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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

PUBLIC HEARING

OPERATION GALLEY

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 23 JUNE, 2022

AT 2.00PM

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THE COMMISSIONER: Ms Stores, can I just ask you to keep your voice up a little bit?---Yes.

You're softly spoken and it's hard to hear you sometimes. So what do we have now, Mr Corsaro?

10 MS HEGER: I just had a few more questions for Ms Stores.

THE COMMISSIONER: Yeah, sure.

MS HEGER: And then there's an application to cross-examine. Before the break, Ms Stores, I was asking you about section 94 contributions, correct? ---Yes.

Can you speak up a little bit?---Yes, yep.

20 Thank you. And your evidence was that the council's contributions plan didn't levy for road and traffic management facilities as at 2016, is that right?---That's correct.

And so as a result, the council's practice was to ask for a VPA, which might address those matters, is that right?---Yes, it might address those, but others as well.

I'm sorry, what was that?---But, but other facilities and infrastructure, it might not just be traffic and transport facilities.

30

Yes. And you were involved in assessing the VPA offer for Landmark Square, correct?---Yes.

Can I just take you to the assessment report that was prepared for the council meeting on 20 April, 2016? That's volume 1.10, which is Exhibit 133. There we are. Can we just make that a little bit lather, please, just maximise it if you can? While we're doing that, can I ask, do you recognise this is at the report prepared for a council meeting on 20 April, 2016? ---That's correct. It's to do with the planning proposal.

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Yes. And were you involved in preparing this report insofar as it concerned the voluntary planning agreement?---I think, the timing - - -

MR CORSARO: Commissioner, can I just interrupt? I'm sorry. We have no visual of that document.

MS HEGER: I'm sorry. We'll have that rectified.

10 MR CORSARO: And what number is it? We certainly don't have any 1.10, we may have it elsewhere.

MS HEGER: Yes. It was volume 110, page 1, Exhibit 133.

MR CORSARO: We don't have access to that document. Thank you.

MS HEGER: Can you see that now, Mr Corsaro?

MR CORSARO: I can, thank you.

20 MS HEGER: All right. If you go over to the next page. Back a page, please. The second paragraph on that page says, "This report provides an assessment of the planning proposal request without a planning agreement as the draft offer to enter into a planning agreement has been withdrawn." Do you see that?---Yes.

And that was your understanding, it had been withdrawn by this point. Correct?---Yes.

30 And it said, "A recommendation has been included to conditionally support the amendments subject to an appropriate mechanism being available to address these demands," referring back to the road and traffic infrastructure demands. Do you see that?---Yes.

And then there's an author recommendation and this is really set out in terms of a draft resolution that the council might adopt. Is that right?---Yes.

40 And it says, "That the council support an amendment to the LEP for the site subject to an appropriate mechanism being available to assist in addressing the road and traffic infrastructure demands and improvements within the city centre generated by the future development of the site." Do you see that?---Yes.

And it says, “Including mechanisms such as one, council entering into a planning agreement with the applicant or alternately, if this mechanism is not available, preparation of an amendment to the Hurstville section 94 Development Contributions Plan 2012 to address the road and traffic infrastructure within the city centre.” Do you see that?---Yes.

That ultimately was not adopted by the council, that aspect of the resolution, was it?---No, they didn’t adopt that recommendation.

10

And so there was ultimately no recommendation to either enter into a planning agreement or to prepare an amendment to the DCP. Is that right? From the council I mean.---I would have to see the resolution. I’m not sure whether the resolution was that they supported the amendment to the LEP, but I think also they may have resolved to prepare an amendment to the section 94 plan outcome. I say that with certainty without seeing the resolution.

20 All right. I’ll just bring up the resolution then. We’ll go to the minutes for the council meeting of 20 April, 2016. All right. If we scroll through to the item for the Landmark Square planning proposal. You’ll see it starts there, “Resolve that council support an amendment to the LEP.” And you’ll see there’s no recommendation as was contained in the assessment report regarding road and traffic issues. Do you see that at the bottom of the page?---Yes.

At the start of the resolution.---Yes.

30 If we go over to the next page. There is a reference to council resolving to commence preparation of an amendment to the DCP but not in respect of road and traffic issues, rather just so that it be included within the Hurstville city centre. Do you see that?---Yes.

And the effect of such an amendment to the DCP was simply to adopt the rates of contribution for the city centre which were different to the rates elsewhere in the LGA. Is that right?---Yes, they were slightly different.

40 So in circumstances where there was no amendment to the Development Contributions Plan for road and infrastructure, in your opinion, did that have an adverse impact in terms of security sufficient public benefit for this development at the time?---It would have meant that those traffic impacts

and any other impacts of the development weren't addressed through the section 94 plan because the section 94 plan didn't levy for traffic and transport works. So, yeah, we wouldn't be able to address those impacts.

All right. Could I take you back to paragraph 24 of your statement? While we're going there you might remember that at paragraph 24 of your statement you note – oh, here we are – that under the Georges River VPA policy you used the land value capture process to assess the sort of value a proponent should be offering under a VPA, is that right?---Yes.

10

And what is the land value capture process you're referring to?---There's a methodology within the policy which enabled council to calculate the reasonable VPA contributions that could be levied under the policy or incorporated into a VPA. The land value capture methodology we had sought advice from economic consultants about the process and the methodology. Other councils had been using that and it assessed the uplift in the residual land value of the site from the current planning controls to the proposed controls and the formula then enabled that 50 per cent of the uplift would be representative of what a VPA contribution should be under the policy. However, the policy also provided alternative mechanisms as well.

20

And you say at paragraph 24 that in your opinion the land value capture process provided a consistent process that was reasonable, open and transparent for the developer, council and community. Why do you say that?---It provided a clear methodology for council and also for the developers to see the basis which would guide the value of the VPA contribution. So there wasn't any question about the negotiation process and what was being offered as a VPA and whether it be a monetary contribution or whether it be works, there was some basis for how you would establish the value in a VPA.

30

It provided some sort of structure and some expectations - - -?---Yeah. A framework, yeah.

- - - for the value that should be provided under a VPA offer, is that right?
---Yes.

And I take it you would accept, if there's no set process for calculating the appropriate value of VPA, there's greater opportunity for that process to be manipulated by those involved in the negotiations?---Yes. It's a voluntary

40

process. So it's, both parties have to ultimately agree to that process and what's being discussed and negotiated.

All right. You say the Department of Planning issued guidelines in 2021 and a VPA practice note which doesn't support the land value capture assessment. Is that right?---If I remember, one of the key principles of the new practice note states that value capture's not to be the primary basis for a planning agreement.

10 Yes. This is address at the last line in paragraph 24, on page 10.---24, yes.

And if we go over to the next page - - -?---Yes, it doesn't support it as the primary purpose of a VPA. It doesn't provide any alternative mechanism. But, yeah, it's not to be the primary purpose.

Right. And in your view would it be helpful if the department did provide some alternative mechanism for assessing value?---It would be helpful, yep.

20 All right. I have no further questions for Ms Stores. There is an application to cross-examine Ms Stores from Mr Corsaro, I believe.

THE COMMISSIONER: Thank you. Yes, Mr Corsaro.

MR CORSARO: Commissioner, can you hear me?

THE COMMISSIONER: I can.

30 MR CORSARO: Unfortunately we notified only a limited area of cross-examination. As a result of what's emerged in the oral evidence, there's a significant issue which I need to take instructions on and amplify the subject matter of the cross-examination. If I were to cross-examine, I could only cross-examination in a limited sphere today. I'm happy to proceed but I would ask for some time for this witness.

THE COMMISSIONER: How much time do you need?

MR CORSARO: It would take probably a little while. I'm not sure how long I will need.

THE COMMISSIONER: So if the witness was to come back tomorrow - - -

MR CORSARO: I'm sorry?

THE COMMISSIONER: No, I'm just thinking aloud. I just really need to have some sense of how long you will take.

