That, that's, that's correct, yes.

20

And do you recall there was some time criticality in relation to that in the contract?---Um, well, Mr Snell was leaving so um, there was, there was – that was going to put a um, sometime critical point around when we were able to or, you know, when, when I was able to get a ah, a new licensee in but that's, that's as all I can recall at the moment.

Okay. Now do you recall meeting Mr Franklin?---Ah, I, I do recall it, yes.

And did you meet with Mr Franklin before you made him the offer to manage the Hotel?---Yes.

30

And do you recall where you met him?---Um, I think, I think met him in a café.

Ah, in - - -?---In Armidale.

In Armidale?---In Armidale, yeah.

Yes. And was it just you and Mr Franklin at the meeting?---Um, I think Mr Cassidy would have been there, I think John would have been there too.

40

That's John Cassidy?---John Cassidy, yeah.

Yes. Was Mr Shaun Cassidy there?---He, he could well have been there too, I'm not um, he could have been, I, I can't, I can't recall whether he was there.

Yes. Well, he was the - - -?---He, but he was the - - -

He was the contact as it were - - -?--- - - - pivotal point, yeah.

- - - between Mr Franklin and you and Mr John Cassidy, is that right?
---Yeah, yes.

So it is possible that he was at that meeting?---Yes.

And is it the case that you subsequently offered him the position to manage the Hotel?---Yes.

10

And he was subsequently the person that you identified in the liquor licensing application - - -?---It was.

- - - as the person who would manage the Hotel?---It was.

Now there's a reference on that page, Mr Hendry, to the name, and it's just next to that note about proposed guy who will hold licence, there's reference to a Rob someone, it might be, it might be Graham Gusheh?
---Braham.

20

Braham. I see. Who was Mr Gusheh?---Um, he, he was a um, an employee of um, Abigroup or (not transcribable) he was a, he was a construction, a construction manager.

I see. And can you recall, is it likely that, that you would have mentioned his name to, to Mr Griesz?---Um, I don't, I don't recall whether I, I don't recall whether I would have or, or not um, who, who, this is Gillis Delaney Brown so this is, this is - - -

30 This is, this is a file note, Mr Hendry of Mr - - -?---Oh, this is Simon Griesz, whatsaname.

- - - Mr Griesz?---Yeah, yeah.

Mr Griesz is taking a note of a - - -?---Well, I would have, I would have had to.

Yes?---I would have had to.

40 Do you recall what involvement Mr Gusheh had in this transaction around this time?---Well, he, because he was a um, a, a construction um, ah, a very experienced construction manager - - -

Yes?--- - - - he um, he was going to have a look at um, the structural integrity of the building and um, you know, potential costs for doing something with the building, refurbishments and stuff like that.

I see?---So he was a, he was just a um, a long-term employee of Abi's with a lot of experience that, you know, you could rely on to get a, an opinion without it being pretty, pretty straight as to what he thought was going to, what, what sort of money you needed to spend or what you needed to do to -
- -

Yes?--- - - - fix the building.

10 Yes. And whose idea was it to, to get him involved to have a look at the place?---Um, well, I, I, I hadn't, I hadn't asked him to - I think it was John's idea.

Right?---Yeah.

And is that something that by reference to this file note it was discussed around this time?---Ah, well, his, his name is there so something, something um, I can't, I can't, I can't recall why his name is on a, on a page on 19 December but his, his name's there so he must have talked about it.

20 Yes. But you're saying it was Mr, Mr Cassidy's idea suggested to you that he come and look at the, the Hotel?---Yes.

And that, that may have occurred, that conversation with Mr Cassidy may have occurred before or on or about 19 December given that it mentioned it in a - - -?---Given that timing, yeah.

In a phone call with Mr Griesz on 19 December. Is that right?---Yes.

30 Yes. Now, can I show you page 385 of the, of the brief. I won't tender that document but if we can provide, can we just provide a copy? Yes. Page 385. This is an email, Mr Hendry, from it looks like the assistant to Mr Walker?---Yes.

And that's sent to your Bigpond address. Is that right?---Yes.

And that attaches his recommendations for the structure for your venture. Is that right?---It does.

40 And again that hasn't been sent directly to Mr Cassidy, is that right?---No, it's been sent to me.

But this was something that you are likely, in fact would have discussed with Mr Cassidy?---Ah, it was, it was drawn to um, allow an engineer or something with an engineering background to actually understand how this whole thing was going to fit together.

And when you say someone with an engineering background, you're talking about Mr Cassidy?---I am, yeah.

And you'll see on the email that, that Mr Walker has written, "Please let me know if you or John Cassidy have any questions." Do you see that?---OH, yes I do.

Just on the covering email?---Yes.

Yes?---Yeah.

- 10 So again Mr Walker's drafting this on the assumption that Mr Cassidy is at this point involved in the transaction?---Yes.

As you had instructed him that he was?---Yes, yeah.

- 20 And that's on the basis of your instructions to him. Now, the diagrams indicate, as we were discussing – and if I can ask you just to ignore the handwriting on the document, but the property, this is at the top of page 386, there's the property which is going to be a partnership with the property title registered in the name of both trusts and the bank operated in the name of both trusts and there's a corporate trustee with you and Mr Cassidy holding one share and two shares respectively. Do you see that?---Yes.

So Mr Cassidy would have a controlling interest in that company?---Yes.

And that's consistent with his having a two-thirds share- -?---Yes.

- - -of the, of the, of the property. And you both are directors of that, of that corporate trustee as it was proposed?---Yes.

- 30 And looking at the, the left-hand side of the unit trust, it's Unit Trust No. 1, that's a third interest for you. Is that right?---That's correct.

And just following the arrow down it would be the unit holders was to be Darrellen Pty Limited as Trustee for the Henfam Discretionary Trust. Do you see that?---Yes.

