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23/07/2014

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pp 00227-00300

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION VERDI

Reference: Operation E13/0955

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY, 23 JULY, 2014

AT 10.05AM

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THE COMMISSIONER: Yes.

MR STEWART: Yes, good morning, Commissioner, Stewart, solicitor, I seek leave to appear on behalf of Mr Snell.

THE COMMISSIONER: Yes, Mr Stewart that leave is granted.

MR STEWART: Thank you, Commissioner.

10 THE COMMISSIONER: We need to resume with Mr Hendry's evidence.

<DARRELL FREDERICK HENDRY, on former oath [10.04am]

THE COMMISSIONER: Mr Thangaraj, did you want to go next?

MR THANGARAJ: I will.

20 Mr Hendry, you gave some evidence yesterday about the various structures involved or the various steps you took in relation to the structures. The bottom line was, wasn't it, that no matter who was involved in the purchase ultimately or which entity, either individual or entity, the purchasing entity had to be resolved as a matter of urgency?---Ah, it certainly, did, yes.

And that wasn't simply a matter of choosing a name, the structure underneath that entity had to be finalised as well?---That's correct.

30 And if it were the case the trusts were to be set up those deeds had to be prepared?---That's correct.

And ultimately it proved to be that a number of steps were involved and you took advice where that was needed?---I did.

During those periods of taking advice a number of different options were canvassed, different possibilities for structures were canvassed weren't they?---There, there was, yes.

40 And this was, your involvement in the purchase, the entity that was going to represent your interests, it was never going to be you as an individual was it?---Ah, no, no.

And originally you did that with your original bid, you put, put it down as your name because the structure had yet not been developed?---Ah, that's correct.

And it was such a conditional offer you weren't exposed - - -?---It was such a conditional offer I - I didn't understand, I didn't - - -

THE COMMISSIONER: Are you talking about the first offer?

MR THANGARAJ: Yes, yes?---I didn't know I was going to win.

Yes?---So there was something that was – I would have had to deal with immediately if I was successful, I then would need to really start thinking about how should this be structured.

10 Yes. And one option – ultimately we know that Mr Cassidy and yourself were the purchasers through various entities, one structure ultimately that could have been used if you wanted was a simple partnership, your entity in partnership with his entity, that was one possibility ultimately that could have been used wasn't it?---Ah, I think there's a myriad of alternatives.

Exactly right, exactly. But the structures that had to, the structure ultimately had to accommodate a number of things including for example you wanted your involvement of your superannuation, Henfam, your discretionary trust, you had some role that you had identified for yourself?---I, I – well, it was,
20 it was more around um, having flexibility to have more than two partners, that if you had a structure it always get difficult if you then want to add another partner it's not necessarily that easy to just incorporate that partner, so by having the structure it was you could just keep on adding additional shareholders I saw to the particular structure.

And that was an element of contingency in these discussions that you were having, that if for example there were three people involved that it was flexible enough to accommodate that?---One, it was flexible and two, it was clean so there was no, there was no need when you're bringing somebody in
30 the first thing they want to know is what is in it, what is in the structure, if the structure was clean then it would make it that much easier to bring other people in.

Right. And part of the structure that you discussed at least with Mr Walker I think was an involvement of Darrellen and Henfam, that is your - - -?---It was, it was Darrellen, it wasn't, it was, it was – Darrellen had a Henfam ah, discretionary trust.

Yes?---It was not the super fund.
40

Yes, okay. Those names are mentioned in, in incantations during this process at various stages though aren't they?---Um, in, in the diagrams they are.

And this structure had to be completed before settlement, it wasn't something that could be done overnight was it?---Ah, it, it proved not to be able to done overnight, correct.

And it wasn't a matter of you being able to wait for decisions from Mr Cassidy, you were road testing different alternatives, canvassing different structures, work shopping didn't alternatives?---I, I – this was more a um, from, from my perspective it was more a, a procedural thing that had to be done but um, and, and had to keep on moving to be able to meet the deadline of being able to settle by the end of January.

That's right. And yesterday I think at one point you said something like, That's me, I just get in there and do it?---Yeah. Yeah.

10

It had to be done and you were doing it. It was suggested on a couple of occasions that you wouldn't do things without – that committed Mr Cassidy without discussing it with him, but the reality is, isn't it, that the discussions that you were having with advisors didn't commit Mr Cassidy to anything?--Ah, that, that's – yeah, that's correct. And I think the, the commitment discussion was around actually committing dollars.

Yes?---Um - - -

20

You paid the deposit?---Yeah, no, sorry, when the discussion – my recollection of the discussion about a commitment was if I would commit Vercot into, into incurring some financial cost?

Yes?---And I would not do that - - -

Yes---? - - - without referring to Mr Cassidy, but, but this, this was ours. To some degree it was preliminary, I suppose. It had to be done.

30

Yes. You paid the deposit?---I paid the deposit, yes.

The Vercot money didn't come in until much later?---Correct.

And there were times, and you gave some examples yesterday, where structures were considered or workshopped without any consultation with Mr Cassidy, for example, can I go to V43? You were taken to this yesterday by counsel assisting and if we go to the third page, this diagram suggested that Vercot might lend your side of the potential partnership some money?---Mmm.

40

That was never, that was never a personal instruction, was it?---No.

That was never going to happen?---No.

If we go to V42, and you were asked about this yesterday at transcripts 203 and 204 and at 204 line 43 you said that you just made the call to do it this way and the question was, Did you talk to Mr Cassidy about doing it this way? You said, I doubt it, no, I wouldn't, I seriously don't think I would've

talked to him about it, I just wanted to get the two companies incorporated?
---Mmm.

That's, again, consistent with you moving things along?---Yes.

10 If we go to V43, when you were asked about this, page 210 line 23, it was suggested to you by counsel assisting, 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 how he wanted the units to be held by and now that was
10 – and how that was to be funded? You said, It might sound funny but I probably assumed that's how it was going to work as opposed to actually asking John, that's why I say this diagram is not how it ended up. And you say a few lines later you've made an assumption?---I, I, sorry, I have a 457 document sitting - - -

No. Yes. That was, that was, that was the document that you were asked about but I just took you to the transcript?---Oh, okay.

20 It's V43. That was another example. And on another occasion you gave an example where you thought that the structure might be what you or Mr Walker thought was the most effective or efficient for Mr Cassidy and again that was based on thoughts that one or both of you had had about what might best suit him?---Yes.

30 Now, you've given evidence that at certain times you had discussions with Mr Cassidy about potential structures throughout the period, and we – you've talked about the fact that there was a contingency that was available if a third person was to become involved ultimately or a third entity. The discussions with Mr Cassidy about potential structures and whether this might work, that might work, were ultimately all contingent upon him making a final decision to be involved financially, weren't they?---Ah, yes.

And the structures that were being put in place were flexible?---I believe so, yes.

And over time they changed?---Yes.

40 With respect to Vercot, you were the company secretary for Vercot?---I was.

In 2005, Mr Cassidy was also a director of BBA of Bilfinger Berger for a short time, 12 months, 10 months, do you remember that?---Yeah. In 2005?

Yes?---Um, he was, he was, yes. The, the, um, the German parent created an executive board commissioner so they, they left three, I think, of the old Abigroup directors on what they described as an executive board.

Yes?---Um, which, um, was not in, in reality never worked like a true board did in Australia because the Germans didn't really want to give them too much information.

All right. And part of that – notwithstanding the head office approach or determination – part of his role of being a director of BBA involved some contact with executives at BBA including yourself?---Ah, it would've, yes.

10 Now, sometimes with respect to Vercot, decisions are made informally and other times in a more formal sense. Sometimes you had meetings either face to face or on the phone and if you have those meetings obviously you and Mr Cassidy would be attending either by phone or face to face?---That's correct.

And if either of us needed to attend for some or all of the meeting they would do so in the usual way?---That, that's correct.

And sometimes minutes of the meetings are typed up?---Um, correct.

20 Were typed up, I should say. Sometimes you took notes and other times he took he notes?---Ah, correct.

THE COMMISSIONER: Does that mean that there were meetings at Vercot where there were no minutes kept or no minutes typed up?---Ah, most of the – Commissioner, it's a question of what did you find as a directors meeting and what do you find as a management meeting, if you like, and we're talking about a small, private company, um, so I think that line blurred as to what, what should be recorded in a minute, as a formal minute, and what was actually just a commercial decision.

30 MR THANGARAJ: Can I show you this document?

THE COMMISSIONER: Has, has counsel assisting seen that document, Mr Thangaraj?

MR THANGARAJ: No, your Honour.

40 THE COMMISSIONER: There are standing practice directions which require counsel, if they're going to show a document to a witness, to make it available to counsel assisting. Can we identify the document?

MR THANGARAJ: Oh, I'm sorry, your Honour. I didn't appreciate that. Yes, I – it's a minute of a telephone meeting of directors of Vercot held at Suite 3B, 1 Richardson Place, North Ryde, New South Wales, 13 January 2006 at 9.00am. I've got copies. I didn't – I've got one other document, I'll provide that now. Sorry about that. There are two documents including that one which I propose to – I've got a copy for your Honour as well. Could I

just provide a copy of each document to both your Honour and counsel assisting? Do you want another set?

Do you have a copy of those, that document?

THE COMMISSIONER: Yes.

THE WITNESS: I do.

10 MR THANGARAJ: Now that is, that's a telephone meeting, it's identified as Mr Cassidy being, attending by telephone and yourself at 3B/1 Richardson Place?---Correct.

Now 3B/1 Richardson Place was the office of Bilfinger Berger where you worked?---That's correct.

This was a meeting where Mr Cassidy attended by telephone, therefore do you remember that you took the notes of this meeting?---I did.

20 And the procedure that existed was that your secretary at Bilfinger Berger would type up the notes, send, send them to the chair to be signed, he would send them back to the, to the, to Bilfinger Berger and they would be kept in the Vercot file at your office?---That's correct.

And that was because you were the company secretary?---Ah, yes, and, and my recollection is 3B Richardson Place was the registered office of Vercot.

Right. And some time in, I think it was 2011, you left Vercot and you returned the file to Mr Cassidy?---I did.

30 All right. Now if we go over, if we go to the second page it talks about future investments and the last line reads, "In this regard the company is currently considering an equity investment in a hotel in Armidale known as the Tattersalls Hotel". Correct?---Correct.

Now before I come back to that there was a press release which was V40 which was in December and in that what the media and the community were told in the press release including by yourself was whether a local investor would come in or not was a potential, you would have a local manager and potentially a local investor. Now that was potential at that stage because it hadn't been confirmed, had it?---No, it hadn't.

40 And similarly this document of Vercot is consistent with that press release that at stage, 13 January, a final decision had yet to be made as to whether or not Vercot would invest in Tattersalls?---Um, that's, that's what the minute is reflecting.

THE COMMISSIONER: Well, it's a slightly different question. What the minutes reflect is one thing, what Mr Thangaraj is putting to you that based on, based on the document, bearing in mind that documents can say one thing and, and not reflect the true position, what he's putting to you is that as at 13 January, 2006 no decision had been made by Vercot in relation to investing in the Tattersalls Hotel, that's what's being put?---Yes.

Well, do you agree or disagree with that?---Um, I, I'd have, I'd have to agree.

10

So you agree with that?---Yes.

MR THANGARAJ: If we go to the second document, do you have the other document that I provided?---I do, I do.

Now that is a minute of a meeting of directors of Vercot held at Tattersalls Hotel, Armidale on 19 January, 2006 and this was a meeting where the two of you attended and it was face to face because you were in Armidale that day?---Yes.

20

And these again, this time the notes were prepared by Mr Cassidy and then typed by your secretary and then again sent back to him to be signed and then retained at the Vercot file at the registered office?---Yes.

There was a discussion as to whether or not the directors would approve the decision, sorry, approve a decision to invest in the Tattersalls Hotel?---Yes.

30

Do you see that on the second page? And how it was started, the, the meeting, was that you confirmed that in your private capacity you were the successful tendered to acquire the Hotel for \$2.65 million in the name of yourself and/or a nominee, you were offering Vercot the opportunity now to invest or co-invest I should say in the Hotel and some other material relevant, relevantly is there and then halfway through the second page the meeting, the minute records that the directors approved the decision for Vercot to take a controlling interest in the investment, do you see that? ---Yes, I do.

40

And that's what was discussed and that's what was approved at the meeting on 19 January, 2006 wasn't it?---Yes.

At this stage ANZ Nominees was still a shareholder in Vercot weren't they? ---Um - - -

They were soon exiting but as of the 19th they were still a shareholder? ---Well, I'll - I can't recall unless you show me the register but I, if, if that's what the share register shows then that's correct.

All right. And what you would expect would be that the directors would have to have a meeting and approve such an investment of a company in this situation?---Well, these, these were big transactions in the terms of what impact it had on the, the bank balance of Vercot.

Yes?---Um - - -

And you had other shareholders, and you had another shareholder as well?
---And we had one other shareholder.

10

Yeah. I just want to ask you some questions about this price of \$2.65 million. You explained, excuse me, you explained yesterday how you arrived at that figure and you described it “my price”?---Yes, yes.

The original figure of the 3.5 million was a figure to, I think you – stay in the game, stay in the race, that, that sort of - - -?---Yes.

It was a, it was a, it was an offer that was so conditional that it gave you an exit strategy in itself didn't it?---It did.

20

It wasn't a figure based on any genuine assessment of the value, it was simply a figure – and as you said, I could have put 13 and a half because I was never going to be, I wasn't, could not be held to it?---I hadn't done the work at that stage.