10 MR CORSARO: I understand. You're understood. I haven't to the moment asked for any time in relation to the other witnesses. I have an expectation about what I would cover. Obviously as a result of what's occurred today, there are one or two issues that require instructions and review of some documentation. The unfortunate part of this is I'm not available tomorrow.

THE COMMISSIONER: Yes, that's right, it's Friday. Do you have any availability next week.

20 MR CORSARO: I'm sorry for the inconvenience but – I'm sorry?

THE COMMISSIONER: I'm just asking the witness her – you do? When could we put the witness back in, do you think?

MS HEGER: Monday morning at 10.00am is an option.

THE COMMISSIONER: All right. Would that suit you?---Yes.

30 Okay. All right. Well, why don't you proceed as far as you can and then we'll have this witness stood down until Monday morning?

MR CORSARO: Certainly. Thank you, Commissioner. Can I ask you, Ms Stores, to go back and deal with some of the areas that emerged during the course of your evidence today. You recall giving the Commissioner, through the questions of Counsel Assisting, your view that the councillors – and by "councillors" I'm referring to Councillor Hindi, Councillor Badalati and presumably Councillor Sansom – were more engaged in respect of the development issues concerning Landmark? Do you recall giving that evidence?---Yes.

40 And you were asked what it was about the dealings with the councillors in respect of that matter that caused you to have that view, and I think to be

fair to you, you said it was the nature of the questions and the repetitive or continuous questioning in relation to that particular project. Have I got that correct?---Yes.

And if I've understood your evidence correctly, you say to the Commissioner that the level of interest was more significant than on other sites where you had dealt with the councillors, correct?---Yes.

10 Now, am I right in believing that, generally speaking, in your dealings with these councillors – and let me just limit it to Councillor Hindi – you understood him to be someone who was always intimately interested in the nature of the development application or proposal to be put to council?
---Yes. For me I was working primarily on the strategic planning projects so the planning proposals and strategic plans.

20 To the extent that you dealt with them, I can't ask you about supposition otherwise, I just want to know to the extent that you dealt with Councillor Hindi you would say to the Commissioner, wouldn't you, that he was always an engaged councillor?---Yes.

And that involved every project where you dealt with him. Correct?---I couldn't say whether it was every project but, yes, with the majority.

Now, in relation to Landmark there was a particular bone of contention in respect of the FSR. Correct?---It was the height and the FSR.

30 Let me just talk about the FSR. So far as your dealings with Councillor Hindi were concerned, he was always seeking to stress there were other developments in Hurstville, in the central business district of Hurstville, which had comparable FSRs to the Landmark project which exceeded the FSR then being discussed or proposed by council staff. Correct?---I couldn't say whether there was other sites without certainty that had the same heights and FSRs within the city centre.

40 Well, we'll just deal with the FSR for the moment. You recall, don't you, there were various discussions where he stressed to you the Bing Lee site as a comparable site for the purposes of assessment?---The Bing Lee site was another site that we had received a planning proposal for but it was not in the same position. The site wasn't the same size as the Landmark site.

Leaving aside the fact that you believe they weren't one-to-one comparisons, the FSR on the Bing Lee site then being proposed was 3.6:1, wasn't it?---I don't know. I can't recall.

All right. So as you sit there you have no specific recollection one way or the other?---I can't recall the details for that particular site, no.

10 And you recall that he was arguing with or with the staff as to why Bing Lee would have an FSR greater than the site then being proposed. Is that a fair summary of what he was saying to you?---I don't know whether it was more or less. I couldn't say.

What I'm asking you - - -?---It was - - -

20 What I'm asking you to reflect on, Ms Stores, is your recollection of the interaction, what you describe as having intense questioning in respect of the Landmark project incurred stressing perhaps over and over again the rationale as to why staff were looking at this project as not being comparable with Bing Lee and another site, Penshurst.---Yes. I think it was questioning not just the staff but also the urban design consultants who prepared the proposed FSRs and heights and provided recommendations and concept plans for the sites. The question is related to comparing the Landmark site with another smaller industrial site in Penshurst.

THE COMMISSIONER: When you say consultant, is that (not transcribable) engaged by council?---Yes.

Thank you.---They were urban designers.

30 That's okay.

MR CORSARO: You aren't suggesting to the Commission, are you, Ms Stores, that having regard to the subject matter of the discussion there was anything inappropriate about the questioning in relation to the Landmark site, are you?---Can you ask that question again, please.

40 Yeah, certainly. You're not suggesting to the Commission, are you, that having regard to the content of the questions that were coming from Councillor Badalati that there was anything – I'm sorry, Councillor Hindi, there was anything untoward or incorrect or corrupt or wrong in relation to what he was doing?

MS HEGER: Can I just object to the way that question has been put. Can it be put by reference to a particular meeting and not have so many parts in it?

MR CORSARO: Yeah, I'll rephrase it. Thank you. I'll rephrase it. You would agree with me, wouldn't you, Ms Stores, that having regard to the nature of the questioning, all that it indicated to you was a councillor who had planning in his head and wanting to engage to understand the rationale as to why decisions were being made, correct?

10

MS HEGER: I - - -

THE COMMISSIONER: Still object?

MS HEGER: Can I just object again? It's not being put by reference to a particular meeting but generally and I think that's the difficulty with the question.

MR CORSARO: Well, it's been put generally in various ways today,
20 Commissioner, in respect of dealings with the councillors.

THE COMMISSIONER: No, I don't think it has been. I think Counsel Assisting took the witness to particular meetings and it wasn't approached in that way at all.

MR CORSARO: Perhaps I have it incorrectly. Can I take you then, Ms Stores, to paragraph 15? Do you see that there you say that the Councillors Hindi, Badalati and Sansom "appeared to have more of a particular interest in 1-5 Treacy Street whilst those councillors always had an interest in
30 planning matters in general. They would always ask a lot of questions about the detail of these properties and why things were presented in a particular way." See that?---Yes.

And you sought to make a comparison, didn't you, between your general dealings with the councillors in connection with other projects and the nature of the questions or your dealings with them in connection with 1-5 Treacy Street and Landmark Square, didn't you?---Yes but, the, for example, the employment land study looked at a lot of different sites, not just - - -

40

Look, I'll come to that. I'm trying to engage you in relation to the evidence in paragraph 15. So can we just go to paragraph 15? You seem to there compare the level of interest in relation to two projects as opposed to a level of interest on other projects, correct?---Yes.

And you were asked about this but I think you told the Commissioner that the reason you had that view was because of the nature of the questions being asked and the fact that it was "continuous". That was your evidence, wasn't it?---Yes.

10

Okay. So let's talk about the nature of the questions. I put to you that the nature of the questions concerning Landmark Square generally involved questions about why the FSR was not being treated comparable to other sites, including Bing Lee and Penshurst. Do you agree with that?---I remember the comparison being between the Landmark Square site and the Penshurst sites. I can't remember the comparison to the Bing Lee site but there were a lot of questions asked of both the staff and the consultants.

20 On that issue?---On the FSR issue and the testing that was undertaken by the urban design consultants at the time.

30 And what I'm suggesting to you is what was happening in relation to these particular projects and what you recall as being "the nature of the questions" and "the continuous nature of the questions" related to enquiries and questions and propositions being put to staff and the consultants to try and understand why these sites were not being treated equivalently to other sites, such as Bing Lee and Penshurst. Do you agree with that?---There was a lot of questions about the Landmark site and the controls that were proposed for that site as well as, I recall, the Penshurst site. But as I mentioned, I can't recall the Bing Lee site because at that - - -

Well, you - - -

THE COMMISSIONER: Just finish your answer, thanks.

THE WITNESS: At that time the, I don't think the Bing Lee site was part of those initial studies for the industrial lands.

40 MR CORSARO: Yes, thank you. There was a planning proposal, wasn't there, for Bing Lee?---Yes, yes.

And again, what I'm seeking to bring out – and please feel free to disagree if you wish – what I'm seeking to bring out is the nature of the questioning. The approach being taken was to try and drive home to council staff and the consultants that these sites were not being treated equivalently to other planning proposals and sites which council had already determined or had before it, correct?--Yes.