And so was it the case that you would be funding at this stage a third of the price for the asset?---Yes.

- 40 Is that right?---Yes.

And there's an indication that it would be Vercot Pty Limited lending that money. Is that consistent with your recollection of your instructions to Mr Walker at this time?---Um, Vercot, Vercot was not lending any money to Darrellen. Um, that is, that is not consistent with um, (1) ultimately what happened, but (2) um, what ah, what even was discussed.

I see. And looking at the right-hand side, Unit Trust No. 2 would be the two-thirds interest for Mr Cassidy?---Yes.

And again the unit holders at this stage were to be advised by Mr Cassidy?
---Yes.

Do you see that?---Yes.

10 Yes. And Mr Cassidy would be purchasing units which would give him a two-thirds interest in the property?---Yes.

Is that right?---Yes.

So he would receive trust distributions of two-thirds to your one-third?
---Yes.

Is that right?---Yes.

20 And just over the page, Mr Hendry, we've got the operations diagram and the operating trust with the unit trust sitting underneath and is it the case that again you'd had a corporate trustee?---Yes.

And you'll see that there it's got shareholders and directors to be advised?
---Yes.

But is it the case that you anticipated the corporate trustee would be the same structure as the corporate trustee for the property side of the transaction?---Yes.

30 And again rather than having two trusts here you would just have one unit trust and the units would be owned to one-third by Darrellen, your company - - -?---Yes.

- - -and then the other side by Mr Cassidy with him yet to advise who would be holding the units?---Yes.

Is that right?---Yes.

40 If I can just take you over the page, is it the case that there was then a checklist of information that was required to proceed with the structures, do you recall seeing that at the time?---Ah, yes, yes.

And you had some things that you needed to do in terms of providing the names of the trustee companies and- - -?---Yes, yes.

- - -the unit trusts and the details of the directors et cetera and doing that in conjunction with Mr Cassidy?---Yes.

So you were going to need to speak to him and Mr, there's obviously some things that Mr Cassidy needed to do as well in terms of identifying the name of the unit trust, the details of the unit holders and the operating unit trust?
---Yes.

Is that right?---Yes.

Yes. And Mr Walker's indicated a number of perhaps assumptions and directions that are relevant to the structures at the bottom of that page. Is that right?---Yes, yes.

Now, is it the case – you may not recollect this, Mr Hendry, and perhaps I can show you a document that about 22 December, 2005 you sent Mr Walker a fax. I'll show you the document. It's at page 402 of the brief. Do you recall sending that fax, Mr Hendry?---Um, well, that's certainly my writing.

Yes?---So I recall I sent it, yes.

It's your handwriting?---Yes.

Okay. And you've indicated this is in relation to the two trustee companies, so this is one of the things you had to indicate to Mr Walker?---Yes.

And you've said the names of the companies are Armpub No. 1 and Armpub No. 2?---Yes.

But instead of by comparison with the structure we were looking at that you would hold one share and Mr Cassidy would hold two shares, the directors and shareholders are identified as being you and your wife. Do you see that?---Correct.

And she would hold two shares and you would hold one share?---Yes.

What was the reason for that change?---Um, this was ah, this was all done around 23 December.

Yes?---We had um, a closing window in relation to ah, (1) the changeover of the purchaser from my name to the corporate name, as well as the issue of um, at some stage in early January we were going to have to start the licence application.

Yes?---And um, it had taken from recollection four days to get a package from Armidale to Sydney in relation to the tender document so from a – given, given the time frame if – seeing this was 23 December, a week before Christmas- - -

Yes?--- - - -for me to send that documentation up to Armidale and back it just did not, from an efficiency point of view it just was going to take too long, too length of time.

Yes?---So um, I took it on myself to put, to, to get the company incorporated and, and um, ah, able to be able to make the applications- - -

Yes?--- - - -I just put it in my name and my wife's name- - -

10 Yes?--- - - -knowing full well that um, at some stage further down the track it could be changed over to, to other parties.

And when you say that – I'm sorry to interrupt you?---No, that's okay.

Is it the case, Mr Hendry, that you had some idea of what documentation you would, would be required, that Mr Cassidy would need to sign in order to get this incorporated get the companies incorporated?---Um, could you, could you just expand on that again, please?

20 I'm sorry. So you've indicated that you've done it by reason of convenience- - -?---Convenience was- - -

- - -because of the time that would be taken?---Yes, yeah.

But is it the case that, for example, you could've faxed material to Mr Cassidy?---Ah, I, I, I suppose I, um, I suppose I could have, yeah.

Yes. I'm just trying to explore this, the idea of there being an inconvenience and, and the time?---Yeah. Yeah.

30

It is the case, isn't it, that I mean in, in essence what's required to incorporate a company you, you'd need to have consent to act as directors? ---You need, you need, um, yes, you need the consent of the directors, you need the consent of the secretary and the public, and the public officer.

Public officer. And normally the company secretary and the officer are the same?---Officer are the same.

Yes?---Yeah.

40

So, but that's in essence all you need, isn't it?---Look, if, if – it is, it is, true.

Yes?---Um, but, well, I just made the call to do it this way.

I see. Did you talk to Mr Cassidy about doing it this way?---I doubt it. No, I, I wouldn't – I, I seriously don't think I would've talked to him about it. I, I just wanted to get the two companies incorporated.

Yes?---So the process could start with the changeover for the, for the purchase of the property.

Yes?---And for the, to get the licence, application for the licence going.

And was it your intention when you did this to, to keep things moving, that the directorship and shareholding would change prior to settlement?---Yes. Yes.

10 So, it was only ever meant to be a temporary arrangement?---It's a convenient – it was a temporary convenience exercise.

Yes. Yes. And if it assists you, Mr Hendry, that you've sent that on 22 December which was a Thursday?---Yeah.

