

VERDIPUB000325
24/07/2014

VERDI
pp 00325-00390

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION VERDI

Reference: Operation E13/0955

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY, 24 JULY, 2014

AT 10.04AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Yes, good morning. Yes, Mr Hendry has been recalled.

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

MR MOSES: Yes, Commissioner, so in accordance with our request yesterday that Mr Hendry seeks a section 38 order.

10

THE COMMISSIONER: Yes, that section 38 order that I previously made continues to apply - - -

MR MOSES: Thank you, Commissioner.

THE COMMISSIONER: - - - as does your obligation to tell the truth, Mr Hendry, you understand that?---Yes, yes, yeah.

Yes.

20

MS MITCHELMORE: Yes, thank you for returning, Mr Hendry. I just wanted to ask you, you gave some evidence on Tuesday of, of this week that you met, you went up to Armidale in between 28 November and 2 December, 2005?---Yes.

And you, you met with Ms Paini, Sue Paini, the CEO of Services UNE, is that right?---Yeah, yes.

And you met with her at the Hotel?---Yes.

30

Yes, you remember giving that evidence?---I do.

In her evidence yesterday Ms Paini said that in the course of that meeting she asked you why you were interested in purchasing the Hotel, do you recall her asking you that question?---No, I don't, no.

Ms Paini also said in her evidence that while she cannot now recall the exact conversation she believed that you said in response that you had previously known of the Hotel through being a student at the University and that you had attended the Hotel on occasions when you had been a student at the University. Do you recall saying words to that effect to Ms Paini in response to a question about why you were interested in purchasing the Hotel?---Ah, no, I don't but I, I was not a student of the University of New England.

40

Yes. So, so do you deny that you said words to that effect?---I couldn't have, I could not have said words to that effect.

Yes. And you'd agree that giving a response to that effect would be inconsistent with your evidence on Tuesday that it was Mr Cassidy who had told you - - -?---It's, it's totally inconsistent and it's wrong.

10 Yes, thank you, Mr Hendry. Can I ask you some questions about the minutes of the meeting that you were taken to in evidence yesterday and can I show you Exhibit V52, I'll try and find you the hard copy, Mr Hendry. I just wanted to take you, there's a reference on page 2 of that, that minute and this I think perhaps a passage you were taken to about following the,
10 following discussion, about halfway down the page the directors approved the decision for Vercot to take a controlling interest in the investment and there's then the words "any to apply for 2.7 million A class units in Tattersalls No. 2 Unit Trust at an issue price of \$1 in accordance with the documents tabled," do you see that?---I do.

Do you recall that documents were tabled at this meeting?---I don't, I, I don't recall documents being um, tabled at the meeting, I don't, no.

20 Are you able to tell me from the terms of this decision what documents are likely to have been tabled at this meeting?---Ah, the, the trust documents.

Would that include an application looking at the terms of this decision, an application for 2.7 million units in Tattersalls Unit 2, sorry, Tattersalls No. 2 Unit Trust?---Um, it could have, yes.

Yes, well, it says here it's in accordance with the documents tabled so it's reasonable to assume isn't it?---Yeah, and that, and it's reasonable to assume that that's one of the documents.

30 One of the documents - - -?---Yes.

- - - would have been an application to purchase those units. And Mr Hendry, is it right that you had prepared or had prepared for you documents in anticipation of a decision on the part of Vercot to invest in the Hotel and you had, is that right?---Yes, that is correct.

And you had them prepared for this meeting, is that right?---That, that would, that would be correct.

40 And is it right that the application for 2.7 million units at an issue price of \$1, is that how the balance of the purchase price was going to be funded? ---That, that is correct.

So by that application and the issue of 2.7 million units, the trust property would have an injection of \$2.7 million, is that right?---That, that is correct.

And \$2.5 million would then be paid from that to fund the balance of the purchase price?---Correct, and the balance was in relation to stamp duty and the other legal costs et cetera associated with the acquisition.

I see. So the 2.5 million to fund the balance of the price together with stamp duty and things like that?---Yes. So, so the deposit had been paid - - -

Yes?--- - - - of 2.65.

10 265,000, yes?---Plus this 2.7 was, was a close amount to the purchase price - - -

Yes?--- - - - together with stamp duty and other costs that were paid, other settlement costs that are normally paid in relation to a property transaction? ---Yes, yes, you can see arithmetic isn't my strong suit but it was 2.4 million would have been the balance, is that right, if you've already paid 265,000? ---That's, that's correct.

20 Yes?---So the balance, so the difference - - -

Yes?--- - - - with the, between the 2.4 and the 2.7 - - -

Yes?--- - - - would have gone towards the other costs associated - - -

Yes?--- - - - with settlement of the transaction.

Yes, that's right and – because the purchaser, you would have been responsible for paying the stamp duty, is that right?---Correct, yes.

30 Yes. And it's right, isn't it, that in order to make an application for units in the trust at this meeting the trust would have already had to be established, is that right?---That's correct.

And Tattersalls number, Tattersalls Unit Trust, I'm getting it wrong, Tattersalls No. 2 Unit Trust was established with Vercot being the only holder of units, is that right?---Yes, yes.

40 So that had been done in preparation for Vercot taking a controlling interest in the investment?---Yes, it would have, yes, yes.

That's right isn't it?---Yes, yes.

That had been done for that purpose?---That had been done, yeah.

And at that time and I can take you back to the schedule of the deed if necessary the trust deed but Vercot had purchased ten units in the trust. Is that, do you recall that?---Ah - - -

Would you like me to take you - - -?---I don't recall but if you, if you show me the document I - - -

Would you like me to take you back? Yes, I can take you back to the trustee if that would – it's B49. So this is the, the trust deed and if we can just go back to that schedule, Mr Hendry, at page 600 and - - -?82?

10 This is the operating trust. Yes, you're ahead of me, Mr Hendry, it's page 582. And it's the case that the ten redeemable units at point 5 to Vercot?
---Yes.

And the settled sum is \$10. Do you see that?---Yes.

And it's the case isn't it just looking at that the settled sum on that page, the settled sum is \$10, do you see that? At point, point 4?---Yes, yes, at 4, yeah.

20 Is it the case that the units are the ten units that were purchased by Vercot were \$1 each, can you recall?---Yes.

Is that right?---Yes.

So that's - - -?---They were \$1, they were all \$1 par.

They were all \$1 units?---Ah hmm.

So it's, it's the case at this point that, that Vercot has purchased the units - - -?---Yeah.

30 - - - the, the 10 units at \$1 per share, so its outlay at this stage is \$10, is that right?---Yes, yes.

You wouldn't expect there to be a meeting to approve Vercot spending \$10, is that right?---No.

But nonetheless Mr Cassidy as the controlling shareholder of Vercot would have known that this was being done?---He would have known, yes.

40 And the operating trust had been established at the same time as for two unit trusts?---They were all, they were all, it was all done all at the one time.

I see. And the operating trust had been established with 90 units to Vercot - - -?---Yeah.

- - - and 10 units to Darrellen - - -?---10 units to Darrellen.

Is that right? So that's \$90 outlay and \$10 outlay respectively. And that was enough to give Vercot the majority interest in the operating trust wasn't it?---Yes, yes.

Now it's the case that these trusts were established as discretionary trusts, is that right?---Yes.

Such that it would be in the discretion of the trustee as to how distributions were made from the property of the trust?---Yes, yes.

10

And so in this case the trustee of Tattersalls Unit Trust No. 1 and No. 2 is Armpub No. 1?---Armpub No. 1.

So it's going to up to Armpub No. 1 - - -?---No. 1.

- - - as to how it makes distributions to Unit Trust No. 1 and Unit Trust No. 2?---Yes.

20

And Mr Cassidy was always going to be the controlling shareholder of Armpub No. 1, is that right?---Yes.

So he would control what distributions the two unit trusts received, is that right?---He would, yeah.

Yes. And it's the case isn't it that the mechanisms for Vercot to take a controlling interest were all in place before this meeting on the 19th?---Yes. The 6th of January I, there's something about the 6th of January I just, it seems a bit early to me, I, I, you know - - -

30

I'd ask you not to, not to concern yourself with that - - -?---Sorry, but I - - -

No, I understand but that - I'd ask you just to - - -?---Could you ask the question again please 'cause I'm - - -

Yes. So I'm taking you back to the minutes if I can, Mr Hendry, so looking at these minutes it's the case isn't it that the mechanisms for Vercot to take a controlling interest were all in place before this meeting on the 19th, that's right isn't it?---Yes, yes.

40

And the reference to you on page 1 if I can go back to page 1 of those minutes, saying that "Mr Hendry is now offering Vercot the opportunity to co-invest in this hotel", it's the not case is it this was the first time that you've made that offer to Vercot is it? 1014.26

MR MOSES: Sorry, I object. In which offer?

MS MITCHELMORE: I'm sorry, offering - - -

THE COMMISSIONER: The offering to Vercot - - -

MS MITCHELMORE: Offering the opportunity to co-invest in the hotel?
---Well I'd been talking about well before then.

And this is, the purpose of this meeting is to formalise isn't it?---I think it's just a formalisation of previous discussion.

10 Yes. If I can take you back to page 2 of the minutes, you'll see at the bottom of the page there's a reference, Mr Hendry, to general discussion and agreement regarding employment of suitable personnel previously interviewed by Mr Hendry. Do you see that?---I do, yeah.

It's the case isn't it on your evidence that you had interviewed Mr Franklin - - -?---Franklin.

- - -with Mr Cassidy?---Ah, I – my recollection was that John was at, at the, at one, one of the meetings with Phil.

20 Yes. And it's the case isn't it that by this time, 19 January, you had already offered him a position?---Um, more likely than not yes, because I needed him to be on the liquor licence.

Yes. And in fact you'd submitted his details to your instructing solicitor on about 10 or 11 January?---January, mmm.

Do you recall that evidence?---Yes, yes, I do.

And we went to the document?---Yeah.

30 So again this minute is here just documenting arrangements that had already been made?---Correct.

And they had been made to the knowledge of Mr Cassidy?---Ah, yes.

And with his approval?---Yes.

40 And you'll see also that there's a reference in that paragraph for an application to be made for the transfer of the liquor licence. Do you see that?---I do.

And as we went through yesterday it's the case isn't it that an application had already been made?---It had.

And that had listed Vercot as a company that had an interest in the licence? ---It, it had.

Or in the property?---It did.

So again this minute is documenting arrangements that had already been made?---Yes.

To the knowledge of Mr Cassidy?---Yes.

And with his approval. Is that right?---Yes, yes.

10 So to the extent that one might take from this minute that before this date no decisions had been made, that's not an accurate reading of this minute, is it?
---It's a formalisation of what had, decisions that had been um, made previously. I mean that's all I can say, it's just, it's formalising what, what we had discussed earlier.

THE COMMISSIONER: But it's – well, I think implicit in that answer, Mr Hendry, tell me if I'm wrong, is that insofar as it's expressed in those minutes in the present tense, that's inaccurate?---Oh, okay. I understand. Okay.

20 I think that's- - -?---Okay.

Do you understand?---I'd, yeah, I'd agree with that.

Yes.

MS MITCHELMORE: Yes. I have no further questions.

THE COMMISSIONER: Mr Hendry, can I just ask you, you still retain an interest in the Hotel?---I do.

30 And is that still to the extent of a one-tenth share?---It is.

Right. Is there or was there a Development Application lodged in sometime around 2008 to redevelop the Hotel?---Oh, there's been a number of- - -

There have been a number of them?---There's been a number of them, yes.

But whichever of those had been lodged- - -?---Yeah.

40 - - -was any one of them successful?---Ah, yes. The Council in most instances had agreed with what was being proposed.

And are there – sorry, go ahead, finish?---What I was going to say was is that um, you know, we kept on re-evaluating how much money ah, should we spend on refurbishing and doing up the Hotel and whether or not we'd get a return on that.

Ah hmm?---So- - -

But has the Hotel been redeveloped?---No, no.

Is it undergoing any form of redevelopment?---Yes, yes, we're, we're looking at a much ah, cut down version of what the original DA was about.

So, so the redevelopment is going on as we speak, is it?---Um, it, there's some preliminary works been done at the moment, yes.

Now, did anyone have any further questions of Mr Hendry?

10

MR THANGARAJ: Just some questions arising from these questions, Your Honour.

THE COMMISSIONER: Yes.

20

MR THANGARAJ: Mr Hendry, if a company, or let's limit it to Vercot, but in your experience if any company is going to make a decision as to whether or not a multimillion dollar investment would be made, the relevant documents would need to be considered before that decision could be made, couldn't it?---Well- - -

THE COMMISSIONER: What do you mean by the relevant documents, Mr Thangaraj?

