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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 FRIDAY 24 JUNE, 2022

AT 10.00AM

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: There's one housekeeping matter I want to raise and it's that Mr Watt gave some evidence that I don't consider is relevant to this investigation and I propose to make a non-publication order in respect of it and request that the transcript made available to the public is redacted to exclude that evidence. I, Stephen Rushton SC, Commissioner of the Independent Commission Against Corruption, being satisfied that it is in the public interest to do so, hereby direct, pursuant to section 112 of the Independent Commission Against Corruption Act 1988, the evidence given in the Operation Galley Public Inquiry on 23 June, 2022 by Michael Watt at transcript pages 304.8 to 304.29 should not be published or otherwise communicated to anyone except by Commission officers for statutory purposes or pursuant to further order of the Commissioner.

**SUPPRESSION ORDER: I, STEPHEN RUSHTON SC, COMMISSIONER OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION, BEING SATISFIED THAT IT IS IN THE PUBLIC INTEREST TO DO SO, HEREBY DIRECT, PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988, THE EVIDENCE GIVEN IN THE OPERATION GALLEY PUBLIC INQUIRY ON 23 JUNE, 2022 BY MICHAEL WATT AT TRANSCRIPT PAGES 304.8 TO 304.29 SHOULD NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO FURTHER ORDER OF THE COMMISSIONER.**

THE COMMISSIONER: Yes. Thank you.

MS HEGER: Commissioner, I have a few more questions for Ms Bishop this morning and then I understand there's an application to cross-examine Ms Bishop, who is appearing remotely again.

MS HEGER: Are you there, Ms Bishop?---Yes, I am.

Thank you. Yesterday I asked you some questions about a meeting that took place on 9 April, 2018 with Councillors Badalati and Hindi. Do you remember that?---Yes, I do.

- 10 Can I just ask you a couple more questions about that and take you back to Exhibit 129, which is volume 1.6, page 39? Those are the notes of the meeting to which I took you yesterday.---Yes.

I'll just wait for those to come up on the screen. You'll recall yesterday I asked you about the fact that Councillors Hindi and Badalati had made some comparisons to the Gloucester Road site and the Bing Lee site. Do you recall that?---I do, yes.

- 20 I just now wanted to ask you about a couple of other questions that were raised in this meeting. The first is, just at the bottom of this page, there's a question from Councillor Badalati, "How wide is the existing Roberts Lane?" and then another one, "Why is Roberts Lane proposed to be nine metres?" Was there a proposal at the time that Roberts Lane be widened as part of this planning proposal?---Yes, that is correct.

And that's something that the applicant proposed or council staff had proposed?---From my recollection, it's what council staff proposed.

- 30 And why was that proposed?---For a couple of reasons. As I say, this is just on my recollection, is that the widening of Roberts Lane would assist in moving the traffic in and out of this, out of the site that was going to be subject to redevelopment. It, it also, as my understanding, it would assist in moving traffic in that part of East Hurstville and improving the local road network.

- 40 And is that a proposal that a proposal that the applicant had concerns with on your recollection?---On my recollection, I don't think he did have concerns with the actual re-widening of the road. The concern was in relation to the process because for us to acquire land, not only from the applicant but there were other lots of land in the site, required us to put a land acquisition affectation in the LEP and that required an amendment to

the, the Hurstville LEP, which would, may have delayed the Landmark LEP. So my recollection was it wasn't so much that we were asking for the, the land, not on, on the Landmark site but the sites that made up the planning proposal but it was the time frame.

All right. And do you recall in this meeting, Councillors Hindi or Badalati expressing concern about the delay that might be occasioned by that road widening proposal?---I can't recall, no.

10 All right. There's then a reference on the next page towards the bottom, Councillor Hindi, the fourth-last line, "What is design excellence – a competition?" Can you recall anything else about the questions that Councillor Hindi was asking on this topic?---No, because I'd only be making an assumption that there was a design excellence reference in, in the DCP and he was asking clarification on what that would be but I'm only making an assumption there.

20 Right. What is design excellence?---Design excellence, it can be defined broadly as how a site works not only internally but how a site looks, looks from the outside. So it may have everything to do with landscaping, positioning of landscaping, façade treatment, the relationship of, as I say, the podium, the bottom part of a building to the top part of the building, materials that are used. It's, it's an aesthetic, it's an aesthetic value I think that's placed on the building.

Right. And that concept is sometimes incorporated into Development Control Plans. Is that right?---Yes, it is.

30 And was it proposed to be including in the Development Control Plan in this instance for Landmark Square?---From my recollection, yes, it was.

Right. So doing the best you can, you think Councillor Hindi's question might have been directed to that topic but you don't have a recollection?---I, I, yes, that's correct.