And 23 in 2005 was the last business day before Christmas?---Day before Christmas.

20 Yes?---And, and then you had the break between Christmas and New Year, so, I mean, nothing was gonna happen during that period, so, you were then up to the first week of January, we'd effectively lost, potentially lost two weeks, so, I, I just thought I could get around all that by just doing it this way.

I see. And it's the case that Mr Walker submitted the company order forms as per your instructions of this date?---Yeah.

You recall that he did that?---Yeah. Yeah.

30 And is it the case, Mr Hendry, that you recall receiving a letter from your lawyers, BWS, about your purchase of the Hotel on or about Boxing Day, 26 December?---Yeah. Yeah. Had 'em working.

Yes?---Um, um, look, it, it was, this was 22, we were still pushing ahead.

Yes?---So, I can't recall exactly but if you showed me a document I wouldn't be surprised if it wasn't one.

40 It's the case at this stage, is it, that although you wanted an extension you may not have had one at this point. Is that right?---May, yes, yes. But that hadn't been, that hadn't been agreed from, from my recollection.

And the final – so, the settlement date at this point was around 17 January. Is that right?---Yes. Yes.

And you ultimately got it extended to 31?---Yes.

But there was some time pressure?---There was, yes.

In relation to getting this all done?---Getting, getting this all done, yes.

So, if I can show you a document, it's page 419 of the brief. I'm sorry, I didn't tender, Commissioner, the, the document at page 402. So, that's Mr Hendry's fax, yes, at 22.

THE COMMISSIONER: Yes. That facsimile will be Exhibit V42.

10

**#EXHIBIT V42 - FAX SENT TO GEOFFREY WALKER FROM
DARRELL HENDRY DATED 22 DECEMBER 2005**

MS MITCHELMORE: Mr Hendry, do you recall receiving this letter?---
Yes, yes, yes.

20 Yes. There's a reference under the heading New Purchaser, there's
confirmation that the purchaser is to be a company acting in its capacity as
trustee of two unit trusts yet to be formed, one representing your interests
and one representing the interests of Collin Cassidy. Do you see that?---
Um, that's on page - - -

Page 1, Mr Hendry, I'm sorry?---Page, sorry, sorry?

Under the heading, under the heading New Purchase of the second
paragraph?---The second paragraph, oh, yes, the second paragraph, yeah,
yeah.

30 Yes. Yes. And that's obviously a typographical error for, for John?---Yes.
Yes.

And what is in - what they've said in that paragraph is consistent with the
diagram that Mr Walker's given on 19 December about - - -?---Yes.

40 - - - what the structure would be. Can I take you to page 426 of that, of that
letter using the, the right hand corner numbering, you'll see there's a
heading Hotelier's Licence. Do you see that's heading 18, point 18?---I do,
I do, yeah.

And you'll see that there's reference to the purchaser having to notify the
vendor of the full name and address of the transferee within 14 days of the,
the date of the contract?---Yes.

Do you see that?---Yes, I do.

So, in fact, that date's passed by this point?---Yes. Yes.

And so that is why there's a request from your solicitors for urgent instructions?---Instructions.

To, to get the full name of the transferee and, and the proposed licence?---
Yes.

And is it the case that the proposed licensee was going to be one of the Armpub companies?---Yes.

10 Is that right?---Yes.

With Mr Franklin managing?---As the, as the corporate representative, I think the words were, but, so we, we, Mr Franklin was going to be the corporate representative from memory.

Yes?---Yeah.

And consistent with the structure would it have been Armpub No. 2?---Arm
No. 2, yes.

20

Yes. And at this time they've enclosed, according to the letter, looking at the, the bold just before the heading Business Name they've enclosed blank liquor licence forms for you to consider in the meantime?---Yes.

Indicating they need your urgent instructions on, on those forms. It's the case, isn't it, Mr Hendry that you sent the form back to your solicitors in two, those forms back in two stages? Do you recall that?---Um, I, I, part of the information on the form required details from Mr Franklin.

30 Yes?---And part of the form required details that, um, I had, um, access to.

Yes?---So, yes. My recollection is it was done in, in a couple of parts.

In two, in two stages. Is that right?---Yes. Yes.

So, is it the case that you first sent back to, to Brown Wright and Stein the information that you obtained from Mr Franklin?---Um, in terms of the logistics of timing I, I can't recall, I can't recall how it went.

40 Yes. Yes?---But it was in two parts.

Yes?---It was definitely in two parts. I completed part of it.

Yes?---And he had to complete the other part.

And, and is it the case, to your recollection, that he filled out his part first? Do you recall that?---I, I, I'm sorry, I don't recall.

Perhaps if I can show you page 669 of the brief, and again this isn't your document, so, just up on the screen you'll see it's a, a fax from Mr Malanos. Is it the case Mr Malanos was assisting Mr Griesz in his absence while he was on holidays?---Mr Griesz had gone on holidays and Mr Malanos had been handed the ball.

Drafted, he'd been drafted?---Yeah.

10 Yes. So, you'll see that that, there's a letter attached to that?---Yes. Yeah.

And there's a reference indicating who, who the company is going to be in, in the contract?---Yes.

You can see point 2, it's going to be Armpub No. 1?---Yes.

20 And then if you go over the page there's a reference obviously to the replacement contract, and this is all in relation to the fact that you wanted your name, your individual name off the contract, so, that was what you'd signed originally?---Yes.

And you were going to rescind that contract and put in Armpub No. 1 as the purchaser. Is that right?---Yes.

As trustee for the unit trust?---Trust, yes.

And then you'll see that the transferee of the liquor licence would be Armpub – it says Armpub No. 1. Is that - - -?---I think, I think that's right. I think Armpub 1 did also have the licence.