30

MR THANGARAJ: Well, as of – the documents that my friend's referred to was with respect to the minutes of the 19th referred to documents that had been tabled, so let's limit it to those documents. If a company is going to invest over \$2 million it would need to know, wouldn't it, the precise mechanism by which its investment would be made?---Absolutely.

And so it wasn't a case of making a decision on a whim, it was a case of evaluating the documents that needed to be prepared?---Correct.

And those documents had to be prepared in a particular way in order for a consideration to be made as to whether or not the investment would be made?---Correct.

And so those documents were prepared?---Correct.

40

And the documents that were prepared had to be in a manner in which Mr Cassidy would be prepared to invest if he was going to make a decision to do so?---Correct.

So you had to discuss with him along the way the potential structures because there was no point going to him with a proposal that he would reject?---Correct.

So by the time of the 13th, we know from the minutes, Vercot's still considering its position?---In my head, in my head - - -

Yeah?--- - - - that decision had been, John had made a decision to invest in, in the, in the Hotel.

THE COMMISSIONER: Mr Hendry, could I, sorry, could I just stop you there. I don't mean to cut across, Mr Thangaraj, but this is an expression that you've been using quite often in the evidence you've given?---Yeah.

10

You keep saying "in my head"?---Yeah.

Well I take it that you're not given to imagining or pre-empting or inventing decisions that you take to invest in consultation with other people. I mean, when - - -?---No, true, but I've worked, I work - - -

- - - when you say, well - - -?---Sorry,

We need to be clear about what it is that you're saying?---Yeah.

20

Mr Thangaraj is putting to you a very specific proposition, namely that as at 13 January, 2006 Vercot had not made any decision to invest in the Hotel and forgive me if I've summarised the effect of your evidence but my understanding of your evidence is that you have said quite consistently that you had had discussions with Mr Cassidy prior to that date and that as far as you were concerned, based on those discussions Mr Cassidy was a co-investor in the Hotel. Now am I right about that or am I wrong about that?--
-No. You are right about that. And in my head is a reflection, I've worked with the guy for over 18 years, you know um, so look, contractually you're
30 absolutely right. And in some respects you might look at me being naive in accepting that, you know, he, John could have turned around and said, "No, I'm not going to proceed."

MR THANGARAJ: Yes?---He could have said that. And he could have said that on 19 January.

That's right?---I, I, I'll accept that. But I, naively I believed he wouldn't have.

40 All right. You at the beginning of the, of this entire process believed, in your words "rightly or wrongly" - - -?---Right.

- - - when he first contacted you you thought that he might get involved?
---Yep.

Because that was an assumption you made?---It, it, it was an assumption.

All right?---It was an assumption.

And you continued to read through the, between the lines as to what you thought he would do?---Correct.

And the point was reached where you believed that he would invest but the final time, sorry, the meeting on the 19th was the time that he said, “Okay, I’m finally in.” Do you agree with that?---I’ll, I’ll accept that. I accept that.

10 You had a belief up till that point based on discussions about structures, et cetera?---Yep.

Right?---Yep.

But the structures had to be organised because he wasn’t just going to pull \$2.7 million cash out of his pocket was he, right?---Correct.

I mean, he was putting in a lot of money?---Yes. Yes. Yes.

20 THE COMMISSIONER: Well - - -

MR THANGARAJ: Oh, I withdraw, that way.

THE COMMISSIONER: I think, I think Vercot had something like 52 million - - -

MR THANGARAJ: Yes.

30 THE COMMISSIONER: - - - standing to its credit. I wouldn’t have thought that was a lot of money in that context. But he wasn’t pulling it out of his pocket so to speak.

MR THANGARAJ: No. I – Vercot’s the entity that had the money?---Correct.

This was always only going to be bought through Vercot wasn’t it, as far as you understood?---Ah, well correct.

40 Yeah?---Well no, no, that’s not correct. I mean, Vercot had the money. John was a shareholder in Vercot.

Yep?---Vercot could have lent the money to John and John could have done it in his own name. I mean, that was part of this early review we did of structures as to what was the most efficient way of structuring this deal.

All right, well - - -?---It just so happened that, and it, and it worked that Vercot was the most effective way for John to acquire the interest in the Hotel.

Yeah. I think you agreed yesterday with me that, that John, you, from the person you knew that you were never going to buy into the Tatts in your private name?---Correct.

You'd want an entity?---Yeah.

And similarly Mr Cassidy wasn't going to buy it in his private name?---Ah
hmm.

10 He'd need an entity?---Yes.

All right. Thank you.

THE COMMISSIONER: No other questions for Mr Hendry? Yes.

MR MOSES: I have.

THE COMMISSIONER: Yes. Yes, Mr Moses.

20 MR MOSES: Thank you. Mr Hendry, if I could just ask you some questions in respect of the discussion with Sue Paini. You might recall Counsel Assisting asked you some questions about whether or not you'd informed Ms Paini that you'd been to the University of New England, I think you said, well no, you hadn't been. And I think you denied that you had such a conversation, correct?---Correct, yes.

And you say that you can't recall being asked that question by Ms Paini, that is why were you interested in buying the university pub or words to that effect?---Correct.

30 If you were asked that question, if you were asked that question today what, what would have been your answer to that?

THE COMMISSIONER: If you'd, if you'd been asked what was your interest in the Hotel what would have been your answer?

MR MOSES: In, in a university hotel, Commissioner, yeah.

THE COMMISSIONER: In a university hotel.

40 MR MOSES: Yep?---Um, could I, I thought about this Commissioner because it bugged me that Ms Paini um, had thought that I'd um, gone to the
- - -

THE COMMISSIONER: Said that?--- - - - University of New England. I ah, I did my degree, full-time degree at the University of New South Wales, Commissioner, and um, it, it wasn't a um, aggressive timetable in relation to ah, attending lectures and tutorials.

It left lots of time to go to the pub did it?---Plenty of time. There was, there was a hotel - - -

Yes, all right?--- - - - on Anzac Parade which was in walking distance of the University of New South Wales and I, I was a frequent patron of that hotel and I was there, I'd been there during the day or at night or, and certainly after end of semesters and end of, and, and after exams. And the hotel was just full of university students and I could well have been relating to Ms
10 Pains that, you know, I'd done that for two or three years so I understood what the dynamics of "a university hotel" was.

And I suppose extending from your, or at least building on that experience you thought that the investment in the Tattersalls Hotel could be similarly fruitful?---It was a, it was a, you know, I mean it was a lot earlier but, but, you know, I could, I could see the dynamics, a good operating university hotel, you know, had an opportunity to be quite successful.

MR MOSES: Yes, thank you. And, and the other question is this,
20 Commissioner, for Mr Hendry, and that is that the Commissioner I think put a number of propositions to you that, you know, unless you were somebody who's given to imagining things or in effect flights of fancy you wouldn't have imagined that Mr Cassidy would have invested, would have been investing in the Hotel. What was the basis of your belief that he would be investing in the Hotel when you had the initial discussion or discussions with him, what was the basis of your belief? If you just explain that? Because the Commissioner I think is troubled about your use of the terminology "in your mind." What was the basis of the belief that you had
30 that Mr Cassidy would be investing?---Well, my experience with Mr Cassidy over the, you know, the 18, 18 years of, of working with him.

But what was it that he said in the initial conversations that you had with him - - -?---I can't remember.

- - - what was it that gave you the belief that he would be investing?---(No Audible Reply).

I think that's what the Commissioner's interested in knowing, if you could -
40 - -

THE COMMISSIONER: Well, I think it, while we're being frank, Mr Hendry, you see, you had 18 years of experience of working with Mr Cassidy quite closely in - - -?---Yeah.

- - - very, very, in a very, very large organisation which involved the expenditure of millions and millions of dollars?---Yes.

So investment decisions were not taken blithely were they?---Ah, no.

No. But getting back to your experience of working with Mr Cassidy what, what was it that he said or did that led you to the view, persuaded you if you like that this was going to be a joint investment in a hotel and it was one that Mr Cassidy was, in other words it was an investment that Mr Cassidy was committed to?---Ah hmm. Ah hmm. Um, well I can't, I can't recall what the words were.

10 No, no, no, I'm not suggesting you know the words but - - -?---Yeah. Yeah.

- - - you've referred several times to discussions so perhaps if, it's just a question of giving us the flavour of those discussions or the, the gist of those discussions?---I got the, I got the call from um, John about the advertisement and him saying it, it would be a good investment for me. Um, I then had a, a brief look at what um, what the possibility was and I rang him back and said, "Look, I'm interested but I need to have, I need to have partners." And from, whatever that conversation was I inferred, rightly or wrongly, that he would have an, he would have an interest.

20 But it - - -?---He would be interested.

But, but it went further than that, didn't it, because there were all these other discussions that occurred over the course of time leading up to the minutes of the meeting on 13 and 19 January where those discussions were formalised as you said?---Yes, yes.

So there were a lot of other discussions as well?---There were a lot of discussions yes.

30 MR MOSES: But, just if I can interrupt, Commissioner - - -

THE COMMISSIONER: Yes.

MR MOSES: But I think you've said though in your evidence that it crystallised in your mind that Mr Cassidy would be somebody who would be investing after the second discussion you had with him, that's, that's a the point of time that you formed the view that you thought he would be coming on board?---And, and, and rightly or wrongly that's what I did.

40 Okay. Yes, thank you.

Commissioner, I have no further questions, I thank the Commission for that indulgence.

THE COMMISSIONER: Oh, thank you, Mr Moses. No other questions of Mr Hendry?

Thank you Mr Hendry, you can step down. I think we're safe to say you're excused this time?---Oh, good, okay.

THE WITNESS EXCUSED

[10.31am]

MR MOSES: And may I be excused as well, Commissioner?

10 THE COMMISSIONER: Yes, thank you, Mr Moses.

MR MOSES: Thank you. We promise we won't go to the Doncaster now.

THE COMMISSIONER: Yes, Ms Mitchelmore.

MS MITCHELMORE: Yes, Commissioner, the, the next witness today is Mr Bruce Atkinson.

20 THE COMMISSIONER: Yes, Mr Atkinson, just come forward.
Mr Atkinson, you don't have anyone appearing for you today?

MR ATKINSON: No, I don't.

30 THE COMMISSIONER: Oh, just take a seat. I just need to explain something to you so that you appreciate the position. You are compelled to answer questions truthfully, you do not have the option of refusing to answer a question and because you are compelled to answer you can object to each and every question that's asked of you or any particular question that is asked of you and by objecting you in effect have the protection of that objection so that the answers that you give can't be used against you in some future proceedings. If you wish to take that course I can make an order that operates as a blanket objection to the whole of your evidence and that in effect means that the answers that you give can't 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. So do you understand that?

MR ATKINSON: I do.

40 THE COMMISSIONER: So do you, do you wish me to make an order under that section that provides a blanket objection to all the evidence that you give?

MR ATKINSON: No, I don't.

THE COMMISSIONER: All right. Thank you very much, Mr Atkinson, that's very refreshing. Do you wish to be sworn or affirmed?

MR ATKINSON: Sworn.

THE COMMISSIONER: Thank you. Yes, could he be sworn.

MS MITCHELMORE: Yes. Mr Atkinson, can you state your full name, please?---Bruce Davies Atkinson.

And your occupation?---Solicitor.

10 And is it the case that you're a partner, Mr Atkinson, at the firm Watson McNamara and Watt?---Well, I was but I'm now substantially retired.

I see. How long were you a partner of that firm?---About 22 or 23 years.

And is it the case that you were a partner of that firm at around, at the time of 2005, 2006?---Yes.

Is it the case that from time to time as a partner of that firm you were retained to do work for the University of New England?---Yes.

20 And in general terms what was the nature of that work?---Ah, it was almost all conveyancing work.

I see. And do you recall whether any other partners of your firm had been retained to do work for the University?---Ah, prior to me taking on the work my partner Rod Watt did some work for the University.

I see. Do you recall, I'm going back to October of 2005, do you recall that you were instructed to act on the sale of the Tattersalls Hotel?---Yes.

30 And can you recall who asked you to act on the sale?---I think it was Sue Paini who was the then CEO of Services UNE or the Union anyhow.

Yes. And Services UNE was the owner of the Hotel, is that right?---Yes.

And was it the case that Ms Paini asked you to act on the conveyance of the sale, is that right, to deal with the conveyancing aspects of the sale?---Yes.

40 And can you recall back in October 2005 who was on the board of Services UNE at that time?---Ah, well, I, I knew my partner was on the board.

Is that Mr Watt?---That's, that was Mr Watt.

Yes?---And Ann Maurer who was a partner in an accounting firm in town and I think Andrew Murray - - -

Yes?--- - - - a businessman from, from Armidale and that was I think the extent of my knowledge.

Yes. And do you recall when you had the conversation with Ms Paini and she gave you instructions what the method of the sale of the Hotel was going to be?---It was to be a tender.