40 Can I then ask you some questions on a different topic. You may be aware that at various times, Councillors Hindi, Sansom and Badalati have been on Joint Regional Planning Panels that voted on 1-5 Treacy Street. I'm not going to ask you about the specifics of that because I don't understand you to have any involvement in that but I want to ask you more generally about Joint Regional Planning Panels.---Yes.

Around 2016, there were, of course, Joint Regional Planning Panels which were established by the Environmental Planning and Assessment Act. Is that right?---Yes, there were. Yes.

And they're now known under the Act or there's now established by the Act both District and Regional Planning Panels. Is that right?---Yes, there's Regional Planning Panels, yes.

10 And District Planning Panels, as well?---No, they are the same thing. A, a Regional Planning Panel is, is the same as a District Planning Panel.

Okay. There's also something called a Local Planning Panel, is that right, established by the Act?---That is, that's correct.

And the District and Regional Planning Panels are generally speaking given consent authority functions in respect of what's described as "regionally significant development" in the Act. Is that right?---That is correct, yes.

20 And regionally significant development can include things like development with a capital investment value over a certain amount of money, I think it currently might be about \$30 million, does that sound right?---Yes, you are correct.

Okay. And was that the case as at 2016?---Oh, sorry, I can't - - -

In respect of JRPPs, I mean.---I, I can't recall the value but that, that is, the principles behind what you are saying is correct, yes.

30 All right. The value might have been different under the legislation at the time?---The, the value might be different, yes, but the principles of what you're saying is absolutely correct.

I understand. And is the idea, well both then and now, that those planning panels were to provide independent and expert views on planning matters of regional significance?---Yes, that is correct.

And at the moment for Regional Planning Panels, the Act provides that they're to have five members, is that right?---That is right, yes.

40

And it provides that three are appointed by the minister, is that correct?  
---That is correct.

And then two members are appointed, or nominated, by the relevant local council, is that right?---That is correct.

And those nominees can be councillors, is that right?---They can be, yeah, they can be. They don't need to be, they don't need to be but they can be, yes.

10

Council could also nominate a council staff member, is that right?---They could.

And then could nominate anybody else who they consider to be appropriate?---They could.

Whether they be within council or not. All right. And from time to time local councils do nominate councillors to be on these Regional Planning Panels, is that right?---That is correct.

20

But of course councillors don't necessarily have any planning expertise other than what they've gained through making planning decisions on council, is that right?---Usually, yes. Usually.

Yes. I suppose there might be some cases where a councillor might have some sort of qualification in planning but it's not a requirement to be on a planning panel?---That's right, or architecture. It's not a requirement, no, it's not a requirement, you are correct.

30

And in the case of Local Planning Panels, the position is different in that the Act does not permit councillors to be members of those panels, is that right?---You are correct.

Rather, if a councillor has a view about a particular DA coming before a Local Planning Panel, they just make a submission to the panel like any other interested party, is that right?---That is correct, yes.

40

Do you have a view on whether it's appropriate for councillors to sit on District and Regional Planning Panels?---I do, I don't think councillors should be responsible for sitting, for making determinations on development applications at, at a regional level, no.

And why is that?---Because they, they're not, they're not in a position, they're not permitted to make an assessment at a local level, so I don't understand why the same provisions aren't in place at a, at a regional level for significant applications. The role of a council should be to make that strategic direction, whether it's through planning, through planning proposal and strategic plans, that's their opportunity to set the development and planning outcomes for a city. So I, I, I just don't think it's necessary. I think the system set up by the Environmental Planning and Assessment Act  
10 to be robust and transparent in relation to DA determinations and I, at, at the local level, and I think it should occur at the regional level.

And is underlying your position a concern that councillors who sit on Regional Planning Panels might bring their own local interests to bear, rather than necessarily an independent, expert view of the planning matter?  
---Look, there, there is a risk there that they could do that, yes.

And when a Regional Planning Panel is to make a decision on a development application that concerns your local government area, is the  
20 practice that council staff prepare a report assessing the DA that goes to the planning panel?---Yes, that is correct.

And does that report generally go to Georges River Council before it goes to the Regional Planning Panel?---No.

All right. You may have heard there was some evidence from – did you listen to Mr Watt's evidence?---Most of it. Most of it yesterday, yes, I did.

And I think he gave some evidence that at least in one case the assessment  
30 report prepared by council staff went to council before it went to the JRPP. Were you there for that evidence?---I'm sorry, I can't, I can't recall hearing that, sorry.

All right. Well, if you assume that that was, that did happen in one instance at Hurstville City Council.---Ah hmm.