30 Licence?---Yeah.

Okay. And then the proposed manager of the, the licenced premises would be Mr Franklin?---Yes.

And they enclosed a partly completed form D containing details of the, the manager, and if you scroll down you'll see that there was an attached form? ---Yes.

40 And you'll see the information of Mr Franklin?---Yes.

There are a series of crosses down the side. Are they your crosses?---Um, could – um, more likely than not, they are.

Yes?---Yes.

And so you were just indicating to Mr Franklin - - -?---What he had to complete.

- - - what he needed to fill in. Yes. And I can just take you now to page 675, you'll see at point 24 interests held by natural persons. That's been left blank?---Yes.

Do you see that?---Yes.

Similarly, the following items, items 25, which is dealing with interests held by corporations?---Yes.

10 And directors and shareholders of propriety companies?---Yes.

So all of that information wasn't filled in by Mr Franklin?---Yes.

Is that because that's - - -?---He - - -

- - - information that you would have known and not him?---I, I, he would not have known and, and I did.

20 Yes. And it's the case that you subsequently provided that information to your solicitors?---Yes.

And you did that, I suggest to you, on or about 16 January so about five days later you filled in that information. Was there a reason for, for that gap?---Um, not ah, I'm not sure, I don't know whether Phil returned the document to me to enable the completion, I'm not sure.

Okay?---I can't, I can't recall.

30 All right. Now if I just go back in time a little bit to 28 December, is it the case that you've sent, you made some changes to the structure document that Mr Walker had provided you on the 19th, do you recall making some changes to that?---Could, could you show me, please?

Yes, of course. 457 of the brief. We'll see – I'm about to give you a hard copy, Mr Hendry. That's a fax from you to Mr Malanos in Mr Griesz's absence?---Yes.

40 And that gives the names of the, the two companies, the two trustee companies?---Yes.

You see that?---Yes, yes.

And then you've attached the diagram prepared or email to Mr Stein so prepared by Mr Walker which outlines how you propose to structure the transaction, you've amended it slightly, do you see that?---Yes, yes.

The second page of that document is of course an email from Ms Paini granting you an extension, do you see that?---Yes, yes.

Passing over that, page 459 is the document Mr Walker had done for you originally and is it your handwriting on, on that document?---It is, yeah.

And you're naming Tattersalls Unit Trust No. 1 so the Unit Trust No. 1 is called Tattersalls Unit Trust No. 1?---Yes.

10 And Tattersalls Unit Trust No. 2, you've got Armpub No. 1 as the corporate trustee, do you see that?---I – yes, yes.

And you've, you've inserted as the unitholders on the, on the John Cassidy side that it will be John and his wife, do you see that?---I do, yeah.

And their purchase of the units would be funded by Vercot, do you see that? ---Yes, yeah.

Now is the case then looking over the page your amendments were of a similar nature - - -?---Yes.

20 - - - so you've called it Tattersalls Operating Trust, the units are owned by Mr and Mrs Cassidy in the, in respect of his share and it's Armpub No. 2, is that right?---Yes.

And it's the case isn't it that you would not have provided those instructions without Mr Cassidy telling you how he proposed or who he wanted the units to be held by and how that was to be funded?---Um, it ah, it might sound um, funny but I, I probably assumed that that's how it was going to work as opposed to actually um, asking, asking John. Um, why, why I say that is um, this diagram is not how it ended up.

30 Yes?---That's the only reason why I say that.

I see?---As at this date I'm talking about.

Yes. So, so what you're saying is you may have made an assumption at this stage?---I made an assumption at this stage that this is what it was going to be.

40 Yes?---But it ultimately didn't end up like this - - -

No?--- - - - in terms of ownership.

No. So there's one of – there's two options really. The first is that you did get these instructions from Mr Cassidy and they were subsequently changed?---That's - - -

That's one option?---That's one option or alternatively - - -

The other option is - - -?--- - - - I just kept on going forward and, and um, that's, that's how I assumed it was going to work - - -

I see?--- - - - as opposed to actually talking to John about it.

I see. Commissioner, I tender that document.

THE COMMISSIONER: Is this letter of 28 December?

10 MS MITCHELMORE: Yes, corr.

THE COMMISSIONER: Yes, that will be Exhibit V43.

**#EXHIBIT V43 – MEMO TO MICHAEL MALANOS CC SIMON
GRIESZ FAXED BY DARRELL HENDRY RE TATTERSALLS
HOTEL DATED 28 DECEMBER 2005**

20 MS MITCHELMORE: Now you've mentioned that this wasn't the way that the transaction ultimately was structured. Can I show you page 665 of the brief. Now it's the case, Mr Hendry, that as you've said you faxed this to Mr Malanos and you said, "Please find attached changes to the ownership structure."?---Yes.

And looking at the first of the, of the attachments - - -?---Yes.

- - - is that your handwriting on the document?---It is, it is, yeah.

30 And this now has, still has Armpub No. 1 as the corporate trustee and it still has the Tattersalls names but it now has the unit trust on your side having only a one-tenth interest, do you see that?---Yes, yes.

And Unit Trust No. 2 has a nine-tenths interest?---Yes.

And similarly the, the shareholding for Armpub No. 1 has a change from, from one share and two shares to one share and nine shares, do you see that?---Yes, yes.

40 Did that ultimately happen to your recollection?---Yes, that's - - -

That there was a change to nine shares?---Yes.

Is it the case though at the moment that the issued share capital of Armpub No. 1 is only three shares?---Um, you, you um, more likely than not you're not, you're correct, yeah.

Yes. So it may be that notwithstanding that there was this change on the document ultimately the shareholding didn't change?---Um, ah, you, you – oh, you could be right, I, I, I can't say one way or the other but you could be right.

