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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC  
COMMISSIONER

PUBLIC HEARING

OPERATION GALLEY

Reference: Operation E19/0569

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 23 JUNE, 2022

AT 9.30AM

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: Take a seat.

MS HEGER: Commissioner, I call Gregory Hynd.

THE COMMISSIONER: Okay, thank you. And Mr Drewett, you - - -

MR DREWETT: Yes, Commissioner. I seek authorisation and leave to represent Mr Hynd who is in the witness box.

10 THE COMMISSIONER: I think authorisation's been granted, hasn't it?

MR DREWETT: It has previously been granted.

THE COMMISSIONER: It has, yeah.

MR DREWETT: I'm instructed by Ms Georgia Wilcher, W-i-l-c-h-e-r, who sits next to me, from HWL Ebsworth. Commissioner, whilst I'm on my feet, I have explained the section 38 declaration to my client and he wishes to avail himself of that declaration.

20

THE COMMISSIONER: All right. Okay. Is he going to take an oath or an affirmation?

MR DREWETT: I'm sorry, it'll be an affirmation.

THE COMMISSIONER: Thank you.

THE COMMISSIONER: Thank you. There's just only one matter I wish to raise with you before we proceed, and that's this section 38 declaration. I may be repeating some of what your own counsel has said to you but can I say this? As a witness you must answer all questions truthfully and you must produce any item that I require you to produce during the course of your evidence. The effect of a section 38 declaration is this, that although  
10 you must still answer the questions put to you or produce items that I might require you to produce, your answers and the item produced cannot be used against you in any criminal proceedings, subject to one exception. That exception is that the protection does not prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act, including the offence of giving false or misleading evidence, most importantly. If you give false or misleading evidence you will commit a very serious criminal offence for which the penalty can be imprisonment for up to five years. I'm not suggesting for one moment that you're going to give untruthful evidence, but I just wanted to highlight that particular aspect  
20 of the matter. Do you understand that?---Yes, I do.

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 him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection, and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

30 **DIRECTION AS TO OBJECTIONS BY WITNESS: 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 HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION, AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

40

THE COMMISSIONER: Thank you.

MS HEGER: Mr Hynd, can you please state your full name for the record?  
---Gregory John Hynd.

And you've prepared two statements for the purposes of this investigation,  
correct?---Yes.

10 The first is dated 20 December, 2021, is that right?---I don't have it in front  
of me but I'm assuming that that's correct.

Yes. It will be shown to you on screen today if you need it. And the second  
is the statement dated 6 May, 2022. Does that sound right?---Well, again, I,  
I take it that it's, that's true, yes, from you.

All right. And are those two statements still true and correct to the best of  
your knowledge and belief?---Yes, they are.

20 All right. Are you still a director of Foresight Management?---Yes, I am,

And you've held that position since 2011, is that right?---I think, I think I've  
been a director of that company for longer. I renamed it in about 2011, so I  
think it actually dates back to about 2009.

Okay. And what was the name of that company before?---It was John Law,  
it was either John Law Investments or John Law, John Law Holdings and  
I've got another company now that is, I, I retook that name.

30 All right. And what sort of work does Foresight Management do?---These  
days, nothing, but it used to provide development advisory services and  
project management services.

All right. And you personally have been involved in the development and  
construction industry for about 20 years, is that right?---Oh, more than, yes.

How long have you been involved in that industry?---Oh, if you take my  
misspent youth, about 30-odd years.

40 All right. And in 2016, Foresight was engaged by a company called  
Aoyuan International, was that right?---Correct.

And the purpose of that engagement was to conduct due diligence, give transactional advice and management services in relation to the potential purchase of a property known as Landmark Square from One Capital Group, is that right?---Correct. I, I, I had been working for Aoyuan for a, a long time, I was working on several things at the same time for them. Did you say 2017 or - - -

2016.---'16. Yeah. I started, whenever Adrian started talking to, to them, that's when I started, with One Capital, that's when I started working on it.

10

Okay. And you took instructions from Adrian Liaw, is that right?---Yes.

And when you started working on the deal, One Capital Group had already lodged a planning proposal with council for Landmark Square, is that right?---Yes.

That occurred in June 2015, does that sound right?---I don't know, I can't, can't recall, I don't know.

20 But you understood council had voted in favour of the planning proposal in April 2016, is that right?---Correct.

And so at the point that you came on, One Capital Group and Aoyuan were discussing an agreement for the sale of the Landmark Square property from One Capital to Aoyuan?---Correct, correct. Subject to rezoning, correct.

Subject to the rezoning. All right. And you predominantly dealt with Elaine Tang as One Capital Group's representative, is that right?---Over the entire duration, yes, primarily, yes.

30

Okay. But you say you didn't understand her to have any particular expertise in property or planning, is that your understanding?---I, I don't believe that she had any great depth of knowledge or, or experience, no.

Okay. You also dealt with a person called Philip, is that right?---On, on some occasions, yes.

40 Less frequently than Elaine Tang?---Oh, more in 2016, early 2017, when we were actually talking about the commercial negotiation and for entering into some kind of purchase agreement.

Okay. And in paragraph 12 you describe Philip as the “kingmaker.” What did you mean by that?---He, he seems to be the guy that was driving the negotiations et cetera from One Capital’s side of things.

And what do you mean by driving the negotiations?---Well, he was the, he seemed to be the main decision-maker that we were dealing with.

All right. You also understood that Wensheng Liu was the director of One Capital Group?---Not initially, no.

10

Okay. But you understood that he had some involvement with One Capital Group?---Later on, yes. Later on I came to know that he was the sole director.

Okay. At what point did you find that out?---It would have been sometime in 2017.

Okay. You say at paragraph 15 of your statement, I’ll just bring that up. You say there that you attended two meetings in Mr Liu’s office situated above Bing Lee in Hurstville. Do you see that?---Correct.

20

All right. You said the meetings were mainly conducted in Mandarin and so - - -?---A lot of them were, yes.

Okay. Which you obviously don’t speak.---No.

And Adrian Liaw attended those meetings. Is that right?---Correct.

And at those meetings there was also Mr Liu of course. Is that right?---Yes.

30

And Elaine Tang and Philip as well.---Correct.

Did anybody else attend those meetings at Mr Liu’s office as far as you can recall?---I don’t believe so. No, I don’t believe so.

You don’t recall any councillors from Hurstville City Council or - - -?  
---Definitely, definitely no councillors.

Okay. You refer at paragraph 16 to a meeting that took place at Addisons in June 2017. Do you see that?---Yes.

40

And Ms Tang asked you to attend that meeting.---Correct.

And what was the purpose of that meeting on your understanding?---My understanding was they've been – look, the process, the Gateway got returned by the Department of Planning. Sorry, to go backwards but the, the Gateway got returned by the Department of Planning. Went up to council with a number of issues.

10 That was in about August 2016. Does that sound right?---Correct. Or I'm not sure whether I saw the letter about then but we'd certainly started negotiating with One Capital without the knowledge of that letter and later came to know that that had occurred.

All right. When you say the department had raised a number of issues, the department had expressed a number of concerns about the proposal and suggested it be reconsidered in some way. Is that right?---Correct. So effectively it didn't achieve Gateway but, or its determination was to be sent back to council.

20 Yes.---So what we then, and it was to be driven by One Capital to, to start to get this thing rezoned because it was obviously their responsibility. Meetings had been had with council which I had been at those meetings and there, there was difficulties in trying to get the thing moving forward and the meeting, this particular meeting my understanding of it was in relation to things being bogged down with council officers and, and constantly having to go around in circles with them, et cetera and probably more frustration from One Capital that it wasn't. I believe I was there because they had an obligation to take me to any important meetings on behalf of Aoyuan so it wasn't driven by us.

30 All right. And that was an obligation under an agreement that had been entered into between Aoyuan and One Capital Group. Is that right?---Or was being negotiated. I can't remember. It was a heads of agreement. I can't remember when it was exactly signed.

All right. And so under that heads of agreement you'd agreed to purchase the options for Landmark Square. Is that right?---Yes. Well, we, yeah, I can't remember the exact, that was the gist, main gist of it, yes.

Okay. And so you understood One Capital was seeking some legal advice as to steps that could be taken to progress the planning proposal. Is that right?---Yes.

Okay. And you say in the next paragraph. Go to the next page, paragraph 17. You identify that there were two Addisons lawyers there. Is that right? ---Correct.

Also Michael Gheorghiu. Is that right?---Correct.

10

Elaine Tang was there.---Correct.

And you also note that Mr Con Hindi was there as well.---Correct. And also his wife was there.

Also his wife Mireille Hindi. Is that right?---Correct. At the time I made this statement I couldn't remember her name.

20 Okay. And you understood at the time that he was not then serving as a councillor because the council had gone into administration earlier. ---Vaguely, yes. I mean I don't know that he was necessarily introduced to me as, immediately as a councillor or ex-councillor.

All right. And did anybody explain to you why Mr Hindi was attending that meeting?---Not exactly, no.

When you say not exactly, did anybody give you an indication as to why he was attending?---No.

30 Okay. And did you have an understanding as to why he was attending? ---Not particularly, no.

And did anybody explain to you why Mrs Hindi was attending that meeting?---No.

Did you have any belief as to why she was attending the meeting?---I assume they'd been invited by One Capital. That's all I knew.

40 All right. You assumed they had been invited by One Capital, I think you – but you say you assume they'd been invited by One Capital, but did anybody actually say anything to suggest that was the case?---No. No.

All right. You just made that assumption because it was One Capital that organised the meeting?---Well, someone invited them there and they came to be there somehow and I don't know – well, lawyers don't usually invite other people to legal conferences with their clients, so I assume that's how it happened. I don't know the - - -

10 Can you recall whether Mr Hindi stayed for the entire meeting or did he leave partway through?---My recollection, that he was there for the entire portion of the meeting that I was there for.

And were you there for the entire meeting on 15 June?---I would have been there for as long as it related to Landmark Square at Hurstville. Whether they spoke about other things, I can't recall whether they went on to other matters that didn't, didn't concern me. I left. I don't, really don't know.

20 Okay. And you say at paragraph 17 of the statement that Mr Hindi was talking about previously being involved in council. Do you see that? About halfway through paragraph 17.---Yes. That, that came out through the course of the meeting.

Okay, well, can you recall the words that Mr Hindi used at this meeting on this topic?---Oh, not exactly. You know, I, I didn't really think much of the meeting, as you can tell from my statement. So I don't recall that there was anything of much value spoken about, to be honest.

30 Okay. Well, can you convey the substance of what Mr Hindi was saying beyond what you've said there on this topic?---Oh, I can't recall the, the absolute detail I'm sorry.

All right.---I mean, some of it would have been about the history and those sorts of things on, again, supposing that Addisons would have advised One Capital of being able to seek a review of the, of the planning proposal. I mean, that's what would have been discussed. I mean, nothing was really an answer to the problem, so - - -

40 Okay, well, when you say he was talking about previously being involved in council, is he talking generally about his work on council or about the Landmark Square proposal specifically? Do you have a recollection of that?---Oh, not in any detail. I mean, I'm assuming it was more to do with Landmark Square.

And you say in paragraph 17, “He was trying to talk to me because I was a development person and he thought he was” - - -?---Oh, he - - -

Just wait till I ask the question.---Sorry, sorry. Sorry, yeah.

Only ‘cause it creates problems with the transcript if we talk over the top of each other.---Yeah, sorry. No problem.

10 Okay. You say, “I was a development person and he thought he was a development person.” Again, can you recall the words he actually used to give you that impression?---No, there was just a few things that he was sort of – I didn’t really have a lot to do with the meeting. I was there largely as an observer protecting the interests of my client, which wasn’t, wasn’t the client that was causing the meeting to be had at Addisons. There was a few times that he was sort of appealing to me and it was almost impress me a little bit or something. I, I, that was my feeling of what was going on with a couple of things. It would have been about general planning/development type stuff.

20

All right. And did Mrs Hindi contribute to the meeting?---Not in any great detail I don’t believe.

All right. Do you recall her saying something at the meeting?---She would have said something but I don’t know that she said much.

Well, rather than sort of reconstructing, she would have said something. Do you actually have a recollection of her saying something?---Not in, no, no.

30 Okay. Did you see Mr or Mrs Hindi provide their contact details to anyone in the room on this occasion?---No.

You also talk about a second meeting that occurred at Addisons in paragraph 18. You say at paragraph 18 “It was another strange sort of meeting.” What do you mean by it was strange?---Look, I didn’t, I didn’t think anything was, this, any of this was helpful to what our particular issue was. Planning proposals, there’s not much you can do legally with them other than if there’s a procedural failure. So the opinion of lawyers is probably not that helpful, to be honest. And I, so Mireille Hindi was there again. I mean, was there any value to what we were doing? No.

40

All right, so that's why you say it was strange because you didn't really see the purpose of the meeting?---No, that's why I don't recall what anyone's really said because I largely probably thought it was a waste of my time, to be brutally honest.

All right. And that meeting occurred later in June 2017, is that right?---I believe so, yes.

26 June, does that sound right?---Somewhere around there, yes.

10

Okay. So you say Mrs Hindi attended that meeting, is that right?---Correct.

But Mr Hindi didn't on this occasion?---Correct.

Elaine Tang was there?---Yes.

And Michael Gheorghiu was there?---Yes.

And Philip Uy was there as well?---I believe so, yes.

20

Right. At paragraph 18, in the last sentence, you say, "It was obvious his wife," i.e. Mrs Hindi, "was there as Con Hindi's proxy." Now, that's obviously your opinion.---Correct.