And had you previously handled sales by tender?---Yes.

10 Were they a common part of your practice?---Oh, well, not particularly common because I've never been very keen on them and ah, and if I had a ah, any ability to put any relevant input into it I would generally not submit a property for sale by tender.

I see. But, but you had acted on some tenders in the past?---Oh, yes.

Apart from your firm do you recall whether the company Services UNE sought assistance from other persons in relation to the tender process? ---Well, I knew that, that ah, Stephen Hall, a partner of Forsyths in Tamworth - - -

20 Yes?--- - - - had been appointed administrator or receiver - - -

Yes?--- - - - so that extent he was involved in it.

Yes. And do you recall whether he had any role in relation to the tender process?

30 THE COMMISSIONER: Mr Atkinson, sorry to interrupt, could I ask you to speak a little bit closer to the microphone because we're transcribing and the monitors are having a bit of trouble picking up your voice?---My apologies, Commissioner.

That's all right, thank you. Sorry, Ms Mitchelmore.

MS MITCHELMORE: No, no, that's okay. Mr Atkinson, I was asking whether Mr Hall had any role in relation to the tender process, do you recall whether he did?---Well, my recollection is that he controlled it.

I see. Is it the case, Mr Atkinson, that you prepared documents associated with the tender and with the sale?---Yes.

40 And do you recall whether Ms Paini provided you with any particular documents or instructions about the conditions of the tender?---Ah, I think I got all of my instructions from her - - -

Yes?--- - - - but I don't recall that there was anything in particular because ah, once I knew it was a tender then I essentially knew what I had to do.

I see. Can I show you – well, perhaps I can ask you first. Can you recall what the tender documents comprised for this particular sale?---Ah, well, there's an invitation to tender and then there's a tender and a contract.

That's a contract for sale of the property, is that right?---That's right.

Yes. So perhaps if I can show you Exhibit V28, page 102 of the brief. Mr Atkinson, are you comfortable with looking at the, the document on the screen there?---Yes.

10

Yes. Can you see that's a document titled "Conditions of Tenders"?---Yes.

Is that a document that you prepared?---Yes.

And that was the Conditions of Tender for this particular sale?---Yes.

Can I show you page 106 of the brief, Exhibit V29. Mr Atkinson, is that the contract of sale that you prepared?---It's, it's the first page of it.

20

It's the first page, yes, it's a rather lengthy document, is that right?---Yes.

And is it the case, Mr Atkinson, that your firm was responsible for obtaining all of the relevant certificates and stocktake and details that would go with the contract?---Well, I was provided with the inventory.

Yes?---I, I can't remember who gave it to me but I would imagine it must have come from the University.

30

I see?---And I obtained the title search and the zoning certificate - - -

Yes?--- - - - the drainage diagram.

And details relating to the liquor licence?---Yes. They would have provided to me.

I see, okay. Now is it the case that aside from the standard elements there were special conditions of the sale, do you recall that?---Yes, there was, there was special conditions most of which were fairly standard special conditions.

40

I see. Can I show you page 116 of the brief. Are they special conditions that, that you drafted?---Yes.

And they're the special conditions to which you're referring?---Yes.

Yes. Can I show you Exhibit V35, it's page 320 of the brief but the page I wanted to show you, Mr Atkinson, is page 322. You see that's a tender form?---Yes.

Did you prepare that form?---I prepared the form, yes.

Yes. You didn't, you didn't fill in the document obviously - - -?---No.

- - - but, but the form is a document that you prepared in association with the tender?---It was part of what would be regarded as the tender documents.

10 I see together with the conditions of tender, is that right?---Mmm, mmm.

Yes. Was there also an information memorandum prepared in relation to the tender, do you recall that?---I don't know, I didn't, I certainly didn't prepare one.

I see. Now do you recall that there was a confidentiality deed prepared in relation to the tender?---I prepared a draft confidentiality deed which I understood that all interested parties would be required to um, sign.

20 I see. So if I can show you Exhibit V32. Is that the deed that you prepared, excepting it's been filled in but aside from the handwritten annotations is that the deed that you recall drafting?---Yes.

Do you recall, Mr Atkinson, the close of tenders was the 25 November 2005?---25th or 28th, I don't recall which but it was certainly around then.

Around that time. Can I show you Exhibit V13 page 296 of the brief. That's an email from Ms Paini, do you see that? And is it the case, Mr Atkinson, that you're included as a recipient of that email?---Yes.

30 And it's confirming a meeting for the 28 November to, to consider the tenders received. Do you see that?---Yes.

Do you recall receiving that email?---No.

40 Do you recall attending a meeting to discuss the tenders?---Um, I have a vague recollection but I don't think I was, I don't think I attended for any length of time. There was a meeting in the library and my office um, there were a number of people there, I can't remember who they all were but one was my partner.

Mr Watt?---Mr Watt.

Yes?---But it was to consider the tenders, they had control of it and I really didn't take a great deal of interest in it.

I see. Do you recall whether Mr Cassidy was at that meeting?---No.

You don't recall it?---That's correct.

Do you recall that there was an offer that came in after the closing date for the tenders?---Yes.

Can I show you page 320 of the brief Exhibit V35. You'll see, Mr Atkinson, that that's a, and perhaps if I can go to page 322. That's a tender form submitted by a Mr Darrell Hendry?---Yes.

10 Do you recall seeing this document at or around the 28 November?---Um, I have no specific recollection, it was pretty obvious it must have been presented to me.

Do you recall giving any advice about the request in that letter that he get an extension of time?---Um, I didn't have a lot of opportunity to give advice about this matter and the matter was under the control of other people.

I see. So is it the case that you don't recall giving any advice about whether or not an extension should be granted?---I'm fairly sure I didn't.
20

I see. And do you recall that Mr Hendry subsequently put in an offer of \$2.65 million which was accepted?---Yes.

Can I show you page 334 of the brief?---Can I just clarify something? Um, you asked me if I recall giving any advice.

Yes?---The reality is and one of my principal objections to the tender process which I averted to earlier is that it's essentially unfair to all tenderers because it's common practise and I do it in drafting these documents to provide that the vendor has no obligation to accept the highest or any tender and has the ability after the tenders close to negotiate with anybody else and that's the reason why I considered that this process is unfair to purchasers and why I avoid it if I can.
30

I see?---So it may well be that I told them that they could deal quite without any restriction with a subsequent buyer.

Yes. Because that would be within the terms of the conditions of the tender?---That's part of the deal.
40

Yes?---Mmm.

If I can show you this document. Now, Mr Atkinson, it's an extract of the contract of sale that's been signed but you'll see that there are the special conditions attached to it. Do you see that?---Yes.

And do you see that condition 14, there's an addition to your special conditions at condition 14?---Yes.

And do you recall seeing that at the time?---Yes.

Yes. And that was a condition that was added by the purchaser Mr Hendry?---Yes.

Yes. Commissioner, I don't believe that the copy of the special conditions with that addition has been tendered so I tender that document.

10 THE COMMISSIONER: Yes, thank you. That's Exhibit V73.

**#EXHIBIT V73 - CONTRACT FOR THE SALE OF LAND FOR 174
BEARDY STREET ARMIDALE WITH SPECIAL CONDITIONS
ATTACHED**

MS MITCHELMORE: Yes. And I have no further questions for Mr Atkinson. Thank you.

20

THE WITNESS: Thank you.

THE COMMISSIONER: Any questions of Mr Atkinson? No.

Thank you, Mr Atkinson, you may step down you're excused?---Thank you, Commissioner.

30 **THE WITNESS EXCUSED** **[10.48am]**

THE COMMISSIONER: Yes.

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

MR FOORD: If the Commission pleases my name is Foord, F-o-o-r-d.

THE COMMISSIONER: Yes, Mr Foord.

40 MR FOORD: I seek your leave to appear on behalf of the witness Harris.

THE COMMISSIONER: Yes, thank you. That leave is granted

MR FOORD: He'll take an oath, your Honour, and the provisions of section 38 have been explained to him.

THE COMMISSIONER: Thank you. Just take a seat, thank you. Could I just 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 does not protect you if it should be found that you've given false or misleading evidence to the Commission. Do you understand that?

MR HARRIS: Yes, Commissioner.

10 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.

20 **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: Yes. Could he be sworn, please.

30

MS MITCHELMORE: Yes, can you state your full name for the Commission, please?---James Richard Forster Harris.

And what's your occupation, Mr Harris?---I'm a grazier.

10 And is it the case that you, you own and manage your own property?---Yes.

And you run a business of grazing, is that right?---Yes.

Have you always lived in the vicinity of Armidale?---Oh, no. Um, I went there in 1979/1980.

I see. But you've lived - - -?---Yes, since - - -

- - - you've lived there since that time?---Yes.

20 Yes. Mr Harris, are you a member of the Council of the University of New England?---Yes.

You've been a member of that Council for a long time?---Yes.

Since about 1994, would that be right?---Yes, something like that.

And is it the case that you were the Deputy Chancellor between about 2001 and 2007?---Yes.

30 Are you able to explain briefly the role of the Deputy Chancellor within the university structure?---Um, he's the deputy chair I suppose of the Board. Um, the position is elected every two years. Um, the Deputy Chancellor, if the Chancellor is away or unavailable fills the role of Chancellor.

I see. Aside from the membership of the Council are you presently a member of any committees of the Council?---Today I'm on the Audit and Risk Committee, the Finance Committee, and the Honoraries and Tributes Committee um, and the Standing Committee.

40 I see. And it's the case that you've been a member of similar committees in the past?---Yes.

And for some time?---Yes.

When you were Deputy Chancellor, by reason of holding that office you were an ex-officio member of a number of those communities?---Yes.

Is that right?---Yes.

And that included the Standing Committee of the Council?---Yes.

And the Audit and, what was then known as the Audit and Compliance Committee?---Yes.

I'm going back to 2005?---Yes.

10 Is it, I think you indicated it's now called the Audit and Risk Committee?---
Risk, yes.

So it's been renamed?---Yes.

And you were the chair of the Audit and Compliance Committee for a period of time, is that right?---Yes.

Can you recall when that was?---Um, oh, I can't actually recall. I'd say from about 2000 but, yeah, and onwards.

20 But that - - -?---Yes.

Onwards. But it included the period around February of 2006?---Yes. Yes.

Are you able to explain briefly the purpose of the Audit and Compliance Committee?---Um, it's to advise Council um, on the policies it should take to follow risk policy, corruption, fraud, those sort of things.

30 I see. Just pardon me a moment. Can I show you, Mr Harris, page 7 of the brief?---Yes.

Do you see that that's a terms of reference for the Audit and Compliance Committee? We're just trying to bring that up for you?---Yes. Yep.

And is that consistent, those terms of reference consistent with your understanding of what the role was?---Yes.

And has that changed very much over time?---It's been tweaked over the years.

40 Right. But substantially the same purposes?---Yes. Yep.

Yes. Perhaps if you can just scroll down I think there might be a date. Maybe not. No. No, I'm sorry. That's not, that's not dated that document but from your understanding - - -?---Well, 21st of - - -

Oh, I see. There is a date there?---2004.

I see. So to your knowledge is that the document that would have been applying at or around this time?---Yes. Yes.

And including up to 2006?---Yes.

Yes, Commissioner, I tender that document.

THE COMMISSIONER: Yes. That's Exhibit V74.

10

#EXHIBIT V74 - OFFICE OF THE SECRETARIAT – AUDIT AND COMPLIANCE COMMITTEE TERMS OF REFERENCE

MS MITCHELMORE: Mr Harris, during your time as Deputy Chancellor is it the case that the, there were two Chancellors holding the position? The first was then Magistrate, Pat O'Shane, is that right?---Yes.

And from the end of 2003 it was Mr John Cassidy?---Yes.

20

And as Deputy Chancellor do you work closely with the Chancellor?---It depends on the Chancellor.

I see. Did you work closely with Mr Cassidy?---Yes. I think we had a good working relationship.

Yes. And how regularly would you speak with him about university matters?---Ah, there, I can't put a, I'll say regularly. Whether that was once a week or, or once a fortnight but yeah, it varied from time to time.

30

From time to time. Of course. And is it also the case that you'd see him in meetings of the Council?---Yes.

And other committees of which you were both members?---Yes.

What was your assessment of the level of his engagement with issues concerning the university?---He was full on. He was an activist Councillor.

I see. I just want to take you back to May of 2005. Were you aware by reason of your membership of the Council and the Standing Committee that a receiver and manager was appointed to the UNE Union at around that time?---No I wasn't. Later on, no but not then.

40

I see. Do you recall that it was the Standing Committee that appointed the receiver and manager of the, over the Union?---Um, no I don't.

Do you recall that the Standing Committee of the Council subsequently approved the Deed of Company Arrangement with relation to the UNE

Union and another company, UNE Union Limited?---Um, I remember a document we got through the Union from Stephen Hall that, yes. Yes.