Yeah. The 2.65 figure which you explained as I said how you arrived at also accommodated an exit strategy effectively for you because you had taken into account, to use the Commissioner's word, if you wanted to flog it off, if you wanted to sell the asset that was a price that you factored in, the possibility that you might have to sell it if you didn't have any partners?
---Ah, correct, I, I worked backwards to, to a price that gave me what I thought was the less financial exposure possible.

30

Now this was not a price that you described as our price because it was not a price suggested by John Cassidy was it?---It was my price.

And it was not a price which moved to 2.65 either up or down because of anything suggested by - - -?---Ah, it, it was my price.

40

Yeah. But it wasn't influenced at all by anything Mr Cassidy said?---No, the, the price never moved from what Mr Cassidy said.

And he never told you what the other bids were did he, he never told you who, how many other bids there were?---No, no.

He never told you who the other bidders were?---No.

And he never told you what the other prices of the other bids were?---No, no.

Thank you, Commissioner.

THE COMMISSIONER: Yes, Mr Moses.

MR MOSES: Yes, thank you, Commissioner.

10 Mr Hendry, I'm just going to ask you a question based on evidence from yesterday, it was an answer that you gave in response to Counsel Assisting at page 190 of the transcript, Commissioner, at about line, at about line 1. The question was put to you by Ms Mitchelmore, "It wasn't a secret in your mind that he was investing and he'd agreed to invest," and you answered it, "It was, yes, correct." Do you recall that question and answer yesterday? ---Um, could you, could you repeat that again, please.

It may be more appropriate if I give the witness a copy of the transcript and page 190, thank you. If we may have leave to provide a copy of that page to
20 -- oh, the Commission's got it, thank you. So it's page 190, it's the top of the page, that question?---Um - - -

Is there anything in terms of that question or answer that you wish to clarify?---Ah, I, I it's, for me, Commissioner, I think it's a double-barrelled question.

THE COMMISSIONER: Well, it's ambivalent because the question is framed in the negative, it wasn't a secret in your mind?---It wasn't a secret in my mind, no, it wasn't a secret in my mind.

30 That Mr Cassidy was investing?---No, correct.

And that he had agreed to invest?---And I'd say yes.

That he had agreed to invest- - ?---Yes.

- - -at that stage?---Yes.

Yes.

40 MR MOSES: Thank you. We just wanted to clarify that, Commissioner.

THE COMMISSIONER: Yes.

MR MOSES: And yesterday, and, Commissioner, this appears at page 180, lines 12 through to about 35, these are questions by you, Commissioner, concerning the concept of goodwill. The Commissioner asked you a question yesterday in terms of the concept of goodwill and the

Commissioner in particular said, "I always understood references to goodwill to mean that the business has a customer base." And you started answering the question and then another question was put by the Commissioner at line 20. Again we might let you go to the transcript on this page 180, so, Mr Hendry, if you'd turn to page 180. At about line 20 the Commissioner asked the question, "And whether or not it loses money, that might have something to do with bad management but goodwill in the sense that it had customer base." "Goodwill normally means – to my mind goodwill means a premium because, you know, there's some value add there and- -" and then the Commissioner asked you a question, "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- -? And the Commissioner asks you the question, "You were looking at the profit and loss?" "I was looking at the profit and loss." So if I can ask you this question. Was that what you were looking at when you determined that it had in your words, no goodwill?---Yes.

Yes. Thank you. Commissioner, could I just tender if I can a document which is a tax ruling from the Australian Tax Office which is used in these goodwill cases as to what is the concept of goodwill and how it's valued? I've shown – we've only just given a copy to Ms Mitchelmore, this only arose yesterday, so we don't want the Commission to have any misunderstanding about this issue.

THE COMMISSIONER: No, I was being perfectly frank, I don't necessarily understand what the technical meaning of goodwill is.

MR MOSES: Yeah.

THE COMMISSIONER: I was just trying to clarify with the witness
- - -

MR MOSES: No, I understand.

THE COMMISSIONER: - - -what he understood it to mean.

MR MOSES: Understand. So- - -

THE COMMISSIONER: Have you seen that, Ms Mitchelmore?

MS MITCHELMORE: I've just been given it, Commissioner, but I can reserve my position. I don't anticipate that there will be an issue, it's a public document, it's a tax ruling.

MR MOSES: Can I, can I just draw the Commissioner's attention to page 5, line, paragraphs 9 through to 15 which talks about the concept of goodwill, the meaning of goodwill and then, Commissioner, if you go to

page 12, valuation of goodwill, paragraphs 47 to 49 which deal with the valuation, the Tax Office's preferred approach to valuing goodwill. There are some cases on this other than Murray which deal with valuation of goodwill in the pub industry where they basically adopt goodwill valuations based on a year of profit in the last financial year as to how they come up with a goodwill figure and there are some decision of Justice Brereton about this in the New South Wales Supreme Court, but we'll draw those to your attention if this becomes- - -

10 THE COMMISSIONER: Well, that's a matter for submissions, yes.

MR MOSES: If this becomes an issue, in submissions.

THE COMMISSIONER: Right. Well- - -

MR MOSES: But we seek to tender that at this stage.

THE COMMISSIONER: All right. Well, that will be Exhibit V51.

20

#EXHIBIT V51 - (WITHDRAWN)

MR MOSES: Yes, thank you, Commissioner.

MR THANGARAJ: Sorry, Your Honour, I should have asked- - -

THE COMMISSIONER: You haven't, Mr Thangaraj- - -

30 MR THANGARAJ: Could I tender- - -

THE COMMISSIONER: - - -tendered the minutes that you- - -

MR THANGARAJ: Yes, I didn't know if you wanted, wanted me to tender or I should have asked whether my friend would tender them. I'm happy with whatever Your Honour- - -

THE COMMISSIONER: It doesn't matter much, they get marked in the same way.

40

MR THANGARAJ: I'm happy to – if I – if they could be- - -

THE COMMISSIONER: Did you want both of those documents?

MR THANGARAJ: Separately.

THE COMMISSIONER: Separately?

MR THANGARAJ: Yes.

THE COMMISSIONER: All right. Sorry, I'll withdraw the last tender of the Taxation Office papers, in lieu Exhibit V51 becomes the minutes of 13 January, 2006, Exhibit V52 becomes the minutes of 19 January, 2006 and Exhibit V53 is the Taxation rulings in relation to goodwill.

10 **#EXHIBIT V51 - MINUTES OF A TELEPHONE MEETING OF DIRECTORS OF VERCOT PTY LTD ON JANUARY 13 2006 (WITHDRAWN)**

#EXHIBIT V52 - MINUTES OF A MEETING OF DIRECTORS OF VERCOT PTY LIMITED HELD AT TATTERSALLS HOTEL ON 19 JANUARY 2006

20 **#EXHIBIT V53 - ATO TAXATION RULING- INCOME TAX: CAPITAL GAINS: GOODWILL OF A BUSINESS**

MR MOSES: Commissioner, I have no further questions. Thank you, Mr Hendry.

THE COMMISSIONER: Thank you.

30 Anyone else has any questions for Mr Hendry? Anything arising, Ms Mitchelmore?

MS MITCHELMORE: Just a couple of questions, Commissioner. Mr Hendry – and perhaps this is just going back to your clarification of your answer at page 190 of the transcript, I just want to be, make sure I understand. It wasn't – and this is going back to your meeting with Mr Walker as at 9 December, 2005?---Yep.

At that stage Mr Cassidy had agreed to invest in the Hotel?---Ah, what date are you saying?

40 This is 9 December, 2005?---In, in my mind he, we, we had discussions.

Yes?---We'd had discussions, yes.

Yes. And he had agreed to, as you say, you said in your evidence with Mr Thangaraj it was a question of the dollars, who would be putting the money in?---Yes.

And your, as at 9 December- - -

MR THANGARAJ: All right, I object to that, Commissioner. I don't like the sound of what was said, I put in relation to- - -

THE COMMISSIONER: No, well, Mr Thangaraj, you see this goes back, no, this was something that Mr Moses raised- - -

MR THANGARAJ: Oh, sorry.

10 THE COMMISSIONER: - - -in relation to the clarification of a particular answer.

MR THANGARAJ: Yeah.

THE COMMISSIONER: But the context of the answer was put in terms of the events surrounding 9 December.

MR THANGARAJ: I understand that, it was just that I didn't understand what my friend was saying I had put.

20

THE COMMISSIONER: No, no. It was, it was in response to a question by Mr Moses.

MR THANGARAJ: Okay.

MR MOSES: It was clarification of that evidence at page 190, which was the double-barrel question.

THE COMMISSIONER: Yes.

30

MR MOSES: So we've just got to go back to that.

THE COMMISSIONER: Let's go through it.

MS MITCHELMORE: Yes. So just going back, back to that answer, Mr Hendry, it wasn't a secret in your mind that, first of all that, that Mr Cassidy was investing?---Yes.

And that he had agreed to invest?---Yes.

40

Is that right?---Yeah.

As at 9 December, the precise mechanism for him to put the money in had not been settled?---Correct.

Is that right at that point?---That's correct.

But he had given you his agreement that he would put in at least at that point two-thirds of the capital that was required to fund the balance?

---Yes, in my mind that's what had been agreed, yes.

And, and you would put in one-third?---Correct.

And it subsequently changed to you just paying the deposit?---Correct.

And Mr Cassidy paying the balance?---Correct.

10

And again that was something that you discussed with him before you made those changes to the structural documents?---Correct.

And indeed as at about 16 January you submitted to your solicitors the licensing documents which put Vercot in as one of the companies that was involved in the purchase of the Hotel. That's right, isn't it?---Yes, yes.

20

Now, you wouldn't have done that, would you, unless at that point it was Vercot who would be investing in that part of the Hotel?---That's, that's correct.

So notwithstanding that you have a formal minute of 19 January where there's a formal decision made- - -?---Yeah.

- - -it was earlier than that wasn't it where you've had instructions from Mr Cassidy to involve Vercot in this purchase?

30

MR MOSES: I object. Commissioner, I think we need to be a bit specific about when this is alleged to have occurred because we've had a lot of very general propositions being put.

THE COMMISSIONER: No, no. Well, but it is, but it is specific, Mr Moses.

40

MR MOSES: Yeah, but earlier from what time, Commissioner, because you'll see the transcript yesterday, there are a lot of general propositions being put which aren't going to be of much assistance at the end of the day, I mean we just need to be specific about when is it suggested this occurred, so we can be specific about these matters.

THE COMMISSIONER: Well, again, this was all being put in the context of discussions with Mr Walker that occurred on 9 December, 2005. That's my understanding.

MR MOSES: Well, Commissioner, if the proposition be put to the witness
- - -

THE COMMISSIONER: Is that right, Ms Mitchelmore?

MR MOSES: - - -so he knows what's going on here in terms of the proposition.

MS MITCHELMORE: Certainly. I'll clarify. So going back to 9 December, you had a discussion with Mr Cassidy and you had agreement as between your respective shares?---Yes.

Is that right?---Yes.

10

And the mechanism wasn't agreed?---No.

And it was subsequently the case that you worked on a series of potential structures which followed the same format?---Correct.

But the entities on Mr Cassidy's side who would be investing wasn't entirely clear?---Correct.

20

Because you hadn't yet formalised with Mr Cassidy how he would be investing. Is that right?---Correct.

But he, to your knowledge he would be- - -?---Yes.

- - -investing on that side of the transaction?---Yes.

Is that right?---Yes.

30

And it's the case isn't it that as at 10 January when you instructed Mr Malanos to insert Vercot, is it the case at that time, so 10 January, 2006, that you had instructions to insert, from Mr Cassidy to insert Vercot?---Um, we would have had to have talked about it because I've got Vercot's name there and it was in one of the structures. Um, I had to get the - I'm not trying to be evasive here.

No, no?---We had to get a name in the application for the licence- - -

Yes?--- - - -because there was a timeframe of two or three weeks I think it was- - -

40

Yes?--- - - -for that licence to be approved.

Yes?---So my understanding of the situation at that time, given what all the discussions had been at that time, was that it was going to be Vercot.

Yes. And- - -?---And that's why I put, got Vercot in there.

At 10 January?---On 10 January.

And you were getting that understanding from discussions with Mr Cassidy. Is that right?---I, I, I would have – I would have had to have been.

Well, is there anybody else you would've - - -?---No, no.

- - - been getting those instructions from?---I would've, I would've, I would've had to have been.

So, as at – certainly by 10 January - - -?---Mmm.

10

- - - you have an understanding from Mr Cassidy - - -?---Yeah.

- - - that it is to be Vercot - - -?---Vercot.

- - - that is doing the investing?---Yes.

And he of course - - -?---That'll be my best recollection, I mean, we're going back a long time, but, but - - -

20

No, I know. It is a long time ago. No. I accept that?---Yeah, you know.

But certainly by that date - - -?---Mmm.

- - - you had that understanding from Mr Cassidy about Vercot?---From – for the fact that I've got their name in there - - -

30

Yes---? - - - it would've – by logic I wouldn't have just done that without having some reference because it – you needed to have who the entities, specifically who the entities were that were going to own or were going to make, that were making application for the licence.

Yes?---So, it had to be clear enough in my mind who those parties were to put it in that – otherwise they would've had to just substitute another licence application.

But just to clarify, Mr Hendry, so that I'm not misleading you - - -?---No.

40

So, 10 January, I'm talking about the document that you submitted to your solicitors in relation to the structure?---Structure.

And of course the liquor licencing information that you provided to them was on 16 January?---Right.

So, that was six days later?---Right.

So, I'm – what I'm putting to you is that at 10 January - - -?---Oh, okay. I thought you, I thought you were putting the - - -

Yes, I know. I thought you might've been confused?---Yeah.

And I apologise?---Okay. Sorry.

So, as at 16 January you've put in the liquor licencing information to your instructing solicitors and that included Vercot?---Vercot. Ah hmm.