What is that opinion based on?---Just the way the meeting went and her being there. That was, that was what my opinion was of that meeting.

Okay. Well, did Mrs Hindi say something in particular to give you the impression she was there - - -?---She said more in this - - -

30

Just wait until I finish asking the question.---Sorry, yeah.

Did Mrs Hindi do or say anything to give you the impression she was there on behalf of Mr Hindi?---Probably not directly, no. She did speak more in this meeting than the previous meeting.

You have a recollection of her speaking at this meeting?---Correct.

Can you recall what she said?---Not in detail, no.

40

THE COMMISSIONER: What about the substance of what she was saying?---The substance of the meeting? Um - - -

No, the substance of what she said rather than the exact words used.---Oh, the substance was more around probably almost strategy to, with respect to the dealings with council. The council officers.

MS HEGER: And did you understand Mrs Hindi to have any particular experience with planning proposals or planning matters generally?---No.

10

All right. Is that part of the reason why you assumed she was there on Mr Hindi's behalf?---Correct.

Because you understood him to have some experience with planning matters, is that right?---Being an ex-councillor, he absolutely had some understanding of planning.

20 You say in paragraph 19 your impression was that "Mr Hindi had been engaged by One Capital as a consultant." What was that impression based on?---Just that they were in these meetings providing advice, effectively providing advice in the meeting. So - - -

Right. And did you actually witness Mr Hindi provide advice in that first meeting?---Effectively, yes. That's, he was talking about strategy with planning, planning matters and those sorts of things. I mean, that's providing advice. It's similar to what I do when people call me in to meetings.

30 Right. And did you have any reason to think that Mr Hindi was receiving some money or other benefit in return for what you understood to be those consultancy services?---I didn't know. So, again, it's assumption, but he wasn't there just out of the goodness of his heart, I suspect.

I have no further questions for Mr Hynd, but I understand there's an application to cross-examine Mr Hynd from Mr Hindi's representatives.

THE COMMISSIONER: So who wants to go first? Mr Corsaro?

40 MR CORSARO: Can you hear me, Commissioner? I'm sorry, can you hear me, Commissioner?

THE COMMISSIONER: I can. Can you hear me?

MR CORSARO: Yes, thank you. I'm happy to go first if that's convenient.

THE COMMISSIONER: That's fine.

MR CORSARO: Mr Hynd, can you hear me?---Yes.

10 I'm sorry you can't see me but we'll proceed in this way. Can I ask you to go back to your recollection of the first meeting that you gave some evidence about a moment ago at Addisons. So would you mind just doing that for me.---Yes.

I take it that you were there, as you say to the Commissioner, to protect your clients' interests, but I rather gather from your statement that you didn't consider it significant. Is that correct?---I didn't consider what significant?

20 The meeting, what took place at the meeting as significant for you.---I didn't think it was serving a great purpose and going to lead to any great outcome, no.

And you were more concerned with listening and trying to observe whether there was anything occurring which was relevant to the interests you were trying to protect, is that correct?---Yes, I guess so. Correct, yes.

30 And the end product of all of your observation was that there was nothing that transpired at that first meeting which you considered to be remotely relevant to what you were there to observe and do, correct?---Well, nothing material, no.

When were you first asked to think back as to what happened at that first meeting? It took place some years ago, when were you first asked to reflect and to give some statement about what happened? Was it only recently?---it was when I was interviewed last year, wasn't it, when that first statement was made.

40 Okay. The first statement is dated 20 December, 2021. So can the Commissioner proceed on the basis that until that time you essentially had no reason to reflect on what occurred at that first meeting at Addisons? Is that a fair statement?---That's a fair statement, yes, correct.

And the meeting at Addisons occurred some four or five years before you were actually asked to think back and to relate what your recollection was, correct?---Correct.

We know that the end product of your view as to what happened on that occasion was it wasn't really material. So I take it that you made no note or other record to record what transpired at the discussions at Addisons, correct?---No. Yeah, yeah, correct, yep.

10

And so what you tried to do was to think back to a meeting that you thought was ultimately inconsequential to try and remember what people might have said and done. Have I got that correct?---Correct.

So I'm not in any way critical of your recollection but is it possible that your version of what happened at that meeting might have been blurred by time? That's totally possible, isn't it?---The, the detail. I mean, the stuff that's in my, that's the stuff that's in my statement is the, the, the stuff that left an impression upon me in that meeting, which is - - -

20

Yeah. So - - -

THE COMMISSIONER: No, just let him finish his answer, please.

THE WITNESS: It's, it's not detailed stuff because I didn't think any of the detail was worth, well, it, it didn't leave an impression on me.

MR CORSARO: So you were asked to indicate whether Mr Hindi was there for all of the time that you were there and you seem to suggest that he was but could you be mistaken about that?---For the, I, I believe that he was there for the, the time that I was there, yes.

30

My question is rather different. That's your belief, but could you be mistaken in your recollection?---Possibly.

And if I was to suggest to you that Mr Hindi left not long after the meeting started, would you be able to deny that on your oath?---Are you, in terms, when you say "not long after the meeting started", can you define that, please?

40

Yes. Yeah. In other words, I'm going to suggest to you that Mr Hindi was actually excluded early on from the meeting. I can't tell you a precise time but he wasn't there for long.---He was long enough, he was there long - - -

You wouldn't deny that on your oath?

THE COMMISSIONER: He's trying to answer your question.

10 THE WITNESS: He was there long enough to leave an impression upon me that he was in the meeting and for me to have, have formed some kind of recollection of meeting him. That's the only time I've met the man, other than seeing him in council meetings, and so he wasn't, you know, if you're talking, if you're trying to sit there and say he introduced, he introduced everybody, all the parties and walked out, I, I would say that's not correct.

MR CORSARO: No, I'm not suggesting that at all. I'm going to suggest something slightly different. In your statement you refer to Mr Hindi in the context of some "machismo". Do you recall using that word?---Yes, I do.

20 And in evidence a little while ago you told Counsel Assisting that in fact your recollection was that there was a general planning discussion, or discussions about general planning matters, with Mr Hindi. Do you recall saying that?---Yes.

And your view of Mr Hindi was that he was trying to impress you with his vast knowledge of planning. Is that a fair view as to how you regarded the conversation?---Correct.

I'm sorry?---Correct.

30

I'm sorry, Mr Hynd, I didn't catch the answer.---Correct.

Yeah. And I get a lot, I'm not being dismissive of you or insulting of you but you considered that attempt by Mr Hindi to impress himself on you with his vast knowledge of planning as really not impressing you at all. Correct?---Correct.

And it's that which left an impression on you may I suggest?---That has left an impression on me, yes.

40

Yep. And that's why you remember Mr Hindi was there because you and he spoke generally about planning matters and, to put it bluntly, you thought he was speaking nonsense about general planning matters. Correct?---I didn't think he was speaking nonsense but he appealed to me at a couple of times in, in the way he was putting things and I, I didn't really engage with him a great deal, I'll be honest with you.

Your view of it was that Mr Hindi was trying to exchange expert opinions with you about how planning should be done. Is that a fair statement by me?---Yes, that's one way of putting it, yes.

And to put it bluntly you saw what he was offering towards that issue as being not really worthy of your consideration. Is that a fair summary?

THE COMMISSIONER: What issue, Mr Corsaro?

MR CORSARO: I'm sorry?

THE COMMISSIONER: What issue?

MR CORSARO: The issue in relation to 18 and 19 in relation to what we've notified, Commissioner.

THE COMMISSIONER: Ah hmm. I don't think the witness knows that.

MR CORSARO: I'm sorry. Okay. Well, I'll do it a bit differently. Mr Hynd, going back to your recollection, I put to you that the reason you remember Mr Hindi was there is because of this "machismo" issue that you've spoken about a minute ago rather than what he said or did at the meeting. Is that a fair a summary?---Yes. To a degree it was, yes. Look, a couple of times he tried to appeal to me. Yeah, it's - - -

And indeed – I'm sorry, please finish.---No, that's, that's it. That's basically it.

Thank you. And you told Counsel Assisting a moment ago that you had no idea who he was or what he was doing there. That's fair, isn't it?---I think that became a little clearer but probably not entirely clear during the course of the meeting.

40

Right. And you can't remember anything he actually said to those at the meeting. Correct?---Not in, not in word verbatim, word for word, no.

I'm not asking about verbatim perhaps, Mr Hynd, so don't think you're limited in that way. What I'm trying to suggest is you don't have any good recollection about the substance of what he might have said at that meeting. ---Not in detail, no.

10 And can I take you back, please, to what you told the Commission a little while ago about your impression about Mr Hindi being a consultant. Do you remember you used that word a little while ago?---Correct.

And indeed I think your second statement seems to paint the picture that if he was a consultant he wasn't very much of a consultant based on your view of his ability. Correct?---I didn't think a lot of value was being delivered in terms of outcome but I didn't think going to Addisons period was, you know, deliver an outcome.

20 Yeah. And again you can't recall – sorry, I withdraw that. Your view about him being a consultant was not really based on anyone describing him as such at the meeting. Is that fair?---That's fair.

And your view of him being a consultant was not based on anything he may have said. Is that correct?---Oh, that's, that's fair, yes.

Your impression that he was a consultant, may I suggest to you, was probably formed by two things. Firstly, that he was there, is that correct? ---Correct.

30 And, secondly, that you and he spoke generally about the planning process in the way that you've described a moment ago. Is that fair too?---That's correct.

Is there anything else other than those two factors that led you to form the view that he was a "consultant"?---No.

40 THE COMMISSIONER: Mr Corsaro, can I just raise one matter. Is it Mr Hindi's position that Landmark Square was not discussed? Is that's what's being suggested?

MR CORSARO: No, the suggestion is that Mr Hindi left very shortly after it began and was not privy to the discussion.

THE COMMISSIONER: Thank you.

MR CORSARO: I'm sorry, I thought that that was made clear, and maybe we haven't made it clear by reference to the affirmative case that was in the notice, Commissioner.

10 THE COMMISSIONER: No, well, I think if that's the position, it should be put to the witness that Landmark Square wasn't discussed.

MR CORSARO: Yeah, I'm going to do that, Mr Commissioner. So I've asked you the two factors relating to your view about him being a consultant. And what I'm going to suggest to you is that you cannot be sure that the Landmark project was discussed while Mr Hindi was at the meeting. ---Landmark Square most definitely would have been the subject of discussion. It was the only reason I was there.

20 Thank you. You say "would have been". Are you saying that you have an accurate recollection of Landmark being discussed, is that what you're saying?---Yes.

My question is that you cannot be sure and you cannot be certain, on oath, that Mr Hindi was present when Landmark Square was being discussed. Will you agree with me?---Mr Corsaro, I wouldn't have stayed in a meeting that didn't concern me, and the only reason for me to be there was Landmark Square.

30 No, no, you misunderstand me, Mr Hynd, and I apologise if my question led to that confusion. What I'm suggesting is it may very well be that you witnessed a discussion about Landmark. I'm not suggesting otherwise to you. What I'm suggesting is you cannot on your oath be certain that the discussion about Landmark that you witnessed was in Mr Hindi's presence, that's what I'm suggesting to you.---I believe Mr Hindi was there for the duration of the meeting that I was there, but, look, I, I guess what you're saying is correct.

You can't be sure about that, correct? Recollection being what it is.

40 ---Recollection being what it is, I guess.

You're agreeing with me, Mr Hynd, correct?---Yeah, I think, I – well, I think it's unlikely, but I'm agreeing with you on a technical level, I guess.

Mr Hynd, can I take you then to the second meeting, and I just want to understand what you're saying in relation to the proxy issue, namely that Mrs Hindi was there as a proxy. Were you aware that at some stage Mrs Hindi was a councillor at Kogarah Council?---No.

10 And if I ask you to assume that for the moment, what you witnessed at that meeting, could it have been consistent with Mrs Hindi's knowledge being imparted as a result of her at one stage being a councillor?---Possibly.

So that's the first issue that you had regard to when you formed the view she was there as a result of a proxy, namely what she was saying, correct?  
---Correct.

20 And secondly, by virtue of the fact that she was there at all. They're the two factors I think you would say to the Commissioner led you to form the view she was a proxy, correct?---Correct.

Nothing further? That's true, right?---Correct.

Thank you, Commissioner. Nothing further.

THE COMMISSIONER: Thank you.

MS HEGER: There's another application to cross-examine Mr Hynd.

30 MR PARARAJASINGHAM: Commissioner, I notified my learned friend this morning.

THE COMMISSIONER: No, that's okay. No, no, no, that was brought to my attention.

MR PARARAJASINGHAM: Yes. Commissioner, much of what I was going to traverse has already been covered by Counsel Assisting in particular, so I might just go to the proposition, if that's convenient.

THE COMMISSIONER: Certainly.

MR PARARAJASINGHAM: Mr Hynd, you've given an account of your interaction with Mr Hindi, yes?---Correct.

And indeed in your statement, just to read the full sentence out to you, you say, "I didn't want to know the guy. He was trying to talk to me because I was a development person and he thought he was a development person. There was a type of machismo thing going on." You've heard me read that to you just now.---Ah hmm.

10

It's right to say that on no occasion did you have with Mr Badalati the sort of interaction that you had with Mr Hindi, correct?---No occasion.

No occasion. And it's right to say that you only knew Mr Badalati in the context of scheduled council meetings, correct?---Correct.

Nothing further, Commissioner.

20 THE COMMISSIONER: Thank you. I think there was an application from Mrs Hindi too, wasn't there?

MS HEGER: I'm not sure that there was but I'll stand to be corrected.