Yes. And the Standing Committee approved the, the new constitution of the company?---Yes.

Do you remember that?---Yep.

10 And do you recall being present at that meeting of the Standing Committee?---Yes.

Yes. And do you recall whether Mr Cassidy was involved in discussions about those issues?---No, not in particular, no.

Is it likely that he would have been?---He would have partaken in the discussion, yes.

20 And is it the case that the Standing Committee nominated the board members for Services UNE which was the new company that was formed?--
-Yes, I believe so.

And one of the assets of that company was the Tattersalls Hotel?---Yep.

Do you recall that that hotel was sold by Services UNE?---Yes.

Do you recall attending a meeting of the Standing Committee on 21 November, 2005 to approve the sale of the Hotel?---From the minutes, yes. From my information I received from, yes.

30 Yes. So you're recorded in the minutes as having been present?---Yes. Yep.

And it's the case then that you were aware as at 21 November, 2005 that the Hotel was being sold?---Ah hmm.

40 If I can just take you to those minutes. It's page 284 of the brief. It's part of Exhibit V16. I'm just not sure what tab of that exhibit, but I'll just show you the, the minutes and you'll see that you're, you're there present?---Ah hmm. Yep.

There's no reference in those minutes, Mr Harris, to any conflict of interest being declared. Do you have any recollection of whether anybody declared a conflict of interest at that meeting?---I don't believe so.

Do you recall that the Hotel was being sold by a tender process?---Yes.

And you recall that the Hotel was sold as a result of that process?---Ah hmm.

Can I show you a letter, page 773 of the brief. Just pardon me one moment. I've got a hard copy to show you, Mr Harris?---Yep.

Do you recall receiving this letter as the chair of the Audit and Compliance Committee?---Yes.

And do you recall receiving it on or around the date of the letter, which is 5 February, 2006?---I couldn't tell you the date but - - -

10

If I can indicate for your assistance, Mr Harris, there was a meeting of the Audit and Compliance Committee on 10 February?---Yeah, I, I would have got it before the 10th but I can't tell you whether it was the 5th, 6th, or the 7th. Yep.

I see. Yes. Now, it's the case that you weren't present at that meeting on 10 February, is that right?---Yes.

But the, the minutes record that this letter was tabled?---Yes.

20

Have you had an opportunity to read this letter recently?---Yes.

To the best of your recollection before reading this letter were you aware that the purchaser of the Hotel, Mr Darrell Hendry was in Mr Cassidy's words as used in this letter, "Well known to him"?---No.

Before your receipt of this letter had Mr Cassidy told you that he had acquired an interest in the Hotel?---No.

30 Had he told you that he was considering investing in the Hotel?---I don't think so.

It's likely to be something you would recall Mr Cassidy telling you isn't it?--Um, um, yes.

Did Mr Cassidy tell you that, or let you know that the letter was coming before you received it?---No.

40 No. You'll see that there was a request in the second paragraph of the letter asking you to tender it at the next meeting of the Audit and Compliance Committee?---Yes.

And that was on 10 February, 2006?---Yes.

And you weren't present at that meeting?---No.

Do you recall where you were?---I was at a ram sale.

When you weren't going to be able to attend a meeting just generally - - -?--
-Ah hmm.

- - - to whom did you convey your apologies?---I, to the secretary.

That's Ms Arthurson, is that right?---Yes, mmm.

Did you give any consideration to who should chair the meeting in your
place?---Ah, no, I didn't, no.

10

What would ordinarily occur if you as the chair didn't attend a meeting?
---Ordinarily the, the – well, two options. The, the committee would elect a
chair for the day - - -

Yes?--- - - - and if the Chancellor was there they would take the chair.

And is it the case that the Chancellor considers the chair of any meeting?
---He, the Chancellor can chair any meeting of the, of the University
Council if they so choose.

20

If the Chancellor was present at the meeting and the chair wasn't would it
ordinarily be the case that the chair - - -?---Yeah, more than likely.

- - - would be Chancellor?---Yes, yes.

Do you recall whether you considered if it was appropriate for the
Chancellor to chair this particular meeting?---No.

30

Did you ask him to chair the meeting?---No.

Do you recall Mr Cassidy ever providing you with any further information
about his relationship to Mr Hendry?---No.

Or his investing in the Hotel?---No.

Commissioner, that's all the questions that I have for, for Mr Harris.

40

THE COMMISSIONER: Yes. Does anyone have any questions of
Mr Harris? Yes, Mr Thangaraj.

MR THANGARAJ: Can you just have a look at that letter of - - -?---Yeah.

- - - of 5 February, Mr Harris. You'll see that – sorry, before I go to the
letter you've given some evidence about your recollection of events from
2006. Do you, do you remember acting on this letter in any way when you
received it? Did you do anything about the letter?---No, I took the letter at
face value.

If you had any difficulties with the letter, if you disagreed with anything in the letter you would have made that known wouldn't you?---Yes.

So – because this was the Audit and Compliance Committee?---Yes.

And if, if something on this letter, and you knew it was to be tabled at that committee meeting, it was an important document, right, so if there was something which you knew was wrong you would have brought that to the attention of the committee?---Yes.

10

Which you – and it's true, isn't it, that you did not bring any problem to the attention of the committee?---No.

All right. Which means that you either didn't know the contents of the letter or the bits that you did know about you agreed with?---I, I took the letter at face value.

Yeah. But what I'm saying, okay. Well, let's - - -

20 THE COMMISSIONER: Mr Thangaraj, are there particular aspects of - - -

MR THANGARAJ: I'll go to it.

So if we go to the second page you'll see that Mr Cassidy has written there that, in paragraph (i) that he has, he had already advised, that is before the letter, already advised a number of people that he was considering investing in the Tattersalls business, do you agree that he had told – and you'll see that one of the persons that he says he advised was the Deputy Chancellor? ---I, I can't recall.

30

Okay. But firstly the Deputy Chancellor there refers to you?---Yes.

And what he's saying in the letter is that he already advised you that he was considering investing in the business, that's what he's saying in the letter? ---I, I, yeah, it was, yes.

And if, and if that was incorrect, that is if that was false or a lie you would have immediately informed the Audit and Compliance Committee that that was in fact incorrect?---Yes.

40

And you did not do that?---No.

So you accept that at some time before 5 February, 2006 Mr Cassidy had informed you that he was considering investing in the business?---I'll accept that, that, that I took the letter at face value and I, I took no action on it.

Yes.

THE COMMISSIONER: Sorry, what was that, Mr Harris?---Ah - - -

When you say you took the letter at face value - - -?---Face value, mmm.

- - - I'm just, I'm just having trouble understanding what you mean by that. Do you mean that you accepted unequivocally the assertions made in the letter without making individual inquiries of those persons or, or - - -?---I, I believed what was written in the letter.

10 You believed what was written in the letter?---Yeah.

All right. Well, then just in relation to paragraph (i) to which Mr Thangaraj has taken you - - -?---Yeah.

- - - given that it refers to Mr Cassidy having informed you directly that he was considering investing in the Hotel, that claim in the letter is at odds with your previous evidence that until you received the letter you were not aware that he was considering investing in the Hotel so it's that conflict that we're interested in resolving.

20

MR THANGARAJ: What I'm saying to you is on 5 February, 2006 - - -? ---Mmm, yes.

- - - when you read this letter - - -?---Yes.

- - - you would – if this was wrong, if it was not the case that he had advised you that he was considering investing in the business you would have immediately brought it to the attention of the Audit Committee?---I would have, yes.

30

And the fact that you did not proves that you accepted on 5 February, 2006 that you had been advised by John Cassidy that he was considering investing in the Tattersalls business.

THE COMMISSIONER: Well, I don't know about proves but it suggests that that was the case.

THE WITNESS: Yes, I, I - - -

40 MR THANGARAJ: Accept that?---Yes.

Now do you remember that the 10 February meeting, that you could not attend because you were ill?---No, I was a ram sale.

Oh, sorry, you were at a ram sale. And you knew that you would not be able to do that?---Yes.

Do you remember speaking to Mr Cassidy and asking him to chair the meeting - - -?---No.

- - - because you were unavailable?---No, I, I, I assumed he was the Chancellor, he would be there, I assumed he'd chair it.

10 Okay. So is this the case, you – did you tell him, do you remember telling him that you would not be able to attend the meeting?---I, I, I certainly would have told the Secretariat, whether I told the Chancellor I don't know.

All right. So it may be the case that you told him in advance that you would not be able to attend the meeting?---I can't answer, I don't know.

Okay. And, and if you did that your assumption would then be that he would chair the meeting?---Yes.

All right. Thank you, Commissioner.

20 THE COMMISSIONER: Any questions of Mr Harris? Any questions arising?

MS MITCHELMORE: No, Commissioner.

30 THE COMMISSIONER: Thank you. Just before you go though, Mr Harris, I know this is testing the memory but given that you acknowledge that it appears from the letter that Mr Cassidy had in fact informed you that he was considering investing in the Hotel would you be able to remember whether you had that conversation with him days or weeks before 5 February?---No, I'm sorry.

You couldn't possibly say?---No, I'm sorry.

All right. Yes, thank you.

MR FOORD: There's just one matter, your Honour.

THE COMMISSIONER: Yes.

40 MR FOORD: Just so your Honour knows this for, when you come to write your report.

Minter Ellison apparently conducted some sort of investigation late in February of 2006. Were you actually ever spoken to by either Minter Ellison or Senior Counsel who were retained?---No.

So the first time you had to bring these events back to mind was when you were spoken to by investigating officers of ICAC many years later?---(not transcribable)

Thank you, your Honour.

THE COMMISSIONER: Thank you.

Yes, thank you, Mr Harris, you may step down, you're - - -

MR THANGARAJ: Sorry, just one thing I forgot. Sorry.

10 Do you remember having a conversation with Mr Cassidy in late November
where he said that he had a conflict of interest because he knew Mr Hendry?
---No.

THE COMMISSIONER: Well, Mr Thangaraj, I hate to be picky but you're
asserting by that question that such a conversation occurred - - -

MR THANGARAJ: Yes.

20 THE COMMISSIONER: - - - and you're simply putting to this witness that
it's a lack of recollection.

MR THANGARAJ: Yes.

THE COMMISSIONER: I think it should be made clear.

Mr Harris, do you know whether or not such a conversation occurred with
Mr Cassidy or is it simply something that you're not in a position to recall
one way or the other?---I don't believe it happened.

30 You don't believe it happened. Anything else? No. I think you can, I think
you can step down, Mr Harris, you're excused?---Okay.

THE WITNESS EXCUSED

[11.08pm]

THE COMMISSIONER: Thank you.

40 MR FOORD: Commissioner, I'd ask to be excused, I don't think there's
any necessity for me to come back and cross examined Mr Cassidy.

THE COMMISSIONER: No, I think that's - no, you're excused, thank you.

MR FOORD: Thank you.

THE COMMISSIONER: Yes, Ms Mitchelmore.

MS MITCHELMORE: Yes. Commissioner, the next witness is Professor Pollard.

THE COMMISSIONER: Professor Pollard, you don't have anyone appearing for you today?

PROFESSOR POLLARD: No, I don't, Commissioner.

10 THE COMMISSIONER: No. I don't know if you've heard what I've said to previous witnesses?

PROFESSOR POLLARD: Yes, I have.

THE COMMISSIONER: Do you understand that, 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 you've given false or misleading evidence to the Commission?

20 PROFESSOR POLLARD: Yes, I understand.

THE COMMISSIONER: And do you seek the protection of a section 38 order?

PROFESSOR POLLARD: Yes, I do.

30 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.

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: Do you wish to be sworn or affirmed?

PROFESSOR POLLARD: Affirmed, please.

THE COMMISSIONER: Yes.

MS MITCHELMORE: Yes. Can you state your full name for the Commission, please?---Robin John Pollard.

10 And what is your occupation?---I'm a senior academic. I specialist in international education and managing partnerships.

And who's your present employer?---Monash University.

And for how long have you been at that university?---I've been at Monash um, actually on two occasions but in total more than 25 years.

I see?---Um, in between that period I was at the University of New England for about five years, four or five years.

20 I see. So you were previously employed at the University of New England? ---Yes, that's right.

And for how long were you there, it was about five years did you say? ---Four or five, I think four years.

I see. And what was your position at the University?---I was initially Pro-Vice-Chancellor International, and that covers the period of the, of the hearing.

30 I see. And is it the case that for a short period you acted in the position of Acting Vice-Chancellor?---Yes, that's right, from the period 7 January to 26 February.

I see. And did you do that sort of between the departure of the previous Vice-Chancellor, Professor Moses, and the commencement of the new Vice-Chancellor, Professor Pettigrew?---Exactly right. Professor Moses left at the end of 2005.