10 And that's the intensity of questioning and the repetitious nature of the questioning, correct?--I couldn't say whether the controls for the other sites were the same or how different they were, but there were a lot of questions, as I said, about the basis for the controls that were recommended for the Landmark Square site.

And the questions, so that we're not at odds and you're clear about what I'm putting to you, the questions to staff and the consultants involved, the councillors seeking to understand and draw out why these sites were, different controls were being proposed for these sites as opposed to other sites which they regarded as being comparable, correct?

20 THE COMMISSIONER: Mr Corsaro, are you asking the witness her understanding of the purpose of the questioning? Because - - -

MR CORSARO: No, the nature of the questions.

THE COMMISSIONER: All right. As long as you do that, fine.

MR CORSARO: I'm sorry, would you like me to clarify it, Commissioner?

30 THE COMMISSIONER: I'm just concerned that you might be asking the witness, putting the witness something she can't answer. That is, what was their purpose in raising all these questions?

MR CORSARO: No, Commissioner (not transcribable) I'm trying to remove any degree of speculation. I apologise if that was the inference in the question. So I'll put it clearly. I don't want there to be any misunderstanding. Because obviously the witness can't tell me about the purpose. That's something that you'll need to hear from others. But can I make it clear?

40 THE COMMISSIONER: Sure.

MR CORSARO: So, Ms Stores, I don't want there to be any misunderstanding. I'm not asking you to speculate as to what they had in their mind. Are you with me? I'm not asking you to try and delve into the processes of the councillors' minds. But I'm asking you about the nature of the questions objectively that came to you. Do you understand what I'm asking you?---Yes, I think so.

10 So the questions and the comments, that you described as being extensive questions and repetitive questions, were questions which sought, so far as you were hearing them, to try and get exposed and understood what information was relevant as to why these two sites were not being treated equivalently to other sites which the councillors were putting to you were comparable, namely Bing Lee and other sites. Do you agree?---We engaged, we, initially we had recommendations from planning consultants for the industrial lands planning controls. However, because of the questions that were being raised about the controls and whether they were appropriate, council then engaged GMU, an urban design company, to prepare detailed plans and undertake testing of those, and to also provide a presentation to the councillors. And I recall at one of those workshops there
20 was a lot of questions of those urban designers about their recommendations and the concepts that were being presented to the councillors.

And the questions that you were hearing were questions directed to understanding why the advice being received by council from the consultants and why the staff of council appeared to be treating these two sites as having different controls to other sites which the councillors were suggesting to you were comparable and which had different and more expansive development controls. I can't put it more generally than that, but do you agree?---They did ask questions and, about why those controls were
30 being recommended for the Landmark site and why they were being recommended in the context of not just the city centre but in comparison to a couple of the other Penshurst sites.

Thank you. And to the extent that you've said in paragraph 15 that they "appear to have more of a particular interest" in those two sites, what you're intending to refer to is the nature of the questioning in the way that you have just described it, is that correct?---They asked, yes, a lot of questions about the Landmark site in particular as a part of that work that we were doing.

40 But in the context of trying to understand or ask you why the two sites were being treated differently to other sites. Is that not correct?---I'm not sure

that they, they were being treated differently, they were all being analysed as a part of a process that we were to follow and so therefore the process was a consistent process before the employment land study and how it was being prepared and undertaken by the consultants was a thorough assessment of where the site sat within their particular, whether it be the Hurstville City Centre or Penshurst or the other sites at the time.

The planning proposal was for the Bing Lee site, is that correct?---Yes.

- 10 The Bing Lee site was across the road, wasn't it?---Yes, diagonally across the road but I can't recall the time of that planning proposal.

- Thank you. And when you say they had a particular interest in Landmark Square, what I'm putting to you is that what you're describing is that they were trying to understand and ask questions as to why Landmark Square was being treated differently to Bing Lee. Would you agree with that?---It could have been but I can't say because I can't recall the discussion and the comparison between the Bing Lee site, but if that comparison was being undertaken it would be trying to understand from the consultants why sites were being recommended different controls, because each site - - -
- 20

All right. I'll put it – I'm sorry, I cut across you. Please finish.---Each site can potentially have different FSRs and height controls.

Would you look at paragraph 15 for me, which is on-screen.---Yes.

- I'll just ask you in a different way. "Councillors Constantine Hindi, Vincenzo Badalati, Philip Sansom appear to have more of a particular interest in the 1-5 Treacy Street and Landmark Square sites." You described today, as a result of questions from Counsel Assisting, that what you were trying to do is to make your own subjective comparison between the nature of the questions asked in relation to those two sites and "other properties" that you refer to in the next sentence, correct?---As I recall, the questions, were asking a lot of questions about the Landmark site as a part of that employment land study.
- 30

- THE COMMISSIONER: Did you understand as a result of those conversations that Mr Badalati and Mr Hindu wanted a greater height and an increase in FSR?---That's what they indicated.
- 40

Yes. Thank you. And the Landmark site?---Yes.

MR CORSARO: And were they – I’m sorry?

THE COMMISSIONER: In respect of the Landmark site.

MR CORSARO: Thank you. And in the questions that were being asked of you in relation to that they were saying comparable to other projects.

Correct?---They used other sites and, as I mentioned, the Penshurst site which is located in Penshurst, another suburb, was used as a comparison.

10

And the questioning and comments they were making were to indicate that there was every reason to treat the two sites in question, Treacy Street and Landmark, as being comparable to the other sites which had greater FSR or height. Correct?---It was the recommendations of the consultants from their work that they had undertaken of those sites of what they thought was the best planning controls that should be applied.

20

But in discussing the recommendations in your presence and asking questions of the consultants, weren’t they saying things like, “Why are you making a recommendation along these lines when there are equivalent sites which have greater FSR and greater heights nearby?” Weren’t they saying words to that effect?---They could have. I can’t recall.

All right. Can you recall in specific terms any question asked or is it just an impressionistic view that you have in relation to them having “a particular interest”?---The question, it’s the, the amount of questions that were directed towards those particular sites at the workshops.

30

So does it more go to this, they asked a lot of questions?

THE COMMISSIONER: No, the witness didn’t say that. They asked a lot of questions in relation to the Landmark site.

MR CORSARO: Yep. So I’m trying to understand your evidence, Ms Stores. I apologise and I am labouring this point, but when you say a number of, the number of questions, are you saying that you’ve done a subjective comparison in some way to quantify the number of questions on one project as opposed the number of questions on Landmark?---No.

40

Surely not. All right. So it’s just an impression that you have. You haven’t done a qualitative assessment of the number of questions asked, have you?

---Not the number of questions but it was that we then undertook further detailed assessment of that particular site because of the level of questions that had been put to the proposed controls from the planning firm and we also then had urban designers come on to assist to - - -

Did you deal with Mr Hindi in respect of the Beverly Hills master plan at some stage?---No.

10 In any event let me move on. You had no reason to form a view, did you, that Mr Hindi had anything other than proper planning reasons for asking the questions he did on 1-5 Treacy Street or Landmark Square? Correct? ---I, yes, no other reason, no.

No, you're agreeing with the question I put to you?---Yes.

And you have no reason to believe that Mr Hindi had anything other than proper planning reasons for the questions he asked of the staff and the consultant in connection with 1-5 Treacy Street or Landmark Square. Correct?---Correct.

20

Can I ask you, please, to go to paragraph – I'm sorry, Ms Stores, I'm just trying to turn it up in my material. I apologise. I won't be a moment. I need to turn something up, so bear with me. I'm sorry, I won't be a moment. It's paragraph 10 and 11. Would you go to that, please. And it's the part of the statement which deals with a conversation you had with Ms Christy. You told the Commissioner and Counsel Assisting about that earlier today. Do you recall?---Yes.

30 Now, as you understand it, this was something that the acting general manager may have been told, who then passed it on to Tina, who then passed it on to you. Is that the idea?---Yes. That's what I understood.

You have no – yeah. You have no direct knowledge one way or the other as to whether what Tina told you was actually correct?---That's correct.