In any event it would be still the case wouldn't it, if it was still two to one share that - - -?---The corporate trustee - - -

10 Yes?--- - - - as long as it was um, JMC having more than DH - - -

Yes?--- - - - the control - - -

Yes?--- - - - still rested with - - -

That's right?--- - - - through the corporate trustee.

Yes, it didn't matter whether it was nine to one or, or two to one?---Two to one.

20 He was still in control of the company, is that right?---Yeah, yeah, yes.

Now you've provided some details, you'll see that the other change from the earlier document, Mr Hendry, well, there was two changes further, the first was that Vercot's been removed from your side of the transaction, as you said that would have been erroneously included?---Yes, yeah.

And on this side rather than Vercot funding the purchase of units by Mr and Mrs Cassidy it's just Vercot - - -?---Yes.

30 - - - as the, the unitholder?---Yes.

And you've provided the details for Vercot there?---Yes.

And is it the case that you've done that on the instructions of Mr Cassidy? ---It could have been after a discussion with, also with ah, Mr ah, Walker about um, the best way for um, ah, John, John's interest to fund um, the acquisition.

40 I see?---Um, was it more um, probably not – efficient 's probably the wrong word but what, from John's perspective was it more ah, effective for him to have Vercot as the shareholder as opposed to um, him and ah, Annette personally and, and, and that was all about um, loans between Vercot and the shareholders.

So rather than having Vercot fund Mr and Mrs Cassidy to purchase the units Vercot would just be indirectly making that purchase, sorry, purchasing the units, is that right?---Yeah, yes, yes.

And - - -?---Because, because the, because they were private company loans um, if, it had gone through a ah, John and Annette actually owning the shares then they would have, there was an obligation that they would have to pay back one-seventh of those loans in accordance with the taxation regulations - - -

Yes?--- - - - or if they didn't they would end up having to pay ah, they would have to be taking dividends.

10 Yes?---So I can't recall whether that came from further discussions with Mr Walker about this is a more efficient way of doing it or not.

Yes, yes. But ultimately, Mr Hendry, you wouldn't have settled on that as being the appropriate structure for Mr Cassidy's side of the transaction without checking with him?---Oh, without talking to him about it?

Yes?---I mean at some stage I've talked to him about it.

Yes?---Yes.

20

And similarly there's been a change in the level of respective interests in this document?---Yes, yes, yes.

You're now only taking one-tenth?---One-tenth, yeah.

Which is in effect the deposit that you've already put in?---Correct.

And Mr Cassidy's interests are taking the remainder?---Nine, yes.

30 Is that right?---Yes.

And similarly you would have had to have discussed that with Mr Cassidy? ---Yes, yes, yeah.

Because he's taking on now the lion's, well and truly the lion's share of the investment?---Yes. Um, don't get me wrong here, he would have, I was more focussing on why Vercot as opposed to the Cassidy's there- - -

40 Yes?--- - - -in terms of not, in terms of not sending this to John for John to have a look at.

Yes?---Because as you say, the ownership interest changed.

Yes?---So um, he, he would have got a copy of this, at some stage he would have got a copy of this and it's more likely than not it would have been around about, around about this time.

But irrespective of whether or not he got a copy of it you would have been giving these instructions after having spoken to him. Is that right?---Um- - -

As opposed to the previous document where you said you may have made an assumption?---Yeah, yes, yes.

Yes?---Particularly in relation to the interest.

10 Yes. And that interest is the same, if I can take you over the page, in relation to the Hotel?---Yes.

Is there the same change in the interest?---Yes.

And again that's something you would have discussed with Mr Cassidy? ---Yes.

20 And are you able to recall why there was that change in the level of interest? ---Well, it was, it was to do with um, ah, going to the um, Commissioner's point, I, I, I'd become not so much negative about the deal but I, I, I was just more concerned about the cost of the refurbishment and um, what needed to be done with the Hotel going forward and um, I didn't want to commit um, a substantial part of my funds, further additional, potential further additional funds to, to this Hotel in Armidale.

I see. So it's the case that you reduced your share from one-third to one-tenth?---One-tenth.

Being the deposit?---Yeah.

30 Which you'd already paid?---Paid, yeah.

So the balance of the price would be paid by Mr Cassidy?---Would be paid - - -

Or by Vercot, I'm sorry?---Paid by Vercot, yeah.

Paid by Vercot?---Yeah.

40 And which, of which Mr Cassidy's the controlling shareholder, is that right? ---Yes, yes.

In fact at this point you may have held about 10 per cent of the issued share capital. Would that be right?---I probably did but I was, you know, I was going to exit at some stage, I was going to, which I, which I ultimately did anyway.

Yes?---So it was coming back to an entity that- - -

Would, would- -?--- - -John and Annette fully owned.

Yes. And at this point there may have been some other minority interest still in Vercot, potentially Mr Austin was being bought out at around this time, is that your recollection?---Yeah, well, yeah, but I mean he was, he was well on the way out I'd suggest at that stage.

Yes. And is it the case that there was also a buyout around about this time of interest held by ANZ Nominees?---Yeah, I, I think there was.

10

Yes?---I think, yeah.

So, so again- -?---The structure was being cleaned up, if you like.

Yes, It was a process of reducing everybody down so that it was ultimately just Mr and Mrs- -?---Cassidy.

- - -Cassidy's company?---Yes.

20 Is that right. Now, on or about 11 January, and perhaps I'll show you the email – I'm sorry, yes, I tender that document, Commissioner. That's the fax from Mr Hendry to Mr Malanos of the 10th.

THE COMMISSIONER: Malanos, yes. That's Exhibit V44.

#EXHIBIT V44 - FURTHER MEMO TO MICHAEL MALANOS CC SIMON GRIESZ RE TATTERSALLS HOTEL DATED 10 JANUARY 2006

30

MS MITCHELMORE: Now, can I show you, Mr Hendry, page 667 of the brief. It's an email, I can take you down to the bottom email first?---Um- - -

I'm sorry, it's just on the screen at the moment?---Oh, sorry, yep, yep.