10 And certainly at that point you had, had sufficient discussions with Mr Cassidy to understand that it would be Vercot funding his side of the transaction?---Yes.

And what I'm putting to you is that even earlier than that, so going back to 10 January when you provided the last structural document to your solicitors, that also had Vercot in that, in Mr Cassidy's side and I'm saying at that point - - -?---Yes.

I'm suggesting to you at that point similarly you had the instructions from Mr Cassidy?---I would have, I would have - - -

20 That it would be Vercot?---I would have had to have had, yes.

Yes. Thank you, Commissioner.

THE COMMISSIONER: Yes. Can Mr Hendry be excused at this point? Yes. Thank you, Mr Hendry, you may step down, you're excused?---Okay.

THE WITNESS EXCUSED

[10.41am]

30

THE COMMISSIONER: Just leave those documents on the desk and someone will clear it up for you. I know there's been a slight reordering of witnesses today. Who is it proposed to call next?

MS MITCHELMORE: Commissioner, I wanted to just deal with the witnesses who have come down from Armidale.

THE COMMISSIONER: Yes. Yes.

40 MS MITCHELMORE: And elsewhere, so, the first witness today is Mr Phillip Franklin.

THE COMMISSIONER: Yes, Mr Franklin, just come forward and take a seat. I understand that you don't have anyone appearing for you today.

MR FRANKLIN? Yep. That's correct.

THE COMMISSIONER: Could I just explain to you that under the Act that governs these proceedings you are obliged to answer questions truthfully and you do not have the option of refusing to answer a question. Do you understand that?

MR FRANKLIN: Yeah.

10 THE COMMISSIONER: Because you are compelled to answer, the act also provides that you can object to the questions that are asked of you and in that way the answers can't be used against you in civil and criminal proceedings, and under Section 38 of the Act if I make an order in effect you're not required to object to each and every answer but the order operates as a blanket objection to all of your answers. Do you understand that?

MR FRANKLIN: Yes.

20 THE COMMISSIONER: And the effect of that order is that none of your answers can be used against you in civil or criminal proceedings but it doesn't protect you if it should be found that you've given false or misleading evidence to the Commission. Do you understand that?

MR FRANKLIN: Yes.

THE COMMISSIONER: And you want the protection of an order?

MR FRANKLIN: Yes.

30 THE COMMISSIONER: Pursuant to Section 38 of the Independent Commission against Corruption Act I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

40 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Now, Mr Franklin, do you wish to be sworn or affirmed?

MR FRANKLIN: Ah, sworn.

THE COMMISSIONER: Thank you.

THE COMMISSIONER: Yes, Ms Mitchelmore.

MS MITCHELMORE: Yes. Mr Franklin, can you state your full name, please?---Phillip Howard Franklin.

And what's your current occupation?---I'm an apprentice carpenter.

10

And do you live in Armidale?---Yes, I do.

Have you always lived in Armidale?---No. Only – I've been there for about 25 years, something like that.

I see. Is it the case that you've previously worked in the hotel industry?
---Yes, that's true.

20

And did that include a period as the manager of the Tattersalls Hotel in Armidale?---Yes.

Can you recall for how long you held that position?---Roughly it was around 18 months, something like that.

And can you recall the period of time? So, did it start around February of 2006?---Yeah, around February of, yeah, 2006 and, yeah, 18 months.

Eighteen months. Yes?---Yeah.

30

Can you recall where you worked before moving to the Tattersalls?---I was a casual at the Wicklow Hotel and the New England Hotel before that.

I see. And how was it that you came to work at the Tattersalls Hotel?---Um, I got a phone call from a friend of mine, Shaun Cassidy, and he said that Darrell Hendry had bought the Hotel and asked me if I wanted to go for an interview for it.

I see?---Yes.

40

So, it was a telephone call from, from Mr Cassidy?---Yes.

Mr Shaun Cassidy. Do you remember what time of day that was? Was it - - -?---Um, it was early one morning.

And what, what was your response to his inquiry?---Ah, yeah, well, I was only part time at that time so, yeah, I was very interested in, yeah, the manager's position.

How did you know Mr Shaun Cassidy?---Ah, we played rugby together for several years.

So, you indicated to Mr Cassidy that you were interested?---Yes. Yes. I did.

And did, did he then set up a, a meeting?---Yeah, we had a meeting later on that day.

10 So, that was the same day?---That was the same day.

And can you recall where that meeting – did he tell you where the meeting would be?---Yeah, I think it was at Café Midale which is just across the road from Tatts Hotel.

So, that's in Armidale?---Yes. Yes.

It's in the mall of Armidale. Is that right?---Yes.

20 When he said that Darrell Hendry had bought the Hotel, was that a name that was familiar to you?---No. Never heard of him before.

So, you agreed to attend the meeting that day?---Yes. I did.

And, and you went to the café?---Yes.

And do you recall who you met at the café?---Ah, yes, um, Darrell Hendry was there, John Cassidy was there and Shaun was there.

30 And to the best of your recollection are you able to tell me what, what happened at the meeting?---Um, I was – I spoke to Darrell and Darrell said that he just purchased the hotel and they were looking for a manager, um, they'd heard from Shaun that I was, I'd been in the hotel game and running pubs in Armidale before, so, yeah. We just talked about what I'd do with the pub, and that – just a general job interview.

Yes. So, it's the case that, that Mr Hendry did most of the talking. Is that right?---Yes.

40 Did Mr John Cassidy ask you any questions?---Ah, he was there and he did ask questions but I couldn't tell you what ones they were or anything.

Yes. Do you recall being told by either Mr Hendry or Mr John Cassidy about plans for the Hotel?---Ah, not at that stage I don't think. They, they may have mentioned that they were going to do something with it later on but that was not really discussed at that stage I, I don't think. Yeah. It was seven years ago, I'm not - - -

Yes. No, I understand?---Yeah.

Do you recall how long the meeting at the café went for?---Um, I think we had lunch there and, so, maybe 45, an hour maybe, something like that.

And can you recall what happened at the end of the meeting?---Um, yes, then we – I'm pretty sure I was offered the job then and we went across the road and looked at the Tatts and we were given a tour of the Hotel.

10 Do you recall who went across to the Hotel?---Ah - - -

Was it everybody from the meeting, or - - -?---No, no. It was just Darrell and I.

I see. And who took you on the, on the tour?---Um, it was Snelly, I think, the previous, um, publican.

Sorry, that would be Mr Snell?---Yes. Yes.

20 Steven Snell?---Yep.

And he was the then manager. Is that, is that right?---Yes.

And do you recall what parts of the Hotel you, you had a look at?---We looked at all of it, the, the bars, the storage areas, um, he even took me upstairs and showed me the residence.

30 And can you recall how long you were at the Hotel that day?---Um, maybe an hour or two. I, I couldn't tell you a hundred per cent.

And is it the case that – you've said you were offered the job on that date to your recollection?---As far as I know, yeah.

And it was Mr Hendry who offered you the job. Is that right?---Yes.

And is it the case that you subsequently had to fill out some forms in relation to the licence?---Yes. That's correct.

40 Liquor licence?---Yeah.

And provide some documents in relation to your qualifications to, to manage the Hotel?---Yes.

If I can just show you on the screen page 664, so, V46, Exhibit V46? ---Thank you.

And, Mr Franklin, you see that document, it's a, it's a fax?---Yes.

Which you may not have seen before, but can I take you through a few pages, and in particular – using the right hand numbers at the top of the page – 716?---Yep.

So, you've got the document there, you can go to 716 if you wanted to look at the hard copy or you can look on the screen?---Yeah.

Do you recognise the handwriting on that document?---Yeah. That's my handwriting.

10

And if you can just scroll through – is that – sorry, just pausing there, is that your handwriting there, Mr Franklin?---No, it's not.

Yes. Okay. Over the page, is it the case that you had to swear an affidavit as part of this application? Do you recall doing that?---Yes. Yes. I do.

And if I can show you the page on the screen now, is that – that's the affidavit part of the application that you swore?---Yes, it is.

20 And that's 9 January 2006. Do you see that there?---Yeah.

By reference to that date are you able to recall the timing of your original meeting with Mr Hendry and Mr Cassidy? Was it several weeks before that?---Not a hundred per cent sure because after that meeting I think I put in two weeks' notice, and in that two weeks' notice from that other job I filled out a lot of these forms so it could be anywhere from a week to two weeks previous to 9 January that we had the meeting.

I see?---Yeah.

30

So, that's – to the best of your recollection - - -?---Best of my recollection.

- - - it may have been one or two weeks prior to - - -?---Yes.

- - - 9 January?---Yes. So - - -

All right. Yes. I have no further questions for Mr Franklin.

40 THE COMMISSIONER: Any questions for Mr Franklin? No. Thank you, Mr Franklin, you may step down, you're excused?---Thank you.

THE WITNESS EXCUSED

[10.53am]

MS MITCHELMORE: Yes. Commissioner, the next witness is Mr Steven Snell.

MR STEWART: Commissioner, I've explained the provisions of Section 38 to him. He'd like a declaration.

THE COMMISSIONER: Thank you.

MR STEWART: And Mr Snell, Snell will take a, ah – he'll be sworn.

10 THE COMMISSIONER: Thank you. Take a seat, Mr Snell. Just let me clarify with you that you appreciate the order that I can make under Section 38 of the Act protects you from the use of your answers against you in civil or criminal proceedings but it doesn't protect you if it should be found that you've given false or misleading evidence to the Commission. You understand that?

MR SNELL: Yes, I do.

20 THE COMMISSIONER: Pursuant to Section 38 of the Independent Commission against Corruption Act I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

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40 THE COMMISSIONER: Yes. Can we have the witness sworn, please?

THE COMMISSIONER: Thank you. Yes.

MS MITCHELMORE: Yes. Mr Snell, can you state your full name, please?---My full name is Steven John Snell, S-n-e-l-l.

10 And what's your current occupation, Mr Snell?---I'm semi-retired.

I see. Is it the case that you previously worked in the hotel industry?---Yes.

And is it the case you previously worked at the Tattersalls Hotel?---Yes.

And you managed that Hotel for a period of years?---Yes.

Can you recall when that was?---Yes. January '98 to February 2006.

20 And was your employer the UNE Union?---Yes.

Did that change at some stage in 2005 to Services UNE Limited?---Yes.

In the second half of 2005 until you left the Hotel, who did you report to at that time?---Directly to the CEO, Sue Paini.

I see. And you lived on the premises of the Hotel. Is that right?---Yes.

30 Can you recall what your working hours were on a daily basis?---They were staggered from time to time - - -

Yes---? - - - depending on demand.

I see. And how many days a week would you work?---Living on the premise we'd work nearly every day.

I see?---Except Sunday when we were closed.

40 I see. At the time that you left the Hotel in February 2006 is it the case that the Hotel had recently been sold?---Yes.

Can you recall who bought the Hotel?---No.

Did you know of a name Mr Darrell Hendry? Is that name familiar to you? ---Yes.

How do you know Mr Hendry?---From my understanding he, ah, had purchased the Hotel yes but it wasn't confirmed to me at any stage. I didn't

see any documentation in relation to him actually purchasing the Hotel but I was told that was the case.

I see. And do you know a Mr John Cassidy?---Yes.

How do you know of Mr Cassidy?---He was the Vice-Chancellor of the UNE University.

10 The University. And did you ever come to learn of Mr Cassidy being involved in the purchase of the Hotel?---No.

Did you know of Mr Cassidy by sight?---Yes.

How did you know him by sight?---From a number of functions which I had attended through the University.

Do you ever recall seeing Mr Cassidy in your Hotel?---I did.

20 Can you recall when that might've been?---It would've been late November 2005.

Late November of 2005. And can you recall the circumstances of your – did you have any interaction with Mr Cassidy on that day?---Yes.

30 Are you able to recall the circumstances of your interaction with him at that time?---Yes. I saw Mr Cassidy in the upstairs apartments of the Hotel. He said to me, How do you get out of here? And I said, The way you came in here. And he left the premises, got into his motor vehicle and left the, the Hotel.

Is it the case that you just ran into Mr Cassidy on – in the – sorry, in the apartments, did you say, of the Hotel?---Upstairs accommodation, yes.

I see. So, there are three floors - - ?---Yes.

- - - of the Hotel? Is that right? So, he was not in the, the bar area?---No, it was upstairs.

40 And my question before – is it the case that you, you just happened to run into Mr Cassidy?---No. His presence was made, made known to me by staff members that there was a person upstairs wandering around, looking, inspecting the Hotel.

I see. Is it the case – you indicated that, that he then left the premises. Is that right?---Yes.

And got into a vehicle?---Yes.

Is that right? And do you recall the make of the car he was driving?---It was a Mercedes Benz.

Do you recall what colour?---Gold to the best of my recollection.

Is there any reason you're able to recall that incident so clearly with Mr Cassidy?---It was fresh in my mind after the tenders had closed for the Hotel. It was a number of – a day or a second, two days after the closure of the Hotel, the first tendering process of the Hotel.

10

And how were you aware of that date?---I was aware what was going on, I wanted to be aware of what date I was leaving the Hotel.

And so who told you about the, the closing date of the tenders?---Someone through the, the University.

I see. And it's the case that you – did you know Mr – you didn't know Mr Hendry before the Hotel purchase, is that right?---No.

20

Do you recall when you first spoke to Mr Hendry?---No.

Did Mr Hendry ever visit the Hotel?---After the Hotel was purchased, yes.

Can you recall approximate timing of that?---Some time after early December 2005.

Do you recall seeing Mr Hendry visit the Hotel with Mr Cassidy?---After the purchase of the Hotel?