You just recorded what she told you, correct?---That's correct.

40 And there's nothing that you can assist the Commissioner with in order to assist him in determining whether or not what Ms Christy was told by the acting general manager was actually correct, am I right?---Yes.

And I assume you never spoke to the acting general manager about this conversation, correct?---Not that I can recall.

If you had recalled it, surely you would have made a note about that, correct?---That's correct.

Can I next ask you to go to paragraph – I just need to get another document. Do you recall that you told the Commissioner about council's policy in relation to VPAs?---Yes. The - - -

10

Do you remember that, Ms Stores?---The Hurstville, the Hurstville policy?

Yes.---Yes, there was a policy for planning agreements.

Can I ask you, please, to confirm that the document you're referring to is volume 9.1, page 57? I'll ask for that to be onscreen if I may. Is that the document you were referring to, Ms Stores?---Yes.

20 And can I just ask you to just go to page 70, for me? Part 3 of this dealt with negotiation procedures, correct?---Yes.

And you told the Commissioner about the concern you had about the councillors being involved in the negotiation of the agreement, correct? ---Yes. Well, attending the meeting.

I'm sorry?---Attending a meeting.

Yes, yes. With the developer in question.---Yes.

30 And what you were trying to, I think, refer to, are the provisions of clause 3.5 and 3.6, if I just take a moment and ask you to read them. Is that what you're referring to?---Yes, those provisions.

But surely your view is, isn't it, that that process can only commence after the council itself has determined that it should engage in the negotiation process to determine what the planning agreement must contain, or should contain?---Once - - -

40 Is that right?---Once you receive the VPA offer from the developer, that's when we start that process of assessment of the proposal and the impacts

and then we would engage in discussions with the applicant or the developer about that VPA.

Well, the policy I think makes clear, if you go to clause 3.10, next page, please, “Before the lodgement of the relevant application by the developer, the council and the developer will decide whether to negotiate a planning agreement. The parties should consider whether other planning authorities and other persons associated with the development should be additional parties to the agreement. The developer is not the owner of the development plan, they should be an additional party to the agreement.” So it’s after the lodgement of “the application”. Do you see that?---The negotiation and discussion of a VPA offer can occur before and also during the assessment of that offer because it’s, it’s a process of they submit or they propose to submit an offer and there could be discussion at that stage, and also after lodgement.

Or alternatively, the application itself is the offer, isn’t it?---Can you ask that again, please?

Yeah. Often an application by a developer to negotiate a planning agreement commences not with a document called an application but commences with an offer, correct?---The process is they either lodge a development application or a planning proposal and there’s usually a separate VPA offer document that they provide, whether it be a letter of offer that is provided in association with that proposal or development application.

No, we don’t have to guess – I’m sorry to cut across you. It’s the digital – had you finished?---Yes.

We don’t need to guess because the policy in clause 3.4 says, if I could go back one page, please, “The council prefers that a planning agreement is negotiated before lodgement of the relevant application and that it accompanies the application on lodgement.” Do you see that?---Yes. But that’s the preference.

But what I’m trying to suggest to you is that it’s the business of council and councillors to determine whether or not a VPA should then be negotiated with a council officer being the appropriate delegated authority, correct?

---Yes.

And many of the discussions that you've told the Commissioner about were discussions involving a determination as to whether council should agree to proceed with a negotiation of the terms of a planning agreement, correct?

---Can you ask that question again, please?

You refer to a number of discussions, and one discussion in particular, where you say you were concerned because the councillors were there with the client.---Ah hmm.

- 10 At that stage there had been no determination by council, had there, that there should be the negotiation of the terms of the planning agreement?
---We, at that stage, hadn't finalised the assessment of the VPA offer. That was still being considered by staff.

And therefore you'd agree that, at that stage, council had yet to determine whether or not it was going to grant approval for someone to proceed to negotiate the terms of any planning agreement, correct?

- 20 THE COMMISSIONER: Mr Corsaro, can I just say that if – I don't follow this line of questioning. If it's going to be suggested that the fact that council would at some stage determine whether or not a council officer should proceed or officer proceed to negotiate a VPA, what's the relevance to that, sorry, to the fact that your client, Mr Badalati, attended this meeting?

- MR CORSARO: Because as I understand the witness's concern, it relates to clause 3.6 of the policy. Clause 3.6 of the policy says, "The councillors will not be involved in the negotiation of the agreement face-to-face." And the issue is whether or not the councillors were there "face-to-face negotiating", otherwise there's nothing in the policy, we will ultimately be
30 putting to you, that prevented that meeting.

THE COMMISSIONER: Well, that may be the case, but are you saying that that's the explanation, and they were there knowing that they didn't have a role in the negotiation? I'm not sure what you're actually putting. I don't understand how this goes to the point of explaining why they attended this meeting. I can understand you saying there was nothing in this particular code that may have prevented them from being there, but how does it go to the question of why they were there?

- 40 MR CORSARO: Evidence will be given as to why they're there. This witness hasn't given any evidence as to why, the motivation or purpose. All

this witness has given evidence of is her own subjective concern because she took the view that the councillors were there engaged in face-to-face negotiation. That's what I understand her evidence to be. It's quite – I thought it would not be appropriate for me to try and get her to speculate as to why they were there or (not transcribable)

THE COMMISSIONER: Of course not. But don't we then have another problem? This document really speaks for itself.

10 MR CORSARO: It does. It does. But I just wanted to tease out as to whether or not what was happening is a negotiation of the terms of a planning agreement. And the document of course will speak for itself and the submission will stand on its face after you hear the councillors, presumably, in relation to what they were doing. But I've got to – evidence has been put before you based on a subjective view which is not based on anything other than the witness's concern that it was contrary to policy and ultimately a submission will be put to you that it may not at all be contrary to the policy.

20 THE COMMISSIONER: But it still doesn't explain why they were there.

MR CORSARO: And more importantly I can't even ask this witness why they were there because she won't know.

THE COMMISSIONER: Well, then, why don't we just leave this as a matter of submission. You can say what you like about that exactly.

MR CORSARO: I will. I will, but my position is, and I'm sorry to hark back to it, at the moment I've got to try and assess not only what is in
30 writing, what's come today and the weight based on subjective views of matters. That's really the issue. I'm sorry, I'm not being critical of anyone but it is what it is and that's the, at the end of the day you will be more concerned with hearing from the councillors as to why they were there rather than the council's staff as to their views about the matter subjectively. I'm pretty confident about that and I don't want to labour the point and I don't want to delay the proceedings unnecessarily but the evidence is there and I don't want it to be used in a way which is contrary to my client's interest as you'd expect.

40 THE COMMISSIONER: How much longer do you think you will be because the shortest way (not transcribable) proceed.

MR CORSARO: I'm sorry, say again?

THE COMMISSIONER: I said how much longer do you think you might need because it may be better if I just allow you to proceed and we wrap this up.

MR CORSARO: Can I suggest this, it would be probably better if you give us an opportunity of amplifying the one or two areas I've got to go.

10

THE COMMISSIONER: Right.

MR CORSARO: I can touch on them. If you've told me to go as far as I can I could touch on them but it would not be efficient.

THE COMMISSIONER: So what are you telling me, that that's it for today?

MR CORSARO: No. I'm happy to keep going. I probably think I've got 15/20 minutes.

20

THE COMMISSIONER: Very well.

MR CORSARO: And I'm happy to come back to it on Monday morning if that's more convenient to the Commission.

THE COMMISSIONER: No, no, no. Very well, you proceed until you reach a point that you think you can't proceed further.

MR CORSARO: Thank you. Ms Stores, can I take you, please, to the note which is I think your annexure 4. Sorry, annexure 3. Thank you. You've probably been asked some questions about this.---Yes.

30

The – oh, I'm sorry. Annexure 3 not 4. I apologise. Could you go back one page, please. I'm sorry, this is the document you were asked some questions about, remember?---Yes.

Now, was this meeting arranged by the general manager, the acting general manager?---I don't know who that meeting was arranged by.