40 I see. And Professor Pettigrew started towards the end of February 2006? ---27 February.

I see. And after that short period did you return to your substantive position?---Yes.

Did you have prior experience in University management before taking the position at UNE?---Um, in different, in different roles. Prior to going to UNE I was an Associate Dean International at Monash University.

I see. And was it – can I just ask you, Professor Pollard, some questions about your practice of note-taking?---Yes.

Is it the case, is it your practice to take notes of meetings that you attend?
---Normally, yes.

Yes. And is it your practice to take notes during meetings as things were said or do you do it after the meeting?---Normally as they're said.

10 I see?---Um- - -

In your position as Pro-Vice-Chancellor at University of New England, who did you report to?---I reported to the Vice-Chancellor.

So Professor Moses?---Initially Professor Moses then- - -

And then- - -?--- - - -after this period, Professor Alan Pettigrew.

20 Yes. And is it the case that in your time at the University Mr Cassidy was the Chancellor?---Yes, that's right.

And did you work closely with Mr Cassidy?---Not really. My, my portfolio was quite a specialised area, it had to do with partnerships and international matters.

30 Would you ever receive instructions directly from him rather than the Vice-Chancellor?---When I arrived at UNE I received a – it was early January 2004 and there was a polite note from Helen Arthurson on my desk asking me to report to the Council, I think maybe to the Audit and Compliance Committee of Council, so it wasn't uncommon for me to receive direct requests from the Council, but normally I reported and received instructions from the Vice-Chancellor.

I see. And so when you say receive instructions from the, from the Council, that's coming from Ms Arthurson as secretary to the Council. Is that right?
---That's right. Not so much – instructions is, is too strong, they were requests to report.

40 I see. And that wouldn't happen very often, is that what, what your answer was?---No, it didn't happen often.

Yes. Did you work sufficiently closely with Mr Cassidy to be in a position to observe the level of his engagement with issues in the University?---Yes, I, I could. Not, not directly but from a reasonably close distance I could do that.

Yes. And how would you describe that?---As other people have said, he was quite hands-on. I think he, when he started as Chancellor he was

determined to change some of the business practices and processes at the University.

Yes. Were you a member of the University Council?---No.

Did you attend meetings of the Council?---The people on my level, the second tier of the Executive were permitted to attend Council meetings.

10 Yes?---I think initially we were asked to leave during closed sessions but then during Mr Cassidy's time we were permitted – there was a change in approach and we were permitted, we were permitted to observe closed sessions as well.

I see. And it's the case though that as someone who was attending but not a member of the Council that you weren't allowed to speak, is that right, unless you were asked a question?---That's exactly right. The protocol was that we sat to one side and could be called upon to speak at the, normally through the Chair.

20 I see. And did you attend any meetings of Council committees?---I attended the Audit and Compliance Committee meetings and also the Finance Committee meetings.

But again not as a member. Is that right?---That's right.

Just as an observer?---Yes.

30 And did Mr Cassidy frequently attend the Audit and Compliance Committees?---I think he did, yes.

And he was the Chair of the Council obviously?---That's right.

Professor Pollard, I wanted to take you back to 2005. Do you recall that there were issues at that, that time, so in 2005, to the best of your recollection, concerning the solvency or otherwise of the UNE Union?
---Oh, yes. There was a lot of effort, senior management time was going into that particular issue. I wasn't personally involved in it but I could observe it unfolding.

40 Yes. And did you have some awareness of those issues through your attendance at meetings for example of the Finance Committee?---I don't recall it coming up at the Finance Committee but yes, I, I know, I knew it was going on.

And your attendance at Council meetings?---Yes.

And do you recall, Professor, that there were two entities, UNE Union and UNE Union Limited?---No, I don't remember that.

I see. Do you recall that in 2005 there was a restructure of those entities resulting in a single entity known as Services UNE?---Yes.

And again you weren't directly involved in issues concerning the restructure. Is that right?---No, not at all.

But you had some awareness of those issues?---Mmm.

10 And one of the assets that was folded into Services UNE was the Tattersalls Hotel?---Yes.

Do you recall that that Hotel was sold by tender towards the end of 2005? ---Other than the events of the last few months I probably would not have recalled that, but I've read the, the documents.

I see, And do you recall that the hotel was sold by tender?---I don't recall that either but I now know that.

20 I see. Do you know who purchased the hotel?---Again I know it because of the – reading through recent, recently reading through documents.

I see. Do you recall whether Mr Cassidy informed you at any stage that he was acquiring an interest in the hotel?---Yes. He came to me on 20 January and that was in the period that I was Acting Vice-Chancellor or I believed I was Acting Vice-Chancellor and told me that he had acquired an interest on 19 January.

I see?---I took a file note to that effect.

30 Yes. Can I show you page 751 of the brief. Professor, is that your, that's your handwriting?---Yes, it is.

And is that your signature at the bottom of the page?---Yes, it is.

And is that a note of your meeting with or a meeting with Mr Cassidy on 20 January, 2006?---Correct.

40 Do you recall making this note?---Yes. Well, I don't recall making it but it was a standard- - -

Practice that you- - -?---It's the kind of practice I would, I would, I would, I had and I recognise this is my file note from that meeting.

I see. Just looking at the note at the top of the page sort of next to the arrow, do you recall Mr Cassidy telling you at any point before this meeting that he was considering investing in the Hotel?---I don't believe he, he talked to me about it before this, this date, before this, this date.

If he had told you something of that nature before 20 January are you likely to have made a note of it?---Yes.

Do you recall him telling you before this meeting that he knew the person who had purchased the Hotel who's described in this note as I think former partner associate?---I think this, the date I made this note was the first I'd heard of any of it.

10 I see. And when you say any of it, you mean- -?---The purchase of the Hotel or the, or for that matter any interest of Mr Cassidy's partner's involvement in it.

I see. I see. There's a note at the top of the page that suggests that Mr, is it AR, is that Mr Robinson?---Yes, that's Adrian Robinson, Mr Adrian Robinson, who was the Chief Financial Officer. You can see there that I added that in at the top to indicate that Adrian Robinson entered the meeting at my request after the meeting had started. What had happened was that the meeting started with the disclosure by Mr Cassidy that he had decided to
20 invest in the Hotel. I then called for Mr Robinson to join us because I thought it was important to have another person there as well.

I see. And the note then says, is it, "first item repeated?"---Yes. And that is, the meeting started with Mr Cassidy telling me that he had decided to invest in the Hotel. I called in Mr Adrian Robinson and then we went through that same item again so that Mr Robinson would hear it as, as well.

I see. Commissioner, I tender that document.

30 THE COMMISSIONER: Yes. Those notes will be Exhibit V75.

**#EXHIBIT V75 - HANDWRITTEN NOTES OF ROBIN POLLARD
DATED 20 JANUARY 2014**

MS MITCHELMORE: Professor, can I next show you page 773 of the brief?---Thanks.

40 Professor, is that your handwriting at the top of, on the top right-hand corner?---Yes, it is, I believe it is.

And is it the case that that's a note that the document was tabled at an audit compliance, audit and compliance committee meeting on 10 February?
---Correct.

And do you recall being present at that meeting in your capacity as Acting Vice Chancellor?---Yes, I do.

And can you recall whether you'd seen the letter before you attended the meeting?---No. In fact my wording there tabled at um, is indicating to me that it was tabled, physically tabled at the meeting rather than being included in the business paper for the meeting.

I see. So - - -?---So, so I inferred that this was handed out at, as the meeting started.

10 I see. Now is it the case, Professor, that on the 17 February, so a short period after this that you had a conversation with Mr Dennehy about these matters?---Yes, that's right.

And Mr Dennehy was the Executive Director of Business and Administration?---Correct.

And is it the case that that conversation prompted you to ask him to prepare a report?---Indeed.

20 And to request Mr Fox to prepare a report?---Yes. I requested both of them to provide reports to me immediately after I had a verbal discussion with Mr Dennehy.

I see. And can I show you page 812 of the brief. Is that a copy of a document that you created?---Indeed. These are my file notes, um, you can see from the date at the top that I commenced the log of events on the 20 February so the first few entries there are um, I entered retrospectively so I'm indicating that and thereafter from that date on I've completely the log as events unfolded.

30 I see and you would do that contemporaneously, is that right?---I did it contemporaneously because it became obvious that these matters were becoming important.

I see?---But of course at the time I started this 20 February the events of earlier, the previous period was still fresh in my mind.

40 Yes. And is it the case that with the earlier entries you were going off your recollection other than where you refer to a file note?---Yes. Um, although I kept papers of all of those, I kept whatever documents were relevant. So for example the audit and compliance committee meeting there on the 10 February I would have had the business paper with me and I also would have had the, the letter from Mr Cassidy to the chair of the audit and compliance committee in my file as well. So I had, so um, I was able to, I'm able to be quite reliable I think in the, the log that's here.

I see. And so just looking at the log then for the audit and compliance committee of council there's a reference to the discussion was entirely on point C?---Yes.

Do you see that? What do you mean by entirely on point C?---Point C refers to the letter from Mr Cassidy to the chair of the audit and compliance committee dated 5, 5 February, point C commences, "Mrs Jennifer Crew" and so on so you might like to refer to that document. So point C refers to that item in the letter of 5 February.

10

That's at page 773 of the brief. Is that the letter that you're referring to? ---Yes, that's right.

Yes. Now just going back up the page, the first entry that you've made is late December 2005 early January 2006?---Yes.

And you've said you've heard, you heard rumours that all might not have been above board - - -?---Yes.

20

- - - do you recall anything specific about what you heard at that time?---No, nothing at all. Armidale is a small town and there are rumours that circulate fairly frequently and with, with, with a high, high speed.

I see. And there's an entry for the Monday of the 13 February in the afternoon and it says that you provided incoming VCs. Is it the case that you met with Professor Pettigrew at that time?---I didn't meet him but I was talking to him by telephone.

30

I see?---Although I must admit provided doesn't indicate the means by which I provided and I don't recall. I think we may have been doing fax as well as telephone.

I see. You've indicated you - - -?---So actually provided and must, since I wasn't meeting him in person it must have been by fax.

I see. And you refer there to a letter of Jenni Crew?---Yes.

40

Can I show you this document. Professor, is that the letter you recall?---I believe it is and in fact I can identify that it did come from my personal files by that number in the bottom right-hand corner at 1149 that was a number that I had applied by my secretary when I was leaving the University of New England and I had filed in a confidential file over 100 pages of notes like this and documents like this and so I can see that this one came from my, my personal file collection.

I see. So that's a copy of the letter that you're referring to and you've indicated that you also had, you gave him a copy of the letter of the 5 February from Mr Cassidy?---Yes.

And you've discussed with him the events and you had indicated you didn't propose to do anything further. Is that - - -?---That's - I proposed that to the incoming Vice Chancellor, yes.

Yes, I see. And you've then had a conversation with Mr Dennehy that's there recorded in your, I'm going back to page 812 of the brief, is that right?---Correct.

10 And that's the conversation of the 17 February that triggered you're asking him for a report?---Quite correct.

And also asking Mr Fox for a report, is that right?---Yes, yes.

20 Can I show you Exhibit V7 page 815 of the brief. Is that a copy of the report that Mr Dennehy provided to you?---It is. Could you just scroll down a little bit? Commissioner, I'd like to make a comment about this. The, the date at the bottom has been attributed as 26 February, I believe in fact it was on, it should have been the 20 February and I believe that because I made my request to Mr Dennehy and to Mr Fox the previous Friday the 17 and I wanted and required reports forthwith.

I see. So you recall asking for those reports - - -?---I do.

- - - as a matter of urgency?---That's right.

30 I see?---I didn't - when I made my initial request to both of them it was by email um, and I didn't indicate a date but um, having thought about it over the weekend I wanted them on Monday and so I do remember asking Mr Dennehy to respond to me on that Monday.

I see?---And if you look at that number it is somewhat scrawled so it could be the 20th I think it's probably a reasonable interpretation of that. Certainly my recollection and is consistent with my log of events.

Yes, I see. Can I show you brief 795. Is that the report that you received from Mr Fox?---Correct.

And is that your annotation that you've received it on the 20th?---Yes.

40 And is it the case that you subsequently spoke to Mr Fox on the 20 February?---Yes. If you refer back to my log.

This is on page 813 of the brief?---813. You can see that the top entry, "Anthony Fox came to my office, gave me his letter and the Forsyths document dated 2 June, Anthony Fox advised me to contact Minters, Minter Ellison for advice on what I'm obliged to do, see notes of the meeting. So, so you can see there on the 20 February I also kept a file note of, of um, my meeting with Anthony Fox.