And indeed as I understood his evidence it was a practice at Hurstville City Council. Do you have any view on the appropriateness of that practice or can it create any difficulties in your view?---I, I don't agree with that  
40 practice. I think that it's, the Regional Planning Panel has been set up to be the determining body. The councillors or the council have no role in that

application outside that, outside that forum. So I don't think, it isn't an appropriate practice to, to send it to council first on the basis that the council may, their, their position may vary from the council staff so I, I don't think it's, it isn't an, it's not an unheard of practice but I don't think it's an appropriate practice.

And your evidence was that's not the practice adopted at Georges River Council.---It is not the practice we use at Georges River, no.

10 I have no further questions for Ms Bishop.

THE COMMISSIONER: Thank you.

MS HEGER: I understand Mr Corsaro wishes to cross-examine Ms Bishop.

THE COMMISSIONER: Thank you. Mr Corsaro, can you hear me?

MR KUTASI: Commissioner, can you hear me?

20 THE COMMISSIONER: Thank you.

MR KUTASI: It's not Mr Corsaro today it's Kutasi, K-u-t-a-s-i.

THE COMMISSIONER: Okay. Thank you.

MR KUTASI: Thank you. Ms Bishop, you told Counsel Assisting yesterday that you had been listening to Adrian Liaw's evidence on Wednesday afternoon. Do you recall that?---Yes, I do.

30 And it's clear from Mr Liaw's evidence, isn't it, that whatever you thought he nodded his head in relation to, it couldn't have been for the purposes of Mr Hindi receiving some form of benefit, could it?

THE COMMISSIONER: I don't think - - -

MS HEGER: I object to the question for this reason in that I think, no doubt unintentionally, it may be misrepresenting Mr Liaw's evidence.

THE COMMISSIONER: Yeah.

MS HEGER: His evidence was that he didn't recollect that particular exchange with Ms Bishop.

MR KUTASI: Commissioner, Mr Liaw's evidence – Commissioner, I'll rephrase it. Mr Liaw indicated he didn't recollect the head nod but he nonetheless made it clear that he had no belief that Mr Hindi was receiving any benefit for the Landmark Square project. Correct, Ms Bishop?

10 MS ALDERSON: Commissioner, I don't understand the purpose of this questioning, asking this witness to comment on the evidence of Mr Liaw.

THE COMMISSIONER: Yeah. It's a bit problematic. Well, I'm not sure that was his evidence either. I mean I can check but the transcript will bear it out but we'll proceed for the moment. Thank you.

MR KUTASI: My suggestion to you, Ms Bishop, is that whatever suggestion you thought he gave you it couldn't have been that Mr Hindi had received any form of benefit. Do you agree?

20

THE COMMISSIONER: What you're putting is that if that evidence was accepted, that is - -?---Excuse me, Mr Commissioner. I thought Mr Liaw said he couldn't remember the conversation.

Yeah, I thought so too.

MR KUTASI: I'll say it again. Commissioner, Mr Liaw said that he did not hold the belief that Mr Hindi had received any benefit from the Landmark Square project.

30

MS HEGER: I'm sorry to interrupt again. I'm not sure that was his evidence either. Perhaps if, do you want to take Ms Bishop to a particular part of the transcript of Mr Liaw's evidence? It might be better to - - -

THE COMMISSIONER: That'd be preferable.

MR KUTASI: I'll move on, Commissioner. Nonetheless, Ms Bishop, despite your belief that Mr Liaw nodded his head to you, you made no contemporaneous note about that, did you?---No, I didn't. It, I didn't.

40 However, I will say that following the meeting with Mr Liaw I did report

the conversation to the general manager that afternoon. But you are correct, I did not take a note.

And what reaction did the general manager give you after you reported that to her?---I, I, I think she noted, "That's interesting," but I, I'm, I'm sorry, I can't recall exactly what she told, what she said to me. I'm sorry.

Did she tell you to make a contemporaneous note about it?---Yes, she did, she did. She, she told me to make a note of it, yes.

10

And you didn't?---I, as my evidence said, it, it slipped my mind. I'm, I didn't, I didn't take a note exactly following that meeting, no.

And it's because you weren't actually that concerned about it, were you? ---No, that's not correct. It just, I just didn't take a note of it.

You didn't notify a breach of the code of conduct to anyone?---Yes, that's what I, I've just indicated. I went to tell the general manager. I didn't lodge a code of conduct but I reported it to the general manager directly after the meeting.

20

Did you ever ask her – my apologies. Did you ever ask if she followed that complaint up?---I didn't but I, I'm sorry, I'm not going to, I, I can't, I can't answer that question, I don't know, I don't know.

And you didn't contact the ICAC about that?---No, I didn't. As I said, I, I had discussed it with the general manager and I would follow her guidance, whatever she was going to do. But I, I don't know what she did with it.