30

Well, at any time?---I saw them in, their presence numerous times after the purchase of the Hotel after early December, they would visit the Hotel and have lunch on numerous occasions.

And this is after - - ?---Early December.

- - - early December of - - ?---After the closing of the second tender.

I see. Do you recall, do you Mr Shaun Cassidy?---Not personally.

40

Would you know him by sight?---Yes.

Do you recall seeing Mr Shaun Cassidy in the Hotel?---No.

That's all the questions, I have, thank you.

THE COMMISSIONER: Mr Snell, had, had you been informed that your services would not be retained after the sale of the Hotel?---I had let it known that we would, would not be available but we were not asked.

So your decision was that when the Hotel was sold you would move on?
---That's correct.

Right. Can I just clarify, when you said you saw Mr Hendry with Mr Cassidy, Mr John Cassidy, in the Hotel having lunch on I think you said numerous occasions did you, did you say that those occasions were all in December of 2005?---Yes.

10 Thank you. Does anyone have any questions of Mr Snell? No? Thank you, Mr Snell, you're excused?---Commissioner.

THE WITNESS EXCUSED

[11.02pm]

THE COMMISSIONER: Yes, Ms Mitchelmore.

20 MS MITCHELMORE: Yes, the next witness, Commissioner, is Mr Shaun Cassidy.

MR CHEE: Commissioner, my name is Chee, C-h-e-e - - -

THE COMMISSIONER: Yes, Mr Chee.

MR CHEE: - - - with authorisation I appear for Mr Shaun Cassidy. Mr Cassidy will be taking an affirmation and he seeks a declaration under section 38 of the Act.

30 THE COMMISSIONER: Thank you. Mr Cassidy, just take a seat. You appreciate I take it that the order under section 38 protects you from the use of your answers against you in civil or criminal proceedings but does not protect you if it should be found you've given false or misleading evidence to the Commission, you understand that?

MR CASSIDY: I understand that.

40 THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

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10

THE COMMISSIONER: Yes, can the witness be affirmed, please.

THE COMMISSIONER: Yes, Ms Mitchelmore.

MS MITCHELMORE: Yes, can you state your full name for the Commission, please?---Shaun Michael Cassidy.

10 And what's your current occupation?---I'm a winemaker.

And what are your qualifications, Mr Cassidy?---I've got a Bachelor of Applied Science.

And are you currently employed at the Merilba Estate Vineyard?---That's correct.

And the vineyard and the winery is located on a property known as Merilba, is that right?---That's correct.

20 And the property is owned by your uncle, Mr John Cassidy?---And his wife.

And his wife, that's Mrs Annette Cassidy?---I assume so, yeah.

And are you employed by a company?---Yes.

What's the name of that company?---Merilba Estates Pty Limited.

And is that a company with which your uncle is associated?---Yes.

30 Is he a director of the company?---Yes.

And a shareholder?---Yes.

And you're a director of that company?---Yes.

And a shareholder?---Yeah.

Are there any other directors or shareholders of that company?---No.

40 Are you responsible for the day to day running of the business?---Yes.

How long have you been involved with the business?---12 years.

Is it the case Mr Cassidy, that you grew up in Armidale?---No.

When did you first come to Armidale?---My recollection is I came to Armidale in 1997.

For what purpose?---I was visiting John and Annette and my, at that time my grandmother lived on the farm as well.

I see. And it's the case that you then stayed, is that right?---That's correct.

Working at the, the vineyard?---Initially on the farm and then um, planting a vineyard.

10 I see. I wanted to ask you some questions about the Tattersalls Hotel. Are you aware that your uncle has an interest in the Hotel?---I am now.

Did you find out about that from him directly?---No.

Who did you find out about that from?---I don't recall.

Is it the case that your uncle's never told you that he has an interest in the Hotel, is that what you're saying?---(No Audible Reply)

20 THE COMMISSIONER: In other words, has there never been a discussion of any kind with your uncle where in it it has been made clear to you that he has an interest in the Hotel?---Not that I recall.

MS MITCHELMORE: Has he ever asked you anything in relation to the Hotel?---Um, again a long time ago, not that I recall.

Do you ever recall him asking you for any suggestions as to a manager for the Hotel?---Possibly.

30 You possibly recall that, you don't have a recollection?---I don't have a clear recollection, no.

Is it the case – well, if I suggest to you that, that he did ask you for a recommendation and that you suggested Mr Franklin, does that accord at all with your recollection?---That could be a possibility.

And how did you know Mr Franklin?---I played rugby union with him.

40 And were you aware of where he was working at around this time and I'm talking about 2005?---Not that I recall.

Were you aware that he was working in the Hotel industry?---I was aware of that.

And is that why you suggested Mr Franklin or you may have suggested Mr Franklin to the best of your recollection?---Possibly.

Do you know the name Mr Darrell Hendry?---Yes.

How do you know Mr Hendry?---By association with John, my association with John.

Is it the case that you ever worked with Abigroup?---Yes, as a um, as a very lowly ah, chainie which is the position where you help the surveyor from time to time in, in university holidays.

Did you know that Mr Hendry was connected with Abigroup?---Yes.

10 And did you ever come to know him in that context?---(No Audible Reply)

Did you ever meet with him in that context?---No. I knew of him, he was very highly regarded by the men around him.

Did your uncle ever mention that Mr Hendry had an interest in the Hotel? ---Not to my recollection.

20 Do you recall attending a meeting in Armidale, Mr Cassidy, around about or some time in December of 2005 with your uncle Mr Hendry and Mr Franklin?---I don't recall.

Is it possible that it occurred?---It's possible but I have no recollection of it.

And is it possible that it occurred by reason of you making contact with Mr Franklin?---Again, it's a possibility but I don't recall.

How well did your uncle know Mr Franklin?---I have no recollection of how well he knew him.

30 Did he know him at all to your understanding?---Not that I can recall.

So it's possible that you may have set up a meeting with Mr Franklin on your uncle's behalf?---I don't recall that but it's, it could be a possibility.

Do you recall speaking to Mr Franklin about, about managing the Hotel? ---No, I don't recall speaking to Phil about that.

But it's possible that you did?---It's a possibility but I don't recall.

40 THE COMMISSIONER: Mr Cassidy?---Yes, Commissioner.

You've been, as I understand it, sitting in the back of the room as both Mr Franklin and Mr Snell and before him, I think, Mr Hendry have given some evidence this morning. Has none of that evidence, particularly from Mr Franklin, jogged your memory in relation to this meeting that took place with your uncle, Mr Hendry and Mr Franklin?---Ah, it hasn't, Commissioner.

MS MITCHELMORE: I have no further questions.

THE COMMISSIONER: Yes. Thank you. Any questions of Mr Cassidy? Yes. Thank you, Mr Cassidy, you can step down.

THE WITNESS EXCUSED

[11.10am]

10 THE COMMISSIONER: Yes, Ms Mitchelmore.

MS MITCHELMORE: Yes. Commissioner, the next witness is Ms Sue Painsi.

THE COMMISSIONER: Ms Painsi, do you have anyone appearing for you today?

MS PAINI: No.

20 THE COMMISSIONER: Could I just explain to you that you are compelled to answer questions that are asked of you and you must answer those questions truthfully. Because you don't have the option of refusing to answer a question, you would be able to object to each and every question that was asked of you and in that way your answers couldn't be used against you in later proceedings, but I can make an order under Section 38 of the Act which effectively operates as a blanket objection to all of the evidence that you give, and the effect of that is that your answers can't be used against you in civil or criminal proceedings, however the order doesn't
30 evidence to the Commission. You understand that?

MS PAINI: Yes.

THE COMMISSIONER: Do you wish to have the protection of the order?

MS PAINI: Yes.

40 THE COMMISSIONER: Pursuant to Section 38 of the Independent Commission against Corruption Act I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

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IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR
DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Do you wish to be sworn or affirmed, Ms Paini?

MS PAINI: Affirmed.

THE COMMISSIONER: Yes. Thank you.

THE COMMISSIONER: Yes, Ms Mitchelmore.

MS MITCHELMORE: Yes. Can you state your full name, please?---
Susanne Annette Paini.

10 And what's your present occupation, Ms Paini?---Chief executive.

And where are you presently employed?---At Hume Employment Service
Limited in Wodonga.

And is it the case that before your present employment you were employed
as the CEO of the UNE Union?---That's right.

And in addition to the UNE Union there was an entity, wasn't there, called
UNE Union Limited?---There was.

20 And is it the – can you recall which of those two entities was your
employer? Was it the UNE Union?---No, I couldn't tell you for sure.

Do you recall at some point that there was a corporate restructure?---There
was.

And your position changed to CEO of a company called Services UNE
Limited?---That's right.

30 Did that restructure arise, to your recollection, as a result of the two entities
being UNE Union and the UNE Union Limited being placed into a
receivership and an administration respectively?---That's right.

Do you recall who the administrator was?---Steven Hall from Tamworth.

Yes. From Forsyths. Is that right?---That's right.

40 And do you recall the circumstances that led to his appointment?---Um,
following the government's decision to bring in voluntary student unionism,
um, the University expressed concern that the Union was potentially trading
insolvently and, um, as a result of that a number of meetings were held with
the Board and, um, subsequently Steven was appointed.

When you say a number of meetings were held with the Board, is that the
Board of the Union?---That's right.

And do you recall when the appointment occurred?---Um, around May or
June in 2005.

Of 2005?---Yeah.

If I said May of 2005, does that sound about right?---That's right. Yes.

And after his appointment is it the case that as the receiver manager of the UNE Union and administrator of UNE Union Limited that Mr Hall took responsibility for the day to day management of the – those two entities?---That's correct.

10 And did you report to him in that capacity?---I did.

And were you involved in discussions with him about the financial position of the two entities?---I was.

Do you recall him providing a report to the University expressing an opinion that if the UNE Union had continued to trade it would've done so insolvently?---I do.

20 And the introduction of voluntary student unionism wasn't going to improve that position, was it?---Ah, to me that was the trigger for that decision.

And what was the issue with the introduction of voluntary student unionism that was going to have an impact on the Union?---The Union received around \$1.1 million, from my recollection, from, ah, student Union fees. Um, prior to the decision to bring in voluntary student unionism, um, so, around 1.1 million of our income would cease from the beginning of the following year, I think.

30 Do you recall discussions with Mr Hall and others about what should be done with respect to the assets of the, the two entities?---Um, yes. The primary asset of the Union was the Tattersalls Hotel. By and large they didn't have a lot of other, um, saleable assets.

I see. If I can show you – it's part of Exhibit 16, V16, it's page 37 of the brief. Ms Paini, can I ask you to look at tab 3, if you wanted to look at the hard copy of, of the bundle in front of you? Now, they're notes from a meeting that was held in the office of the executive director. That was Mr Dennehy, is that right?---That's correct.

40 And this was held on 20 July 2005?---That's right.

You're indicated as being present but joining the meeting at approximately midday. Do you see that on the first page?---I do.

Do you recall attending this meeting?---I do.

Can you recall for what purpose you attended?---My understanding is that I was there primarily to respond to questions around the issue of the

availability of the licence, or – if Tattersalls was sold, whether that, the University would be able to continue to hold the licenced functions on campus that it currently was facilitated through the Tattersalls Hotel.

I see. And do you recall being present – if I can take you to page 38?---
Yeah.

There's a reference at point 4 to, to a decision or an agreement that was reached by the group. Do you see that?---I do.

10

Do you recall being present for, for the – when that agreement was reached?---No, I'm not sure that I was there at that point.

As at this time, 20 July 2005, did you have a view about whether the Hotel should be sold?---Yes.

And what was your view at that time?---Um, that it should be sold as soon as possible.

20

And why was that?---Um, because of the, um, the – that it was the only saleable asset of the, um, Union, that there was a significant debt, um, that the Union currently held and that our income would shift significantly downwards from the beginning of the following year.

Yes. Do you recall that during the period of his administration and for a little while thereafter, Mr Hall received some offers to purchase the Hotel? ---Um, I think there was a, a considerable interest in the Hotel for a number of months, and that would've included the period that Steven was administrator.

30

Yes. One of those offers was from a company called Camtrad. Do you recall that?---That's correct. Yeah.

If I can show you Exhibit V6?---That's right.

That's the letter from Camtrad to Mr Hall. Is that a letter that you recall seeing?---Yes.

40

And do you recall having discussions with Mr Hall about that offer around that time?---Um, I don't know that I can recall specifically discussing this with him, but I certainly would have.

Do you recall that Mr Hall obtained a valuation of the Hotel as part of his role as administrator of UNE Union Limited?---That was one of the first actions that were taken by him as administrator.

And is it the case that the Camtrad offer was better than the valuation?---It was.

But it was a conditional offer?---That's correct.

Do you recall whether negotiations progressed with Mr Campbell and Camtrad?---I know that I issued a letter to the local Council allowing him to do some research on the property that the Tattersalls sat on and I can't remember any specific discussions with him but there may have been discussions with him.

10 I see. Do you recall having discussions with anybody else about purchasing the Hotel in this period around July to October of 2005?---July to October, that's a fairly broad period. As I said, there was a considerable interest in the Hotel. At that point I don't know that a firm decision had been made to see the Hotel.

Yes?---And I don't, I don't recall any offers coming directly to me or discussions directly with me during that period.

20 Other than possibly Mr Campbell. Is that right?---Yes, but as you can see, Mr Campbell's was actually addressed to Stephen Hall, the administrator, not to me.

Yes?---Mmm.

Now, ultimately as a result of the restructure, UNE Union and UNE Union Limited were folded into one entity, Services UNE Limited. Is that right? ---Yep.

30 And did you understand that that entity was a controlled entity of the University?---Yes. I probably didn't always appreciate the difference, but yes.