I haven't got a copy for you at this stage?---No, that's okay, yeah.

40 We'll just, we'll just turn that up. But it's an email from Mr Malanos to you and it's copied to Mr Stein saying, "Please find attached the first draft of the above trust." And this is Tattersalls No. 2 Unit Trust. Do you see that?
---Yes.

And it says that he's passed on your fax of the 10th to Mr Stein about the proposed amendments to the trust structure. So obviously there needed to be amendments, certainly for the operating trust because the number of units was changing- -?---Yes.

- - -in accordance with the structure?---Yes, yes.

Those same changes may not have needed to be made to the unit trusts holding the property. Is that right?---Um, I think it would have had to be in both.

Well, I say that, Mr Hendry, because the unit trusts are individual entities. Is that right?---Oh, sorry, yeah, yeah, go on.

10 So they wouldn't have needed to change, but the operating trust- - -?
---Trust.

- - -you both had units?---Yes.

And the nine-tenths to one-tenth would have had to- - -?---Correct.

That would have required an amendment to the trust deed?---Correct.

20 So just going up the page then, so do you recall reviewing the unit trust deeds at around this time?---Um, I, I, I don't recall but I'm saying there I have so- - -

Yes. And you're happy with the terms of the trust deed. So this is 11 January and is it the case – you've said, "John and I are happy with the terms."?---Ah hmm.

30 Is it the case that if you're saying that you've provided a copy of it to Mr Cassidy?---Well, I, I, if I'm saying John and I, I would have provided a copy to Mr Cassidy.

Yes. And you've added, oh, that's just indicating that you put the details of Vercot's address and ACN as you had done in that last document that we went to. Now, I tender that, that document.

THE COMMISSIONER: Exhibit V45.

40 **#EXHIBIT V45 - EMAILS BETWEEN DARRELL HENDRY AND
MICHAEL MALANOS RE TATTERSALLS NO 2 UNIT TRUST
DATED 11 JANUARY 2006**

MS MITCHELMORE: Now, I indicated, Mr Hendry, that, and you've indicated in your evidence that you provided your liquor licensing information to your lawyers in two tranches?---Yes.

Do your recall that?---Yes.

And is it, this is the fax from you to Mr Griesz, do you see that?---Yes.

And you've attached the information that was required, the remainder of the information that was required?---Yes.

And you've indicated that the new information, I mean so far as in form D is concerned, is marked with a circle?---Yes.

10 And is it the case that that information, just looking at the form D which is part of that package- - -?---So I'd rewritten it.

Have you rewritten?---I, I, that form D or form C?---Well, form C hadn't been provided previously?---Okay.

So that's, is that your handwriting on form Cc?---That's my handwriting.

Yes?---Yep.

20 If I can just get you to turn to form D?---Yeah, yeah.

And looking at that document, on the first page is that your handwriting? ---Um, on the- - -

Yes, the first page of form D that you've got there?---With the um- - -

Page 716 at the top?---716?

Yes?---No, that, that is um, that is Phil Franklin's writing.

30 So that is Mr Franklin's?---Yeah.

So that's in effect the form that you had already sent?---That I'd sent to him.

Okay. And if I can take you then down to items that we looked at before which hadn't been filled in, so item 24. So you crossed, that's now been crossed out. Do you see that?---Yes.

There's now a line through that?---Yes.

40 And if we go over the page is that your handwriting on that page, Mr Hendry?---That, that's my hand, that's my hand, yeah.

And you've indicated with a circle consistent with what you've said to Mr Griesz, that's the new information that you've been providing, sorry, that you've provided- - -?---Yes.

- - - in relation to the corporate interests in relation to the Hotel licence? ---Yes.

Is that right?---(No Audible Reply)

And the directors and shareholders of those companies?---Yes.

Do you see that?---Yes.

And you've indicated that Mr and Mrs Cassidy are the shareholders of Vercot. Do you see, do you see that?---Yes.

10

Is there any reason that you didn't put yourself down as a shareholder of Vercot at that time?---Um, it's probably just my interpretation of what the information was required. Um, because it, in, in hindsight I probably should have had my name down there in the Vercot as well.

Yes. But it was just an omission on your part?---It's an omission on my part.

20

Yes. And just checking over the page whether there's anything further on that page that was added, you, you've added there who will be the, who will own the freehold, so, again you had - - -?---Which is a, which is a mirror of 26.

Yes. That's right. So, they're, they're, that's material that you filled in and, and then provided to your solicitors?---Yes.

30

Is that right? And that's consistent with the documents showing what the structure was going to be. At this point you had that all locked down as it were?---Locked down.

Yes. And this is sent back on the, the 16 January. Is that right? That you've sent, you've sent this to your solicitors, just going back to the covering page of the - - -?---Yes.

Yes. Commissioner, I tender that document.

THE COMMISSIONER: Yes. It is Exhibit V46.

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#EXHIBIT V46 - BUNDLE TITLED EMAIL TO SIMON GRIESZ FROM DARRELL HENDRY RE LIQUOR LICENCE APPLICATION

MS MITCHELMORE: Now, Mr Hendry, I just wanted to ask you some questions about the actual trust deeds, and I might provide you with copies of them, it's probably going to be the easiest thing?---Yeah, yeah, yeah.

Because they're, they're not short documents, but is it the case, to your recollection, that they're all drafted in fairly similar terms?---Yes.

Or, or in fact the same terms?---Yes. I, I think there was a template - - -

Yes---? - - - where they just inserted names and addresses and other pieces of information.

10 Yes?---But for all intents and purpose they're the same through, through both documents.

Through both documents?---Mmm.