MR RIZK: Commissioner, it's Mr Rizk. There was an application but the matters we wished to address have been dealt with by Counsel Assisting and Mr Corsaro.

THE COMMISSIONER: Thank you.

30 MS HEGER: That completes Mr Hynd's evidence.

THE COMMISSIONER: Thanks, Mr Hynd, for your assistance, and you're free to go.---Thank you very much.

**THE WITNESS EXCUSED**

**[10.16am]**

40 MS HEGER: I'll just tender Mr Hynd's statements.

MR DREWETT: Thank you, Commissioner.

THE COMMISSIONER: I assumed that you didn't want to ask any questions. I didn't - - -

MR DREWETT: No, no.

THE COMMISSIONER: I shouldn't have.

MR DREWETT: That's a fair assumption. Thank you, Commissioner.

10

THE COMMISSIONER: Thank you.

MR DREWETT: If we can be excused as well.

MS HEGER: Mr Hynd's statement of 20 December, 2021 will be Exhibit 164.

20 **#EXH-164 – STATEMENT OF GREGORY HYND DATED 20  
DECEMBER 2021**

THE COMMISSIONER: Thank you.

MS HEGER: And Mr Hynd's statement of 6 May, 2022 will be Exhibit 165.

30 **#EXH-165 – STATEMENT OF GREGORY HYND DATED 6 MAY  
2022**

THE COMMISSIONER: Thank you.

MS HEGER: I now call Michael Watt.

THE COMMISSIONER: Thank you.

MS HEGER: Mr Watt is represented.

40

THE COMMISSIONER: Mr Clark.

MR CLARK: Yes, Commissioner. I am authorised to appear for Michael Watt. Mr Watt does seek a section 38 declaration. I have explained the effect of that to him and his obligations to the Commission.

THE COMMISSIONER: Do you know whether your client will be taking an oath or an affirmation?

MR CLARK: An affirmation.

10

THE COMMISSIONER: Thank you.

THE COMMISSIONER: Take a seat, thank you. Your counsel has informed me that you seek a section 38 declaration and I'm sure that he's explained to you what that means, but let me say it again. As a witness you must answer all questions truthfully and you must produce any item that I require you to produce during the course of your evidence. The effect of the section 38 declaration is that although you must still answer questions put to you or produce any items that I require you to produce, your answer or the item cannot be used against you in any civil proceedings, or subject to one exception, in any criminal proceedings. The exception is that the section 38 declaration will not prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act, and most importantly, an offence of giving false or misleading evidence. If you give false or misleading evidence you commit a serious offence for which the penalty can be imprisonment for up to five years. Now, I'm not in any way suggesting that that's going to happen but I'm sure your counsel's pointed that out to you as well. So, I will make that declaration now.

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 him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection, and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

**DIRECTION AS TO OBJECTIONS BY WITNESS: 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 HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION, AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

40

THE COMMISSIONER: Yes.

MS HEGER: Mr Watt, could you please state your full name for the record?---Michael Robert Watt.

And you prepared a statement for the purposes of this investigation dated 16 June, 2022, is that right?---Yes, I did.

10 Do you have any corrections to make to that statement?---I do. If I can take you to paragraph 33?

Yes.---At paragraph, at paragraph 33 I'm mistaken about the last two sentences in 33 and these should be deleted.

All right. We can note that and make that amendment. Is the statement otherwise true and correct to the best of your knowledge and belief?---It is.

20 You were Director of Planning and Development at Hurstville City Council from 8 August, 2011. Correct?---Correct.

And you resigned on 21 August, 2015.---That's correct.

And what were your responsibilities in that position?---I was responsible for all planning and development matters that were being handled by the council during that period of time.

All right. So that included the assessment of development applications. Correct?---Correct.

30 The assessment of voluntary planning agreement offers.---That's correct.

And you had about 34 staff reporting to you in that period. Is that right? ---Yes, yes.

You're aware that the development application for 1-5 Treacy Street was lodged on 3 October, 2014. Correct?---Yes.

40 And at that stage, as you note in your statement, it was for an 11-storey mixed used development with about 75 apartments. Is that right?---Yes.

And in that case the DA was ultimately referred to the Sydney East Joint Regional Planning Panel. Is that correct?---Yes.

But nevertheless you and your team were responsible for preparing the assessment report for that DA. Is that right?---Yes.

And around the same time an offer was made to enter into a voluntary planning agreement. Is that right?---Yes.

10 And in respect of 1-5 Treacy Street it was a company called GR Capital Group that lodged the DA and made that offer. Is that right?---That's correct.

And you understand a voluntary planning agreement is a binding agreement whereby a developer agrees to provide certain monetary contributions or dedicate land or provide other public benefits. Is that your understanding? ---Yes.

20 And the role of council staff was to assess that offer for the VPA. Is that right?---That's right.

And also to negotiate with GR Capital Group in relation to that agreement? ---Yes, it was, yes.

And of course once the negotiation has taken place and the VPA is finalised it ultimately goes to council for approval.---Yes.

30 Now, council first voted on the offer for the 1-5 Treacy Street VPA offer on 19 November, 2014. Is that right?---That's right.

And you prepared a report on that VPA offer. Is that right?---Yes.

And you ultimately recommended that the offer be refused because it provided insufficient public benefit. Correct?---That's correct.

40 All right. Could I take you to that report which is at Exhibit 126, volume 1.3, page 70. It'll come up on-screen. It might be easier than you flicking through your statement. Do you recognise this to be the report you prepared?---Yes.

And it says at the top “Report Author, Director of Planning” which is you of course.---Yes.

And it says, “The purpose of this report is to advise that council has received an offer to enter into a voluntary planning agreement.” Do you see that under the heading Executive Summary?---Yes.

And it’s noted there that the development application was currently being assessed by council and was to be presented to the JRPP. Do you see that?  
10 ---That’s correct, yes.

And at the bottom of the page, under the heading History, it’s noted that on 3 October the development application was lodged. Do you see that?---Yes.

And on the same date a letter of offer to enter into a VPA was provided. Do you see that?---Yes.

And then on 29 October, 2014 an updated offer was provided. Do you see that?---Yes.  
20

Go over to the next page. There’s a table that appears and it’s said before that “Table below summarises and compares the development’s proposed maximum building heights and FSR against council’s DCP and the draft Hurstville LEP.” You see that?---Yes.

And it’s noted there that the development application imposed a maximum building height of 36.5 metres at the parapet. You see that?---Ah hmm.

You see that, Mr Watt?---Yes. Yeah.  
30

Thank you. With a maximum of 39.7 metres at the lift overrun. You see that?---Yes. Yep.

And that was compared to a limit of 23 metres under the then current Development Control Plan. You see that?---Yes.

And also a limit of 23 metres under the then draft Hurstville LEP. Do you see that?---Yes.

And so at the point in time that you prepared this report, a draft LEP had been prepared by council. Is that right?---Yes.  
40

And it had in fact been adopted by council on 17 September, 2014.---Ah  
hmm. That's correct.

That's correct? I do just need you to respond for the transcript.---Yes.

Thank you. And then it had been sent to the Department of Planning for the  
LEP to be made, is that right?---Yes. Yes.

10 And that had all occurred prior to you preparing this report, correct?---Yes,  
it had. Yes.

The table also notes that the DA proposed an FSR of 4.9:1, do you see that?  
---Yes.

Obviously higher than the 3:1 under both the DCP and the draft LEP, do  
you see that?---Yes.

20 All right. At the bottom of the page, the offer for the VPA is summarised in  
four dot points. You see that?---Yep. Yes.

And then over on the next page it's said, "Council staff have reviewed and  
considered the documentation associated with the offer. The following  
comments are provided on the proposed offer. However, this information  
has not been conveyed to the applicant's lawyer and the offer has not been  
reviewed by council's lawyers." So is it fair to say at this point council staff  
hadn't actually engaged in negotiations with One Capital Group over the  
terms of the VPA offer?---That's correct.

30 And indeed the amended offer had only been received on 29 October as you  
saw before, is that right?---Yes.

And you also note that the offer had not been reviewed by council's  
lawyers.---Yes.

40 Was it council's practice or was it your practice to have a VPA reviewed by  
lawyers before it was approved by council?---We had a policy in place that  
set out the guidelines by which we should adhere to whenever we received a  
voluntary planning agreement. The purpose of those statements was to  
inform the council that certain steps in that process were either still  
underway or not yet completed.

All right. And so the guidelines provided for you first, obviously, to negotiate with the proponent about the VPA, correct?---Yes. Yes.

Yes?---Yes.

And also the guidelines provided for the VPA to be reviewed by council's lawyers, correct?---Correct.

10 And that's obviously something that you considered important to be conveyed to council before they considered this VPA at the meeting?---Yes, I did.

And then in the following paragraph you summarise why you did not consider the offer to provide sufficient public benefit. Do you see that? ---Yes.

Despite this report, of course, on 19 November, 2014, the council voted to accept the VPA offer, correct?---They did.

20

And that decision was made in a closed session, is that right?---That's right.

Which meant that your assessment report wasn't made public, is that right? ---That's correct.

Do you have an understanding as to why that decision was made in a closed session?---I can only suggest that the council were of a mind that because it was concerning matters of commercial significance, they wouldn't in this instance consider the matter in the closed session. In other words, it wasn't made public.

30

All right. Did any of the councillors actually convey that to you or are you just making an assumption?---No, I think that is consistent with the approach that the council adopted with matters that might involve some commercial investigation or consideration. In, in most instances they would then go to a closed session or a closed meeting of the council.

All right. At paragraph 18 of your statement. I'll just bring that up. You say you were surprised with the decision that councillors made. Do you see that?---There were two, yes, I was surprised in that particular instance.

40

And why were you surprised?---Firstly, because we were still assessing it and we'd identified some deficiencies for them and we put that to them in the council report. And secondly, this report was called for ahead of the process of work that we needed to do to provide council with full information and indeed negotiate the proposition with the applicant at the time.

10 All right. And of course there's no requirement for council to provide any reasons when they depart from staff recommendation, that's right?---That's right.

And did any of the councillors communicate any reasons to you for their decision?---None that I'm aware of.

And can you think of any good reason why it was appropriate to accept the VPA offer in these circumstances?---I can't think of any good reason why it was appropriate, given the recommendation and the preliminary assessment which we had done, put to them.

20 Okay. A rescission motion was subsequently lodged in December 2014, is that right?---Yes.

And that was, in effect, a motion to overturn the previous resolution to accept the VPA?---Correct.

And that was voted on by council in December 2014, correct?---Yes.

And that rescission motion failed, is that right?---Yes, yes.

30 Can I take you to paragraph 21 of your statement? You note that Councillors Hindi, Badalati, Sansom and a number of other councillors voted against the rescission motion. Do you see that?---Yes.

And you say that that group of councillors were generally the controlling bloc at council at the time, meaning they regularly voted together in support of the mover for recommendations or amendments. Can you see that?  
---Yes.

40 So can I just clarify that with you? Do you mean by that that if any one of those councillors moved a motion, in your experience generally, the rest of

that group of councillors would vote in favour of it? Is that what you're saying there?---That's, that's correct.

All right. And how many council meetings did you attend over your time at council?---I would have attended every council meeting, every ordinary council meeting, which is the main meeting of the council, during the period of time that I was in the position of Director of Planning.

10 Okay. And when you were at those council meetings you were obviously aware of the particular councillors that had moved particular motions, is that right?---Yes, yes.

That's recorded on the agenda for a council meeting, isn't it?---It would be, yeah. Particularly those meetings that were open to the public. There were occasions when council held its meeting in closed session and, and on some occasions, excluding executive staff. So on those occasions we wouldn't know what the, what the discussion was, or the debate, or for that matter the actual voting.

20 All right. And you obviously reviewed the agenda for council meetings before you went along, is that right?---Yes.

And so the statement that I've just read out to you is based on your experience attending a number of council meetings over your time at council, is that right?---Yes.

30 And when you say in the first sentence, "Looking at the list of people who voted for the rescission motion, this group would be, in my opinion, more open to considering the reasons behind the council officer's recommendations." Are you making a comparison there between those who voted for it and those who voted against it?---I am. And that's based on my observation during those many council meetings that I sat through.

40 All right. And so are you meaning to say that all the councillors you referred to in the second sentence were less open to considering the reasons given by staff for the recommendations they made compared to the balance of the councillors?---I would say they were more inclined to vote with the bloc. They would, they would from time to time move, move a motion themselves and sometimes when the council moves a motion they give some reasons as to why the motion is being put. Obviously it would appear that from time to time they took turns in that type of process but certainly those

councillors formed the majority vote in the council on many of the matters that were before the council.

10 All right. And did you understand Mr Hindi or Mr Badalati or Mr Sansom to carry any particular influence amongst the group of councillors you've identified in paragraph 21?---I would say those three were instrumental in leading the council's direction on voting in generally all matters that came before the council. They were basically the leaders of the controlling bloc and usually you could find that if one of those – pardon me – councillors moved a motion when the matter was being considered, that motion usually was accepted.

All right. And so is that the basis for your opinion that they were the leaders, that whenever you observed one of those three to move a motion, the rest of the councillors you've identified voted in favour of it?---Yes.

20 But did that not apply to the other councillors you've identified there other than Mr Hindi, Mr Badalati and Mr Sansom?---Sometimes but not always, depending on the matter that was before them.

All right. So you'd say it'd be less often than if one of those other - - -? ---That's right.

- - - councillors put forward a motion everyone would vote in favour of it as compared to if Mr Hindi - - -?---Yes.