And do you recall what if any requirements existed at that time for reporting by controlled entities to the University?---We'd always reported to a degree through the University, through Graeme Dennehy. I think that became more formal with the, the shift to a controlled entity.

40 I see. So when you say it became more formal, can you recall what arrangements were in place for reporting?---Not directly, no. I, I would believe that the minutes of our meetings et cetera were sent to the University once they were approved but that's, it's a long time ago.

Yes. You say you believe that occurred, can you recall whether that occurred?---Look, it would be something that I would have expected to have happened. I would have expected that those minutes would have then been tabled as part of the board papers for the University within their meetings.

When you say you would have expected it to happen, who within the company would have been responsible for forwarding that information?
---That would have been me.

And do you have a recollection of doing it?---No, I can't, not with any certainty.

Do you recall attending meetings of Services UNE on its formation starting in September of 2005?---These are directors' meetings?

10

Sorry, yes, directors' meetings?---Yes.

Yes. Is it the case that you took minutes of those meetings?---That's correct.

And in terms of the process with the minutes, is it the case that you took notes during the meeting about what was occurring?---That's right.

20

And you took notes of any resolutions of the directors that were made in the course of the meetings?---Yes.

And what was then the process for having the minutes adopted?---I would type up the meeting minutes generally the next morning and they would be circulated with the Board papers prior to the subsequent meeting and then they would be approved at that subsequent meeting.

I see. Is it the case that there were discussions at the early meetings of Services UNE about the Hotel?---Yes.

30

Because as you said it was probably the major asset of the company at that time?---Yes. I prepared I think for the first meeting a business plan moving forward or some proposals moving forward at the Tattersalls was certainly included in those, in, in, within that plan.

If I can take you to the, to the minutes, that's, Exhibit 15 is the bundle and tab 1 of that, it's page 89 of the brief. Just the first tab, Ms Paini, is a - - -?
---Yep.

40

That's the first meeting of the, of the Board. Is that right?---Yes, I believe this, that's the first meeting.

Yes?---The initial meeting of Services UNE Limited.

And if I can take you over to the second page you'll see point 7 there's a reference to a confidential business plan?---That's correct.

And is that the business plan you were just referring to as something that you had prepared?---That's right.

And that was for the purpose of the directors for a plan going forward?
---That's correct.

And is it the case that the Tattersalls Hotel was mentioned in that plan to your recollection?---Yes.

Do you recall what you said about the hotel in that plan?---I believe I would have recommended that it be sold.

10

You'll see under that, Ms Pains, that there's a motion that was moved by Mr Murray that the offer received by the administrator that the CEO be authorised to commence negotiations for the sale for \$3 million or greater, that was the motion that was moved at that meeting. Do you recall that?
---That's correct. Well, I don't recall it but I can see it so I believe it would have occurred.

20

Yes. And is it the case that there's reference to consideration of the report from the administrator. Is that the report that he made into the affairs of the UNE Union and UNE Union Limited?---That's correct.

There's also reference to the valuation from Manenti Quinlan. Is that the -- do you recall seeing a copy of that report?---Absolutely.

And there's also a reference to the amount of interest. Is that a reference to the amount of interest in buying the hotel?---Yes, I believe so.

30

And the offer received by the administrator, is it your understanding that that was the offer that had been received from Camtrad?---Yes.

If I can take you to the next tab, Ms Pains, it's the minutes of the next meeting of 13 October?---Yep.

And again you're in attendance. Is that right?---That's right.

40

If I can take you to the second page of the minutes there's a motion, the third motion is that you be authorised to sign a contract of sale for the Hotel, just conditional on the purchaser having 14 days from exchange to arrange finance. Do you see that?---I do.

Do you recall that resolution being made?---Um, again not specifically but um, I see it certainly, it would have been made.

Yes. At page 93 of the brief. There's reference there to an expected exchange date of 17 October. Do you see that?---I do.

Is it, is it the case that negotiations with Camtrad were by this stage, and this is 13 October, 2005, advanced?---I can't recall specific discussions

regarding with ah, Camtrad um, during that period of time. Um, what I do recall is that subsequently they made a firm offer for a lower amount.

Yes?---Um, so um, what, any progress at that stage would have still been based on a conditional offer.

I see. Perhaps if I can show you Exhibit V24, and that's an email from a Mr Peter Pardy to Mr Hall. Do you see that?---Yes.

10 Do you recall seeing that email at any stage?---I've certainly seen this email, yes, and I saw it sometime around that period of time.

Yes. And that was in effect Mr Pardy on behalf of Camtrad withdrawing the offer of \$3 million. Is that right?---That's correct, yes.

Yes. And as you said, a subsequent offer was made at a revised amount. Is that right?---That's right, yeah.

20 So if I can just show you Exhibit V25?---Yeah.

And is that the- - ?---Yeah.

- - -the further offer?---Ah hmm.

And do you recall seeing that offer at around this same time, so around 21 October when it was sent?---Yes. I imagine I would have seen that either on that day or within a day of that being received by Forsyths.

30 Do you recall receiving an email from Mr Murray in relation to another offer to purchase the Hotel?---Um, yes, I, I've certainly seen another email from Andrew Murray.

Yes?---Ah hmm.

So this is Exhibit V11, page 95 of the brief. Is that the email that you recall seeing, Ms Paini?---Yes.

40 So that is another offer of up to \$3 million but that's obviously conditional. Do you see that?---That's right, yes.

And so it's the case that as at this time there is interest - - -?---That's right.

- - - in purchasing - - -?---Yeah.

- - - the Hotel. The next meeting of the Services UNE Limited was on 27 October, 2005, that's back in Exhibit 15 at page 98 of the brief. There's a reference just going back to the, the Tattersalls Hotel on the first page,

Ms Paini, of that document, there's a reference to a recent offer received including an unconditional offer for \$2.65 million, do you see that?---I do.

Do you recall there being an offer that Mr Hall received for \$2.65 million?
---Yes, I believe so.

If I can show you Exhibit V26, page 97 of the brief. You see that's a letter from Mr Tim Ryan?---That's (not transcribable) yeah.

10 Yes. Is that the offer that you recall seeing - - -?---I believe so, yes.

- - - for 2.65 million and you saw that around about that time?---Yes, I certainly would have seen it before the um, Board meeting on the 27th.

Yes. And if I go back to the minutes you'll see there's reference to a discussion with Gerry Quinlan?---Yes.

Do you see that? Do you recall a discussion with Mr Quinlan in the course of this meeting?---I believe both Mr Quinlan and Mr Hall teleconferenced
20 into that meeting - - -

I see?--- - - - on that day.

And do you recall what Mr Quinlan said about the valuation?---Not specifically, no, I think there would have been general discussion around the fact that we were receiving offers significantly higher than the valuation which from memory I think was 2.3, 2.35.

2.35?---Yes.
30

Yes. And - - -?---And the Board would have wanted to understand why that was occurring or what was driving that.

I see, yes. And discussion with Mr Hall appears to have dealt with how you might achieve the best value from the asset, do you see that?---I do.

Do you recall what options were canvassed at the meeting for the sale of the Hotel?---Um, I don't - no. Um, there may well have been a discussion around different options um, including auction.
40

Yes?---Um, I would say that generally I don't like auctions and given the circumstances and the interest in the Hotel that if we had, I believe if we'd gone to auction at that point um, and we hadn't achieved the result that we wanted that it becomes then very problematic to sell the Hotel quickly which is what really we wanted to achieve.

And you'll see that there was a decision or a preference expressed for, for a closed tender process, do you see that?---I do, yes.

And was that your preference?---I don't know that I probably was even aware of closed tenders prior to this particular date, it's not something that had been on my radar. So to the best of my recollection that was something that would have been proposed by Stephen Hall as, as an option.

Was proceeding by that option something that you agreed with, do you recall agreeing with that?---Yes, I do.

10 And what advantages did you see as coming with the process of closed tender?---I think it gave us the opportunity to test the market reasonably well and fairly quickly. It – from my recollection it allowed us to have a choice as to whether we accepted any of those tenders and therefore if we didn't achieve a satisfactory result we could continue with, to explore other options to sell the Hotel or continue to negotiate with the individual parties that had expressed an interest so, I mean, my responsibility at that time as far as I'm concerned was to optimise the value that we achieved for the Hotel.

20 And you considered the - - -?---And I considered that that gave us the best chance within the timeframe that we wanted that we couldn't afford to wait 12 months to sell the Hotel.

And what was the idea timeframe in your mind for selling the Hotel?
---That it would be settled before Christmas.

You'll see there's a resolution for you, CEO, market the Hotel by the closed tender process over a three week period?---That's right.

30 Can you recall why a three-week period was settled upon?---I think again because we were, if you work back from Christmas and the University and Armidale generally pretty well closed from a week or so before Christmas and nothing occurred. It was just a very quiet period so if you worked back from there I think we were looking at trying, as I say, trying to actually at least get things if not totally finalised then very much finalised before that Christmas slow down period.

And is it the case that Mr Hall was selected to administer the process?
---That was something that he agreed to do outside of his role as the
40 administrator or as an extension of his role as the administrator and it wasn't a process that I'd previously been involved with so I felt that that was a very, it was a smart thing for us to do.

And Mr Atkinson of Watson McNarama and Watt was retained to assist with the preparation of documents, is that right?---Yes, he, he'd been the University Union solicitor for a number of years so he was simply um, continuing to act in that ah - - -

Capacity?--- - - - capacity.

And Ms Paini, do you recall preparing a press release in relation to the sale?
---I don't.

Perhaps if I can show you Exhibit V12 at page 101. Do you recall that document?---I've not seen that document more recently than whenever it was prepared so - - -

10 Yes?--- - - - but I'm, I'm sure that I would have prepared it or, or Stephen and I between us would have prepared it.

I see. Do you recall where releases were published, UNE releases or how they were published, what the process was?---In general yes, not specifically. I would have (not transcribable) would have had a list of some media outlets that are local that we would have normally sent out media releases to.

20 Yes?---They would have gone as a matter of course to the University because they were being mentioned. I'm not sure whether Stephen Hall also may have had a number of contacts in the media that he would have used so I'm not really sure whether he or I would have actually pushed this out more broadly.

I see. When you say they went to the University because the University was being mentioned who or, or where did you send them when they were going to the University?---Oh, I'm not sure whether it would have been the University marketing department or the University Secretariat.

30 I see. You can't recall now - - -?---No, no.

- - - which of the two you may have sent them to. For releases of this nature did you have to get University approval?---Well, prior to us becoming Services UNE and UNE Limited no, but I can't be sure after that date whether or not we needed to. It's possible, yes.

Do you recall seeking approval with relation to this release?---No. As I said, I haven't seen this release since whenever it went out or around that time so - - -

40 Yes. Do you recall that an issue arose before the close of the tenders so it was over a three week period, the close of the tenders was 25 November, 2005?---Yeah.

Do you recall that an issue arose before the close of tenders about whether Services UNE required approval from the University Council to sell the Hotel?---Yes, I do.

And if I can show you the next set of minutes, Ms Paini, that's the minutes of 17 November at page 279?---Yeah.

And you'll see there's a reference there, Ms Paini, to Mr Watt giving the meeting information coming through the Chancellor that Council approval was required?---Yeah.

10 And you'll see that you advised that your understanding was section 4 of the constitution only required that your company or the entity only required approval for purchases and not for sales, is that right?---That's correct.

Is it the case that you were still directed by the Board to ask for permission? ---Um, that is the case and um, I'd been trying to think what my steps were in this because this was one of those areas where prior to us becoming a controlled entity of the University I think it would have been very clear cut that our constitution was the guiding framework for this.

20 Yes?---Um, sometime after this meeting, before I sent the email to – or had discussion with Helen – I'm not sure whether I had a discussion with Helen Arthurson or with Anthony Fox, um, but I was made aware that as a controlled entity that we would most likely be subject to the UNE Union Act or the UNE University Act which would require us as a controlled entity to seek that, um, authority.

I see?---Yeah.

So, it's the case that you, you did then seek formal permission. Is that right?---That's correct.

30 So, if I can show you Exhibit V18, page 282 of the brief, that's the letter that you sent to Ms Arthurson. Is that right?---That's correct.

On 18 November?---Um, yeah.

And that was seeking approval of the Council to allow you to sell the Hotel?---That's correct.

40 And you were asking for approval by 25 November. Is that right?---That's right, and I think from – within about a week, yes.

Yes. And do you recall subsequently being informed that the committee had, had approved – or, sorry, that the standing committee of the Council had approved the sale?---Ah, yes, I believe I received an email to that effect.

Yes. Can I show you Exhibit V19, page 287, just towards the bottom of the page?---The bottom of the page.

Yes. Do you recall receiving that email from Ms Arthurson?---I do.

You will see that there's a reference in that email to the standing committee having approved the sale but subject to a number of, sorry, subject to Services UNE adhering to a number of policies. Do you see that?---I do.

Were you familiar with those policies?---No.

10 After receiving the email did you go and look at what those policies said?
---Yes. I believe I sourced those through the University, and I'm not sure whether they went through Anthony Fox or someone else.

I see. Is it the case that you provided those policies to the directors of Services UNE?---I don't know that I would've necessarily provided them to the, to the Board. Um, I certainly would've reviewed them myself, um, and perhaps discussed them with, um, either Anthony Fox, um, Steven Hall and perhaps Anne Maurer as chair, um, yeah, um, I would've been concerned about making sure that the steps we'd taken at that point - - -

20 Yes---? - - - complied with the requirements of the legislation - - -

Yes---? - - - or policy.

Or the policies?---Yeah.

30 Yes. Perhaps if I can just show you some documents to see if they correspond with what you looked at at the time. Can I show you this document? Do you recall seeing that document, Ms Paini?---No. Look, specifically I can't say. I'm, I'm quite sure, again, that I have, did review it at the time.