40

And the draft employment land study was deferred, wasn't it, based on the recommendation of the general manager? That's your recollection, isn't it?
---The draft employment land study had been reported to council in December the previous year in 2015 and the recommendation of that report was that the draft controls that were recommended for the industrial lands be placed on public exhibition. However, the council at that time resolved to defer that report for further consideration to another time. I can't remember the exact words.

10 And it never appears on a council agenda thereafter, did it?---It was proposed, as this file note states, that it was proposed to go back to council in February and then there was still further work being done on some of the sites planning controls by council's consultants and it, it looked like that it wouldn't make the report until March.

And is that what is referred to in the last paragraph of this note?---Yes.

20 And was that because additional work had to be done before it could be placed back in front of council as far as you understood?---My recollection is that that work by this time frame was close to completion and that we could report that to the March meeting, if not the February meeting, because the, the lead times for the council reports, it would go to the, the March meeting.

The reason I put to you earlier that the matter was deferred based on the general manager's recommendation is because I picked up something in your note, which is on the previous page. Can I take you to it, please? Do you see it says in the third paragraph down "LO noted an alternative option to putting the (not transcribable) to the council meeting in March is to defer the report. This would mean the planning proposal for the
30 Durham/Landmark Square site would be assessed without the draft strategy being considered and it's noted that the applicant was two weeks away from submitting the planning proposal's documentation." NS is you, isn't it?---
Yes.

And having made that alternative option – that was the general manager, LO, wasn't it?---LO, yes, that was the general manager and he was looking at what alternative options there could be to put in reports to council.

40 And that was the option ultimately determined in your presence as a result of discussion that day, right?---I, I think, as per the paragraph above, that

was on the basis of the concerns that were being raised by the councillors at the meeting and that had been previously raised by the councillors over the - -

That's the same subject you and I have actually been canvassing earlier, namely their insistence that these sites were being treated unequally by reference to other sites, correct?---It is those sites.

You're agreeing with me, correct?---It's the same sites, yes.

10

And just to make sure, I'm right, aren't I, that having put forward this alternative option, what was discussed that day is that that's exactly what would happen, correct?---I, as I believe the general manager, because the report had been deferred by the council in December, he was looking at is there another alternative option or what other options are there in terms of how we look at the employment lands study.

20

And then the general manager himself controlled the agenda to determine whether or not that Landmark, I'm sorry, whether or not the study should go back to council, correct?---The reports that are prepared for the council meeting are put to the general manager for final approval.

And presumably the general manager could have determined to put the report back to council at any stage he considered it appropriate to put it on the agenda, correct?---He, he can.

And you have no – I'm sorry, you don't know why that didn't happen, correct?---Why the employment land study didn't go back to council?

30

Correct.---I wasn't party to that, any discussions following.

So you don't know?---No.

Thank you, Commissioner. That's as far as I can take it.

40

THE COMMISSIONER: All right. Can I just ask you this, if you use this meeting, 19 February – and I'm just going to try and summarise something. If you disagree with it, please tell me. Would it be correct to say that one of your concerns is that it appeared to you that these councillors were interfering with what you regarded as proper procedure?---Which, the 19th being the - - -

Sorry, 9 February, referred to in your note. In fact - - -?---That was the meeting just then between the general manager - - -

And the two councillors and you and - - -?---And the two councillors.

Yeah. Sorry, they were suggesting things to you. I won't use the word "interfering". They were suggesting things to you that you considered didn't align with what you thought you had to do as an officer of council.

10 ---Correct. In terms of the process that was set.

The process, yeah, and they were interfering in the process.---They, they were viewing it through (not transcribable) like giving their opinions about how they thought that study could progress.

Yep, okay. Thank you. I'm going to have to stand you down until Monday morning. I do apologise for that. I was hoping we could finish your evidence today. But - - -

20 MR CORSARO: Commissioner, can I just say, if I can prevent Ms Stores being further inconvenienced, I'll look at the transcript and look at the issues that I wanted to get some instructions about, and if I form the view that it's unnecessary to call her, can I let the Commission know?

THE COMMISSIONER: Thank you. And if you are going to proceed, can I ask you to put in writing the areas that you wish to examine?

MR CORSARO: Of course.

30 THE COMMISSIONER: And - - -

MR CORSARO: Of course.

THE COMMISSIONER: You've very helpfully done that so far. And a time estimate too, thank you.

MR CORSARO: Of course. You don't suspect I'm going to change my (not transcribable). No, I'll do that, of course.

THE COMMISSIONER: Good on you, thanks. Okay, we'll stand you down for the moment and thank you for your assistance so far and we might see you on Monday.---Okay. Thanks.

THE WITNESS STOOD DOWN

[3.18pm]

10 MS HEGER: Commissioner, I tender Ms Stores' statement, which is dated 8 November, 2021. That'll be Exhibit 167.

THE COMMISSIONER: Yes, thank you.

#EXH-167 – STATEMENT OF NERIDA STORES DATED 8 NOVEMBER 2021

20 MS HEGER: And I call Meryl Bishop, who is appearing remotely.

THE COMMISSIONER: Right. Is Ms Bishop represented?

MS ALDERSON: Yes, by me again, thank you, Commissioner.

THE COMMISSIONER: Okay, thank you. Somebody's camera is off, I think.

30 MS HEGER: I think I can see Ms Bishop on the screen but it's a very small box. Is there any way of maximising that? All right, I'm told the box should get bigger once Ms Bishop starts speaking.

THE COMMISSIONER: Ms Bishop, can you hear us?

MS HEGER: I think you're muted at the moment.

MS BISHOP: Yes, I can hear you, Commissioner.

40 THE COMMISSIONER: Thank you very much. And I understand you're not particularly well at the moment.

MS BISHOP: I have COVID, Commissioner.

THE COMMISSIONER: Yeah.

MS BISHOP: Unfortunately.

THE COMMISSIONER: I'm sorry to hear that.

MS BISHOP: C'est la vie.

10 THE COMMISSIONER: I understand you'll take an affirmation, is that right?

MS BISHOP: That is correct.

THE COMMISSIONER: Thank you. Your lawyer has probably explained what your rights and obligations are here as a witness, and am I correct assuming that the witness wants a section 38 declaration?

MS ALDERSON: Yes, Commissioner. Thank you.

10 THE COMMISSIONER: All right. Let me say something about your rights and obligations. 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 you must still answer the questions put or produce any item that I require you to produce, but your answer or the item can't be used against you in any civil proceedings or, subject to two exceptions – you remain an officer of council, don't you?---I do.

20 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. I'm not suggesting you would, but if you do give false or misleading evidence to this Commission, you commit a very serious offence for which the penalty can be imprisonment for up to five years. The second exception only applies to New South Wales public officials. Evidence given by a New South Wales public official may be used in disciplinary proceedings against the public official if the Commission makes a finding that the public official engaged in or attempted to engage in corrupt conduct. As far as I'm aware,
30 that's not an issue here. Do you understand that?---Yes, I do.

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.

40

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
10 **DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Thank you.

MS HEGER: Ms Bishop, could I ask you to state your full name, please, for the record?---Meryl Anne Bishop.

And you've prepared a statement for the purposes of this investigation dated 1 November, 2021, is that right?---Yes, that is correct.

20

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

You are still the Director of Environment and Planning at Georges River Council, is that right?---Yes, I am.

You've held that role since October 2016?---Yes, that is correct.

And your responsibilities includes, among other things, assessing development applications and strategic and environmental planning?---That is correct.

30

And they also include progressing a number of planning proposals that have been before council from time to time?---That is correct.

And that includes the Landmark Square planning proposal?---Yes.

40

And so you've worked on that proposal since October 2016 or earlier?---No, after October 2016, after I commenced at council.

All right. And you're aware that prior to you joining Georges River Council, Hurstville City Council had, back on 20 April, 2016, resolved to support the Landmark Square planning proposal, correct?---Yes, yes. I was aware of that, yes.

And you were aware it involved rezoning the land from industrial to mixed use, correct?---Yes.

And also increasing the permissible building height?---Yes.