30 I'm going to suggest to you, Ms Bishop, that what happened is that in 2020, once you became aware that Mr Hindi was under investigation, you searched through your memory of all your interactions with Mr Hindi and you made a retrospective note about the only thing you could think of that looked suspicious, isn't that correct?---No. I was asked to, you are correct in that I was asked to write the note following the, knowledge of the investigation was underway, but it was not, it, it was a recollection of what happened. So, no, I'm, I was not digging around looking at things to put on Mr Hindi, no. Not at all. It was a recollection of a conversation that occurred.

40

When did you become aware that the council was under ICAC investigation?---Oh, I, I couldn't tell you that. I, because I'm not privy to, I wasn't privy to, to the activities that was happening in relation to that. So I, I can't tell you when I was made aware of it. I understood it, it, it was probably during 2021.

Again, I'm going to suggest to you that the only reason you wrote the note is because you became aware of the ICAC investigation.---You are correct, because I was asked to, I was asked to write the note, yes. I was asked, I  
10 was asked to write the note in, in 2020.

And let's talk about the DCP. You would agree that councils have an option to have a DCP, correct?---It, yes, that, that is an option. It is our practice to but it is an option, yes.

And you would agree that in respect to the Landmark Square proposal, at no stage did any councillor suggest that there was not going to be a DCP, is that right?---Yes, I think you're correct. I don't think anyone asked that there, there was no suggestion there was not going to be a DCP for the site.  
20 No, I think you're correct.

Thank you. And it was your preference to do it at the same time as the LEP, that's right, isn't it?---That is correct, yep.

You would agree this was project that had been before council for three years at that stage, correct?---It had been, yes.

And in that time there were other sites at Georges River Council that had an LEP bit no DCP, correct?---Oh, there, look, I'm, I'm, I'm sure there were  
30 but, but not sites of this scale.

And by 2018, particularly 30 August, 2018, you had councillors and staff receiving grief from residents and ratepayers about the delay on this project. Correct?---Not that I'm aware of. There was grief and concern raised by the applicant but this application towards the end of, wasn't placed on exhibition until the end of November, so the community weren't aware of it until it was placed on exhibition towards the end of 2018. So, so, no, residents weren't concerned about the delay of this application, no.

When you say “the applicant” are you referring to Elaine Tang?---Look, the applicant I think, at this stage I think had been moved out, had, was now with Greg Hynd and, and, Greg Hynd and Adrian Liaw - - -

Yes. So on 30 August, 2018, you received an email from Elaine Tang who wasn't the applicant. Correct?---But she had, but, no, she wasn't the application but she had clear involvement in the application.

10 Okay. And so you agree that councillors and staff were receiving grief from interested parties in the delay in the project. Correct?---Okay. Yes. Correct. If, Elaine Tang being an interested party, yes. Correct.

And council was on the edge of losing its VPA, wasn't it?---Well, that's what was stated in her letter, in her email of 30 August, however she was not the party, the, the VPA discussions were now with Adrian Liaw, not Elaine Tang.

20 And very importantly as well, there was a risk that council was going to lose control of the whole project to the Minister for Planning, as well, wasn't there?---I couldn't say that there was a risk there, that the, the, the State Government doesn't usually take over councils' planning powers relating to a site unless there are particular circumstances. I would have said that council and the applicant had been progressing constructively to get the planning proposal and the Development Control Plan on exhibition and the VPA finalised. So it would be unlikely, in my experience, that the department would step in.

30 And Mr Liaw sent an email, didn't he, in which he copied in the Minister for Planning, asking why the project hadn't been approved? Isn't that right?---I, I, he may have. I'm sorry. I, I can't recall that email.

So you would agree that's what's happened, isn't it, is that the councillors were scrambling to keep their \$7 million VPA. Correct?---No, I would not, I would not say that at all. I did not get the impression that that, it was, that the, the planning proposal, the VPA was going to fall over, no. I, I didn't get that impression from my dealings with Greg Hynd or Adrian Liaw, no.

40 But you can appreciate, can't you, that the councillors may have gotten that impression from the communications?

THE COMMISSIONER: Well, I think you've taken it far enough, haven't you? I mean, the witness has said that, from her point of view, there didn't seem to be any concern. How can she speak to what other councillors might have thought, for example, Mr Hindi and Mr Badalati?

MR KUTASI: I'll withdraw the, I didn't ask her what Mr Hindi was thinking, Commissioner (not transcribable)

10 THE COMMISSIONER: No, no, no. But you were asking her whether she appreciated there might be different views to her's well of course, but where does that get us?

MR KUTASI: I'll move on Commissioner.

TH COMMISSIONER: Thank you.

MR KUTASI: Thank you. Now – pardon one second Commissioner. One second Commissioner, sorry.

20 MS HEGER: I'm sorry, Commissioner. I think there might be a technical difficulty with the transcript. If we could just pause for a moment? It's been fixed. Please proceed.