Yes?---Um, or, just the relevant sections of this.

Yes?---Um, but I have no recollection of seeing this.

I see?---Yeah. And it may have come to me via an email of some sort rather than as a document, um, as well.

40 Yes. And perhaps if I can – so, that's, that's, um, titled a Government Procurement Policy. Is that right?---That's correct.

Policy and Guidelines paper. And can I show you this document? That's titled the Code of Practice for Procurement. Do you see that?---Yeah. Ah hmm.

And there were two documents that Ms Arthurson referred to in her, her email. Is that the second of the documents that you recall? Perhaps if I can take you back to page 287. So, there was the Procurement Policy and there

was also New South Wales Code of Practice for Procurement. Do you see that?---I do.

And to the best of your recollection, the second document I've given you which is titled the Code of Practice, is that the document that you recall sourcing?---Well, again, I don't recall actually looking specifically at these documents. I'm quite sure that they were provided to me.

10 Yes?---And as I said they may have come to me electronically rather than in a form that looks like this, um, and I would've been interested in looking specifically at the clauses that, um, were relevant to the transaction for the Tattersalls.

Yes. And, and your purpose in doing that was to check - - -?---Well, to, to make sure that our, that we were complying with the, that, with the requirements, yes.

20 Yes. And, and do you recall being satisfied having reviewed the documents that what you had done was consistent?---Yes. My understanding is that that was the case.

Commissioner, I tender those two documents.

THE COMMISSIONER: Yes. Those two documents will be Exhibit V54.

**#EXHIBIT V54 - NSW GOVERNMENT PROCUREMENT POLICY
JULY 2004 AND CODE OF PRACTICE FOR PROCUREMENT
DATED 18 JANUARY 2005**

30

MS MITCHELMORE: Can I just go back to that email at 287? I think it's just come off your screen again, but do you see at the bottom there's a, towards the bottom of - before Ms Arthurson's name, there's a request that close of tenders be extended for a further two weeks until 9 December? Do you see that?---I do.

Do you recall that that request was made?---I do.

40 Do you recall having any conversation with Ms Arthurson about the reason for that request?---Ah, no, I don't believe so.

It's the case that you replied to Ms Arthurson's email and in particular to that request. Is that right?---That's right.

So, if I go, if we go just over, just to the previous page, that's the second half of it, is that the email that you sent back to Ms Arthurson?---That's correct. Yes.

And before sending that did you canvas the attitudes of the, the Board?---If, if I can assist you - -?---I believe that I discussed this with Anne Maurer as chair.

Yes?---And with Steven Hall.

Yes?---And I don't know that it was disseminated at that point or that I held individual discussions with the other directors.

10

I see?---Yeah.

And is it – just – you'll see, Ms Paini, on the second page there, there's reference to you speaking to, specifically to Ms Maurer and to Mr Hall. Is that correct?---That's correct.

So, that's consistent with your recollection. Is that right?---That's right.

20

And you copied the email, just going back up, up the page, you copied the email to all of the directors?---To all of the directors. That's correct.

Do you recall subsequently receiving a request from Ms Arthurson to have Mr Watt ring Mr Cassidy about the closing of the tenders?---I don't recall receiving a phone call but I certainly know that I sent the email subsequent to that, so I presume that I would've certainly received a phone call from her rather than an email request from her.

30

I see?---'Cause otherwise I would've forwarded the email as part of that attachment.

I see. So, this is Exhibit V14, page 294. Is that the email that you're referring to, Ms Paini?---That's correct. Yes.

Yes. And what you're saying is that you had a, a phone call because otherwise you would've forwarded the email with the request?---That's correct.

40

I see. Now, tenders were to close at 4.00pm on 25 November, so, that was a Friday. Do you recall that you arranged a meeting to review the tenders? ---Yes.

And that was arranged for 28 November. Is that right?---The following Monday. That's correct.

The following Monday? Yes?---Yeah. On Monday afternoon.

And if I can show you page 296 of the brief, Exhibit V13, and that's the email that you sent to notify the Board about the meeting. Is that right?

---Yes. Now, that's confirming a meeting so the meeting may have been informally arranged prior to that.

Yes?---And I'm confirming that that was what was arranged, so - - -

So, you may have spoken to the directors together?---Yeah, or it may have been something that we'd agreed at the previous meeting that, following the closure, we would have a meeting, and that, that was really confirming that meeting, so - - -

10

I see?---Mmm.

It just – it's not formally minuted in the earlier minutes, is it?---No. I don't, well, I don't believe so.

Did you have any discussions with Mr Hall as to what the process would be once the tenders closed?---I did. He was included in this email I think.

20 He was, yes?---Yes. And subsequently I believe I asked him if I needed to do anything to prepare for that meeting.

Yes. So I can show you Exhibit V33. Is it the case that you- - -?---Yeah.

- - -you've asked- - -?---That's right, asked Stephen, yeah.

That's the email that you recall?---Yep.

30 Yes. And he indicated to you that he would open the tenders and let you know what they were. Is that right?---On the Friday afternoon after the, I think the tenders from memory, not even from memory, but I believe they closed at 4 o'clock.

4 o'clock?---Mmm.

That's right. And do you recall receiving an email from him after 4.00 that day on the Friday, the 25th?---Again I don't recall the email but from subsequent document I believe I certainly received that email from him.

40 Yes. Just turning to the meeting of 28 November, do you recall attending a meeting to discuss the tenders?---I do.

Was Mr Watt present?---Yes.

He was one of the directors of Services UNE?---That's correct.

And Ms Maurer was present?---Yes.

She was the Chair at that time?---The Chair.

Was Mr Murray present?---No.

Do you recall why Mr Murray was not present?---I believe he'd previously advised that he wouldn't be available for that time and I, mmm, yes.

Was Mr Hall present?--- Yes.

10 Was he present for all of the meeting, to your recollection?---To the best of my recollection, yes.

Was Mr Atkinson present?---He was present, yes.

Was he present for all of the meeting?---Not to my recollection, no.

So he was there for part of the meeting. Is that right?---That's correct.

To your, to the best of your recollection?---Yes. Ah hmm.

20 Yes. Do you recall for approximately how long the meeting went?
---No, I couldn't tell you that with any certainty.

And it's the case that there were three formal tenders. Is that right, does that accord with your recollection?---Yes, I believe so.

And was there also a conditional tender?---Yes, I believe so.

30 And do you recall what the amount of that tender was or the conditional tender?---It was significantly higher than the other tenders.

Yes. So- -?---Than the conditional, than the unconditional tenders.

Yes. So if the, if I say to you the conditional tender was three and a half million?---That would be I think correct, yes.

Compared to the highest offer that you'd received for the tenders was two and a half million?---2.5, that's correct.

40 And do you recall that that conditional offer was accompanied by a request for an extension to put in a formal tender?---I do.

What was your attitude to that request?---Again I believe that our, our responsibility was to optimise the value of the sale of the Hotel um, and that providing we were able to do it under the terms of the tender and it didn't compromise the offers that we'd already received, that there was no reason why we wouldn't accede to that, especially from my reading of the request, there is some suggestion that perhaps we, and by we I mean Stephen Hall

and the process um, could have facilitated or supported an actual unconditional tender in a better way.

I see?---So there were, there were some, there were, there was the um, implication there were delays um, in getting information to that um, tenderer who um, obviously was Darrell Hendry.

Yes?---And um, that therefore I would have felt that if that was correct that perhaps we hadn't treated him as equally as other people within the tender.

10

I see?---So- - -

Yes?---In the interests of fairness I suppose.

So, and did you ask Mr Atkinson or Mr Hall in the course of the meeting or anybody else, can you recall any discussion about whether an extension was appropriate within the terms of the conditions of tender?---Yes. I believe I would have discussed that. Well, I certainly would have discussed it with Stephen Hall, I'm not sure whether I would have also discussed it with Bruce, but Bruce had prepared the, the, the documents around the tender so he may well have been part of that discussion.

20

Yes. Do you recall whether Mr Cassidy attended the offices of Watson McNamara and Watt on the same day that the directors met to review the tenders?---He um, I wouldn't say he was an attendee at the meeting but he certainly turned up.

So do you recall him being present in the room where the meeting was held? ---Yes, for a period of time.

30

So he wasn't present for the whole meeting?---No.

Was he present when the tenders were open?---Um, I believe he came into the meeting after, sometime after we'd started, so he may well have not been, and that's not something I could say with any certainty.

Yes. Do you recall that you or someone else informed him of the number of tenders?---No, I can't say that I can recall that.

40

And can you recall whether anybody informed him of the amount of the tenders?---Ah, no, not with any, no, I don't believe so.

Do you recall whether you or anyone else was present or anyone else who was present told Mr Cassidy that Mr Hendry had submitted a conditional tender?---No, I don't, don't, I can't say with any certainty that that would have been discussed while he was there.

I see. Is it possible that that occurred?---It's possible.

It's the case isn't it that by 5 December, so when the board of directors of Services UNE next met- -?---Yep.

- - -that Mr Cassidy had spoken to Mr Watt about his relationship with Mr Hendry, do you recall?---I believe so, yes.

And perhaps if I can show you the minutes?---Yeah.

10 Which is back in Exhibit V15. This is at page 332. And just taking you over the page, Ms Paini- -?---Yep.

- - -to page 333. Do you recall Mr Watt providing that information to the Board?---Um, in broad terms, yes, I do.

And you've taken the, the minute?---I have.

And is it your recollection that in accordance with your practice you would have taken the minutes or typed them up the next day?---That's correct.

20

Do you recall in relation to, to Mr Hendry's request for an extension that a decision was made by the directors to give him until 2 December?---Yes, I believe so.

Do you recall meeting with Mr Hendry in the week between your meeting on the 28th and the extension he was granted 2 December?---Yes, I certainly met with him in that period of time at, at the Tattersalls Hotel.

You met him at the Hotel?---Yeah.

30

Do you remember any part of your conversation that day?---Yes, in broad terms, I couldn't tell you the exact wording but in, in broad terms within that, the context of that conversation, yes.

Yes. Are you able to tell, tell me what that was?---Um, I asked him just as more a general breaking down barriers I suppose and getting to know him a little better why he was interested or why he was interested in purchasing the Hotel and um, I believe he responded in the context that he had previously known of the Hotel through being a student at the University um,
40 and that he had attended the Hotel on occasions when he um, had been a student at the University.

Do you recall in the course of the meeting him asking you about financial information relating to the Hotel?---Um, not specifically but I'm quite sure it would have come up, it had come up in my conversations with almost everybody who was interested in purchasing the Hotel.

And do you recall what your response was?---It would have been the same response that I'd given to everybody else which was that the information that was in the tender package was all of the information that we were making available.

I see. And so you would not have provided any further information, is that right?---That's correct.

10 And that was your practice with respect to anybody that rang you?---All inquiries, that's right.

Did you receive a number of inquiries in the course of this process?---I had, yes.

Sorry, you said?---I had, yes.

20 Yes. Now the minutes of the meeting that I have just taken to, Ms Painsi, so just going back to those and to that particular page, there's a resolution that the highest tender be accepted, that was the tender from Mr Hendry?
---That's correct.

And after resolving to accept that tender do you recall preparing a release?
---Again, I don't recall specifically preparing it but I've seen the release and I certainly believe I would have prepared it.

If I can show you page 357, which is Exhibit V40. Is that the release, do you recall preparing that release, Ms Painsi?---In broad terms, yes, well, generally speaking yes, after seven years.

30 Yes. And you'll see that there's a reference to Mr Hendry or Mr Hendry being quoted - - -?---In the middle paragraph?

40 Yes, in the second paragraph, did you consult with Mr Hendry in relation to the, to the terms of the release?---Um, I would have both - I can't imagine constructing that, that sentence without almost getting his input into the wording of that. It's not something I would normally do and particularly where I'm running it as a quote and it is about, it concerns something that is not my business, it is his business so I would have not only consulted with him, I would have got his approval to release it in that form.

I see. You don't have a specific recollection of doing that?---No, no.

But that would have accorded with your practice?---It would have either been done by email or by phone um, and then I would have certainly emailed that to him before I released it and in part that's because his name is on the bottom of that as well.

Yes, and, and contact details?---Yeah.

Can I just show you tab 7 so still in that bundle, Ms Paini, which is page 696 and that's minutes of the meeting on 12 January and you'll see - - -

MR MOSES: I've just noticed that Mr Hendry's mobile telephone number is on the bottom of that document, it's probably too late but could that be redacted?

THE COMMISSIONER: Yes, yes.

10

MR MOSES: If it's going on – it shouldn't be on there.

THE COMMISSIONER: The usual orders apply.

MR MOSES: Yeah.

THE COMMISSIONER: We don't release - - -

MR MOSES: Thank you.

20

THE COMMISSIONER: - - - private information and that can be redacted at a later time.

MR MOSES: Yes, thank you.

MS MITCHELMORE: I understand it's been redacted.

MR MOSES: Thank you.

30

MS MITCHELMORE: The – just looking at that first page, Ms Paini, that the minutes have been confirmed, do you see that?---Yes, that's correct.

And the minutes held on 5 December and it was, that member was reconvened on 12 December, do you recall that?---That's correct. Um, I know from the, looking at the minutes but I don't actually recall that specifically occurring - - -

But, but it was, it was the minutes - - -?---There were two sets of minutes.

40

There were two sets of minutes that were confirmed and if there'd been any change to the minutes is that the place, namely that page that you're looking at now - - -?---I would have expected that that was noted, yes.

But it would be noted on that page if there any changes?---That's correct.

And if anybody raised any changes that is where they would be noted, is that right?---That's correct.