10

And also increasing the FSR?---Yes.

And am I right in thinking Catherine McMahon was primarily responsible for the assessment of the planning proposal under your supervision?---That is correct.

And Ms Stores was primarily responsible for assessing the VPA for Landmark Square ultimately under your supervision?---That is correct.

20 In your statement you've detailed a number of meetings that you attended in relation to Landmark Square. I want to ask you first about a meeting that occurred on 9 April, 2018, which you referred to first at paragraph 11 of your statement. Now, by 9 April, 2018, Georges River Council had voted on in August 2017 to send the planning proposal for Gateway Determination, is that correct?---Could you just say that date again? On - - -

It was August 2017.---Yes, yes. That's right, that's right, yep.

30 And around that time council had also voted to accept the VPA offer for Landmark Square?---That's right. They'd endorsed the heads of consideration, yes.

And then a Gateway Determination was issued in October 2017, is that right?---That is, that is correct.

Okay. But around this time, April 2018, you were still finalising the Development Control Plan and also the VPA for Landmark Square, is that right?---That is correct.

40 And can you just explain to me what a Development Control Plan is and the purpose it serves?---So the, a Development Control Plan accompanies an

LEP, and we, for developments such as Landmark or development planning proposals of such size, we have a Development Control Plan that runs alongside the LEP, which looks at height and FSR, because the DCP sort of provides the fat or the fat on the bones of, of that planning proposal. So it provides issues around car parking, setbacks, landscaping requirements, façade treatments. It really sort of gives the detail about what this site will look like and provides certainty for the community what this site might look like when it is fully developed.

10 And around this time your aim was to exhibit both the planning proposal and the DCP together, is that right?---Ideally, yes, that is correct. It would have been also the intention to try and exhibit the VPA at the same time. Again, so it's the PP, DCP and VPA are all exhibited at the same time. That often doesn't happen, but that is our intention and that was my intention.

And why was it your intention to do all three of them at the same time? Exhibit them, I mean.---What that does, it provides the community with some understanding of what, again, as I said, what the site, how the site will be developed, what it will look like, where the access points are, et cetera.

20 It also with the – if I, with the VPA being exhibited at the same time, it provides a community with some type of understanding of what community benefit or what benefit will be returned to the community as a result of the, of, of, of the rezoning.

All right, so if you exhibit them together, it gives a much fuller picture of what the development might look like than if you just do the planning proposal on its own, is that right?---That is, that is correct, yes.

30 Could I just take you to the notes of that meeting on 9 April, 2018. I'll just take you to volume 1.6, page 39, which is Exhibit 129. Volume 1.6, page 39. If we go to page 39. You'll see this is a document headed Councillor Briefing 9 April 2018.---Yes.

Now I've forgotten, you didn't – did you personally prepare these notes or somebody else?---No, somebody else would have.

Yes. And it records a councillor briefing that you attended involving Councillor Hindi and Councillor Badalati and another councillor recorded there. Is that right?---That's right. May I, I'll just state that they would
40 have been, the majority of councillors would have been at that briefing, but

what the notes record here are the, are the councillors that asked us questions.

All right. So this is one of the briefings to which all councillors were invited leading up to a formal council meeting, is that right?---That is correct.

Okay. And you can't recall how many councillors attended on this occasion in total?---I, I couldn't, no, I couldn't but usually the majority of them
10 would attend.

All right. You see there there's a comment recorded from Councillor Hindi referring to 9 Gloucester Road which had its own planning proposal?---Yes.

Do you see that in the third row?---Yes. Yes, I can.

And does that accord with your recollection that Councillor Hindi raised a query about the planning proposal for 9 Gloucester Road?---Based on the notes, yes, I, I, I would, I can't say I recall him actually asking the question
20 but in the notes, yes, he, he would have asked that question of us, yes.

And then further down on this page, about two-thirds of the way down, Councillor Badalati asked a question about the Bing Lee site. Do you see that?---Yes. Yes, I do.

Now, they seem to be drawing a comparison between Landmark Square and planning proposals on other sites, for the Bing Lee site and 9 Gloucester Road. Were such comparisons helpful or appropriate in your view?---It, it wasn't inappropriate. The role of the council and the councillors often is to
30 challenge us staff on why we're following a particular approach. So they can do that by asking us to ensure that we have consistency across how we look at, look at planning proposals. However, I think probably what they misunderstand is that a planning proposal is often, especially on these larger sites, it is done based on the site analysis and based on a concept and a design that is prepared on, for that site in relation to its context. So of course not every outcome on every site is the same. So it is difficult to make a comparison of where, for example, of where height may sit, may sit on a site or where the open space is located on the site, the size of the open space, because it does depend on, that does depend on the context of the
40 site. Sorry, I hope I answered that clearly enough.

You did, thank you. And I must admit, my question was more directed not to whether the question as such was an inappropriate one but whether from a planning perspective it's helpful to compare one site to another and - - -? ---Look, not, not particularly but I, not particularly but I can understand why they did it, but it's not, it's not particularly necessary, no. Because it is based, as I said, it's, it's a really site specific thing, developing a, a planning proposal, particularly on these large sites and it's done, it's based on the context of the site and the, the context and the concept that's developed for the site.

10

And your view at the time was that there was no inconsistency between the approach council staff were adopting to the Landmark Square planning proposal as compared to the Bing Lee site or the Gloucester Road site, is that right?---I, I didn't think so, no.

Okay. If I go back to your statement at paragraph 15.---Yes.

You have your own copy of your statement there, is that right?---I, I, I do. Only because it's quite difficult to read on the screen.

20

Not a problem. At paragraph 15, you refer to the level of questioning at this meeting being exaggerated. Can you just elaborate of what you mean by that?---It was, and I will put it in the phrase, it was exaggerated, the level of questioning was exaggerated in relation to other sites that we had been looked at, and the detail of which they knew that planning proposal I guess meant their questions, there was a level of detail there that, that was somewhat, as I say, somewhat surprising and challenging. So it may have been of course talking about the level of open space that was required on the site, the setbacks required on the site to Roberts Lane, the approach for land acquisition, that level of detail and the questions they were asking, I had not heard them do that on other planning proposals that we have, we had been talking with them about over the years.

30

All right. And how many other planning proposals had you talked to Mr Hindi about over the years, since 2016?---Oh, well, Mr Hindi, sorry, Councillor Hindi and Councillor Badalati had been involved in a number of conversations at councillor workshops and councillor briefings which, which – I do a number of them. But if you're asking if I've had a conversation with Councillor Hindi on my own regarding a planning proposal, is that what you're asking me?

40

No I wasn't asking that, actually. My question was how many other planning proposals, other than Landmark Square, had you discussed with Mr Hindi since 2016? I'm not saying one-to-one. I'm saying - - -?---Oh, there would have - - -

- - - either at councillor briefings or other meetings.---We, look, I couldn't give you the exact number but it'd at least be 10 to 12.

10 All right. And does the same apply to then Councillor Badalati?---Yes, he was involved in those briefings as well, yes.

All right. So when you say the questioning was exaggerated, I take it from your evidence what you're meaning to say, by reference to the evidence you've just given, is that it was a level of detail being asked by Councillors Hindi and Badalati that you've not experienced on other planning proposals that you had engaged with them on over the years, is that right?---Yes, that is correct.

20 Can I ask you about another meeting that took place in July 2018. If I go to paragraph 27 of your statement.---Ah hmm.

You refer to a file note written by yourself and typed up by someone else, and you say, "The meeting between Adrian Liaw and I was held around July 2018 to discuss the development of Landmark Square." Do you see that? ---Ah hmm, I do.

30 So the file note was not based on any notes at the time and was prepared after the event occurred in 2020. So I'll just go to that file note now, which is at page 19 of your statement. Adrian Liaw, of course, at this time was representing a company called Aoyuan, as you understood it, is that right? ---That is correct.

Which had by this time purchased the land comprising Landmark Square, is that right?---Yes.

And you say in this note that after the meeting with Mr Liaw was over, you spoke to him in a corridor. If we go over to the next page.---Yes.