Yes, I see?---But I haven't seen that document since?---No, I, I don't think that the Commission's located, located that document, Professor, but you're saying that you took notes at that time?---Not only did I take notes I, I kept a file of all of these documents and when I left the university I put that, um, rubber, it was a rubber stamped sequential number at the bottom right-hand corner of all of those documents and filed them at the university's filing record management office with a confidential status and I also know that there were over 100 pages filed in that, in relation to this particular matter filed at my time of departure. So, so I believe that all of those documents
10 should be available through the university's official record office.

Yes, I see. Is it the case that you engaged Minter Ellison to assist you in determining what if any action you should take?---Yes, that's right. You can see the second entry on that page 813 we're still on that I called Minters.

Yes. And is it the case that as part of that investigation you met with the Chancellor?---Subsequently, yes. Um, the advice that we, I received from Minters was to put some questions to the Chancellor um, the, the steps
20 leading up through that week detailed there on page 813, and I met the Chancellor on Friday, the 24th.

Of February?---Of February, yes.

Yes. Can I show you, well perhaps if I go back a step. So on the, on 23 February, just looking at about half, halfway down 813 you have had a conversation with Mr Cassidy?---Yes. I advised him of the matters in hand and that I would like to put some questions, five questions to him. And also notified him that Mr Dennehy and Mr Anthony Fox have contributed
30 documents that I could show him.

Yes. And it's the case then that the next morning you had a further conversation with him in which he asked - - -?---Um - - -

Well, I'll go back a step. Is it the case that you received a request for the questions that would be asked of Mr Cassidy?---Um, yes. Um, you can see on Friday, Friday, 24 Feb at 9.11am I received an email from the, Helen Arthurson, the university secretary conveying a request from John Cassidy to see the questions in advance.
40

Yes. And is it the case that you provided those questions to him?---I first took advice on that as you can see, from Anthony Fox who then checked with the, the lawyer from Minter Ellison to get advice on that and then we, I faxed the questions to Mr Cassidy, as you can see Friday at approximately 11.30am.

Yes. Can I show you page 801 of the brief. Can I just get you to identify that's your handwriting on that first page, Professor?---Yes. Yes it is.

And is that a copy of the fax that you sent Mr Cassidy that day?---Ah, certainly. Yes, I think so.

Yes Commissioner, I tender that document.

THE COMMISSIONER: The pages containing the questions, referred, was at page, pages 801 to 805 of the brief, Exhibit V76.

10

#EXHIBIT V76 - FAX FROM ROBIN POLLARD TO JOHN CASSIDY ATTACHING QUESTIONS

MS MITCHELMORE: Now, is it the case that you met with Mr Cassidy at around 5 o'clock on 24 February?---Yes.

Can I show you page 810 of the brief. Professor, are these the notes that you took at that meeting?---Yes, they look like my notes.

20

And is it the case, going back to the previous exhibit, that you've recorded responses to the questions as they were set out in the document that you provided to Mr Cassidy?---The um, these, these notes, I haven't, I have to say I haven't seen these since I took them or, and since, at least since I left the University of New England. But Mr Fox um, typed up, took, I think he took his own notes and typed them up and they were made available the subsequent week. So these I was probably taking just for my own record. As I mentioned earlier it was my practice to take notes of, at meetings.

30 Yes?---In most cases.

But just noting what I was interested in, Professor, you'll see that there are numbers down the left-hand side, 1.1, 1.2, 1.3. Does that accord to your recollection with you putting down responses in answer to the questions that you sent to Mr Cassidy in advance of the meeting?---Yes.

40 So if I can just go back, just for your assistance, to the previous exhibit which is page 801 of the brief and you'll see, Professor, that on, just if I go to the second page of that document you'll see that the questions are put as 1.1, 1.2, 1.3?---Yeah. Just need to um, crosscheck the documents. Thanks. Okay.

So just looking at the, at the two documents now, Professor, is it the case that that's your recollection of, of what you were doing?---Yes. That's right. Following it through. And then these, these notes, as I say, my, Anthony, I think I probably agreed with Anthony Fox that he would take minutes of the meeting but um, and he, he did certainly subsequently type up notes. Ah, but these were for my own benefit and record.

Yes, I see. Your log, Professor, if we, we can just go back to page 814 of the brief, that there's a reference on that page, page 3 of 3 to Mr Fox sending his typed up notes to Minters on Monday. So that's consistent - - - ?---Yep.

- - - with your, your recollection - - -?---That's right.

- - - of what was to happen?---Yes.

10

And if I can show you page 817 of the brief. Perhaps before I do that can I tender Professor Pollard's notes.

THE COMMISSIONER: Yes. Those notes of the meeting is Exhibit V77.

#EXHIBIT V77 - HANDWRITTEN NOTES OF PROFESSOR ROBIN POLLARD DATED 24 FEBRUARY 2006

20

MS MITCHELMORE: And if I can just then show you page 817 of the brief. Do you recall seeing that document, Professor?---Um, just, I'll just have a minute, please. Yes, these are Anthony Fox's notes from the interview on 24 February. I have, have not seen these before this year.

Yes?---They, they weren't supplied to me. What happened was 24 February was a Friday. I was still Acting Vice-Chancellor on that day.

30

Yes?---In fact I was Acting Vice-Chancellor up till the Sunday. And the new incoming Vice-Chancellor started on the Monday. So these notes um, from Anthony Fox were not, I believe I have not seen them in, in, until recently.

I see. And is it the case, Professor, that the advice you received from, from Minter Ellison was that on the basis of the material that was provided the matter wasn't reportable to the Commission?---The advice on that, I received advice from Minters partway through the sequence of events, and that was while our investigation was in-hand - - -

40

Yes?--- - - - and the advice then was that we needed to ask these questions. It was actually that advice from Minters that led to the questions being put to Mr Cassidy on the Friday.

I see. I see. Now um, after the incoming Vice-Chancellor took up his position two documents were provided to the new Vice-Chancellor and one, one was the notes of this meeting that I haven't seen, and also um, more formal advice came in from Senior Counsel - - -

I see?--- - - - Mr Lindsay Foster um, and I hadn't seen that either until I was shown it by the investigator.

Right. I see. So you, you at this stage - - -?---And, and - - -

- - - were, were out of the - - -?---I was - - -

- - - out of the process - - -?---I was completely out of it.

10 Yes?---Following that Sunday.

Yes?---Um, but, and, but it is correct. I have subsequently seen that advice this year and it is correct um, that the university was advised that it was not reportable to ICAC. But I did not consider that advice and I was not in receipt of it.

At the time?---At the time.

20 Yes. So at, so at that point in time the matter was no longer within your remit, is that right?---It, it could have been but I wasn't invited to participate in discussions.

I see. I see. Now, in the course of the investigation that, that you conducted with the assistance of Minter Ellison did you speak to any persons external to the university?---Other than Minter Ellison I don't think so. I called up the Deputy Chancellor, Mr James Harris.

Yes?---Um - - -

30 But he was obviously part of the, the university executive, is that right?---
Yes. Well not the executive, the Council members are not remunerated, they're not employees.

I see?---So I was progressing this really as, on behalf of management.

Yes. Sorry, when, when you, when I say external though I mean someone who's sort of outside the university community?---I don't think so, no.

40 No. Yes, they're all the questions that I have for Professor – just pardon me a moment? I'm sorry, I'm just – I'm sorry, I omitted to show you a document, Professor, and this I think perhaps will assist your evidence earlier about having taken a note of your meeting with Mr Fox on the 20th - -
-?---Oh.

- - - I just forgot to show you, is that a copy of your notes of the, of the meeting you had with - - -?---Just a minute. Okay, I just have to refer back to my log. Yes. That's correct so in my log I referred to – on, sorry, the page number - - -

Is it the second page?---The second page, yeah.

Yes, so this is page 813?---At the top, Monday, Monday, 20 Feb, 10.00am.

Yes. And you say "See notes of meeting"?---"See notes of meeting," so these are the notes of the meeting.

Yes, that are referred to there?---Yes, that's right.

10

Yes, Commissioner. I tender that document.

THE COMMISSIONER: The notes of the meeting of 20 February, Exhibit V78.

#EXHIBIT V78 – HANDWRITTEN NOTES OF MEETING TAKEN BY PROFESSOR ROBIN POLLARD DATED 20 FEBRUARY 2006

20

MS MITCHELMORE: Yes. That's all the questions I have for the Professor, thank you.

THE COMMISSIONER: Any questions of Professor Pollard? No.

Thank you, Professor, you may step down, you're excused?---Thank you.

THE WITNESS EXCUSED

[11.41am]

30

THE COMMISSIONER: Yes, Ms Mitchelmore.

MS MITCHELMORE: Yes, Commissioner, the next witness is Mr Anthony Fox.

THE COMMISSIONER: Yes. Mr Fox, just take a seat. You don't have anyone appearing for you today?

40

MR FOX: No, that's correct, Commissioner.

THE COMMISSIONER: No. You've heard what I've said previously about the effect of a section 38 order?

MR FOX: Yes, I understand.

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

MR FOX: Yes, I do.

THE COMMISSIONER: Yes. 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: Do you wish to be sworn or affirmed, Mr Fox?

MR FOX: Sworn, Commissioner.

MS MITCHELMORE: Yes, can you state your full name for the Commission, please?---Anthony David Bradfield Fox.

And what's your occupation, Mr Fox?---Solicitor.

And where are you currently working?---Fox Legal in Armidale.

10

And how long have you been with that firm?---Um, I started that firm at the beginning of last year.

I see?---Or December 2012 I mean.

And prior to that, starting, starting that firm can you tell the Commission who you, were you employed previously by other law firms?---Ah, yes. Um, if I go right back in time I did my articles at Clayton Utz, I went that a solicitor and partner at what was then called Ebsworth & Ebsworth, I was
20 then a partner at Phillips Fox and for a short time I was counsel at Munich Reinsurance and then I moved to Armidale.

I see?---And then I was a partner at APJ Law.

APJ Law?---Yes.

Was that for a time known as Abbott Pardy and Jenkins?---Yes, it was.

And is it the case, Mr Fox, that for a period of years you held the position of
30 University lawyer at the University of New England?---That's correct.

And you held that position under contract?---Yes.

So you were still a partner of your firm, is that right, but under contract to the University to provide the services of the University lawyer?---That's correct. I should slight correct, correct what - - -

Yes?--- - - - I've just said. When I first came to Armidale there was a firm
40 called Simpson & Co and I was a partner there for about a year and then I - and when I was a partner there um, I applied for the job of University lawyer by way of contract and then I took that work with me when I moved to APJ Law- - -

I see?--- - - - or what was then Abbott Pardy & Jenkins, I'm sorry.

I see. And can you recall the period for which you, you were the University lawyer approximately?---Yes, I think it's from, for about five years, from about 2004 to 2009, the beginning of 2009 I think.

Are you able to explain what the role of a university lawyer is?---Well, it's a very mixed role. Um, a lot of the work that is done is contractual work, intellectual property work, there's work to do with discrimination issues, employment issues, so there's quite a, there's quite a variety of, of work. One area we didn't do work in was conveyancing so we didn't do the University's conveyancing for example.

I see?---Or any similar sort of work.

10

So work of that nature would be outsourced?---Yes.

Yes. We did do the odd lease but that'd be about it?---Yes.

And are there particular officers or officeholders within the University structure that you would frequently work with?---Yeah. When I first started my reporting line as it were was to Graeme Dennehy.

20

I see. And he was the Executive Director of Business Administration - - -?--
-Business.

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

And was that, was he your reporting line for the period 2005/2006?---Yes, he was the person I worked most with.

I see. Did you also have occasion to work with the Chancellor?---Um, very rarely.

30

I see. While you were at the University did you regularly attend meetings of the Council, the University Council?---No.

If you attend the meetings was that in a role as an observer?---Oh, yes, yes.

Yes. Do you recall whether you attending meetings of committees of the Council?---Um, I think I may have attended the odd, it might be one or two Standing Committee meetings, I don't recall attended any other meetings. I may have attended for a short time a meeting of a Remuneration Committee.

40

I see?---But - - -

But your attended at such committees was infrequent, is that right?---Very infrequent.

Yes. If I can take you back to 2005, Mr Fox, is it the case that at that time there were issues regarding the solvency of the UNE Union?---Yes, there was. The um, there had been a change in, in, in arrangements whereby universities could no, no, no longer um, levy um, students so that all the

student services, the sorts of things that were um, covered by the levy ah, would have to be covered by the University and that meant that the Students Union and, and affiliated organisations all of a sudden would have no funds unless the University paid the money and that created a bit of a crisis.

I see?---It virtually made them insolvent. They were pretty shaky to start off with but - - -

10 I see. So at this time there were two entities, is that right, there was the UNE Union and UNE Union Limited?---That's correct.

And you UNE Union Limited held the assets, is that right?---Um, I'm not sure about the assets, it certainly held a hotel - - -

Right?--- - - - as far as I can recall. I'm not sure about other assets per se.