And the resolution at that meeting was to approve the, the amended contract of sale, do you recall that there was an issue with the contract being rescinded and then entered into again with a, with a company?---Yes, that was um, following a request from the purchaser.

Yes. That's all the questions I have for Ms Paini, thank you?---Thank you.

THE COMMISSIONER: Any questions for Ms Paini?

10 MR MOSES: There was just an issue, Commissioner, which I'm just getting some instructions on. You might recall that my learned friend had some evidence given, asked a question, some evidence was given about an alleged conversation between Mr Hendry and the witness concerning his interest in the Hotel.

THE COMMISSIONER: Yes.

MR MOSES: That was the subject of examination of Mr - - -

20 THE COMMISSIONER: No, I understand that.

MR MOSES: - - - Mr Hendry so I've just asked that instructions be obtained as to whether there's something that we wish to put to the witness in respect of that.

THE COMMISSIONER: All right. Is that all then, Mr Moses?

MR MOSES: That's all.

30 THE COMMISSIONER: Any questions, Mr Thangaraj? No?

MR THANGARAJ: No, thank you.

THE COMMISSIONER: Well, look, can I suggest we just take a short adjournment just while those, while those instructions are taken. Ms Paini can step down and we'll resume in 15 minutes.

40 **THE WITNESS WITHDREW** **[12.04pm]**

MR MOSES: Yes, Commissioner.

THE COMMISSIONER: Thank you.

SHORT ADJOURNMENT **[12.04pm]**

THE COMMISSIONER: Yes. Take a seat, Ms Paini.

<SUSANNE ANNETTE PAINI, on former affirmation [12.20pm]

MS MITCHELMORE: Commissioner, I just – before Mr Moses asks any questions he needs to, I just have one - - -

THE COMMISSIONER: Yes.

10 MS MITCHELMORE: Just a couple of further questions for Ms Paini. Ms Paini, do you – you said you met with Mr Hendry at the Hotel. Do you ever remember meeting with Mr Cassidy at the Hotel?---No. I don't believe I did. No.

No. Do you ever recall – did, did you offer to take Council members on a tour of the Hotel at any stage?---I don't know whether it was Council members or our board but certainly the invitation was extended to Mr Cassidy as well as part of that.

20 I see?---Yeah.

And did he attend at that time?---No, I don't believe he did.

Do you know whether he ever intended the Hotel?---Only from that – the information provided to me from Steven Snell subsequent to, um, Mr Cassidy being in the Hotel.

So, it's the case you received a report from Mr Snell?---That's correct.

30 That Mr Cassidy had been in the Hotel?---That's correct.

Do you recall when that was?---No.

And can you recall what Mr Snell told you?---That a staff member had, um, found Mr Cassidy upstairs at the Hotel, um, and that, um, I believed that the conversation Mr Snell relayed this morning in fact had come from a staff member to Mr Cassidy rather from Mr Snell to Mr Cassidy so it wasn't my recollection that Mr Snell had then subsequently gone and spoken to Mr Cassidy.

40

I see?---Mmm.

But the report that you had, you were sitting in the, the hearing room this morning when you heard Mr Snell - - -?---Yeah.

- - - recount that conversation. Is that right?---Yes. That's correct. But, but - - -

And that was consistent - - -?---That's, that's pretty much what I heard, was conveyed to me - - -

By Mr Snell---? - - - at the management meeting, by Mr Snell, that's correct.

I see. Save for a difference as between who had the conversation with Mr - - -?---Yes.

Is that right?---That's right.

10

I see?---Mmm.

Yes. I have nothing further. Thank you, Commissioner.

THE COMMISSIONER: Yes, Mr Moses.

MR MOSES: Yes, thank you, Commissioner. Ms Paini, you've said in your evidence prior to the adjournment that you had a conversation with Mr Hendry and that you had asked him, I think, why was it or how did he
20 become aware of the Hotel, why was he interested in the Hotel?---That's correct.

Do you recall that?---Yeah.

And I think you said in answer to that question by counsel assisting that Mr Hendry said to you that he was a former student of the University?---That was my belief, yes.

That's your belief, and that you also said that he had visited the Hotel when
30 he was a student at the University?---That's again my belief, yes.

Your belief. When you say it's your belief do you actually have a firm recollection that was said?---Um, I certainly had a firm recollection, um, sometime after when I was questioned on it by the University lawyers and I certainly recall, um, providing that information to questions I received subsequent to the sale as to who Mr Hendry was, so, but can I recall right now the exact conversation? No. It was that context.

See, what I suggest, what I want to suggest to you is that Mr Hendry never
40 said that to you, ma'am, and that you must be mistaken that he said that to you?---Yeah. Ah hmm.

What would you say in response to that, ma'am?---I guess two people can have a conversation and hear it differently and I accept that, but I believe I've conveyed how, what I - - -

THE COMMISSIONER: No, sorry, Ms Paini. No, Ms Paini, I, I don't think that's going to help them out?---(not transcribable)

See, Mr Moses is putting to you squarely that that conversation didn't happen at all. It's not a question of your construction of the conversation, it's a proposition that it didn't happen at all and he's asking you to comment in relation to that?---Then I would say that I believe the conversation I occurred the way I recollect it.

MR MOSES: And you say that's your belief?---That's right.

10 Thank you. Commissioner, no further questions.

THE COMMISSIONER: Thank you. Anything, any questions of Ms Paini? No. Thank you, Ms Paini, you may step down, you're excused.

THE WITNESS EXCUSED

[12.24pm]

20 THE COMMISSIONER: Yes, Mr Moses.

MR MOSES: I'm just going to be excused for the rest of the hearing, my instructor will stay here, so I won't be troubling you for the rest of the hearing.

THE COMMISSIONER: That's all right. Mr Moses, I'm just wondering whether in the light of the most recent evidence - - -

MR MOSES: Yeah.

30 THE COMMISSIONER: - - - whether it might be necessary to recall your client briefly to put that proposition to him just, just for procedural fairness reasons.

MR MOSES: That's a matter, yeah, that's a matter for counsel assisting as to what she action you want to do with it.

THE COMMISSIONER: I understand, but Mr Hendry can make himself available, though?

40 MR MOSES: We will make sure he's available.

THE COMMISSIONER: All right. Thank you.

MR MOSES: If you request it, so, if somebody lets us know if he needs to be recalled, if it's relevant, then we will certainly ensure he's here.

THE COMMISSIONER: All right. Thank you.

MR MOSES: Okay.

THE COMMISSIONER: Yes. You're excused. Yes, Ms Mitchelmore.

MS MITCHELMORE: Commissioner, the next witness is Mr Geoffrey Walker.

10 MR MOSES: Commissioner, sorry, if Mr Hendry is required can we possibly say that he be fitted in tomorrow morning because that's when I can come back in the morning tomorrow.

THE COMMISSIONER: No, that's perfectly - - -

MR MOSES: Thank you.

THE COMMISSIONER: All right, thank you. Yes, Mr Walker, just come forward if you wouldn't mind, take a seat.

20 MR DOBLE: If it please the Commission, my name is Doble, D-o-b-l-e, solicitor.

THE COMMISSIONER: Yes, Mr Doble.

MR DOBLE: I seek leave to appear on behalf of Mr Walker.

THE COMMISSIONER: Yes. That leave is granted.

MR DOBLE: Thank you, Commissioner.

30 THE COMMISSIONER: Have you told Mr Walker of the effect of Section 38?

MR DOBLE: I, I've just, I've been instructed to seek a Section 38 order.

THE COMMISSIONER: Right.

MR DOBLE: And Mr Walker will take an oath.

THE COMMISSIONER: Right.

40 MR DOBLE: Thank you, Commissioner.

THE COMMISSIONER: Mr Walker, just let me, just let me ensure that you appreciate that the order under Section 38 protects you from the use of your answers against you in civil or criminal proceedings but doesn't protect you if it should be found that you've given false or misleading evidence. Do you appreciate that?

MR WALKER: Commissioner, I appreciate that.

THE COMMISSIONER: Thank you. Pursuant to Section 38 of the Independent Commission against Corruption Act I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

10

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

20

THE COMMISSIONER: Yes. Can we have the witness sworn, please? Sworn or affirmed, Mr Walker?

MR WALKER: Sworn, yeah.

MR DOBLE: Sworn, Commissioner.

30

THE COMMISSIONER: Yes.

MS MITCHELMORE: Yes. Can you state your full name for the Commission, please?---Geoffrey Neil Walker.

10 And what is your occupation, Mr Walker?---Chartered Accountant.

And where do you work?---I'm self-employed at the moment.

And what are your qualifications?---I'm a chartered accountant, registered tax agent, registered auditor.

Is it the case that you previously worked at a firm called WLM Partners?---I did.

20 And what was your position there?---Director.

And how long did you work there?---That (not transcribable) the firms, I've been in self-employment for 24 years.

Is it the case that in your capacity as a director of WLM Partners that Mr Hendry, Darrell Hendry was a client of yours?---He was a client of mine.

Can you recall for how long Mr Hendry – is he, is he still a client?---He still is a client.

30 Yes. For how long has Mr Hendry been a client?---Since about 2004.

And what about Mr John Cassidy?---Since about 2007.

And he is still a client of yours?---He still is.

Is that right?---Yes.

And do you know of a company called Vercot Pty Limited?---I do.

40 Is Vercot also a client of yours?---It is.

Is it still a client of yours?---It is.

And can you recall for how long Vercot has been a client?---I can't exactly recall, um, but it would've been around about 2007 I think.

Now, I wanted to ask you some questions today about your involvement in advising about the structure of a purchase of the Tattersalls Hotel in Armidale in 2005?---Right.

Do you recall Mr Hendry getting in contact with you in relation to setting up a meeting about the Hotel purchase in Armidale?---Yes, I do.

Can I show you page 341?---Right.

10 Mr Walker, is that your handwriting?---That's my handwriting.

And you'll see at the bottom – is that your signature?---That is my signature.

And the date is 8 December 2005?---That's correct.

And is that a note that you took of a telephone call with Mr Hendry?---It is.

20 On 8 December 2005?---That's right.

Is it the case that in relation to your note taking, Mr Walker, that you take notes contemporaneously with phone conversations?---I do.

And just looking at the notes, just to understand your handwriting, Mr Walker, with the word structure, what's, what's with, in relation to those bullet points that sit next to the word structure?---The members and the financing of the- - -

30 I see, members and financing. Thank you. And it's the case at the bottom that you've arranged a meeting at 8.00am the next day. Is that right?
---That's right.

And there's a reference to referred to Geoff Stein, do you see that?---Yes, I possibly, when we were discussing it I probably mentioned Geoff Stein's name as being a lawyer who could deal with the issues around the acquisition of a Hotel, licensing issues particularly.

I see. So I tender that document.

40 THE COMMISSIONER: Yes, Exhibit V55.

#EXHIBIT V55 - HANDWRITTEN NOTES OF GEOFFREY WALKER DATED 8 DECEMBER 2005 TITLED "POTENTIAL CLIENT"

MS MITCHELMORE: Now, that document referred to a meeting on the Friday. Do you recall having a meeting with Mr Hendry after you received this phone call- -?---I do.

- - -on the next day?---On the next day, yes.

Yes. If I can show you page 358 of the brief and, Mr Walker, that's again your handwriting. Is that right?---That's right, it's in my handwriting.

10 And that's of a meeting that appears to have taken place at 8.00am on 9 December?---That's correct.

And are they your initials at the top of the page?---It is my initial, yes.

And do you recognise that document as notes that you took during the meeting with Mr Hendry on 9 December?---I do.

20 And is it the case, Mr Walker, that, or can I ask you did Mr Hendry provide you with any documents in the course of that meeting?---I don't believe so.

Can I ask you just on page 360, which is still part of the same file note, is that nature of components?---Value of components.

I'm sorry, value of components. Yes, thank you. And on the previous page again at the bottom of that page there's a reference to Geoff Stein. Is that right?---That's right.

So you've given him on this occasion his, his phone number?---Yes.

30 Yes, I tender that document.

THE COMMISSIONER: Exhibit V56.

**#EXHIBIT V56 - BUNDLE OF HANDWRITTEN NOTES TITLED
"DARREL HENDRY PURCHASE OF HOTEL"**

40 MS MITCHELMORE: Just if I can ask you briefly, Mr Walker, on page 358 just under the second entry which is toward the margin, the first is purchase of Hotel Armidale, the second heading, is that, is that Consortium? ---Consortium, yes.

And what's written underneath, is that consistent with your recollection of what you were told by Mr Hendry on the day?---It is.

And that was a structure as to the interests in the hotel at that time?

---It was a possible, it wasn't a definite position, it was a possible position that was put- - -

I see?--- - - -that I had to consider when I was looking at the structures.

I see.

THE COMMISSIONER: Next to Mr Hendry's name does that read, is that latent investor or- - -?---No, silent investor.

10

Oh, silent investor. Thank you.

MS MITCHELMORE: And do you recall what that was a reference to, Mr Walker?---As to whether one of the parties would be a silent investor or a nominee for somebody else.

I see. Can I show you page 381 of the brief. Do you recall, Mr Walker, receiving an email from a Laura, is it Menschik?---Laura Menschik, yes.

20

Yes. And just passing on a phone message. Is that right?---That's right.

And at the bottom of that document you'll see – is that your handwriting at the bottom?---That is my handwriting.

And is that a note of the, of you returning the phone message?---Yes.

And that was at 6.30pm on 14 December. Is that right?---That's correct.

And there's a reference to John Cassidy. Do you see that?---There is, yes.

30

Is it the case that you spoke to John Cassidy at that time?---No.

That's just a reference to- - -?---That's just a reference that Darrell was to talk to him.