- - - Mr Badalati or Mr Sansom moved the motion?---Yes.

30 All right. Can I take you to again Exhibit 126, volume 1.3, page - - -

THE COMMISSIONER: Just before you do can I just clarify one matter. I should have raised it earlier, but council votes behind closed doors from time to time and were you always excluded from those meetings?---Not all the time.

No. Was any reason given to you why you were excluded in respect of this one, having regard to the fact that you prepared a report?---No.

40 No. Yes, thank you. Thank you.

MS HEGGER: Exhibit 126, page 100. It will come up on your screen in a moment. For the record this is an email from you, Mr Watt, to Nigel Dickson and copied to some others at Hurstville City Council dated 16 March, 2015 at 4.53pm which obviously post-dated council voting in favour of the VPA offer. Correct?---Yes.

And Nigel Dickson, you understood him to be engaged as an expert planner for GR Capital Group in respect of 1-5 Treacy Street. Is that right?---Yes.

10 And there you set out some, what you refer to as comments, preliminary issues and matters which need to be addressed in the VPA. Do you see that?---Yes.

And first of all you indicate that the VPA proposed to provide works up to a maximum cost of \$890,000 however the list of works and values only totals \$582,474. Do you see that?---Yes.

So you obviously considered that to be a problem with the VPA as proposed.---That's correct.

20

And you set out a number of other issues there with the VPA, obviously matters that you considered were problems with the proposal, the offer that needed to be addressed. Is that right?---Yes.

And is it your opinion that it would have been good practice for those issues to be addressed before council voted in favour of the VPA offer?---Yes.

30 And it had been your intention, hadn't it, to engage with GR Capital Group about these sorts of issues before council decided whether or not to accept the VPA offer. Is that right?---Yes.

Do you see that, in terms of council's general practices at the time do you see that there was a problem created by reporting to council on the VPA offer at all prior to it being assessed and negotiated, in the sense that it provided an opportunity or created a risk that the VPA would just be accepted by council prior to it being properly considered?---I certainly did.

40 Do you think it was best practice to report to council when VPA offers were at such a preliminary stage?---No, it wasn't. Then again, I don't control the agenda for the council and I was asked by the general manager to put a report up on the VPA.

I understand. And was it – and so, sorry, it’s your evidence that the general manager at the time asked you to put this VPA offer on the agenda, is that right?---I believe that was the case. The general manager basically controlled setting of the agenda and the items that went up. And to the best of my recollection, I believe that request would have come from him. Place, place the matter before the council.

10 Okay. You say the request would have come from him. Do you have a recollection of him making that request to you?---Look, I don’t, I’m afraid.

All right. But that’s the best explanation you can provide now for why it went on the agenda for this council meeting?---What I can say to you is that I would not have pushed it myself.

20 All right. And that’s because you didn’t think it was appropriate for council to be considering it at this preliminary stage, is that right?---The council had adopted processes for managing the VPAs, and the staff were working along that process and till the request, till the request came up that we needed to put something up. So we, we prepared a report which was factual to the extent of the investigation and the work that we’d undertaken up to that point in time.

THE COMMISSIONER: But it was only a preliminary report?---Exactly.

Yeah. And - - ?---It couldn’t, it couldn’t be regarded as a final report.

30 MS HEGER: Do you think it would be helpful if the Department of Planning issued guidelines that set out the process for reporting to council on VPA offers and when it’s appropriate for that to occur so that there’s a standardisation across all councils? Would that be helpful or not?---Oh, definitely, and I believe since that time there have been guidelines established for the processing of voluntary planning agreements.

40 But do they cover at what stage council staff should be reporting on VPAs to the elected body?---No, they don’t. They don’t do it in terms of a timeline, precise timeline, but they, there is a requirement for the council to endorse the voluntary planning agreement certainly as a final step. And, and once again that agreement then finally gets added to the title of the property. That also requires another council decision as well.

THE COMMISSIONER: Can I just ask you this, you've mentioned council's guidelines in relation to VPAs. Can you just tell me a bit about those? What did they prescribe?---Pardon me. Voluntary planning agreement is an agreement by the developer, an offer to provide either monetary contributions, works in kind or some other contribution associated with the development, which adds to a shortfall in infrastructure or provides additional community benefit arising from the project.

10 And do the guidelines require an assessment to be made by persons such as yourself as to those - - -?---Yes.

They do?---Yeah. Ordinarily these VPAs are accompanied by a specialist's report that deals with the, the level of infrastructure that's being provided and promoted at the time, and that usually involves a cost estimate for the works if they are in fact works, like road building or provision of open space.

20 Are you telling me that council obtains such a report?---Council would request the report to verify the sums that are involved.

Right. It would be fair to say that all of that was ignored?---In this particular case?

Yeah.---Yes.

Yeah. This was a very large development too, wasn't it? The proposal was.---Well, it was a large development in terms of what was going on in the CBD at the time.

30 Yes, yes.---But there's many larger developments that have taken place in Hurstville since then, of course.

Sure. Yes, okay. Thank you. Thank you.

THE WITNESS: May I just have some water, please?

MS HEGGER: Certainly.

40 THE WITNESS: Thank you. Pardon me.

MS HEGER: That's all right. You were also involved in assessing the DA for 1-5 Treacy Street as well, correct?---I was, yes.

At paragraph 31 of your statement, if we go back to that, and it will come up on screen.---Ah hmm.

You say, "Initially Mark Raymundo was allocated to the assessment of the development and had intended to recommend refusal of the application." Is that right?---That's correct.

10

You held a different opinion that the DA had sufficient planning merit for a recommendation for approval. Is that right?---That's right.

You then took over from Mr Raymundo the preparation of the assessment report, is that right?---Yes, yes.

Did anybody request you to take over that role?---No.

No. At paragraph 32 you say the reason why you took over assessment is it related to the variation to the planning controls, first of all.---Yes.

20

Do you mean by that that the height and FSR that was proposed for this development was in excess of the DCP at the time?---That's right, that's right.

And also in excess of the draft LEP at the time?---Yes.

And you also say you took it over because of the involvement of a VPA. What do you mean by that exactly?---Well, the VPA was run with the, was, was essentially connected to the development and the fact that the council have already, had already approved or agreed to accept a, to enter into a voluntary planning agreement with the developer, I think those issues warranted my attention in terms of preparing the report.

30

THE COMMISSIONER: I'm going to ask you about that. It just strikes me as unusual, and this may not be the case, but it strikes me as unusual that there would be an acceptance of a VPA just at a time when the development application is not being considered. I mean, I would have thought that that would be dealt with at the same time in a council meeting.---Ordinarily, yes.

40

Yeah.---But you will see that the report that was prepared also spends some time discussing the questions that we needed to ask in its assessment that we were never able to ask when it first went to the council. So the report does, the report does cover both the planning merit argument and also commentary on the, on the VPA but the VPA, by that stage, was a forgone conclusion to the extent that the council had agreed to enter into the negotiations. My understanding is that after I left, the, the negotiations were ongoing and, and, and an agreement was finally reached.

10 Yeah. It just strikes me as a bit odd that you would consider and either approve or disapproved of a VPA and then at some other point in time would consider the merits of the development proposal. And I'm not suggesting that there's anything wrong with what you did but it just seems to be odd.--- It, it, it, it was odd. It, it forced our hand to the extent that council already made a determination on the VPA and so it went ahead of the DA before, and we made it quite clear in the report, we hadn't assessed the DA.

Yeah.---And yet they were turning their minds to the VPA and a development they hadn't even had before them.

20

Yeah.---And that was totally out of kilter with the normal process, the DA, VPA process.

Yeah, yeah.---And at that time, it's slightly different today, because we have planning proposals and VPAs coming together before a DA gets approved so the process is a lot more rigid in the way it's set out, under new regulations and policies of the department.

Yeah. Thank you. Thank you.

30

MS HEGER: And is one of the reasons why that process was odd because what you're doing when you're assessing the VPA offer is working out whether it provides a sufficient public benefit in the context of the value of the development overall and the impacts of the development overall, is that right?---That's right.

40 So difficult to assess the appropriateness of a VPA offer until you know what the development actually looks like and what its merits are?---From the council's point of view, its role was to indeed assess the DA and then make decisions about what the infrastructure impact was and then look back at the VPA and say have we got the, the balance right in terms of reducing

the overall impact and, and being able to demonstrate some community benefit at the same time.

Right. But of course in this case it wasn't council's role to accept or reject the DA because that had been allocated to the JRPP, is that right?---That's correct, yep.

But still even in that scenario the practice was to brief council on the merits of the development application before it went to the JRPP, is that right?

10 ---Yes, that's right.

And that's what you did in this instance?---Yes.

And why do you adopt that practice even when it's the JRPP that is the decision-maker?---Council had a request that we do that. Council wished to be informed about what our views might be on matters going to the JRPP.

20 And was it explained to you why council had made that request?---Not really. I, I could speculate that it was because council had a view that they wanted to be informed about, you know, matters that went before the JRPP at the earliest possible time, and I think it was part of their distrust, to some extent, of what the planning staff were recommending and how we were doing our job.

30 So you say you're speculating about that. Is there any basis for that belief that you hold?---I think elsewhere in my statement I make the comment about the way in which some of the councillors interacted with planning staff over, over the time that I was there, and the questions that were asked about decisions that were being made or recommendations that were being made. Didn't always suit exactly what the councillors thought of particular matters that were before them.

All right. And are you referring to particular councillors there?---From time to time there were one or two councillors that seemed to be leaders in that particular area.

Right. And who were those councillors?---That would be Hindi and Badalati.

40 Okay. Well, starting with Mr Hindi, can you recollect some interactions that you had with Mr Hindi of this kind?---I can recollect an interaction with

respect to a development that he was involved in, and that happened to be - -  
-

What do you mean he was involved in?---That, that the mayor was involved in a development, had his own development project going on land in Crump Street.

10

20

30

Okay. Did you have any interactions with Mr Hindi concerning 1-5 Treacy Street?---No.

Going back to your statement at paragraph 33.

THE COMMISSIONER: Before we do that I think the witness mentioned Mr Badalati as well, didn't he?

40 MS HEGER: I'm sorry. You did mention Mr Badalati and I think it was in the context of a question I asked about councillors holding particular views about developments that conflicted with council staff. Was that the context

in which you mentioned Mr Badalati?---That, that was the context as I recall it and I can't actually recall a specific development where any reaction there was directed at council staff.

10 All right. Back to your statement at paragraph 33. You say, "Following the decision on the VPA it was clear to me that councillors wanted the development approved." Why do you say that in circumstances where a question of the VPA is a separate question to whether or not the development should be approved although related in the way that you've previously identified?---Well, I make that statement on the basis that bringing forward the VPA to enable them to approve it before it was considered in my opinion was an attempt to influence the decision on the planning assessment.

All right. And that's a view that you formed just based on the circumstances in which the VPA offer was approved. Is that right?---Yes.

20 Not because any particular councillor approached you and made any sort of representation to you about the DA. Is that right?---That's correct.

Could I just take you to your assessment report on the DA, Exhibit 126, page 123. Sorry, could we just go back to the start of this report, page 1. All right. You recognise this as the assessment report on the DA that you prepared.---Yes.

30 And this is a document that went to council prior to the JRPP voting on the DA. Is that right?---Well, I don't have that recollection. I, I just don't have a good, or a recollection exactly on what the process was at that time so I just can't answer that to the affirmative at the moment.

Okay. Then could we go through to page 123 of the exhibit. Here the report is addressing the draft Hurstville Local Environmental Plan.---Yes.

Do you see that?---Yep.

Which had been adopted on 17 September as it says in the second paragraph. Do you see that?---(NO AUDIBLE REPLY)

40 Yes?---Yes.

And under the Environmental Planning and Assessment Act at the time those who were considering whether or not to approve a DA were required to consider draft Local Environmental Plans. Is that right?---Yes.

At least ones that had been adopted by council and were sent to the department.---They'd be, they would be considered as a matter for consideration.

10 And there was some case law at the time to the effect that greater weight should be given to draft LEPs if they were imminent and certain. Is that right?---That's right.

And that's what you're referring to in the third paragraph there when you say, "The LEP is not considered to be imminent and certain," is that right? ---That's correct.

20 Did you find it was difficult in your experience at council assessing whether or not the making of an LEP was imminent and certain?---No. I found that over the time that I've been in local government that imminent and certain is a break point, if something isn't, it's still a matter for consideration obviously but it's not adopted as part of the legal planning framework.

What do you mean it's not adopted as part of the legal planning framework?---Gazetted.

All right. But did you say it was a grey area, did I hear you correctly, the concept of imminent and certain is a bit grey?---I don't, if I used that word I - - -

30 Sorry, maybe I misheard you. But isn't it difficult in this sense, that whether or not an LEP is ultimately adopted depends upon the decision of the Minister for Planning, is that right?---That's correct.

40 And so when you're preparing an assessment report, you don't necessarily know where the consideration of the LEP is up to, in that you may know it's been sent to the department but you don't know whether the department has actually assessed the LEP when you're preparing your assessment report? ---The practice was that we would get very, very short notice on when an LEP had reached the stage for publication in the government gazette, which is the date that it would take effect from.

All right. What sort of notice were you given?---Sometimes it might be correspondence, sometimes it might be a phone call, sometimes it might be an email.

And, what a matter of days before it was published on the website?---Matter of days, in a matter of days before the publication of the gazette.