So, there were three trust deeds, is that right? So, one for Tattersalls Unit Trust No. 1?---1, Unit 2 and the Operating Trust.

And the Operating Trust?---Ah hmm.

20 So, three trust deeds?---Ah hmm.

Now, can I give you – I've got the, the, the one here for the Operating Trust, which is page 595 of the brief. I've got a third copy there. Now, Mr Hendry, if I can take you – it might be easiest – there's a schedule, and this might be the, what you were referring to. Page 649 of the brief, there's a – it says the first schedule, and is this the schedule that you were thinking of which inserts - - -?---Yes.

- - - the various details?---Yes.

30 And it says that the date of the Deed is 6 January 2006. I took you a little earlier to a document where you indicated that you and John were happy with, with the terms of the Deed. Do you recall that?---Yeah.

That document was dated 11 January?---Yeah.

Are you able to recall why the date of the Deed was 6 January?---Um, did it have something to do with when the contract – the, the, um, the contract for the sale of land changed from my name to Armpub?

40 That happened on 19 January?---The changeover did?

Yes?---Then I can't answer that question.

You don't have a recollection as to - - -?---No.

- - - why, why they're dated earlier than the - - -?---No.

Then in fact you're approving the terms of the, the deeds?---Yeah. Yeah.
No.

The – you'll see at point 5 that the, the unit holders – you've got 10 units to
- - -?---Yeah.

- - - to the 90 that are held by Vercot?---Yes.

10 And again you didn't provide that information to Mr Malanos until 10
January?---Mmm.

So, they would've had to have that information in order to provide or in
order to settle this trustee. That's right, isn't it?---Yes. Yeah.

And down at item 12 the appointers, you and Mr Cassidy, do you see that?
---Yes.

And appointers, in effect, control the trust. Is that right?---Yes.

20 And the, the set lawyer is Mr Stein, so, he's just the person who's
established the trust?---Trust.

Is that right?---Yes.

Yes. And the trustee of the company at point 3 is Armpub No. 2?---Yes.

So, it, it's the corporate trustee for, for this, for the operations?---Yes.

30 Now, looking at the, the other two trust – I tender that document,
Commissioner.

THE COMMISSIONER: Exhibit V47.

**#EXHIBIT V47 - TATTERSALL'S OPERATING TRUST DATED 6
JANUARY 2006**

40 MS MITCHELMORE: And just taking you to page 660, Mr Hendry, is it
the case that Armpub No. 2 has issued the units to – first of all, 10 units to,
to Darrellen?---Yes.

At 660, and on page 662 has issued 90 units to Vercot?---Yes.

Yes. And as I, as I said and as you've indicated that the other two trust
deeds are similarly drafted?---Yes.

And perhaps if I can just show you those documents, so, the first is at brief 5 – sorry, 461. This is the one for your unit trust, Unit Trust No. 1. I can show you that document. And again, Mr Hendry, the relevant page is at 513, and that has similar details but this time it's Armpub No. 1 as, as the trustee. Do you see that?---Yes.

10 And this has got the 10 redeemable units being issued to you – sorry, not to you, to Darrellen, and the, the name of the trust is Unit Trust – Tattersalls No. 1 Unit Trust, and the appointers are yourself and your wife jointly. Is that right?---Yes.

Yes. I tender that document, Commissioner.

THE COMMISSIONER: Yes. That's Exhibit V48.

#EXHIBIT V48 - TATTERSALLS NO 1 UNIT TRUST DATED 6 JANUARY 2006

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MS MITCHELMORE: And similarly, Mr Hendry, at page 600 – sorry, 524, Armpub No. 1 is issuing the 10 redeemable units to Darrellen. Is that, that's right?---Yeah.

Sorry, this is page 524 just for your reference?---4.

Yes. And then Tattersalls Unit Trust No. 2 is in the same terms, but this time – and the schedule is at page 582. Again it's, it's Armpub No. 1 as the trustee but this time the redeemable units are going to Vercot?---Yes.

30

Do you see that at point - - -?---Yes.

Point 5?---Yes.

So all of that is consistent with the instructions that you provided to Mr Malanos on 10 January?---Yes.

Is that right?---Yes.

40 Yes. Now, do you – I'm sorry, yes, I tender that document.

THE COMMISSIONER: Yes. Tattersalls No. 2 Unit Trust is Exhibit V49.

#EXHIBIT V49 - TATTERSALLS NO 2 UNIT TRUST DATED 6 JANUARY 2006

MS MITCHELMORE: Mr Hendry, do you recall going back up to Armidale in connection with the purchase on or around 19 January?---Um, I, I've seen some correspondence that said I was there on 19, so - - -

Yes?---I, I don't - - -

Is there - - -?---I don't physically recall going on 19, but - - -

Yes---? - - - I, I did.

10

But it's the case, isn't it, that you went up to Armidale a number of times?
---Yes. Yes.

The first time you went up was to look at the Hotel before you put the tender in?---Hotel, yes.

The second time – is it on the second occasion that you met with Mr Franklin that you recall?---On 19 January, are you talking?

20

No, no, I'm sorry?---On the second, the second time?

The second occasion you went to Armidale?---Yes.

You met with Mr Franklin?---My best recollection would be, it would've been the second time I went.

And - - -?---Which was prior to Christmas.

30

And you met with Mr Cassidy at that time as well?---I, I would've met with John at the same, same time.

And is it your recollection that the next time you went was 19 January?
---Um, given Christmas and whatever else was going on, I, I would say that's a reasonable assumption. Yes.

40

Yes. And it's the case at that time, Mr Hendry, that you were finalising the documentation so that the Deed of Rescission had to be entered into in order for you to rescind the contract that had you as the individual purchaser?
---Yeah.

And enter into a new contract which had Armpub - - -?---Yeah.

- - - as the purchaser, is that right?---Yes.