In the course of – and that was something that he said to you in the course of the conversation. Is that right?---That's right.

Yes. Commissioner, I tender that document.

40

THE COMMISSIONER: Exhibit V57.

**#EXHIBIT V57 - EMAIL FROM LAURA MENSCHIK TO
GEOFFREY WALKER RE CALL GEOFF STEIN DATED 14
DECEMBER 2005**

MS MITCHELMORE: Can I show you brief 389. Mr Walker, is that again your handwriting?---It is my handwriting.

And that's notes of a – perhaps again a conversation with Mr Hendry. Is that right?---A, a phone discussion with Geoff Stein.

Oh, it's a phone discussion with Mr Stein. Is that right?---Ah hmm.

10 And the name Darrell Hendry, is that up the top because it's in relation to his matter?---Yes. That's right.

I see. So, that reflects a conversation that you've had with Mr Stein. Do you recall – this document isn't dated. Do you have any recollection of when that conversation occurred?---No. Unfortunately I haven't put the date on it. It would've been some time after that 14 December, the previous document.

I see?---Mmm.

20 But you can't, can't put a precise date on it?---No.

Are you able, Mr Walker, just so I've got your handwriting, on the right hand side after hotel property there's a reference, is it hybrid unit trust? ---hybrid unit trust.

And what did you mean by a hybrid unit trust?---Well a hybrid unit trust would be a combination of a unit trust and a discretionary trust. It was only being considered at that time.

30 I see. And above that there's a reference to two trusts. What's, what's written sort of up next to that?---Land rich entity.

I see. And what, what was the issue with land rich entity?---It's an issue about stamp duty as to whether a property would be subject to stamp duty at higher rates for higher value properties.

I see. So, that was something that was being considered - - -?---It was being - - -

40 - - - in the context of this transaction?---Yes.

Can I ask you next to hybrid unit trust there are two dashes going out either way. What does the first, the first of those?---Ownership.

Ownership. I see. And that's, and then underneath is rental agreement, is that right, with hotel?---That's right.

And shops. Is that right?---That's correct.

And under the heading – sorry, under the next – there’s again a reference to hybrid unit trust ownership and this is to deal with the operations and licence. Underneath that, is it goodwill of premises or business?---Goodwill of, goodwill of business.

I see?---Resides in this structure.

10 I see. So that’s within the structure of the operations. Is that right?---That’s right.

Yes. I tender that document.

THE COMMISSIONER: Yes. The undated notes at page – what page was it?

MS MITCHELMORE: 389.

20 THE COMMISSIONER: 389.

MS MITCHELMORE: Commissioner, yes, I don’t presently have copies of that, I apologise.

THE COMMISSIONER: Exhibit V58.

#EXHIBIT V58 - UNDATED NOTES- PAGE 389 OF BRIEF

30 MS MITCHELMORE: And can I then take you, Mr Walker, to the next page of, of this, is that also your handwriting?---It is my handwriting.

Is this a note that you took in, in the same conversation or are, is this a separate document?---It would’ve been something as I was working out how to structure the acquisition, it would just be a, a note that I’ve done.

For your own purposes. Is that right?---For my own purposes. Yes.

40 And is that the same with page 391?---Yes. It is.

Is that part of the same exercise that you were doing on page 390?---Yes.

Yes. So, they’re just notes that you’ve taken as – for your own purposes. Is that right?---That’s right.

They don’t reflect any conversation that you’ve had with anybody?---No.

And can you recall when you made those notes?---Some time between 14 and 19 of December I, I would suggest.

Yes. Commissioner, I tender those documents.

THE COMMISSIONER: Is that 390 and 391?

MS MITCHELMORE: 390 and 391.

10 THE COMMISSIONER: Exhibit V59.

#EXHIBIT V59 - HANDWRITTEN NOTES PAGES 390-392 OF BRIEF

MS MITCHELMORE: Again, I don't have copies, I apologise but we'll get them.

20 Can I just ask you Mr Walker to go to page 392. Is that, is that your handwriting on that page?---That is my handwriting.

Sorry, is that part of the same exercise?---Yes.

Yes, Commissioner, perhaps if I can add that to the tender, the previous tender.

THE COMMISSIONER: I'll join that with Exhibit V59.

30 MS MITCHELMORE: Yes, thank you.

And the next page Mr Walker, page 393, is that your handwriting on that page?---No, that's, it's not my handwriting it's the handwriting of one of my partner's at the time, David Latimer.

I see. So that's someone within your firm, is that right?---That's right, that's correct.

40 Yes. Is that someone with whom you were discussing potential structures?
---Yes.

I see. Yes, I tender that document separately Commissioner.

THE COMMISSIONER: Page 393 Exhibit V60.

#EXHIBIT V60 – HANDWRITTEN–PAGE 393 OF BRIEF

MS MITCHELMORE: Do you recall, Mr Walker, ultimately sending a structure proposal to Mr Hendry?---I do.

Can I show you page 385 of the brief. This email appears to have been sent by, was that your personal assistant, Ms Buckmaster on your behalf?--- That's correct.

And is that an email you recall drafting?---Yes.

10

And is it the case that that attached a, a proposal for the structure of the purchase of the hotel?---Yes.

And can I ask you to go over the page I've got a hard copy here if that assists. Perhaps just to look at the next three pages Mr Walker, do you recollect that that was an, was the attachment to the email that you sent on the 19th of December?---That's correct, yes.

20

The handwriting that's on page 385 was, was, I'm sorry 386 you'll see that there's some handwriting on that page?---Ah hmm.

Did that form page of the attachment that you sent on the 19th of December?---No, it would have been added subsequently.

I see. And can I just ask you to go to another page, page – just pardon me a moment – yes 401. Is it the case, Mr Walker, that that page also formed part of the attachment?---Yes.

30

Yes. Commissioner I tender the document at 385 there was an additional page no on the version at 385 which I seek to add to the tender.

THE COMMISSIONER: Yes, so the email and attachments at 385 to 388 inclusive and a further document at 401 will be Exhibit V61.

#EXHIBIT V61 - EMAIL FROM MICHELLE BUCKMASTER ON BEHALF OF GEOFFREY WALKER TO DARRELL HENDRY

40

MS MITCHELMORE: Yes, Mr Walker, can I show you brief at page 403, this is an email that you received or do you recall receiving this email around 22 December, 2005?---I do, yes.

And it's a phone message from a Michelle Ellis, was she with your firm?--- Yes.

And it's a reference to sending you a fax. Is that your handwriting on that document?---Yes.

Do you recall – does that indicate that you returned the call to Mr Hendry?
---Yes, that's right.

There's a – your handwriting also on the page written, you've written John Cassidy?---Right.

10 Do you recall what that was in relation to?---I don't um, at that stage Darrell Hendry was dealing directly with John Cassidy and I wasn't.

I see.---So it was probably for him to phone John Cassidy.

MS MITCHELMORE: Can I show you, Mr Walker, page 402 of the brief. Do you recall receiving this fax from Mr Hendry?---I do, yes.

And is that the fax, you'll see it was dated 22 December, 2005, do you recall receiving it on or around that date?---On that date, yes.

20 Yes. And is it the case that you then rang Mr Hendry in relation to that fax?
---Um, yes, I would have been in communication with him at that stage I'm sure.

Yes. Commissioner, I tender the documents, I'll perhaps tender them together.

THE COMMISSIONER: That's page 403 and 402 is it?

30 MS MITCHELMORE: I'm sorry, I think 402 is already an exhibit so perhaps just 403.

THE COMMISSIONER: Yes, 403 is Exhibit V62.

#EXHIBIT V62 – EMAIL FROM MICHELLE ELLIS TO GEOFFREY WALKER DATED 22 DECEMBER 2005

40 MS MITCHELMORE: And can I show you page 404 of the brief and the reference at the top of the page, this is your handwriting, Mr Walker?---It is, yes.

And the reference at the top of the page is Armpub No. 1 Pty Limited, is that right?---That's correct.

Does that indicate a change in instructions at all?---Not particularly, no.

Okay. And this looks to be two, a file note of two conversations, is that right?---Ah, yes, that's correct.

The first conversation is with a phone call that you've received from Mr Stein, is that right?---That's correct.

And the second call is a call that you've received from Patricia Holdings, is that right?---That's correct.

10 And is Patricia Holdings is the body to whom you have to send documents relating to incorporation, is that right?---It's a company that will incorporate companies for you.

Yes, yes. And I just want to make sure I can read all of your handwriting before I – just if I need to ask you anything, just pardon me a moment. Yes, Commissioner, I tender that document.

THE COMMISSIONER: The notes of 23 December, '05, Exhibit V63.

20 **#EXHIBIT V63 – NOTES OF GEOFFREY WALKER DATED 23 DECEMBER 2005**

MS MITCHELMORE: Mr Walker, can I show you page 406 of the brief. Is that a fax, it's a cover sheet for a fax that you've sent to Patricia Holdings, is that right?---That's correct.

Do you recall, is that your signature at the bottom of that, that page?
---That's my signature, yes.

30 And do you recall sending that fax to incorporate companies Armpub No. 1 and Armpub No. 2?---I do recall, yes.

And that fax is 23 December, 2005?---Correct.

And you sent that on or around that date, is that right?---That's correct.

40 And you sent the company order forms which you'll see on the subsequent pages of that document, is that right, you've got the hard copy there, Mr Walker, but the subsequent pages are the order forms are they and along with signed consents to be directors and company secretary, public officers, respectively?---That's correct.

For both Armpub No. 1 and Armpub No. 2?---That's correct.

Yes, Commissioner, I tender that document.

THE COMMISSIONER: Yes. The fax cover sheet and accompanying company order forms will be Exhibit V64.

**#EXHIBIT V64 – FAX TO PATRICIA HOLDINGS PTY LTD FROM
GEOFFREY WALKER RE ARMPUB NO 1 & NO 2 PTY LTD
DATED 23 DECEMBER 2005**

MS MITCHELMORE: Mr Walker, you will recall that there in the initial
structure documents that you prepared the directors and shareholders of
10 Armpub No. 1 and Armpub No. 2 were to be Mr Hendry and Mr Cassidy,
do you recall that?---I do, yes.

And the documents as you sent them to Patricia Holdings for incorporation
had Mrs Hendry and Mr Hendry as directors, is that right?---That's right.

Can you recall being informed of the reason for that change?---Oh, it was
around the Christmastime and people are going on leave and in terms of the
pressures to get documentation in place for the settlement date it was ah,
Darrell's idea to ah, have his wife initially appointed so that the signatures
20 could be obtained and, and the companies could be formed.

And what would need to be done then in the event that Mr Cassidy was then
put back in as a director and shareholder?---Oh, simply the resignation of
Helen and, and a consent to act from, and resolution of the directors to
change and then a form to ASIC.

I see. Can I next show you, Mr Walker, page 429?---Ah hmm.

That was a document that was – did you receive a copy of that document at
30 the time?---I would've, yes.

So, this is around 26 December 2005?---Yes.

Is it the case that Brown Wright and Stein were dealing with the
conveyancing aspects of this transaction?---That's correct.

And Mr Stein was also dealing with the trust – establishment of the trusts
that were necessary to put the structure in place?---That's correct.

40 And is it the case that they kept you informed of what was happening on
that side of the transaction?---Yes. Sorry.

And your receipt of this email is just a part of, of understanding what was
happening on that side of the transaction. Is that right?---That's correct.

Apart from the change, Mr Walker, to the directors and shareholders of the
corporate trustee from Mr Cassidy to, to Mrs Hendry, do you recall whether
in the period between your sending the original structure on 19 December

and the purchase of the property ultimately settling that there were any other changes to the structure?---Um, not at that stage, no.

No?---No.

Were there any changes before settlement that you recall?---Um, yes, there were, to the percentage holdings.

10 Yes. Perhaps if I can take you back to page 386 of the brief which is part of 385, and just at the, looking at the handwriting, is that your handwriting on the document, Mr Walker?---It, it is, yes.

And does that reflect a change, the change in the interests that, that you've just identified?---It does, yes.

So the change was from a third from Mr Hendry to a tenth. Is that right?
---That's right.

20 And the change from two thirds to Mr Cassidy to nine tenths. Is that right?
---That's right.

And that's what your handwriting there is signifying?---Yes.

Do you recall Mr Hendry discussing that change with you at any stage?---It was sometime in January when I, I think I was made aware of that.

30 And did you advise as to whether there was any impact in relation to that change?---Just – I don't know whether I specifically advised but there would've been changes to the unit holders within the trusts.

Yes?---And also to the shareholdings of the trustee companies.

Yes. Were you ever provided with copies of the trust deeds in relation to the unit trusts?---Yes. I was.

And did you review those trust deeds?---I did.

40 And for what purpose were you looking at the trust deeds?---It would be my common approach to always have a copy of a trust deed for any client that I control their affairs for.

I see. And did you – so you've reviewed those drafts?---I did. Yes.

Yes. And do you recall if the deeds had to be amended to reflect the change to the interest?---The drafts before they were signed would've been changed. Yes.

Yes. That's all the questions I have for Mr Walker.

THE COMMISSIONER: Any questions of Mr Walker? No. Thank you.
Mr Walker, you may step down, you're excused?---Thank you.

THE WITNESS EXCUSED

[12.54pm]

10 THE COMMISSIONER: So that leaves – you're excused, Mr Doble, thank
you.

MR DOBLE: May it please – thank you, Commissioner.

THE COMMISSIONER: That – excuse me – leaves Mr Stein and Mr
Griesz after 2 o'clock.

MS MITCHELMORE: At 2 o'clock. Yes.

20 THE COMMISSIONER: All right. So, I'll adjourn 'till 2.00. Thank you.

LUNCHEON ADJOURNMENT

[12.55pm]