10 All right. So at what point did you treat the making of an LEP as imminent and certain? Only once you got that notification that it was about to be published or did you treat it an imminent and certain when it had been sent to the department?---It would be with the notification. It would be, certainly be imminent and certain once you, once you achieved, once you were advised of a notification that the LEP was going to be published in a forthcoming gazette.

But would you consider it to be imminent and certain prior to that notification for any reason?---It, it could be imminent and certain at any time prior to that.

20 Do you think it would be helpful if the department issued some guidelines on how you decide whether the making of an LEP is imminent and certain? ---If it, if it continually turns to be, or seems to be an area of doubt and in need of attention, smoothing out the process would be, I think, a good step forward.

All right. But you didn't consider it was an area of doubt in your day-to-day experience?---My experience tells me it's not normally an area of doubt. It's either imminent and certain with, with, with knowledge of a, or an expectation of a high degree of the document being gazetted or it's not.  
30 And when it's not, it could be that the date we sent it to the department, it's not imminent and certain. If it was said to be on the minister's desk, it would be imminent and certain.

All right. But does anybody tell you when it's on the minister's desk? ---I've had it said to me in the times that I've worked in local government sometimes that it's on the minister's desk.

But there's no process in place for the department to tell you exactly what stage it's up to, is there?---No, no.  
40

All right. You note in this report that the maximum height and floor space ratio for the subject site was 23 metres and 3.1 respectively.---Yes, yep.

But the proposed development had a height of 39.7 metres and an FSR of 4.9:1. Do you see that?---Yes, yeah.

10 And you go on to discuss that difference below. Can we move through to page 131 of the exhibit. In the second last paragraph in that page, there's a comment there. I take it that's your comment that you prepared, is that right?---Ah hmm.

It says, "Comment. The proposed development exceeds the maximum building height." That's your comment?---Sorry, can you just reference that location again, please?

Yeah. So you see in bold and italic text there's point (d) "Does the proposed planning agreement protect".---Oh, (d), yes.

20 And then in the paragraph that follows, about halfway through, you say, "As planning controls for the site were only recently exhibited and adopted by the council, it's considered there would be a reasonable planning expectation by the community that those controls relating to maximum building height and maximum FSR would be applied to any development application." Do you see that?---Yes. Yes.

30 In those circumstances, why did you consider it was appropriate to depart from the draft LEP which had recently been exhibited and adopted by the council?---Well, firstly I'll go to the merit argument about this development and the LEP objective controls for the zone. Earlier in the report there's commentary about how the development, in my opinion, was consistent with the objectives. This section here just deals with one of the heads of consideration, one of the issues that needs to be assessed in respect of the further commentary on the LEP and DCP controls. In my opinion the balance was headed to and leaning towards the application warranting a recommendation for approval. It's not the case that you can just take a snapshot on one particular issue. It's, it's, it is the case that you need to look at the balance of issues that are assessed in the report.

40 All right. And the JRPP ultimately voted in favour of this DA on 1 April, 2015, didn't they?---They did, yes.

Okay. The next set of questions I'm going to ask you focus more generally on council practices and procedures during your time at council and see whether, in your opinion, they were conducive to merits-based planning or not. You refer at paragraph 23 to a CBD working party. I'll just take you to paragraph 23. You say there the CBD working party was an informal subcommittee that was set up prior to your employment with Hurstville City Council, you see that?---Yes.

10 And you say its purpose was "to review council's city centre planning controls and convert some of council's planning controls, such as building heights and floor space ratios, existing in its Development Control Plan to an LEP". You see that?---Yes.

And is it through this process that that draft LEP we've been discussing was produced?---Yes.

And the idea was that the committee – and this was a committee of councillors, is that correct?---Yes.

20 But not all the councillors at the time but a subset of the councillors, is that right?---Yes.

And how was it decided which councillors would serve on this subcommittee?---Well, as I said, the committee was formed before my time so I'm not aware of how in fact they decided who would be on the committee.

But you were invited to attend the meetings of this subcommittee, is that right?---Yes, I was.

30

As was the general manager at the time?---The general manager was.

Okay. At paragraph 25, move through to paragraph 25, you say, "It was made quite clear to me verbally by the general manager that the councillors of the subcommittee were going to direct what would be the planning controls. It was also made quite clear to me that I was to sit, watch and see what happened." So is your recollection of these council meetings that you were ever asked to provide advice on the proposed controls or not?---I don't think I was ever asked to provide advice, but I certainly from time to time  
40 made a comment about what the zoning laws or what the FSR was when I was asked.

All right. And how often were you asked?---Not often.

What was the purpose of you going along to the meeting if it wasn't to seek your advice?---Record the decision-making.

Okay.---At the end of the day, my role was to obviously process this into a plan, so they needed somebody there to take forward what, whatever was being suggested.

10

And did you feel comfortable volunteering your views on the proposed planning controls that were being discussed?---I, I was. Again as I say, as I say, when I was asked but that wasn't often.

All right. And when you expressed your views do you feel like the subcommittee considered them and took them on board or not?---Not really.

20 And why do you say that?---Many of the issues that were being discussed were in my opinion not planning related. They weren't directing themselves necessarily to the future urban form structure of Hurstville. It seemed to be more about what height or FSR should be applied to certain parcels of land and from time to time discussion headed towards previous development, previous developers or who in fact owned the land.

Which in your opinion is not in accordance with a merit-based planning approach presumably?---They aren't considerations that need to be applied to the exercise where you're talking about the future development of a - - -

30 Were there any terms of reference - - -?--- - - - of the CBD.

I'm sorry. I didn't mean to cut across you.---Not that I recall.

My question was were there any terms of reference for this committee and your answer is - - -?---Not, not that, not that I recall.

And did you keep minutes of these subcommittee meetings?---I didn't keep minutes. I kept notes.

40 Did anybody have the role of keeping minutes for these - - -?---There was no minute taking.

There was no minute taking. As far as you were aware was there any measure adopted for ensuring the transparency or accountability of the decisions made at these subcommittee meetings?---Not in that meeting. Not in that meeting for it.

You mean not in the meetings of that subcommittee generally? You're not referring to a particular meeting, you're talking about the subcommittee?  
---No, generally there was, there's no, no process for recording minutes.

10 All right. But you took a note of the ultimate decision that was made by the subcommittee on the desired planning controls. Is that right?---My, my role was to take it forward and then report on it to the council.

All right. And in your opinion did the existence of this committee assist the plan making process or impede it?---I think to be honest it impeded the process.

20 And why do you say that?---The process could have been more readily handled by staff making a recommendation to councillors. To have councillors work on considering the development potential of future land parcels is a very cumbersome and inappropriate process. It's not the role of the council to determine those kinds of matters. It is the role of the council staff to prepare that work with their professional skills and then report back to the council.

30 All right. And I should just clarify for the record, you of course only ever worked for Hurstville City Council, that's right, isn't it, and you're only talking about the existence of this committee in that context?---No. I've had, I had 18 years previous experience with The Hills Shire Council.

All right. But in terms of the existence of this committee that was only at Hurstville City Council?---It was only with, only with Hurstville Council.

40 Right. Can I just ask you about paragraph 53 of your statement. Go to that. You say there, "I found that there was no support or real respect in the council. I'm not saying that all the councillors engaged in bad behaviour but generally the culture of the place was one of fear." Just stopping there. And I'm not asking you at this point for examples of particular conduct of particular staff or councillors but why do you say that it was a culture of fear?---My experience up until that time had been one in which I worked in a, a more open environment where there was respect between council staff

and councillors, and when I came to council at Hurstville, despite my enthusiasm and recognising the opportunity of what could be achieved there, the level of engagement and in some cases interference in due process and planning only frustrated the ability of people to be able to contribute, and essentially that was one the reasons why I left in the end. And that, that lack of being able to contribute or not find the support from councillors made it very difficult, difficult for the managerial people in the organisation as well as, well as staff at the lower level.

10 All right. And at paragraph 55 you say, “It was not uncommon for councillors to sometimes be abusive to council officers reporting on items in public council meetings.” Again, I’m not asking you to name particular councillors at this stage but can you just give some examples of the types of abusive conduct, without identifying individuals, that you observed?---Well, look, I just, there’s not any particular matters that come to my mind that I, that I can recall in any detail for you at this stage.

All right. But why did you say in this statement then that it was not uncommon for councillors to sometimes be abusive to council officers?---I  
20 think I can give you the example of, in, in the council forum, I do recall some commentary from a councillor regarding, and I think it may have been directed to Tina Christy, regarding the quality of the report or comments made in the report that, and that councillor disagreed with an openly criticised the particular content that was being, that was put.

And when you were at Hurstville City Council, was there a process in place for staff to make complaints about councillor conduct?---There was but I’m, I was advised that in the past that some of those complaints never really achieved a change in attitude or approach, and I think staff were generally  
30 not confident that having made a complaint about somebody, that something would, would positive be done.

And was that your view, had you ever made a complaint? And I’m not asking you for particulars of the complaint, but had you ever made a complaint about the conduct of councillors?---I may have had discussions with the general manager from time to time about certain behaviours.

And again not asking for particulars of the complaint but how were those approaches to the general manager received by the general manager at the  
40 time?---They, they, they were received but I can’t say whether anything was done about it after that.

Were you aware of there being a staff interaction policy when you were at Hurstville City Council?---Staff interaction policy? I don't, don't recall it.

I take it from that you weren't aware of there being any staff interaction policy?---No.

10 No. And what I mean by that is a policy that regulates the circumstances in which councillors can contact staff at various levels and the extent to which they can question their decision making, that sort of thing?---I appreciate that clarification because I wasn't quite sure what you meant in the first instance. Look, I can't recall one but, look, it was standard practice for councils to have a code of conduct, and the code of conduct would have spelt out how, or what was expected in terms of the interaction between councillors and council staff.

All right. I have no further questions for Mr Watt.

20 THE COMMISSIONER: Thank you. We might just take a 15 minutes break, because we've been going since 9.30, and then those who want to ask some questions can ask you some questions. I'll adjourn for 15 minutes.

#### **SHORT ADJOURNMENT**

**[11.19am]**

THE COMMISSIONER: Please take a seat.

30 MS HEGER: Commissioner, I understand there is an application to cross-examine Mr Watt by Mr Hindi's representative, Mr Corsaro.

THE COMMISSIONER: Thank you.

MR CORSARO: Commissioner, I've briefly spoken to Counsel Assisting and indicated the narrowness of the cross-examination. It concerns a couple of points, if that's convenient.

THE COMMISSIONER: Certainly.

40 MR CORSARO: Mr Watt, can you hear me?---Yes, I can.

I want to go back to one or two matters that were canvassed by Counsel Assisting, which were the subject of questions from the Commissioner himself. May I do that, please, by asking you to go to the original report written in connection with the voluntary planning agreement that you were asked about earlier today? It's volume 1.3, page 70 and I'll just ask for that to be put on screen if that's possible.

THE COMMISSIONER: Yes. We'll put it on the screen.

10 THE WITNESS: Yeah. Yes, I've got that on the screen.

MR CORSARO: You'll see that the report that you prepared has got an agenda item number COW103-14. Is that correct?---Yes.

And in red you wrote that "In accordance with the provisions of part 1 of chapter 4 of the Local Government Act, the matters dealt with in this report be considered in closed council meeting, committee of the whole." That was your recommendation, wasn't it?---That's a standard template header used for reports that are referred to the committee of the whole section of  
20 the business paper.

I'm sorry, was it not your recommendation that it be dealt with by the council in that way?---It, it's not a recommendation of the reporting officer. The content of the report required the matter to go to committee of the whole, and when a report goes to committee of the whole there's a standard template used for that purpose and so the red text is not normally read as part of the report.

I'm with you, thank you. But I'm right in believing that you wrote this  
30 report on the basis that it was going to be considered by council as an agenda item, correct?---As I would with all of the reports that I wrote for the council.

And it being an agenda item, your experience would be that council has to consider it. Correct?---Council gets to consider all reports that go to its meeting, yes.

And your understanding was it was placed on the agenda by the general manager. Is that correct?---The general manager is responsible for setting  
40 the agenda.

And that was Mr Lampe, L-a-m-p-e. Is that correct?---Mr Lampe was the general manager at the time.

Thank you. And if I now ask you, please, to go to the minutes of that meeting which you'll find in volume 1.4. They commence at page 66. I'll ask for those to be put on-screen, Mr Watt. Are they on-screen, Mr Watt? I'm not sure whether you heard me.---Not yet.

10 MS HEGER: Sorry, Mr Corsaro, could you repeat the page you wish to go to.

MR CORSARO: Certainly.

MS HEGER: These are the minutes of the council meeting of 19 November. Is that what you're going to?

MR CORSARO: Correct. Volume 4.1, page 66.

20 MS HEGER: Thank you. They're now on-screen.

MR CORSARO: Are they on-screen. Oh, thank you. So what you see on-screen there, Mr Watt, is the commencement of the minutes of the meeting on 19 November. The council staff appear under the heading Council Staff on that page. Do you see that?---Yes.

Your name appears three down as the Director, Planning and Development, Mr M. Watt. That's you?---Yes.

30 You will see the meeting opened at 7.05pm at about point 9 on that page. Do you see?---Yes.

And if we now go to page 69 of the minutes we have the agenda item COW103-14 on that page. Do you see it?---Yes.

It refers to your report under the heading.---Yes.

Reports refers to the template item which I took you to saying that it should be determined by the council in closed session. Correct?---Yes.

But it says this, “The matters dealt with in this report be considered in closed council meeting (committee of the whole) at which the press and public are excluded.” Do you see that?---Yes.