MR KUTASI: Thank you. Ms Bishop, you accept you're the manager or at the time you were the manager for Catherine Amato, Catherine McMahon as she's sometimes referred to.---I am her manager, yes.

30 Okay. And in your evidence you said it was unusual for Mr Hindi to have meetings with council staff about planning proposals. Do you recall saying that?---One-on-one meetings, yes, that wasn't, it's not common occurrence for the staff and I to have one-on-one meetings with the councillors on planning proposals.

Were you aware of meetings that Ms Amato was having with Mr Hindi?

THE COMMISSIONER: Just one moment there. As I understand it, she is known as McMahon and that's how she should be described. Do you understand me?

MR KUTASI: I, sorry, I understand. I'm happy to call her McMahan at all times. Sometimes she uses the name Amato. But I apologise, Commissioner. I wasn't intending to - - -

THE COMMISSIONER: No, that's okay. That's okay.

MR KUTASI: So I'll ask the question again. Ms Bishop, are you aware of any meetings that Ms McMahan was having with her staff, with councillors, I apologise?---It's unlikely for Ms McMahan to have attended a meeting  
10 with a councillor without me being in attendance or without me knowing. She takes phone calls from councillors because she's permitted to but it would be unusual for her to meet with them without me. Usually that's, that, that was the practice we put in, that's the practice we put in place.

So you would say that, are you saying you're not aware of meetings she had with councillors or you just - - -?---Look - - -

- - - your policy is that she wasn't to?---No, that's not what I said. I said it's, it was unlikely, it's, it's unusual that she would meet, I'm not saying it  
20 didn't happen but it's unusual that she would meet in person with a councillor without me being there. That is not the practice we put in place. We put in place if, if Ms McMahan was to meet a councillor we would do it where I could attend as well. But I'm not saying, she may have met with a councillor but it is unlikely.

THE COMMISSIONER: Indeed I think in the meeting of 25 February, 2009 - - -

MS HEGER: 2019.  
30

THE COMMISSIONER: 2019 I'm sorry, you asked – actually I'll leave it at that.

MR KUTASI: No further questions, Commissioner. Thank you.

THE COMMISSIONER: Anything arising?

MS HEGER: I have no further questions, Commissioner.

40 THE COMMISSIONER: Thank you. Thank you, Ms Bishop, for your assistance.---Thank you.

And you're discharged from your summons.---Thank you.

And I hope you're feeling a bit better today.---Thank you very much,  
Commissioner. Thank you.

**THE WITNESS EXCUSED**

**[10.38am]**

10

MS HEGER: Commissioner, I will tender Ms Bishop's statement of 1  
November, 2021 which was MFI 12. That will be Exhibit 168.

THE COMMISSIONER: Thank you.

**#EXH-168 – STATEMENT OF MERYL BISHOP DATED 1  
NOVEMBER 2021**

20

THE COMMISSIONER: Yes.

MS HEGER: I call Catherine McMahan.

MS ALDERSON Commissioner, also for Ms McMahan. Thank you.

THE COMMISSIONER: Yes, certainly. Take a seat. Will you take an  
oath or an affirmation?

30 MS McMAHON: An oath.

THE COMMISSIONER: Ms McMahon, I take it that counsel – your client seeks a section 38 declaration?

MS ALDERSON: Yes. Thank you, Commissioner.

10 THE COMMISSIONER: I'm sure that your counsel has explained what that is to you, but at the risk of repetition can I say to you this that 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 – and before I go on, are you still employed by council?

MS McMAHON: Yes, I am, by Georges River Council.

20 THE COMMISSIONER: Thank you. I assumed as much. The effect of a section 38 declaration is that although you must still answer a question put to you or produce any item that I require you to produce, your answer or the item cannot be used against you in any civil proceedings or, subject to two exceptions in your case, in any criminal or disciplinary proceedings. Now, the first exception is that the protection provided by a section 38 declaration does 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. I'm not suggesting for one moment that you intend to do that or that you will, but if you did, you will commit a very serious criminal offence for which the penalty can be five years' imprisonment. As I say, I'm not suggesting for one moment that  
30 you're not going to tell the truth.

The second exception applies because you're a New South Wales public official. Evidence given by a New South Wales public official may be used in disciplinary proceedings against the public official, but only if the Commission makes a finding that the public official engaged in, or attempted to engage in, corrupt conduct. And from what I know, it's unlikely to arise here. So I'll make that declaration now.

40 Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by 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**  
10 **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: Thank you.

20 MS HEGER: Ms McMahon, I will ask you to state your full legal name.  
---Catherine Marie Amato.

And you've prepared a statement for the purposes of this investigation in that name, dated 30 September, 2021, correct?---That's correct.

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

All right. And you're known professionally as Catherine McMahon, is that  
30 right?---Yes, that's correct.