Yes?---It, it may have been the lessor of Belgrave Cinema, I'm not sure about that, which is the only cinema in Armidale.

20 I see. Is it the case that in about May 2005 a receiver/manager was appointed over UNE Union and an administrator appointed for UNE Union Limited?---Yes, about that time.

And do you recall who that was?---Yes, that was Mr Hall.

Mr Stephen Hall, is that right?---Yes.

30 And do you recall having any role in the University approaching Mr Hall? ---I may, I, I knew of Mr Hall, he had worked with one of my partners at Abbott Pardy and Jenkins. Um, I may have suggested the name, I'm not, I can't recall but he was certainly someone I knew and he was close by, he was a, he was an A-grade liquidator and he was based in Tamworth.

I see?---Not far, 100 kilometres away.

I see. And do you recall that Mr Hall produced a report on the affairs of the Union, UNE Union and UNE Union Limited?---Ah, yes, I'm fairly confident he did.

40 Yes. And did Mr Hall also obtain a valuation report for the Hotel?---Um, I think so, um, I think – I recall it in the sense that I remember Mr Dennehy talking to me about it but I think so so the answer would be yes.

Yes. Do you recall seeing the valuation at around the same time as you saw Mr Hall's report?---No, I don't, no, I can't recall actually seeing it or reading it, no.

Yes?---No, I don't think I did.

If it was an annexure to the report of Mr Hall would that assist your recollection as to whether you might have seen it?---Um, I think I, I think I saw his report so if it was an annexure I probably would have seen it, yes.

Yes. Do you recall, Mr Fox, being part of what might loosely be described as an informal working party in relation to issues about the restructure and potential sale of the Hotel?---Ah, yes, as an informal group, yes.

10 Yes. Do you recall how that group came to be formed?---I can't. The term working party sounds like a Graeme Dennehy description um, but um, um, I think the um, the Chancellor who'd, who was relatively new to the University and was, was, would be keen to grab all of these issues by the throat and deal with them um, I think he would have been keen to push things along and get a working group to work out where we were going and what we were doing, but um, ah, I can't tell you exactly where it came from, no.

No?---That's a longwinded answer I'm sorry.

20

No, no, that's all right. But it's the case that Mr Cassidy was a member of that, of that group?---Um, I recall that he was, yeah.

Yes. And he was involved in discussions about the sale of the hotel?
---Um, I can't recall that specifically, no.

If I can show you page 37 of the brief, it's part of Exhibit, it might be V16, the minutes of the, the University minutes. But just showing you on the screen- -?---I've got it, thank you.

30

Mr Fox, yes, they're notes of a meeting held in the office of Mr Dennehy on 20 July and you're there as being present. Just looking at those names is that the composition of the group that you've been referring to?---Yes.

And one of the issues for that group was whether to sell the Hotel before any restructure of the UNE Union and UNE Union Limited. Is that right?
---Yes.

40 And do you recall that issue being discussed?---No, I, no, I don't. I can't recall the, the terms of the discussion, no, I'm sorry.

No. Do you recall what your view was at the time about whether the Hotel should be sold before the restructure occurred?---Um, no. I have a very vague recollection that I thought the Hotel needed to be sold because it was a bit of an albatross um, um, but as to the timing and other issues, there was tax issues to take into account um, but I can't help you with that I'm sorry, I can't remember.

No. Is it the case that the Standing Committee subsequently agreed to enter into a Deed of Company Arrangement that would see UNE Union folded into UNE Union Limited and renamed Services UNE?---Um, I certainly remember the creation of Services UNE.

Yes?---As to, I didn't attend, I don't think I attended the Standing Committee meeting about that.

10 No, but you had some involvement in preparing a new Constitution for that entity?---Yes, I did.

Is that right?---Yes.

And once Services UNE was up and running, pardon me, it's the case that you weren't involved in preparing advice to that company. Is that right? ---No, not that I can recall.

20 It was a separate entity to the University?---Services UNE was a company where the sole member of shareholder was the University um, and, but it was to be run as a separate as it were commercial venture with some people from town with commercial knowledge to try and get the enterprise up and running.

I see. Do you recall learning subsequently that the Hotel was for sale by tender?---Yes.

Did you have any involvement in discussions surrounding that decision? ---No, I can't recall that.

30 Do you recall around about November, middle of November 2005 having any discussion with Mr Cassidy, the Chancellor, about whether the approval of the University was required for Services UNE to sell the Hotel?---No, um, I don't recall that. I have a vague recollection, Mr Cassidy and I didn't meet on any regular basis at all.

Yes?---Um, but I might have bumped into him from time to time and I do have a recollection of bumping into him sometime, at some stage there.

40 Yes?---And he may have asked me a question but the answer to your question is no.

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

But it's possible that that occurred?---It's possible.

And if Mr Cassidy required advice about an issue such as the power of a controlled entity to sell property, would it be likely that he'd consult you as the University lawyer?---Ah, yes um, yes, perhaps not directly, it might

have come through Mr Dennehy to me. Um, but um, he may have, but my experience with Mr Cassidy is I can't, I can only recall a couple of occasion in the whole of my time there where he asked me for any specific advice.

Directly, is that right?---Yes.

Can I show you page 795 of the brief. I have a hard copy for you, Mr Fox, if that assists?---No, that's all right, I can read it, thank you.

10 Is that, Mr Fox, a memorandum that you were requested to prepare by the Acting Vice Chancellor?---Yes.

And by this date is it the case that the hotel had been sold? I can show you the second page has, or maybe the third page- - -?---Yes.

Just go to the third page?---I think these events or at least contracts had been exchanged and so forth, I'm not sure about the completion date.

20 Yes. If I can just show you the last page, 797, is that your signature at the bottom?---Yes, it is.

And the date's 19 February, 2006?---Yes.

And do you recall preparing this document at around that time?---I recall preparing the document, yes.

And is it the case that you were requested to prepare it to deal with your recollection of events leading up to the restructure of the Union entities? ---Could you just put that question again I'm sorry?

30 Yes, I'm sorry. Do you recall what you were asked to prepare by the Acting Vice-Chancellor?---I think there was a concern that, about the role of the Chancellor or the involvement of the Chancellor in the purchase of the Hotel and I had um, spoken to Professor Pollard about it just in his office
- - -

40 Yes?--- - - -it wasn't a formal meeting or anything, about it and I'm quite sure Mr Dennehy probably did um, and my recollection is Professor Pollard asked, asked me or us um, to provide a memo, in my case, my understanding of what had happened.

Yes. So what had happened in relation to the sale process, is that right? ---Yes, the process that, yeah.

Yes. And the Chancellor's involvement in the process?---Yes.

Yes. Commissioner, I tender that document.

THE COMMISSIONER: Yes. The memorandum of 19 February, 2006, Exhibit V79.

**#EXHIBIT V79 - MEMORANDUM TO ACTING VICE
CHANCELLOR ROBIN POLLARD ONLY FROM ANTHONY FOX,
UNIVERSITY LAWYER DATED 19 FEBRUARY 2006**

10 MS MITCHELMORE: Now, it's the case, Mr Fox, that this document follows a chronological order. Is that right?---Um, I would hope so.

Yes?---I don't have it in front of me, that's all, but I would hope so.

Oh, I'm sorry, we'll just bring it back?---It seems to be, yes.

Yes. And from paragraph 9 onwards, so on page, at the last page of the document, you're dealing with events in December 2005 and January 2006. Do you see that?---Yes.

20

You haven't recorded there any direct discussions with Mr Cassidy. Is that consistent with your earlier evidence that you had very few direct discussions with him?---Yes. If you look at paragraph 9 for example where I use the word, "I understand," that usually means I've heard it second-hand
- - -

Yes?--- - - -as distinct from a direct conversation.

30 Do you recall him ever telling you directly in January 2006 that he was considering investing in the Hotel?---No, no.

That's something that would have been important to include in a report of this nature if it had occurred?---Absolutely.

And you would have included it if it had occurred?---If, yes, if I was aware of it I, yeah.

40 Well, it's a conversation with you is what I'm suggesting?---Yeah, it would have been a direct conversation where he had informed me of something, yes.

Yes. And that's something that you would have put in this note. Is that right?---I would hope so, yes.

Can I show you page 807. This is a, an email from you, Mr Fox, to PVCI, and was the, and Robin, is that Professor Pollard, is that right?---Yes.

The, the - - -?---PVC International.

Oh, I see. Yes. And he is the, well he was the Pro Vice-Chancellor?---Pro Vice-Chancellor. Pro Vice-Chancellor International but that was his um, email address.

I see?---It didn't change because he was the Acting Vice-Chancellor.

I see. So there was not change in his address even though at this time he was acting as the - - -?---Yeah.

10

- - - the Vice-Chancellor?---Yeah.

And do you recall sending this email?---Um, no I don't actually recall sending it.

But you recall do you attending a meeting on the afternoon of 24 February, 2006 with Professor Pollard and the Chancellor, Mr Cassidy?---I don't actually recall attending a meeting. I may well have but I don't recall it.

20

But you were certainly aware of the, of the questions obviously because you've sent this email attaching the questions to Professor Pollard?---Yes, I, perhaps if I go back a step um, the, Minter Ellison were instructed um, to look at this matter.

Yes?---Because it was appropriate to have someone from the outside do it. Um, I had been in touch with Minter Ellison and I knew the particular partner, and I think it was my suggestion about the particular partner, I'm not, these questions would have come from Minter Ellison, perhaps to me. I'm just accepting the document. Um, and um, so I, and I would have sent them on.

30

I see?---I think that's probably what happened.

I see?---It was not appropriate for me to be directly involved - - -

No?--- - - - in running the whole thing. I was passing it to Minter Ellison to deal with.

Yes, I understand. Commissioner, I tender that document.

40

THE COMMISSIONER: The email of 24 February, 2006 Exhibit V80.

#EXHIBIT V80 - EMAIL FROM ANTHONY FOX TO ROBIN POLLARD RE STRICTLY CONFIDENTIAL TO ACTING VICE CHANCELLOR DATED 24 FEBRUARY 2006

MS MITCHELMORE: And is it the case your evidence earlier, Mr Fox, is that you don't recall attending the meeting, is that right?---No. I don't actually recall attending. I do recall talking to Professor Pollard about it.

Yes?---But I, and, but I can't actually recall sitting there face to face as it were with the Chancellor.

Yes. Can I, can I show you - - -?---I don't know why.

10 Can I show you this document, page 816 of the brief. And it's an email from you to, is it Ms Madafiglio of Minter Ellison? Do you see that?---Yeah.

And do you recall sending that email?---No I don't recall sending the email. I don't doubt it but I don't recall sending it.

Yes. And you'll see that that refers to the duration of the meeting and the fact that you were present?---Yes.

20 Does that assist you recollection as to whether you were at the meeting?---Um, well it, I'm not doubting that I attended the meeting following, looking at that particular email, yep.

Yes. And you've attached notes of the meeting?---If I could just, I haven't seen this document for - - -

No, of course. There's a hardcopy there in front of you, Mr Fox - - -?---Oh, sorry.

30 - - - if that would assist?---I haven't seen this document for five years or - - -

But it's one that you recognise?---I'm just looking for the um, style. No, I don't recognise, I have to say that I don't recognise the document. I'm not cavilling about it but I don't recognise it.

So you don't recall preparing the document?---Um, no I don't, no, I'm sorry. I don't recall preparing it. But again I'm not cavilling about it.

40 That you did prepare it, is that right?---Yeah.

Yes. Commissioner, I tender that document.

THE COMMISSIONER: Exhibit V81.

**#EXHIBIT V81 - EMAIL FROM ANTHONY FOX TO PAMELA
MADAFIGLIO, MINTER ELLISON RE ATTACHMENT
CONFIDENTIAL DATED 27 FEBRUARY 2006**

MS MITCHELMORE: And I have no further questions for Mr Fox.

THE COMMISSIONER: Any questions of Mr Fox? No. Thank you, Mr Fox. You may step down. You're excused.

THE WITNESS EXCUSED

[12.04pm]

10

THE COMMISSIONER: Yes, Ms Mitchelmore.

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

THE COMMISSIONER: Is Mr Gusheh here?

MR GUSHEH: Yep.

20 THE COMMISSIONER: Come forward, thank you. Yes, just take seat, Mr Gusheh. You don't have anyone appearing for you today?

MR GUSHEH: Pardon?

THE COMMISSIONER: You have no one appearing for you today?

MR GUSHEH: No.

30 THE COMMISSIONER: Let me just explain something to you. You are obliged to answer questions that are put to you and you must answer them truthfully. You don't have the option of refusing to answer any questions. Because of that compulsion you are able to object to answering a question that you think might be incriminating but I can also make an order under section 38 of the Act which operates as a blanket objection so that none of your answers can be used against you in civil or criminal proceedings. However, the order doesn't protect you if it should be found that you've given false or misleading evidence to the Commission. Do you understand that?