And if you go down to the body of the document the resolution appears to be “That in accordance with the provisions of section 11(2) of the Act the correspondence relating to the matters are to be withheld from the press.” That followed as a result of the requirement to go into closed session, didn’t it?---Can you just repeat that question again, please.

10

Yes. I’m asking about the words “That in accordance with the provisions of section 11(2) of the Act the reports and correspondence relating to these matters be withheld from the press and public.” I just put to you you understood that that was a consequence flowing from the fact that it was going to be considered by the council meeting committee of the whole in closed session. Correct?---So you’re referring to the first correct type.

Yes.---Two line paragraph - - -

20 Below the italics.--- - - - below the italics.

Yes.---Is that correct?

Yes, yes. Am I right in what I’ve just put to you, Mr Watt?---My, can you just repeat what it is you’re putting to me, though, please.

Look, it needn’t trouble us, the Act will be plain. But go down to the next paragraph.---Yes.

30 “Further, that council now resolves itself into a committee as a whole (closed council) and in accordance with section 10A of the Local Government Act 1993 council staff other than members of the executive, other than the governance officer and other than others invited by the chairperson be excluded.” Do you see that?---Yes.

You were a member of the executive, weren’t you?---Yes.

40 So does it not follow that you were present during the consideration of this agenda item?---I would like the Commissioner just to note the italicised text about three paragraphs down which says, “The doors of the council

chambers were closed following departure of the public and council staff not required.”

THE COMMISSIONER: Yes, thank you.

MR CORSARO: Yeah, but you’re not a council staff not required, you’re actually excluded from being a council staff not required, that’s the point, Mr Watt.---I, I don’t believe I was in, in that closed session meeting.

10 But the resolution itself determines that the persons excluded would not include members of the committee, which included the executive and you were a member of the executive, weren’t you?

THE COMMISSIONER: Mr Corsaro, I understand what you’re saying but it is your client’s position that this witness was present?

MR CORSARO: As far as it goes, yes, he was present and I’m testing him on his recollection about this, Commissioner.

20 THE COMMISSIONER: Thank you.

MR CORSARO: So Mr Watt, do you understand the proposition that’s just explored as a result of the exchange between me and the Commissioner, that what I’m suggesting to you is your recollection on this is far from perfect? In other words, the resolution itself indicates that you were present?---Well, I don’t believe I was present - - -

What do you say about that?---- - - at that meeting.

30 Are you positive you weren’t?

THE COMMISSIONER: Mr Corsaro, I don’t think that’s correct. It doesn’t indicate that he was present. It’s just a resolution that he could be.

MR CORSARO: Yeah. Thank you. Are you prepared to accept that you might be wrong about this?---Only if it’s shown that I was present at the meeting.

40 And if you weren’t present, if the resolution is as recorded, why wouldn’t you have been present?---Because of what it says in the, in the business paper and I don’t have a recollection of being at the meeting.

All right. I don't know whether I got an answer to this, but are you prepared to concede that you might be wrong about this?---If I was presented with information that showed that I was at the meeting, I would be prepared to concede I was at the meeting. I don't see that so I'm saying I have no recollection of being at the meeting.

10 I take that you are saying to the Commissioner you have no recollection one way or the other as to whether you were there or not?---My recollection is that I wasn't at the meeting.

Lastly, you were asked some questions in relation to the VPA and the circumstance concerning your recommendation about the development application, or the planning proposal, I'm sorry. Do you recall that?---Is there an item in the statement or the papers that you wish to refer me to?

20 No, no, no. No, no, Mr Watt, I'm not talking about the item now, I've moved on. Earlier today you gave some evidence about your recommendation in respect of the planning proposal and I just want to ask you about that. I'm just directing your attention to a different topic for the moment. Are you with me?---Are you referring to the VPA or the development application? There's no planning proposal.

I'm sorry, quite right. I apologise for the confusion. I'm talking about the development application.---Thank you.

30 The VPA guidelines that the council had in place made it perfectly plain that VPAs were not to be used for the purposes of planning per se, correct? ---Can you repeat that again, please?

I can take you to the guidelines, perhaps.---Yeah.

It's in volume 9. Just bear with me, Mr Watt. I need to find it. They're in 9.1 at page 57. Have you seen this document before which is on the screen, Mr Watt?---Yes.

40 And this is the policy I think you were asked about, perhaps by the Commissioner if I've got that right, earlier today in connection with VPAs, correct?---Correct.

And if we go to page 61, clause 2.1 of that document sets out council's strategic objectives for the use of planning agreements, doesn't it?---Yes, I see that.

And at page 60 the objectives of the policy are stated as including "to allow the council and developers to negotiate flexible outcomes". Do you see that?---Yes.

10 And the principles that govern planning agreements are reflected in clause 2.1 at page 62, aren't they?---Yes.

And in prime position in that clause is the fact that the planning decisions may not be bought or sold through planning agreements, correct?---Correct.

And (d) is "The council will not allow planning agreements to improperly fetter the exercise of its discretions in connection with the Act," including, presumably, whether or not a development application should be granted, correct?---Yes.

20 You saw the merit in granting or recommending approval of the Treacy Street development, didn't you?---Yes.

And you would have recommended the same acceptance of that development application even if there had been no VPA accepted, correct? ---I would have assessed the application on its merit.

And recommended approval, as you did, correct?---Yes.

30 Thank you. I have nothing further.

THE COMMISSIONER: Nobody else?

MS HEGER: No, Commissioner.

THE COMMISSIONER: Thank you very much for your assistance and you're free to go.---Thank you, Commissioner.

**THE WITNESS EXCUSED**

**[12.02pm]**

40 MS HEGER: I'll tender Mr Watt's statement of 16 June, 2020, which will be Exhibit 166.

THE COMMISSIONER: Thank you.

**#EXH-166 – STATEMENT OF MICHAEL WATT DATED 16 JUNE 2020**

10 MS HEGER: And I call Nerida Stores.

MR CLARK: Commissioner, can I just seek leave to withdraw at this point? Thank you.

THE COMMISSIONER: Yes, thank you.

MS HEGER: Ms Stores is represented.

THE COMMISSIONER: Yes. Sorry, can you give me your name again?

20 MS ALDERSON: Thank you, Commissioner. It's Jaye Alderson, A-l-d-e-r-s-o-n.

THE COMMISSIONER: Thanks, Ms Alderson.

MS ALDERSON: Thank you.

THE COMMISSIONER: I think we've already authorised, haven't we? So there's no - - -

30 MS ALDERSON: Yes, Commissioner.

THE COMMISSIONER: You have made application, thank you. And does your client seek a section 38 declaration?

MS ALDERSON: Yes, she does. Thank you.

40 THE COMMISSIONER: No doubt your counsel has given you some advice in relation to that, but I should perhaps repeat it. As a witness, you must answer all questions truthfully and you must produce any item that I require you to produce during the course of your evidence. The effect of a section 38 declaration is this, that although you must still answer the

questions put to you or produce any item that I require you to produce, your answer or the item produced cannot be used against you in any civil proceedings – can I ask you this, are you still a council employee?

MS STORES: Yes.

THE COMMISSIONER: Now, subject to two exceptions. The first is that the answer – sorry, let me deal with that again. It cannot be used against you in any civil proceedings or, subject to two exceptions, in any criminal or disciplinary proceedings. The first exception is that the protection does not prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act, most importantly an offence of giving false or misleading evidence. If you give false or misleading evidence, and I'm not suggesting you will for a moment, you will commit a very serious criminal offence for which the penalty can be imprisonment for up to five years.

The second exception only applies to New South Wales public officials, and that includes you as an employee of council. Evidence given by a New South Wales public official may be used in disciplinary proceedings against the public official if, and only if, the Commission makes a finding the public official engaged in, or attempted to engage in, corrupt conduct. Do you understand that?

MS STORES: Yes.

THE COMMISSIONER: You do, okay. Thank you. I'll make that declaration now. 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 her during the course of her evidence at this public inquiry are to be regarded as having been given or produced on objection, and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

**DIRECTION AS TO OBJECTIONS BY WITNESS: 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 HER DURING THE COURSE OF HER EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION, AND 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. Thank you.

MS HEGER: Ms Stores, could you please state your full name, for the  
record?

10

MS STORES: Nerida Joy Stores.

MS HEGER: And you've prepared a statement for the purposes of this  
investigation, dated 8 November, 2021?

MS STORES: Yes.

THE COMMISSIONER: We haven't had an oath or an affirmation yet.

20 MS HEGER: Oh, I'm sorry.

THE COMMISSIONER: No, that's okay. I made the same mistake myself.  
Will you take an oath or an affirmation?

MS STORES: An oath.

THE COMMISSIONER: Thank you.

THE COMMISSIONER: Thank you. Take a seat.

MS HEGER: Can I ask you state your full name again, please?---Nerida Joy Stores.

10 And you've prepared a statement for the purposes of this investigation dated 8 November, 2021. Is that right?---That's correct.

And is that statement still true and correct to the best of your knowledge and belief?---Yes.

You are currently an Executive Strategic Planner at Georges River Council, is that right?---That's correct.

20 And you've held that role since 2011 when it was Hurstville City Council, is that right?---That's correct.

And before that you were a Manager of Strategic Planning, is that right? ---That's correct,

And you held that role for about five years?---Yes.

And who do you report to in your current position?---I report to my manager, Catherine McMahon.

30 And she has the title of Manager of Strategic Planning, is that right?---Yes.

And does Ms McMahon in turn report to Meryl Bishop as Director of Environment and Planning?---That's correct.

All right. During your time at both Hurstville City Council and Georges River Council you attended meetings of the elected body of councillors from time to time?---Yes.

40 Was it your practice to attend every council meeting or just the meetings concerning projects that you were working on?---It was primarily for the meetings that I was involved in. So if I had prepared a report to the council or to the committee meeting I would then attend.

All right. And during the time from, say, 2014 onwards, you were working on both the voluntary planning agreement for 105 Treacy Street, is that right?---Yes.

And also the voluntary planning agreement for Landmark Square, is that right?---Yes.

10 And so you attended council meetings whenever they concerned those matters?---Yes, when I could.

Okay. So not necessarily every meeting?---Not every meeting. Sometimes I couldn't attend.

Okay. There was also a practice of briefing the councillors prior to the formal council meeting on issues that were coming before council, is that right?---Yes.

20 And was that with the entire body of councillors, those council briefings, or just a group of them?---There was an opportunity to provide, prior to the committee meetings, a briefing to the councillors. That would be normally held the week before the committee meeting and then the subsequent week would be the council meeting reports.

All right. So sometimes all councillors would come, sometimes only a portion of them would come to those briefings?---That's correct, yes.

Is that right?---They wouldn't all turn up, yep.

30 But you attended those councillor briefings from time to time, is that right?---Yes. If I had a report.

Again, if you had a report coming up before council at the next meeting?---That's correct, yep.

Okay. And so you've attended both council meetings at which Mr Hindi, Mr Badalati and Mr Sansom were present, is that right?---Yes.

40 And you've also attended councillor briefings where Mr Hindi and/or Mr Badalati and/or Mr Sansom were present?---Yes.

All right. Are there other occasions in which you attended meetings with councillors, say for example ad hoc meetings that were called outside of formal council briefings?---There were two occasions that I could recall where there was meetings to do with voluntary planning agreements and the planning proposals for the Landmark Square site where the councillors were there.

And are those two occasions set out in your statement?---Yes.

10 All right. We'll come to those in a moment. So do you mean you can recall two such meetings just on Treacy Street and Landmark Square or two such meetings generally across all the projects you've ever worked on at council?---They were the only meetings where we had the applicant at the meeting as well as the councillors that I can recall. The other times where the councillors were present was during the formal briefing meetings that we had with the councillors or at the committee meetings. So the two meetings that I referred to are unusual in the sense that the councillors were there.

20 All right.---They were meeting with the applicants.

So is your evidence that across all the projects you've ever worked on at council there are only two instances where you attended a meeting that both the proponent was there and councillors were there outside of formal council meetings?---That I can recall, yes.

That you can recall. Okay. So that's why you say those sorts of meetings were unusual - - -?---Yeah.

30 - - - as you've said in your statement. Okay. You say at paragraph 15 of your statement, and I'll just bring that up on-screen. You say at paragraph 15, "Then councillors Constantine Hindi, Vincenzo Badalati and Philip Sansom appeared to have more of a particular interest in the 1-5 Treacy Street and Landmark Square sites." Can I just unpack that statement with you a little. When you say they had more of an interest in those two developments, do you mean those three councillors had more of an interest in those two developments as compared to the other developments that you interacted with them on?---Of the projects that I was involved in, yes. Those two projects they seemed to have more of an interest and asked a lot  
40 more questions about those projects.

Okay. And so in terms of other projects other than Treacy Street and Landmark Square what sort of interactions had you had with these three councillors on those other projects? Is that just limited to formal council meetings and councillor briefings that you've mentioned earlier?---Yes, yeah, so - - -

10 Is that yes?---Yes, the councillor briefings, the workshops. There were workshops hold for, held for other strategic projects such as the employment land study and other studies that we were doing for strategic planning, but these were two, one was a development application and the other was a planning proposal.

All right. So this statement is you comparing your experience with these councillors in meetings with them insofar as those two developments are concerned as compared to other projects you've worked on. Is that right? ---Yes.

20 And when you say they had more of a particular interest, what are you saying there? Is that a comment about the nature or intensity of the questions they were asking? What are you getting at there?---It was the nature of the questions and the I suppose constant questions about those two particular sites. In the lead-up to the Landmark site there was an employment land study. We were asked a lot of questions about the controls that were proposed for the Landmark site. There was questions, not just to us as staff, it was also to the councillors consultants that we had engaged. So they were very focused on that particular site and, at the time.