40 In the second-last dot point you say, "In confidence I also asked him were the two councillors, given their interest in the site, 'awaiting something' when the rezoning of the site occurs?" Why did you ask Mr Liaw that

question at this time?---The reason I asked him, it was linked to the interest that and the, what I felt or appeared to – let me rephrase that – appeared to happen is that Elaine Tang, who had been attending meetings with the council staff and myself through that sort of mid part of 2018, she was making things quite difficult for us to keep progressing the work on the planning proposal and the Development Control Plan. She was, I felt she was being obstructing things and she was being quite critical in relation to process. We weren't doing it fast enough, we were asking too much work to be done, et cetera. And when we would come back to the councillors and talk to the councillors, whether it was at a formal briefing or it may be after a committee meeting, we would be questioned. I felt that Councillor Hindi and Councillor Badalati were asking us questions at a level of detail and understanding the process and the approach that we were taking with the DCP that only you would have known if you were in that meeting with the applicant and council staff. So it was of – you know, I guess I was interested in asking Adrian Liaw, and I guess it was an in-confidence conversation I had with him, did they have a level, did they have a level of interest? And because it appeared that they were, because of that greater level of interest I had experienced earlier in the workshops in the middle of the year, did they have some interest in the site?

And the words you used were “awaiting something”. What did you have in mind when you asked that question?---Well, I guess were they, were they waiting to get something as a result of the rezoning of the site.

You mean some money or other benefits?---I, look, I didn't, it could have been a benefit, yes. I, I didn't know what that would be, but it appeared – of course I wouldn't have known what that was, but it appeared that they were waiting on some benefit. But again, that's just an assumption. I, I have no evidence on that.

Yes, it's just based on your interactions with them in meetings and the level and detail of questioning that they had been asking, is that right?---That's right. And the information that appeared to be fed to them from Elaine Tang.

All right. Well, you mentioned you had an impression they were being fed information. Can you give a particular example of that?---I can only – I can't give you an exact example, except I, except they need, they seem to understand, the councillors seemed to understand the issues around, as I say, some elements to the Development Control Plan. And I'm sorry, I can't

give you detail because my staff were actually doing that work rather than myself, but as I say, they're, they're – they seem to be, been told things that, as I say, only the applicant and the staff had in those conversations, in those meetings of which Elaine was present.

All right. And you say that Mr Liaw, in response to your question, ever so slightly nodded his head. Is that still your recollection?---That is my recollection, yes.

10 And what did you understand him to be conveying by that?---Confirming the statement.

Right. But did he say anything?---No, he didn't.

Did you happen to watch Mr Liaw's evidence yesterday?---Yes, I did.

And you saw that I asked him about this exchange. And while he recalled speaking to you in the corridor, he didn't have a recollection of you asking him this question or him responding. I asked him was he denying it. He
20 said, "I'm not denying it. I just don't recall." Does that cause you to doubt your recollection?---No.

Can I ask you about another meeting, on 31 August, 2018. Go to paragraph 20 of your statement.---Yes.

Here you say, "The staff of the Strategic Planning Team were trying to get the DCP," that is the Development Control Plan, I take it?---That is correct, yes.

30 "To a workable and appropriate level to exhibit but we were having trouble finalising it with the applicant. Councillor Hindi telephoned me around the last week of August 2018 requesting a meeting in person to discuss the planning proposal for the Landmark Square site." Do you see that?---Yes.

And so you understood him to be requesting a meeting with you personally?---That's correct.

Did he request that anybody else attend that meeting?---No.

40 And you say at paragraph 21 – sorry, can you recall what he actually said when he requested the meeting? Did he say what the purpose of it was?

---No, I can't remember why he, what he said in the conversation to me. I think he, he just asked could we meet.

All right. But did he mention the Landmark Square planning proposal?

---Yes, he would have, so I would have known what, well, I would have asked him or he would have told me, so I would have known what it was about so I could prepare.

10 And you say there "The purpose of the meeting was to establish was it possible for the staff to put the planning proposal on exhibition without the DCP." You see that?---Yes.

And before we go to the record of that meeting, can I ask is it unusual to get a call from a councillor to request a meeting with you personally to discuss the progression of the planning proposal and in particular the need for a DCP?---Yes, it is unusual, on the basis that there is opportunity to speak to me several times a month. So it is unusual to get a one-on-one meeting with me, yes.

20 And when you say there are opportunities to speak to you several times a month, in what context do those opportunities arise?---Well, it may be at committee meeting, at council meeting, at the, every Monday night, put it that way. Every Monday night we, we are, as the executive, we are with council either at workshops, committee or council. So there is opportunity to talk to me at any of those meetings, or any of those days.

All right. Can I show you a document at volume 1.6, page 158, and that is Exhibit 129. Page 158. This is an email from Elaine Tang to Gail Connolly, who was, she was the general manager at the time, is that right?
30 ---Yes.

And it's cc'd to yourself as well as some other people. It's dated 30 August, 2018 at 3.28pm. I'll just let you have a read of that email.---I'm just trying to – okay, hang on.

Can you see it on-screen?---It's, it is very tiny. I thought I had it here but I, I have misplaced it. So, okay, all right. Oh, thank you. Could I get you to scroll it down a little bit, please? Thank you. Yes, okay. I've got the gist of it, so thank you.
40

All right. So around this time, August 2018, you were still in the process of trying to finalise the DCP and VPA, is that right?---That is correct, yes.

And obviously Ms Tang in this email is expressing some concern about the delay with the progression of the proposal, correct?---Yes.

And it's indicated in that email that the applicant may have to withdraw the VPA, which was at that time for \$7,890,000. Do you see that?---Yes, yes.

10 And specifically it was said if the planning proposal was not exhibited by October 2018, the applicant may have to withdraw that offer. Do you see that?---Ah hmm, ah hmm.

Now, can you recall whether this phone call you received from Councillor Hindi to request the meeting, can you say whether it occurred before or after this email, noting Councillor Hindi was of course cc'd to this email.---Oh, in, in - - -

THE COMMISSIONER: What date was this?

20

MS HEGER: Sorry, Commissioner.

THE COMMISSIONER: What date was this?

MS HEGER: Oh, the email is April – sorry. If I go back up. 30 August, 2018 at 3.28pm.

THE COMMISSIONER: Thank you.

30 THE WITNESS: If I remember correctly, I, I don't, can't confirm it exactly, Councillor Hindi would have rung me before the 30th.

MS HEGER: Okay. You then had a meeting with Councillor Hindi, Councillor Badalati, the next day, on 31 August, 2018 and I'll just take you to some notes of that meeting which are in the same volume, page 168, if we scroll through to page 168. And this starts with an email from Catherine McMahon but it attaches some meeting notes, which presumably Ms McMahon prepared. If we go down to those notes it says, "Meeting with Vince Badalati and Con Hindi," and it says, "Meryl Bishop and Catherine
40 McMahon attended." Is that your recollection of the meeting on 31 August, 2018?---Yes. That, yes, that is correct.

And you've said in your statement, I think, that these notes are generally accurate, is that right?---Yes, yes.

And at this meeting Mr Badalati is recorded as being worried about the loss of money. Do you see that? In the first line. "VB worried about the loss of money." Can you see that on the page?---Yes, yes, sorry, yes, I can, I beg your pardon, yes, I can.

10 And what did you understand that to be a reference to, the loss of money?
---I'm assuming he was referring that we will lose the \$7 million that had, will be secured with the VPA.

All right. And Councillor Hindi is recorded as saying, "Worried about loss of hotel." You see that?---Ah hmm. Ah hmm.

Presumably you understood that to be a reference to the risk of the proposal being withdrawn altogether. Is that right?---That's right. Or, or falling over, yes, yep.

20

And is this an instance, you mentioned earlier that sometimes the concerns expressed by the two councillors mirrored the concerns expressed by the applicant, is that right?---Sorry, could you repeat that? The - - -

You actually mentioned in your statement, I think, that sometimes the concerns expressed by councillors mirrored those expressed by the applicant. Is that right?---Yes. Yes, that we were taking too long, yes.