You hold qualifications in urban and regional planning, is that right?  
---That's correct.

And you're currently the Manager of Strategic Planning at Georges River Council, correct?---Correct.

And you've held that position since February 2017?---Correct.

40 And before that you've worked in planning at various other local councils, is that right?---That's correct.

You've worked in planning since about 1985, is that right?---Yes, that's correct.

And what does the role of Manager of Strategic Planning involve?---The role involves supervising a team of planners and urban designers and administration officers; dealing with rezoning applications, planning proposals; dealing with planning certificates; writing Local Environmental Plans; writing Development Control Plans; and, and being involved in  
10 preparing the council's policies such as a local strategic planning statement, transport strategy, car parking strategy.

And in your time as Manager of Strategic Planning, can you estimate how many different planning proposals you've worked on?---Probably – at Georges River?

Yes.---Probably about 15-odd, yep.

All right. And one of those was the Landmark Square planning proposal,  
20 correct?---Correct.

And before you commenced your position, Hurstville City Council had voted in favour of that planning proposal in April 2016, correct?---That's correct.

And you were allocated to work on the Landmark Square planning proposal when you arrived in February 2017, correct?---Correct.

And you understood that council had approved a height of 60 metres and 25  
30 metres in April 2016, correct?---Correct.

And an FSR of 3.5:1 for site A, correct?---Correct.

And 1.5:1 for site B, correct?---Yes.

Now, in providing your statement, you were asked by investigators to prepare an explanation of the benefit attained on the Landmark Square site as a result of the council's decision of April 2016, is that right?---Yes, I was.

40 Could I just take you to page 80 of your statement, where that explanation is set out?

THE COMMISSIONER: That will come up on the screen, I hope.

MS HEGER: Do you recognise this to be the explanation I referred to?

---Yes, I do.

10 And you obtained some assistance from council staff in preparing this, as the email records, is that right?---Yes, yes. From the council's urban designed in my team and also the, the GM obtained independent valuation advice as well, yeah.

Right, as you've recorded there?---Yep. That's right.

And this email says that in summary the controls endorsed by council at the meeting in April 2016 enabled at least an extra 70 units to be constructed across the whole precinct when compared to the controls recommended by council staff. Do you see that?---Yes, I do.

20 70 units means 70 apartments, is that right?---Yes, that's right. 70 residential apartments.

All right. And it goes on to say, "If the proposed controls are broken down into site A and site B," and of course site A was as at April 2016 mostly owned by One Capital Group, is that right, or they had options in respect of it?---That is my recollection, yes.

Yes. And indeed that's recorded at the first bullet point just under that paragraph. Do you see that?---Yes, yes.

30 And site B was not at that time owned by One Capital Group and they didn't have options in respect of it, is that your understanding?---Yes, correct.

All right. So it's said in the previous paragraph "If the proposed controls are broken down into site A and site B, site A would gain an extra 110 units." Do you see that?---Correct, yes.

"And site B would lose 40 units." Is that right?---Yes.

40 And then the rest of the email goes on to explain the basis for those calculations. I don't have any further questions of you in that regard because they were clear enough to me, at least. But if you go down into the

table, keep scrolling down, you'll see the highlighted yellow bit. If we could just scroll down a little bit more. The conclusion reached was that the potential uplift in value of the site, assuming 70 extra units were available as a result of the change – and I should just clarify, that's the change as between what the council staff recommended and what was actually adopted by council, is that right?---That's correct.

10 All right. So as a result of those changes in height and FSR, you concluded that an extra 70 apartments were able to be built by the proponent, is that right?---Yes, that's correct.

And then you estimated the total value of those extra 70 apartments to be 11.2 million, is that right?---Yes. That estimation was based on the independent advice received by the general manager.

All right. Some advice received on sort of the market value of apartments at that time, is that right?---Yes, that's correct.

20 All right. And that's set out in the table there so I won't ask you any further detail in that regard. All right. Could I then take you to the Landmark Square planning proposal? Of course you recall, I appreciate you weren't there when the assessment report was prepared but you were aware that staff had recommended a maximum building height on the site of 40 metres in one part and 18 metres in another, is that right?---Yes, that's correct.

And of course council ultimately decided for 60 metres on some parts and 25 metres on another, is that right?---That's correct.

30 And then could I go to paragraph 12 of your statement, which will come up on-screen.---Yes.

You say there "One major issue of concern for GMU", which were some independent consultants that council retained at the time on the Landmark Square planning proposal, is that right?---That's correct.