40 MR GUSHEH: Yes.

THE COMMISSIONER: Do you want the protection of a section 38 order?

MR GUSHEH: Yes.

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.

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL
10 **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: Do you wish to be sworn or affirmed, Mr Gusheh?

MR GUSHEH: Yes.

THE COMMISSIONER: Sworn or affirmed?

MR GUSHEH: Sworn, yeah.

THE COMMISSIONER: Sworn?

30 MR GUSHEH: Yeah.

THE COMMISSIONER: Thank you. Is there, is there - - -

MR GUSHEH: I don't have a, I don't believe in any book.

THE COMMISSIONER: All right. Well then we'll affirm the witness. Thank you.

40 MR GUSHEH: Yep.

THE COMMISSIONER: Yes, Ms Mitchelmore.

MS MITCHELMORE: Yes. Can you state your full name for the Commission, please?---Yeah, my name is Bahram (not transcribable) Gusheh.

10 I see. And what is - - -?---Excuse me but I'm known as Bob.

As Bob?---In, with friends and at work.

I see. And Mr Gusheh, what is your current occupation?---I'm retired.

Before retiring - - -?---I as a civil engineer.

A civil engineer?---Yep.

20 And is it the case that you were employed by Abigroup?---Yes I was.

And you worked for Abigroup for a long time?---Yes I did.

Can you approximate how many years?---Oh, I think from 1985 or '86, thereabouts.

Right?---Till, till ah, 2010.

I see?---Or 2011, June.

30

Yes?---Yeah.

And in your work at Abigroup did you come to know Mr John Cassidy?---Very well.

And did you also come to know Mr Darrell Hendry?---Very well.

Mr Gusheh, do you recall going up to Armidale to have a look at a hotel called the Tattersalls Hotel?---Yes I did.

40

And can you recall who asked you to do that?---Yes I was.

Can you recall who, who asked you?---No um, I, John was in Armidale and Darrell was in office. Most likely I was asked by Darrell.

I see. Can you recall for what purpose you were asked to go up there?---Ah, to look at the building and ah, give my opinion about the building, of various ways. I think that was the reason I went there.

I see. And do you recall how many times you went to Armidale to look at the Hotel?---It, I think twice. I, it's a long time ago.

Yes?---I think twice I went there. I'm not sure of that. One time I'm 100 per cent confident because ah, because of the evidence, yeah.

10 I see. So I know, you've said it's a long time ago, can you recall approximately when you went?---It, no. After I, I, I listened some of the evidence it's, some things gelling but - - -

Yes?--- - - - before that I was thinking that ah, the time had gone too fast for me but the day that I went to Armidale I was going to go with Darrell, and, and Darrell missed the aeroplane. That's the reason I remember it.

20 Yes?---And I got the car for him and we went in and he missed the aeroplane. Um, when we went there then the reason that I know the approximate date because he was engaged in interviewing someone. So when I read that date that he was interviewing it's most likely that is the date. However, I have asked Rex, I called Rex, Rex this day before yesterday to - if they have any record of travels - - -

Yes?--- - - - and they told me it takes 15 days till they give me the date that I went there.

I see?---I think the date that I went, I don't recall what date it was but it was the day that Darrell was interviewing someone there.

30 I see. And you've said you think you might have gone twice, is that right?
---Yes.

Can you recall how long it was between the first and second visits?---I, I - again, I think, this is a vague recollection, the second time was after some work was being done to the hotel and I went to see as a, as a civil engineer what work was being done to the Hotel.

I see?---Maybe, I don't know, maybe four or five weeks after the first one, maybe not, I don't - the record of the aeroplanes are there that, when I went.

40 I see. Can you recall what time of year it was?---Not a clue.

No. On both of the occasions that you went did you see Mr Cassidy?
---Yes, I did, yeah.

Yeah?---I think, oh, on the second time I'm not, I don't know how long it was, the first one, yes, I definitely did.

And did you go to the Hotel with him?---Yes, I did.

And you've indicated that you think you certainly did that once, you may have done it on both occasions that you went up?---I, I could have.

Yes?---It is, the second time I'm not sure about but the first one definitely I went to the Hotel, we walked around the Hotel, in the rooms, it was um, it was a dilapidated hotel and there was some people still there - - -

10 Yes?--- - - - and um, and I walked with John around the Hotel and I, I am not sure whether Darrell was involved. Darrell, I think he was, he came with me or with us, us two also.

I see?---With John and Darrell I think we walked around the Hotel.

Right. And did you, so did you see Mr Hendry on, on both times that you went up?---No, I don't, the second time firstly I'm doubtful about it.

20 Yes?---The second I don't think that Darrell was there, I'm not sure whether Darrell was or not on the second time.

On the second occasion?---No, I'm not sure.

All right. If I can try and separate the two out?---Yes.

On the first occasion can you recall whether you flew up to Armidale and back to Sydney on the same day?---Yes, I did, definitely, yeah.

And did you do that on both, both occasions?---I definitely did, yeah.

30 I see. Can you recall what you did on the first, the first time you went up? ---As I said the first time I went - - -

Yeah?--- - - - I was supposed to go with Darrell, Darrell missed the aeroplane - - -

Yes?--- - - - and, and I went and I waited and I had his boarding card and he didn't show up so I flew to Armidale.

40 I see?---I don't remember whether, how I went from the Hotel to the - from the airport to the Hotel - - -

The airport to the Hotel?--- - - - whether it was a taxi or I don't know. I went to the Hotel and then, from then I saw John.

At the Hotel?---I saw John and, and then - - -

Yes?--- - - - I learn, I think we went for a cup of coffee or breakfast till waited till Darrell gets there.

I see. And did you then go back to the Hotel after you - - -?---We, we went, yeah, I, I, I'm not sure about it but we, I think we – at one point in time in that period when Darrell came in we walked around the Hotel, we went to the back of the Hotel, to the alley next to the Hotel, to the rooms upstairs we, we walked and, and, and John wanted my opinion about the Hotel to see, you know, what's involved, how it looks and structurally and, and what can we do to it.

10 I see. And so you had a look around?---Yes, I did.

And, and you spoke to Mr Cassidy about the condition of the, the Hotel at that time?---Obviously you exchange opinions and you, you walk around and you say this, you know, this is like, it, it depends on that time that what was the ultimate function of the Hotel, whether the Hotel was going to be used as a, what was the purpose of the Hotel, whether it's going to be a, a room type hotel or a restaurant, a convention centre or whatever, then on that basis then it would have been decided what works needs to be done to it.

20

Yes?---And, and, and, and that was – I recall that was one of my suggestion, that, that we should get a architect and do some, draw some plans for what, what, what is intended to do and get the council permit and then by that time, you know, that we are clearer what, what, what can be done.

Can you recall whether Mr Cassidy said to you anything about what, what he might do with the Hotel? What, what plans he had in mind for the Hotel? ---No. It is my, my um, no, my relation work with John wasn't, you know, asking him, you know, asking him what he wants to do with the Hotel or whether, what, what is the intention for the Hotel. It wasn't my position to ask him that question.

30

I see. So, so the purpose of your going was just to give your view about a range of options - - -?---Option. No, no, apart from that about the structure and integrity of the Hotel.

I see?---Of, of, well you know, to see what work is required to be done for the ultimate use, whether - there was different ideas to be discussed, whether it's going to be used as a function or convention centre or, or, or hostel or what. And, and, and then, then after I could have known then, I could have given my opinion.

40

I see. Do you recall aside from walking around the hotel did you do anything else that day?---Yes. As I said Darrell on that day was interviewing someone in the, in the café across the road.

Yes?---Me and John, we went there, either we had light lunch or a cup of coffee while Darrell was carrying on and doing that.

And is it the case that you did anything else other than looking at the Hotel?---Yes.

Can you tell me what else you did?---Yeah, yeah, yeah, yep. Again, after John carried out his business, and Darrell I ah, I went um, to see around, that Hotel is located in a, in a mall in Armidale.

10 Yes?---Is set of townhouses that were being built across the road just little bit far away.

Yes?---I went around to look at their, their construction methodology. I've never been in Armidale before to see what people do in that climate, and it's colder than other places.

20 Yes?---And, and then I was mainly concerned, one of my biggest concern was the parking, the car parking in the Hotel. The, at that time the Hotel had only maybe four or five car park spaces at the back and I, I told John at that time that this is not the um, the space and, and I was looking for the car park facilities around there, around the city.

Yes, I see. And do you recall, I'm sorry, I withdraw that. So that was just a scoping exercise as it were, you were wanting to get a sense of the local area, is that right?---Yeah. Well yes, I wanted to see that what is, what is available and what people do, you know and what the method of construction in that area.

Yes. And can you recall what time you flew back to Sydney?---No idea.

30 And just going to the second time again you flew up and back on the same day - - -?---Yeah.

- - - was Mr Cassidy there that day, Do you remember meeting with him that day?---Would have been, I don't remember but it would have been otherwise I wouldn't go by my own, yeah.

Yes. Do you recall Mr Hendry being there as well?---I think, I'm not sure.

40 You're not sure?---I'm not sure.

And can you recall what happened on that occasion that second time?---I just, no the second time is basically, the idea was that we get, we get or John gets, when I say John get an architect involved to do the plans and things like that, there could have been an architect talk of hiring an architect to, to do the plans for the hotel.

I see. And do you recall any discussion between Mr, well you're not sure if Mr Hendry was there, is it possible that he was there that day?---He could have been, yeah.

And but you don't recall Mr Hendry and Mr Cassidy together on that day? ---If, if, if Mr Hendry, but I'm not sure, if they were there they would have been together, yeah.

10 Do you recall any discussion on either of the two times that you went up about Vercot?---Never.

Do you know what Vercot is?---Yes, I do, now I do, yeah.

When you say now you do what, what, what do you know of Vercot?---It is, Vercot is the company that it was between John Cassidy and Darrell Hendry to, for Abigroup.

I see. And again do you recall what time you flew back that day?---No idea.

20 And you said, Mr Gusheh, in a, in an interview that you had with investigators from the Commission that you went up to Armidale in 2007 or 2008 is it possible that it was earlier than that?---that's what I said at the beginning. My time had gone, the day that the investigators came to my place absolute mess, we were painting the house.

Yes?---Half of the furniture in the middle of the room.

30 Right?---And, and, and I got caught within half a day notice and, and, and I wasn't, you know, it is I didn't know the time of when I went.

Yes?---But now when I look at things and read things and try to connect things together- - -

Yes?--- - - -it is, it is most likely that in 2006.

So that is consistent with your recollection?---Yeah. Well, but I will be confident once I get the, the, my flight schedule from the, from the- - -

40 I see. Yes. And since the time that you spoke to the investigators, have you spoken to Mr Cassidy at all?---No, not Mr Cassidy.

No. Commissioner, that's all the questions I have for Mr Gusheh.

THE COMMISSIONER: Thank you. Any questions of Mr Gusheh?

MR THANGARAJ: I have none.

THE WITNESS: Yeah.

THE COMMISSIONER: No. Mr Gusheh, thank you, you can step down, you are excused. You may go?---Yeah, thank you very much.

THE WITNESS EXCUSED

[12.20pm]

THE COMMISSIONER: Mr Thangaraj, I think that only leaves your client?

10 MR THANGARAJ: Yes, it does.

THE COMMISSIONER: And I understood that you'd had a discussion with Counsel Assisting about your preference that Mr Cassidy be called after you'd had a chance to look at the transcript. Is that right?

MR THANGARAJ: No, Your Honour. What we, what I asked my friend was if we could deal with him tomorrow. The original position was that he would start today, then it became he would only start tomorrow, and then as my friend, she said, well, she'd be finished by lunch today, and I said, well,
20 could we start him in the morning so I could have a proper discussion with him, otherwise by 4 o'clock today, so I can have a discussion with him before he gives his evidence, go over today's witnesses et cetera, and that was agreed.

THE COMMISSIONER: All right. Well, that, I think that's the effect of what I was driving at in any event.

MR THANGARAJ: Sorry, yeah.

30 THE COMMISSIONER: All right. Well, I suppose we made reasonable time and if we don't finish tomorrow it would only mean a further short period on Monday I would think.

MR THANGARAJ: Yes.

THE COMMISSIONER: All right. Does that, is that suitable to Counsel Assisting then if we adjourn until tomorrow morning?

MS MITCHELMORE: Yes, certainly, Commissioner, yes, and I should
40 indicate that that was a preference that I expressed with Mr Thangaraj, yes.

THE COMMISSIONER: Yes, thank you. All right. Well then I'll adjourn today and resume tomorrow morning at 10 o'clock. Thank you.

MS MITCHELMORE: Thank you.

AT 12.22pm THE MATTER WAS ADJOURNED ACCORDINGLY

[12.22pm]