Sorry, when you say that particular site - - -?---The Landmark site.

30 - - - are you referring to one of those?---The Landmark site.

The Landmark site. Okay. But what at Treacy Street? You say they had a particular interest in that site as well. What's your basis for saying that? ---They also asked a lot of questions about that, but at the time the majority of the focus, because of the studies that were being done and also the planning proposal, the majority of questions that I can recall related to the Landmark site.

40 All right. You refer to an employment land study. That's the one that you've set out in your statement.---Yes.

Right. And you said it was both the, first the nature of the questions. Can you elaborate on that? How were the nature of their questions different to other projects that you'd worked on?---They were very interested why the council's consultants have recommended particular controls for the building heights and the floor space ratios for the sites. They didn't agree what had been recommended under the draft employment land study. They disagreed with what was proposed, and that would be asked – there was quite a few workshops that I can recall where the draft employment land study was discussed. We had briefings by the consultants as well as expert urban  
10 designers to undertake further analysis, but there was continued questioning as to why particular controls were being proposed, and that they did not agree with those.

Right. And was it unusual, in your experience, for councillors to engage at that level of detail with the proposal?---I did feel it was quite focused on those particular sites. There were two other sites which were quite smaller in Penshurst that they also asked questions about, but more detailed analysis was undertaken on the Landmark site at the request of the councillors wanting more understanding and detail about those particular sites.  
20

All right. You later give some specific examples of meetings with councillors, and I'll come to those in a moment. Before I get there, turning to the VPA offer for Treacy Street, that was first made around the time the DA was lodged. 3 October, 2014, does that sound right?---Yes.

But as you say in your statement, you weren't involved in assessing the first version of the offer but rather the updated offer that was provided at the end of October, is that right?---That's correct.

30 And did you work together with Mr Watt in assessing that VPA offer?  
---Yes.

Did you have any input into the report that Mr Watt prepared for council for that 19 November, 2014 meeting?---Yes.

Who actually drafted the report? Was it you or Mr Watt?---I cannot recall who actually drafted the report, but I was involved in the discussions with the other sections of councils, of council to actually get an understanding whether the public benefits that were proposed were supported and  
40 appropriate for the development.

All right. And you're aware, of course, the report ultimately concluded that there was insufficient public benefit in the VPA offer?---Yes.

Did you witness Mr Watt's evidence today on that topic?---Yes.

All right. At paragraph 40 of your statement, I'll just show you that. You say in the last sentence, "The report did not provide a full assessment of the VPA offer or the acceptability test of the offer, as this had not been completed at that stage." What do you mean by the "acceptability test"?

10 ---The council's policy on planning agreements required an acceptability test to be undertaken for any planning agreement. And as I recall, acceptability test could have been at the time also in the legislation or in the department's practice notes.

All right. And you, of course, saw the assessment report before it went to council, is that right?---Mmm.

And you read it before it went to council? Yes?---Yes, yes.

20 And you're aware, of course, the report said that the VPA offer had not yet been negotiated with the proponent, is that right?---Yes.

And council's lawyers hadn't yet reviewed it, is that right?---That's correct.

And do you consider it would have been best practice for council's lawyers to review it before council accepted the offer?---Yes.

30 And of course is that standard practice?---It's standard practice for an offer once we've undertaken initial assessment to then be referred to them for review to ensure that it complies with the requirements of a planning agreement.

Okay. And where do the requirements for a planning agreement come from? Is that under the legislation?---Correct.

The Environmental Planning and Assessment Act?---Correct.

40 And of course there were certain requirements in council policy as well?  
---Yes.

What was your reaction when council voted in favour of accepting the VPA offer?---I was very surprised that they accepted the offer on the basis of the officer recommendation.

And why were you surprised?---Because the report had outlined that the public benefits weren't to be, weren't supported by staff and that they weren't considered sufficient to address the impacts of the development. So, and also that we hadn't received legal advice on the offer or that we'd actually done, undertaken the full assessment. So we were quite surprised.

10

THE COMMISSIONER: It was only a preliminary assessment, wasn't it, that had been carried out?---That's correct.

MS HEGER: At paragraph 42 of your statement, if you go to the next page, you say, "The VPA offer for Treacy Street did not provide the information required for a VPA under the legislation, such as the security that would be provided for the works, and it did not include the key components for a VPA offer." When you say "the key components" are you referring to the requirements under councillor's policy?---Under the legislation there's requirements that a planning agreement documents the form of enforcement or security that's to be provided, the forms of dispute resolution, and there was various things that weren't documented in that offer, the timing of the provision. So that hadn't been discussed with the applicant at that stage.

20

And you say, "After the VPA offer was accepted by council," still reading from paragraph 42, "a draft VPA was submitted by the applicant. We requested legal advice from council solicitors on the draft VPA as the document did not reflect the offer that had been accepted by council and did not provide all of the documentation required." So is the fact that council accepted this VPA offer at this point posing a practical problem in that council staff thought additional or different things should be included in the offer but that didn't marry up with what the council had actually approved, is that right?---It, it meant that the offer, we needed to work with our solicitors and the applicant then to establish the agreed terms of the voluntary planning agreement to ensure that the document met the requirements of the legislation and council's policy. The VPA, once it was drafted, was, had to then reported back to the council in draft form to enable it to go on exhibition. So the original resolution of council to accept the offer didn't provide the ability for that draft VPA to be put on public exhibition.

30

40

All right. And so then how did you deal with that?---The draft VPA was prepared after the first decision of council. We worked with the solicitors and the applicant to finalise that document. It was that final draft planning agreement that went back to the council.

So council then had to vote in favour of that draft before it could go on public exhibition, is that right?---That's correct. But they had already accepted the offer at that stage. So it was then in the form of the legal document.

10

Okay. You say at paragraph 43 in the second sentence, "Following the council decision on the VPA offer for 1-5 Treacy Street, we now require that prior to a VPA offer being reported to council the letter of offer to enter into a VPA includes all of the information required in a planning agreement under the legislation" and you give some examples "and that a full assessment of the VPA offer had been" go over to the next page "has been undertaken by council staff, solicitors and consultants. We have also required in some instances a head of agreement to be signed by the developer with a letter of offer." So is what happened that following that council decision on 19 November, 2014, it occurred to council staff, well, there's a risk that whatever we send up could be accepted by council, so we better make sure that all the requirements are in place before we report on a VPA offer? Is that what happened?---Yes, we wanted to ensure that any offer that we had received had had a full assessment and that the council could be fully informed of the public benefits that were being offered and whether they were considered suitable.

20

All right. And around this time, late 2014, there was no policy in place as to the point at which VPA offers should be reported to council, is that right?

30

---Council had a policy on planning agreements. It provided a framework in terms of the process that was to be followed but it didn't stipulate exactly when a report was required to go to the council on the offer. So with that we would then ensure that any VPA offer was fully assessed before it went to the council.

All right. And does Georges River Council now have a policy in place that specifies at what point VPA offers can be reported to council and what has to occur before that reporting takes place?---We do have a new policy under the Georges River Council, so that's a more detailed policy which outlines the steps that are to be followed for the assessment and the process of VPAs.

40

As each VPA can be slightly different, the process may vary. It might come in as a complete document or just an offer.

But does that current policy specifically deal with at what point can a VPA offer be reported up to the elected body?---I would have to have a look at the policy. I think it does but I would have to double check.

That's okay. We can read the policies for ourselves. If the policy didn't provide for that, do you think it would be useful if it did - - -?---Yes.

10

- - - given your experience at Treacy Street?---Yes.

Yes. Okay. Can I now ask you about Landmark Square. There was, of course, a planning proposal lodged for Landmark Square as well as a VPA offer initially, is that right?---Yes.

And that occurred when it was still Hurstville City Council, is that right? ---Yes.

20

And the practice of council at that time was for the planning proposal and the VPA offer to be assessed by different staff, is that right?---That's correct.

And why was that practice adopted?---It was to remove or to separate the assessment of the planning proposal or the development application to ensure that that was a full and proper assessment of the planning controls and what was being proposed, and any VPA offer was to be assessed separately so that the benefits that were being offered weren't being considered directly at that initial stage of the assessment. Both parties were aware that a VPA offer had been provided that wouldn't provide any benefit to the assessment of the uplift that was being proposed.

30

All right. So is the idea that you didn't want what was being offered by way of benefit under the VPA to influence the assessment of the merits of the planning proposal, is that right?---That's correct.

And on your understanding did Hurstville City Council's VPA policy stipulate that councillors were not to be involved in VPA negotiations? ---Yes.

40

And that's the position under Georges River Council policy as well?---Yes.

Both the current policy and the policy dating back from 2017, is that your understanding?---Yes, both the Hurstville policy and the Georges River policy had the same clause.

And on your understanding, why is that position adopted, that councillors should not be involved in negotiating VPAs?---The process, it's – I'm unsure whether it's guided through the practice notes at the time back at Hurstville, whether that was required by the department. but for council it was clear because it was, it's a negotiation process that we go through to have a look at the public benefits that were being offered by a development per, that that wasn't having any involvement from the elected councillors as a part of that process so that they could possibly influence those discussions or their views on what public benefits were being offered. That would be reported to council afterwards.

Can I take you to paragraph 20 of your statement. We'll show that on-screen. So there you describe a meeting that took place at Hurstville City Council in relation to the Landmark Square planning proposal and also the VPA offer for Landmark. Is that right?---Yes.

And you indicate that the people at the meeting included, you've referred to them as the applicant Mr Nigel Dickson, but you understood him to be the planner who had been engaged by the applicant for the planning proposal. Is that right?---Yes, yes.

And also in attendance was Councillor Badalati who was mayor at the time. Is that right?---Yes.

As well as Councillor Hindi.---Yes.

Yes?---Yes.

And the acting general manager at the time. Is that right?---Yes.

And earlier in your evidence you referred to two instances of meetings that you considered to be unusual in your experience. Is this one of the ones you were referring to?---Yes.

All right. You say at the bottom of that page "the councillors". Are you referring there to both councillors?---Yes.

Yes. "They have not been invited to", we'll go over to the next page, "to attend by you." Do you know who invited them to that meeting?---No. However, I think in my statement there's a previous email where there was discussion about a meeting that was being organised. It could have been this meeting but it wasn't arranged by me.

All right. Are you referring to annexure 4 to your statement? We might just jump to that to confirm.---Yes.

10

You referred to an email earlier. Is this the one?---That's, that's correct. So that was on the Thursday prior.

That was on the Thursday prior to this meeting. I might just ask you about that email now. The first email at the bottom is from yourself to Tina Christy. What was Tina's position at the time?---She was the Manager of Development Assessment but I think at the time she was the Acting Director of Planning and Environment.

20 Okay. And it's also to Laurie O'Connor who was the acting general manager at the time.---Yes. Yes.

And you say, "With regard to the meeting on Monday with Nigel Dickson, if the meeting is on the planning proposal it would be best that I not attend as I am now working on the VPA offer." Is that consistent with your evidence earlier that really there should be two separate - - -?---Two separate.

30

- - - two separate staff members working on each proposal?---Yes, yes, yes.

All right. Or on the proposal as opposed to the VPA offer I should say. ---Yes. And I wasn't working on the planning proposal.

40

All right. And you asked for the meeting to be held on Thursday or Friday once the planning proposal has been assessed and the report published. Why did you make that suggestion?---I understood that the consultant who was working on the assessment hadn't completed their work and I thought it more beneficial that if there was to be a meeting with the applicant that that occurs with the planner who's involved and once they, if they had questions that that occur at that time.

All right. But did you have a particular concern about this meeting taking place prior to the assessment being completed?---I did in the sense that it was, I was made aware that the councillors had also been invited, and I didn't think that that was appropriate that they should be attending any discussions where we were meeting with the applicant on a planning proposal or a VPA.

10 And why didn't you think that was appropriate?---Because the policy for the VPAs was quite clear that they weren't to be involved in those type of meetings.

And what about the planning proposal? Did you have a concern about councillors meeting with an applicant prior to the assessment report being finalised?---Yes.

Of course it's not unknown for councillors to meet with applicants regarding planning proposals from time to time. You accept that, of course?---Yes.

20 But why did you have a particular concern about this meeting taking place, then?---It was in the council offices with council staff and the applicant, and the, both the planning proposal and the VPA offer were under assessment, so that wasn't standard practice.

30 So is it because of the point at which the assessment of the planning proposal was up to, that it was at the point of the report being drafted, so I guess at the pointy end of the assessment, and were you concerned that the drafting of that report might be influenced in some way or was it some other concern?---It's, it's that concern as well as that. It, it wasn't – our policies didn't allow that to occur, that they shouldn't be attending any meeting where there was a discussion with the councillors on the VPA offer and the applicant or the applicant's consultants.

40 All right. And you say in your statement, going back to paragraph – I'm sorry, it was around paragraph 20. I'll pull up the – yes, going back to paragraph 20 on the start of page 9. You say, "When the VPA offer was raised at the meeting, the councillors were told that we could not continue the VPA offer discussion, but they were not told to leave the meeting." Who told the councillors that you could not continue the VPA offer discussion?---As I remember, I mentioned to the general, well, the acting general manager at the time that that, any discussion on the VPA offer couldn't occur. And that was raised, but the conversation then changed

back to the planning proposal, but the councillors remained in the meeting until, as I recall, the end of that meeting.

So, sorry, was it the acting general manager who made the point that the councillors could not take part in the VPA offer discussion? Is that what happened?---As I recall, it was after I raised that with him at that – so he, he made a general statement.