40 "One major issue of concern for GMU and the staff was the interface with the adjoining low-density residential sites along Roberts Lane." What do you mean by the interface?---The, the zoning sought by, under the Landmark planning proposal is a B4 mixed-use zone. That zoning is used in our strategic centres of Rockdale – sorry – of Kogarah and Hurstville. Adjoining the Landmark site to the east is mainly zoned what's known as an

R2 low density residential zone, and it, it's a single dwelling or a dual occupancy zone, which only allows a maximum of two storeys. So Roberts Lane was the boundary between what Landmark was seeking, a B4 mixed-use zoning, and the low density residential zoning. So the interface, Roberts Lane and anything fronting Roberts Lane on the Landmark site, is, is important to, from a planning viewpoint and urban design viewpoint to have a look at, because it's important that that interface serves or provides a buffer to the low density residential. So we had to make sure that any design, amenity, open space, anything along there, worked with the low density residential, because that zoning there – the low density residential – wasn't, wasn't going to be changed in the short term nor the medium term.

And is that partly why it was proposed there be the 18-metre height? Was that along Roberts Lane with a view to stepping down to the lower density development?---The, the view taken by myself and my team was that we stepped down to Roberts Lane, and it would have been the concern of the planning department back in 2016 as well that there needed to be some stepping down to Roberts Lane. So the heights can – the heights on the Landmark site along Roberts Lane can relate to the maximum height that would be allowed in the low density residential zone to the east.

All right. And so for those reasons you conclude at paragraph 12 that 18 metres would have been a better planning outcome in terms of the interface, is that right?---Yes. Yes.

Now, you're aware that staff had also recommended in the assessment report for that April 2016 meeting that there be a cap of 2.5:1 FSR for the entire site regardless of whether it was site A or site B, is that right?---Yes.

30 But council ultimately decided to adopt 3.5:1 for site A and 1.5:1 for site B. Is that your recollection?---Yes. Yes.

Which obviously meant that more apartments could be built on site A rather than site B, is that right?---Yes.

And on your understanding, was – well, can you think of a good planning reason why you differentiate between site A and site B in this context in terms of FSR?---In terms of FSR, only, only that site B was closer, was at the corner of Durham Road and Roberts Lane, so you would assume that you wanted lower FSR and height in that area. But it didn't extend all the way along Roberts Lane, site B, so it was only concentrated on one part of

the site, not where you would normally have it, which is all along site B, along Roberts lane, yeah. I might – yeah.

All right. Can I ask you about Development Control Plans. I'll take you to the staff assessment report, which is at volume 1.10. It'll come up on-screen. And that is Exhibit 133. Now, you obviously didn't prepare this report but you've read it before, is that right?---I have read it, yes.

10 And you're obviously familiar with the Landmark Square site, having worked in it for several years, is that right?---Very, yes.

If you go over to the next page, at the bottom the author of the report recommended that "council resolve to commence preparation of an amendment to the Hurstville Development Control Plan". Do you see that? ---Yes.

20 And it goes on to say, "To include the subject site within the boundary of the Hurstville City Centre and to include site-specific provisions for the site, including but not limited to vehicle access," go over the page, "points, building locations and form, landscaped areas, through-site connections, active street frontages, and building setbacks." Now, I assume you heard Ms Bishop's evidence yesterday about how a Development Control Plan interacts with a Local Environmental Plan. Is that right?---Yes, I did.

And Ms Bishop said that the DCP essentially provides meat on the bones for the LEPs?---Yes.

Do you agree with that?---I do. It's a good description, yeah.

30 And on this occasion, council did not vote in favour of an amendment to the DCP as staff had proposed. Is that right?---Yes, that's correct.

And so is the upshot of that – sorry. I should also ask when you have a DCP in place, does that then get considered along with the LEP when you're assessing the development application that ultimately comes in to build the apartments or the hotel or whatever ends up on the site? Is that right?---Yes, it is correct. The applicant has to address the LEP controls, of course, but if the DCP applies, the applicant has to address every single DCP control that applies to the site.

40

Right. So the consequence of this council decision at the time was that if a DA was lodged to build the apartments on the site, the proponent would have to justify as against an LEP but not as against a DCP, obviously, enough. Is that right?---That's, that's correct.

And that essentially means the proponent has to jump through less hoops, is that right, to get their development application approved?---That's correct.

10 Okay. But following this resolution, council staff were still aiming to develop a Development Control Plan and endeavour to do so. Is that right?  
---The, for, for the 2016 or the - - -

Following the council's decision, council staff, in any event, still thought there was utility in preparing a Development Control Plan. Is that right?  
---Yeah. Yes, that's right.

And you thought there was utility in developing a Development Control Plan?---Yes, that's correct. Yeah.

20 And you were involved in that process as well. Is that right?---Yes, I was.

And one was ultimately prepared and exhibited. Is that right?---That's correct. It was exhibited and adopted.