30

Is this an example of that?---If, if I've interpreted what you've said correctly is that we were taking, there was a position that we were taking too long with finalising the Development Control Plan, and because we wanted to exhibit the Development Control Plan and the planning proposal together, you know, there was concern that why, well, the question was asked, and asked on that meeting of 31 August, why couldn't we exhibit the planning proposal without the Development Control Plan?

THE COMMISSIONER: The complaint about delay, that was – I withdraw that. A similar complaint had been made by Ms Tang the previous day.

---That is correct, yes, yep.

40

MS HEGER: And of course both Mr Badalati and Mr Hindi were copied to Ms Tang's email, so it's obvious how they might have become aware of that concern, I should just clarify for the record. Can I take you to another record of that meeting, which is at page 22 of your statement.---Paragraph 22?

Page 22 of your statement. This is another note.---Yes, yes.

Same meeting, on 31 August, 2018.---Yes, yes.

10

And this is attached to your statement. Does this generally accord with your recollection of that meeting?---Yes, it does, yes.

And in this note it's said, "Both councillors were questioning the assessment of the planning proposal and why we needed a DCP if the proponent had prepared a concept master plan that detailed everything."---Yes.

20

And did you understand they were suggesting that the planning proposal could just go on exhibition without the DCP?---Yeah, that's what they were asking for, yes. Well, no, they were asking is that possible, is it possible for that to occur.

Yes. And you explained – well, was it you or was it Ms McMahon explained why? I think it was Ms McMahon since she seems to be the author of this note. Explained why a DCP was considered necessary. ---That's, yes, that's right. That's right.

30

In the last paragraph it said, "Both then requested when the planning proposal was going to be exhibited." Do you see that?---Yes.

And you said that the DCP amendment would need to be adopted by council for exhibition so as soon as the proponent lodged the required draft amendment it could be reported to council, seeking a resolution to exhibit. Does that accord with your recollection?---That's right. That's, it, it does, yes.

40

Now, you say in your statement that you felt that the two councillors were pressuring you and Ms McMahon to finalise the planning proposal as soon as possible. Is that right?---I'm not going to say they were – they were persistent in asking on process. I'm not going to say the word, I wouldn't use the word "pressure" but they were persistent in, in asking us where it

was up to and they were persistent in asking on various details of, of where the, the planning proposal was up to.

And did any other councillors at the time show this level of persistence in asking about when the planning proposal would be exhibited?---No.

And did Mr Badalati or Mr Hindi show this level of persistence in respect of any of the other planning proposals you were working on at the time?---No.

- 10 How many other planning proposals were you working on at the time as at August 2018?---I, this, again, this will be on recollection, Gloucester Road, the Bing Lee application on Forest Road would have been coming to its, coming to an end. The one other I can remember is, it's around 53, I think, Gloucester Road. It's a, it was a retirement village. That's just off, off the top of my head. There were a number of them that we would have been looking at at that time.

All right. Could I take you to, in the last few minutes we have, another meeting that occurred on 25 February, 2019?---Yes.

20

There's a record at page 23 of your statement.---Yes.

And so this is a note of a conversation with Mr Badalati and Mr Hindi before, was that a formal council meeting on 25 February, 2019?---It's, it would have been. I, it, it was in the councillor suite before the meeting, yes.

And at this point, the Landmark Square planning proposal had been on exhibition since October 2018, is that right?---That is correct, yes.

- 30 And you record a discussion between yourself – I'm sorry. Was this your note or Ms McMahon's note?---Ms, Ms McMahon's note, but I, I do know if this discussion, yes.

Yes. You obviously attached this note to your statement and consider it accurately reflects what took place that day?---Yes.

It records a discussion between you, Catherine McMahon, Mr Badalati and Mr Hindi before the council meeting.---That's right.

- 40 Bear with me a moment. It says there that Councillor Badalati requested that the VPA be taken off the officer dealing with it and that the GM, the

general manager, and the director, being yourself, should be handling it. Do you recall Mr Badalati requesting something to that effect?---Something to that effect. He was talking to Cathy at the time but, yes, I, I can recall it, yes.

You witnessed the conversation, is that right?---Yes, I did.

10 And did Mr Badalati explain why he wanted the VPA to be taken off the hands of the officer dealing with it?---Not, not that I can recall. I can only make an assumption that he, if, if I was doing it, he may feel it would be. It may be done faster. I'm not sure.

And the response from Ms McMahon was that the VPA was being handled by the correct staff, is that right?---That is correct, yep.

20 And did you feel at this time that this was an attempt to encourage council staff to progress the VPA more quickly?---Yes, this meeting was, yes. 'Cause the meeting also there was another discussion about, at that meeting, requirement for us to look – we were undertaking some detailed traffic assessment of the site. We'd been, it was an issue that was raised in the submissions. It was also an issue – RMS had raised the issue as well with, with the planning proposal, and we need to ensure that we'd done the detailed traffic assessment and analysis before we could present it back to council. At that, at this informal discussion, it was that they'd questioned was that absolutely necessary to occur. So I guess they were asking us to sort of progress it as fast as we can and, and asking was that detailed analysis absolutely necessary at this stage, could it not be done as part of the DA process.

30 And was that a concern that the representatives for the applicant had raised too? Had Ms Tang raised that concern as well on your recollection?---On my recollection, I, I don't know. Ms McMahon may be better to answer that question.

All right. I note the time, Commissioner. I might just have a couple more questions for Ms Bishop tomorrow, but I understand there's an application to cross-examine her in any event.

40 THE COMMISSIONER: What's tomorrow? Friday, yeah.

MS HEGER: Friday.

THE COMMISSIONER: I'm losing track of the time. Yeah, certainly. Can I just ask you this in relation to that file note, I get the impression that as a result of exchanges that were had at that meeting that council's, well, the staff were concerned about the level of engagement by Ms Tang and her various complaints and the like. In fact, back in late August 2018, you'd raised your concerns with Mr Liaw that - - -?---Yes.

10 - - - you were having difficulties and you just needed one person to deal with council staff as it reduced confusion and provided clarity to both parties. Did you form the impression, and I know it is only an impression, that – no, I'll withdraw that. Could you think of any reason which might – let me go back again. Ms Stores was the VPA officer, was she?---She was, yes.

Yeah. And you were then, what, her supervisor, were you?---Cathy, she, Ms Stores reports directly to Catherine McMahon and then Catherine McMahon reports to me.

20 All right. But I take it you'd seen or heard of nothing that suggested that Ms Stores was carrying out her job incompetently?---Oh, no. Absolutely not. Absolutely not. Ms Stores is very good at her job. She is very thorough.

And so what you know there would have been no reason for you to take her off the job, so to speak?---No, not at all. And we would, and Commissioner, there's no way in the world Cathy and I would have taken her off that job.

No. Yes, thank you. So what happens now? I think there's an application to cross-examine, is there?

30

MS HEGER: There is, by Mr Hindi's representative.

THE COMMISSIONER: Mr Corsaro?

MR CORSARO: Commissioner, can you hear me?

THE COMMISSIONER: Yes, I can. We're going to get this witness back tomorrow. I think you've got two juniors, haven't you?

40 MR CORSARO: I have no junior but there will be someone here to cross-examine.

THE COMMISSIONER: Terrific, okay. That's - - -

MR CORSARO: You might have to give him some leeway but there will be someone here.

THE COMMISSIONER: I may have made a mistake, maybe it's Mr Moses who's got the two juniors.

10 MR CORSARO: I'd like to have to juniors, are you offering me two juniors, Commissioner?

THE COMMISSIONER: I don't think I ever had two, I have to say. I had some very competent ones but - - -

MR CORSARO: Well, you have one over me, I'm not sure I've even had a competent one yet.

20 THE COMMISSIONER: All right. Well then, we'll adjourn until tomorrow morning at 10 o'clock. Thank you.

THE WITNESS STOOD DOWN [4.05pm]

AT 4.05PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.05pm]