You raised it at the meeting with the general manager?---Yes, yep.

10

And then the general manager made that statement, is that right?---Yes, that's what I recall.

And, but as you say, they were not told to leave the meeting, is that right?  
---That's correct.

20

And you say, "The councillors responded that they are representatives of the council." Could you just elaborate on that? First of all, can you recall what Mr Hindi actually said?---My vague recollection was that the councillors, and I think it was Mr, the Councillor Hindi, stated that they were elected representatives and that they could be at that meeting. So they then continued to stay there at the meeting until it ended.

But did you understand Mr Hindi to be saying, "I can continue to take part in the VPA offer discussion" or not?---I can't recall. It was, after that was raised about the VPA offer, the, the meeting then changed back to the planning proposal discussion.

30

All right. So after it was raised, the VPA offer wasn't discussed any further at that point?---No.

All right. And can you recall what Mr Badalati said?---No.

All right. So based on your evidence earlier, you thought that it was inappropriate for Mr Hindi and Mr Badalati to stay in the meeting even though it was only discussing the planning proposal from that point. Is that right?---Could you say that again, please?

40

Sorry. The question was not expressed well. You say at this point the conversation shifted from the VPA offer to the planning proposal, is that right?---Yes.

But your view is that it was inappropriate, for the reasons you've already given, for the two councillors to participate in even the planning proposal discussion, is that right?---That's correct.

Okay. You say, "Councillors Hindi and Badalati appeared to know the applicant." Do you mean by that they appeared to know Mr Dickson?  
---Yes.

10 And you say, "They greeted each other in an informal, friendly manner and were relaxed." What do you mean by that exactly? What was the nature of their engagement?---It was more of a, a relaxed greeting. It gave the impression that they knew each other at the start of the meeting and also when they left, there was some, I think, general talk and we weren't involved in that discussion at the end of that meeting but they, they gave the impression that they knew each other.

All right. Of course you didn't know in what context they knew each other, it could have been Landmark, it could have been another context, is that  
20 right?---Yeah. That's correct.

Okay. At paragraph 21 of your statement you say, "At council meetings that I attended, Councillors Hindi, Badalati and Sansom would seem to always work together and as I recall they would often vote together on a development application or planning proposal." So just dealing with the second bit, "they would often vote together on a development application or planning proposal", presumably that's based on your observations of council meetings that you attended?---Council meetings that I attended, yes,  
30 yes.

Yes. Is that right?---Yep.

But when you say they'd always seemed to work together, what do you mean by that?---They would be having discussions throughout the meetings, either talking about their particular project or the proposal that was being presented, agreeing with each other in terms of if they didn't support the controls, they would each raise similar points about why a proposal wasn't supported or why changes should be made. They had a lot of questions about those proposals.  
40

All right. Are you talking about your observations of them at formal council meetings?---It was both at the workshops that were held on projects but also at the committee meetings and the council meetings.

All right. You also say in this paragraph “There were instances where one would walk out of the council chambers which disrupted the meeting and they may not have enough councillors to reach a quorum.” Are you suggesting there that one of them walked out deliberately to disrupt a council meeting? I mean, there might be a number of reasons why someone  
10 might leave a council meeting.---I don’t know the reasons why they left but it, it, on a couple of occasions I do remember then getting up and walking out and some general discussion amongst them, they would walk out and then come back and, but it wasn’t clear the reason why they left.

Are you referring to all three of them walking out together or just one of them or - - -?---No, no. Just one at a time, but not at the same time.

But not at the same time. All right. So all you’re saying there is that on a couple of occasions you observed one of them walking out of the room?  
20 ---Yes.

Is that essentially what you’re saying?---Yes, yeah.

Okay. But you don’t know for what purpose they were walking out of the room or who they were talking to?---No.

Okay. You say there were occasions where they would either disrupt a meeting, pressure other councillors or disagree strongly with council staff or consultants and strongly question them. Now, taking Mr Hindi first of all,  
30 you say that he has disrupted a meeting on occasion. Have you actually witnessed that occur?---Yes.

Okay, can you give an example of that?---There’s been workshops where there was a lot of questions and disagreement over what was being presented by not just the council staff but the consultants who were providing advice to council. He would interrupt the presentations that were being provided by those consultants and question why certain things were being presented certain ways. That also occurred at committee meetings. There was a lot of questions about particular reports that they, they would  
40 ask staff detail about what was in the report and also had occurred at council meetings.

All right. Well, there's nothing improper per se with asking questions.  
---That's correct, yep.

10 But why do you couch this in terms of being disruptive or being of strong level of disagreement? Can you give an example of that occurring and why you considered it to be disruptive?---I think it was from my experience with other councils prior to being at Hurstville Council, and the general behaviour of the councillors at those meetings. And that, that occurred in that manner, that they could interrupt in the middle of a presentation or when staff were talking. I, yeah, that was surprising to me that that occurred.

All right. And did you witness Mr Badalati do the same thing?---He did also ask a lot of questions and disagree with some of the reports, the papers that were being presented. Also he did strongly disagree with some of the recommendations and we were asked a lot of questions about those recommendations and why things were being presented in the reports.

20 And you obviously consider this to be an inappropriate level of questioning. I'm just trying to get to the bottom of why you considered it was, it went too far as compared to just an ordinary level of questioning from councillors that you might expect who are engaged with an application and considering it seriously.---I think you would expect that there's a normal level of questioning about proposed controls or a planning proposal. But I suppose it was the consistent nature of the questions and also how strongly those questions were put and the objections to that. They didn't agree with those, that it was put quite strongly to the staff in the workshops and in the meetings.

30 All right. And do you make the same comment of Mr Sansom? Of course accepting he only served as a councillor until May 2016.---There were fewer occasions, but at some of the workshops I remember he did ask a lot of questions and very strongly disagreed with what was being presented by staff.

40 And was that in respect of Treacy Street and Landmark Square or more generally on projects that he was considering?---I can't remember which ones.

All right. And I'll ask the same question in respect of Mr Hindi and Mr Badalati. Did you find their level of questioning to be more intense on Treacy Street and Landmark Square as compared to other projects?---I can't recall it being for the Treacy Street site, but in particular I remember the questioning that occurred in relation to the draft employment land study that related to the industrial lands, as well as the Landmark planning proposal.

All right. And again you've set out your interactions regarding the employment land study in your statement. Is that right?---I think so.

10

And in respect of Landmark Square there's some other meetings that you set out in your statement as well. Are those the examples you give in that respect?---Yes.

Okay. At paragraph 23 of your statement, I'll just show you that. Here you're discussing council's section 94 Development Contributions Plan. Do you see that?---Yes.

20 And so I think it's now section 7.11 of the Environmental Planning and Assessment Act but at the relevant time it was section 94. Is that right? ---That's correct.

And that provides for local councils to levy monetary contributions for public amenities required as a consequence of a development. Is that right? ---Yes.

30 So if a development necessitates additional infrastructure, council might levy section 94 contributions from a proponent to go towards the cost of that infrastructure. Is that right?---Yes.

But as you explain, as at 2016 the Hurstville City Council contributions plan did not impose levies for road and traffic management facilities. Is that right?---That's correct.

And the Landmark Square development was on your understanding the sort of development that might have impacts on road and traffic management. Is that right?---Yes.

40 In what way?---Because the site was being proposed under the planning proposal to be rezoned from light industrial to a B4 zone, it would result in a significant change in the land uses. There would be additional residential

units and commercial retail floor space, all of which would have an increase in the traffic in the area and we'd also have discussions with council's engineers in terms of the impacts of that proposal.

And so because the Development Contributions Plan didn't cover road and traffic management facilities, it was the practice of Hurstville City Council to ask for VPAs which could address that issue. Is that right?---Yes. The purpose of the VPAs was to have a look at what impacts or demands the development would be generating and what was not covered under the section 94 plan and also what had been identified in council's strategic plans and studies.

I'll take you to paragraph 46 of your statement. There you refer to the first VPA offer for Landmark Square which was in the amount of \$1 million. Do you see that?---Yes.

And your view of that offer was that it was not reasonable given the scale of the proposed development, the potential uplift in value and impacts of the development as you've said there in paragraph 46. Is that right?---Yes.

And you also note there that the VPA offer was conditional and only related to the hotel component of the development.---Yes.

Is that right?---Yes.

Do you mean by that that under the VPA offer the benefits were only going to be provided if the hotel component was approved? Was that your understanding?---That's my understanding. We obtained legal advice on the offer and we identified a number of concerns with the offer and they were that it was conditional that the applicant acquires the land I think was one of them and that it also only related to the hotel component and not the uplift associated with the residential development.

All right. Could I just show you a document which is volume 1.4, page 81 which is Exhibit number 127. Page 81. Oh, if you go further, if you go back to the previous page, I'm sorry. You see this is an email from Dr Lindsay Taylor to yourself dated 9 March, 2016.---Yes.

Is this the legal advice that you're referring to?---It could be. We received a number of times legal advice on the VPA offer. So - - -

This could be one of them?---This could be one of them.

Okay. If you go to the next page, it says at point 13 “The DR design letter states the monetary contribution is payable to the council as a deferred commencement condition of development consent for the hotel. The effect of this is that the VPA offer relates to the approval of the hotel and therefore does not relate to the planning proposal as such.” Do you see that?---Yes.

10 And it says at point 14, “In other words, nothing is offered for the increase in FSR on site A from 1.1 to 4.5:1 or for the provision of the bonus FSR on that site of 1.5:1 for the development of the hotel. The offer would only relate to the granting of development consent for the hotel.” Do you see that?---Yes.

So having now seen that, is this the legal advice you were referring to in that paragraph of your statement?---Yes, yes,

And that obviously caused you some concern at the time, is that right?  
---Yes.

20

And why is that?---Because the impacts of the full proposal weren't being addressed. So it wasn't, it was a conditional offer that only related to the approval of the hotel, and therefore if the hotel didn't occur there would be no VPA offer that related to the uplift for the residential component of the development where there was also a significant impact on council's facilities and infrastructure.

All right. That VPA offer was ultimately withdrawn in March 2016, is that right?---Yes.

30

And that can be done because of course a voluntary planning agreement is just that, it's voluntary, is that right?---Yes.

Could I just take you to the assessment report for the Landmark Square proposal which is at volume 1.10? I note the time, Commissioner, I should only be another five minutes or so.

THE COMMISSIONER: Sure.

40 MS HEGER: Actually, no, that's not true. I'm probably going to be more like 10 minutes or so. I'm happy to break at this point, Commissioner.

THE COMMISSIONER: Just before we break, can I just ask you a couple of things? Can we have page 4 of the witness's statement, paragraphs 11 and 12? And this deals with your notes of the meeting on 16 December, 2015. In 11 you say, "My notes outlined that Tina advised me that the acting general manager wanted a council report on a draft employment land study recommend what the councillors wanted on certain sites." Is that to be read that, as you understood it, that's what she had been told by the acting general manager?---Yes.

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All right. And you go on in 12 to say that "Tina stated that the councillors, Con and Vince, would not make changes to the recommendations of the employment land study on open council. They wanted the staff to recommend what they wanted." Was it your understanding that that had also been conveyed to Tina by the acting general manager?---Yes.

And who was that at the time, just remind me?---I think the acting general manager was Laurie O'Connor.

20 All right. And where you say that they wanted the staff to recommend what they wanted, did you take to mean that the report was not to mention that it was a councillors recommendation but to pretend in some way that it was a recommendation of staff?---Yes.

And at the end of this paragraph you say, "Tina said that they won't want this." That is you can recall it had been requested but the councillors have to make a decision. What did you understand her to mean that they won't want this?---That they didn't, that the report on the draft employment land study had already been to council prior to that meeting and it had been

30 deferred by the councillors.

Yep.---So it was to be reported back to council and we had worked with the consultants again and I had indicated that there was no change in our staff recommendations or the consultants' recommendations for the particular sites and that's why she indicated that the councillors won't want that. And we'd had workshops with the councillors also prior to the meetings.

40 Did you also understand that there was some reluctance from the councillors based on what you'd said to have any record of what they thought best in the report?---They've got, in the report we would sometimes state what information had been provided to the councillors at workshops. It would

state possibly the dates of those workshops but we would never recommend unless it was a, a recommendation that we supported to staff.

Right.---A councillor recommendation.

So in a sense what, more than a sense. If what the acting general manager had conveyed to Tina was true they were requesting something, weren't they, that was quite dishonest?---It, it wasn't at all standard practice and I was quite - - -

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No, but they were seeking to have staff represent as their views what the councillors wanted and pretend that it was the recommendations that you had independently arrived at.---That's what I was told.

Yes. And can I just take you briefly to page 7 of your statement, paragraph 18, and that again deals with the employment land study. And this is a meeting which Councillor Hindi and Badalati attended with the acting general manager and the Director of Development and Planning Tina Christy and yourself, and then they again raise concerns about the FSRs and the like and then the council has indicated that the draft employment plan study should not be reported back to council and that it remain deferred until a later date. It had been deferred once, hadn't it?---Yes.

20

And they were seeking to have it deferred again.---What I recall is that they didn't want the report to go back up to council at that point in time and that it remain deferred.

Was it your understanding or did you draw the conclusion from that that they didn't want to have to go back or be reported to council because it didn't contain what they wanted it to contain?---Yes.

30

Yeah.---They didn't agree with the report recommendations.

Yeah. Okay. Thank you very much. We'll adjourn till 2 o'clock.

**LUNCHEON ADJOURNMENT**

**[1.04pm]**