Is it the case that you also had to execute that contract for that to be exchanged?---Yes.

And do you recall issuing a direction to pay in relation to the deposit?

---I, I don't but I would suggest that that's what, it did have to happen so - -
-

Yes, so that was all done around, on or around 19 January?---Around the
19th, yes.

10 Would that, would that be right? And just for, for reference can I show you
page 724 of the brief and this is just the, the new contract and you'll see at
page, see on that page, do you recognise your signature on that page?---I do.

And is that your wife's signature as well on that page?---It is.

So that's your counterpart of that contract?---Yes.

And then page 738 of the brief has, is the Deed of Rescission and if we can
just scroll through you've executed that document, just to confirm - - -?---
I've executed that document.

20 Yes. Can I show you this document, Mr Hendry, this is a letter that you sent
to Mr Griesz on or about 22 January. Do you recognise your handwriting,
oh, sorry, your signature?---That's mine.

Yes. And this was just to update as to what the composition of Vercot was
at or about this time?---(No Audible Reply)

Vercot at this point being identified on the, the liquor licensing application?
---Yes.

30 So it's something that - - -?---They needed to have the um, I think they
needed all shareholders actually to be honest.

I see. So you were referring to the fact that Mr Austin was no longer a
shareholder?---No longer a - so he didn't have to put his name on the
application.

On the documents?---On the application.

40 Yes. And that was the same, you had the similar issue with ANZ - - -?---
ANZ.

- - - Nominees?---Yeah.

Yes. Commissioner, I tender that document.

THE COMMISSIONER: That letter is Exhibit V50.

#EXHIBIT V50 – LETTER FROM DARRELL HENDRY TO SIMON GRIESZ DATED 22 JANUARY 2006

MS MITCHELMORE: Mr Hendry, I meant to ask you, on 19 January when you were up in Armidale do you recall visiting the Hotel?---Ah, I, I, I don't recall but I would have gone to the Hotel.

10 Do you recall visiting it with Mr Cassidy?---Um, more likely than not I went with John, yes.

Do you recall if Mr Gusheh attended at that time?---Um, ah, and Mr Gusheh would have, would have attended, yes, yes.

So you recall that, that it was organised for him to, to visit the Hotel?
---Inspect the Hotel or have a look at the Hotel, yes, yes.

20 Is that an arrangement that you made?---Um, I could have, I'm not saying I didn't um, I probably had better contact with him than John so I, I could have been the one who instigated the - - -

Yes. But it had been Mr Cassidy originally who had suggested that he have a look at it?---Yeah, yeah, yes, yeah.

30 Yes. Can I just ask you some questions about the, the cheques that you provided in relation to the settlement so if I can show you page 763 just on the screen, you'll see that there are, I think just a letter attaching the cheques, the settlement cheques as per your advice, so you'd received an advice directing you what cheques needed to be drawn, is that, is that right?
---Yes.

And if you look at the first page these are bank cheques made out to various parties?---Yes.

Did you organise for those bank cheques to be drawn?---Um, I, I would have organised those cheques, yes.

40 And were those funds drawn from Vercot?---Um, they would have been drawn from Vercot, yes.

Yes. And, and would you have indicated to Mr Cassidy that that, that was occurring?---I would have indicated to him that that was occurring, yes.

And he would have known given that he had a – it was the balance of the purchase had to be funded by Vercot in, in - - -?---Yes.

- - - accordance with the, the unit trust structure?---The whole, the, the structure, yeah.

Yes. And the remainder of the, the cheques on the second page have been drawn to the account of, I think it's Armpub No. 1 acting as, as trustee for the two unit trusts.

Yes? So by this time you had a bank account operating and you were a signatory on that account, is that right?---Yes, yes.

10 Was Mr Cassidy a signatory on that account?---Um, more than likely than not he, he was also a signatory, I can't say definitely he was but more likely than not he was.

And that's something that you would have arranged?---Yes.

Yes. And is it the case once you, you purchased the Hotel that you subsequently or perhaps even before the, the settlement date had discussions with Mr Gusheh and Mr Cassidy about developing the Hotel?---Um, I think, they, they would have been general discussions if anything.

20 Yes?---I mean we've -- it hasn't even settled yet um, um, so I mean there might have been some very broad discussions around what possibilities might have been.

Yes?---Um, but apart from that I, I, I don't recall exactly what was physically discussed, I mean he certainly, he, he'd gone up there to have a look at the structure of the, the um, the Hotel - - -

30 Yes?--- - - - and, and, and the potential of what could be done with it, I think that would have been just general discussions.

At that point?---At that time, at that point.

Yes. And it's subsequently the case isn't it that you advanced plans, is that right, to, to redevelop the site?---Over, over, over a considerable period of time, yes.

I see?---Over a considerable period of time.

40 Yes. Did that commence in 2006 to your recollection?---Um, it, it more likely than not did - - -

Yes?--- - - - um, but it's gone through a number of um, aerations in the, since the, since that time, yes.

Yes. Commissioner, I don't have any further questions for Mr Hendry.

THE COMMISSIONER: Mr Moses, do you wish to ask some questions?

MR MOSES: I think my learned friend Mr Thangaraj wishes to ask some questions.

THE COMMISSIONER: He does, yes, all right.

MR THANGARAJ: Your Honour - - -

THE COMMISSIONER: I don't know if you want to go first.

10 MR THANGARAJ: Could I wait till the morning, your Honour, I'll need to look at the transcript.

THE COMMISSIONER: Yes, all right. We'll do that then. Apart from you and Mr Moses does anyone else have any questions for Mr Hendry? No, all right. All right. Well, I'll adjourn till 10.00am, thank you.

THE WITNESS WITHDREW

[3.57pm]

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AT 3.57PM THE MATTER WAS ADJOURNED ACCORDINGLY

[3.57PM]