30 The fact that council didn't vote for a Development Control Plan at this particular time, did that create difficulties in terms of you progressing the Development Control Plan thereafter?---No. I was, it, the sites in the Hurstville City Centre because they were such large sites, seeking large floor space ratios and heights, and to ensure that we addressed the public domain, pedestrian, urban design, all of them, we, all the planning proposals I've been involved in for the Hurstville City Centre have been accompanied by a development control amendment.

But, as I understand it, and correct me if I'm wrong, there was some discussion with the proponent at various times about whether a DCP was even necessary. Is that right?---Yes, that's correct. That - - -

40 Was that a point of contention between council staff and the proponent at one time?---At times it was. The proponent had lodged a master plan with the planning proposal, and they believed that the master plan contained enough of the description and the controls related to the site. But a master

plan, unless it's mentioned in an LEP, a master plan has no way, the Development Control Plan implements the master plan. So you need the Development Control Plan to accompany an LEP amendment.

THE COMMISSIONER: Otherwise it's unenforceable?---Sorry, Commissioner?

Otherwise it's unenforceable?---Otherwise it's unenforceable.

10 MS HEGER: But, presumably, it would have avoided the need to have that discussion with the proponent if you had a council resolution voting in favour of a Development Control Plan? Is that right?---That's correct, yeah.

But as I understand it, after those discussions took place ultimately the proponent did propose a Development Control Plan. Is that right? Is that where you landed?---Yes.

Okay. But that was sometime later in, is that 2018?---2019, yeah.

20 Okay. Can I take you back to the assessment report, volume 1.10, Exhibit 133? On the previous page, page 2, it was also recommended in that third-last paragraph that prior to any post-Gateway public exhibition, the applicant prepare a contamination assessment report for the subject site in accordance with the requirement of the State Environmental Planning Policy number 55, Remediation of Land. So at this time, did that State Environmental Planning Policy essentially require council to consider whether land was contaminated before it decided whether or not to rezone it, is that right?--- State Environmental Planning Policy, SEPP 55, requires that council has to be satisfied prior to rezoning that the site can be made  
30 suitable for the future use and, and that's a legal requirement.

And one aspect of that, as you understand it, is ensuring it's not contaminated in such a way as to prevent the development?---Yeah. It's to ensure that even, it, it's not contaminated in such a way to prevent development, yes, that's correct.

Or to adversely impact on the development in some way, or its future use, is that right?---Yeah. Or it's able to be remediated in order to support the future development.

40

THE COMMISSIONER: I think there had been, I think I'm right, that there was a tyre supply and repair shop somewhere on the site?---There is a service centre somewhere on the site, yes.

Yeah, yeah.---Yeah.

MS HEGER: And on your understanding, was that part of motivation for preparing a contamination assessment or is that just a standard recommendation?---The site at this time was still zoned industrial. So  
10 industrial going into residential, you, you, you have, the council has to be satisfied that the future residential use can be supported on the site. So the site can be remediated to an extent that residential can be on the site.

All right. So that recommendation was for the contamination assessment to be prepared for the whole site but the council ultimately decided to, that the applicant should prepare a contamination assessment for site A but not site B. Do you recall that?---Yes, I do.

And as we canvassed earlier, at this time One Capital Group had options for  
20 site A but not for site B, is that right?---That's correct.

Is that fact alone a reasonable planning justification for requiring a contamination assessment on site A but not site B?---No. Because SEPP 55 is, was, is very clear, or was very clear that you have to be, going from industrial to residential, you have to be, council has to be satisfied that the whole site can be made suitable for the future use and you need to, in order to make that determination, you've got to, you need to be supplied with the preliminary site investigation report, and if you need more information from the applicant they've got to supply a site, a full site investigation report.  
30

And so that can be required even in respect of land that they don't own or don't have options in respect of at the time, is that right?---That's correct. Because it, SEPP 55 applies to the land that is subject to the rezoning. It doesn't matter who owns what.

THE COMMISSIONER: Do you know why the decision was taken to exclude site B?---I, you, in, in my experience with industrial going to residential, in my previous council work, you need to do site testing.

40 Yeah.---And that may have been an issue for the proponent at that stage. You have to actually get on the site and do some, dig holes, yeah.

And if the site was owned by somebody else there might be some difficulties in regards to that?---Yeah. There may be some difficulties.

But nevertheless, and this might sound a bit harsh, but it's the applicant's problem, not council's?---That's correct. It is the – because the applicant was proposing to rezone the whole precinct, it's, it, the, the duty of care is on the applicant or proponent to submit it to council.

10 Thank you.

MS HEGER: You say at paragraph 29 of your statement, going back to your statement for a moment, it'll come up on-screen, "The proponent lodged an amending planning proposal in June 2017." Is that right?  
---That's correct.

Which then removed the site A and site B split. Correct?---That's correct.

20 And then proposed a lower maximum building height than council had voted in favour of being 12 metres. Is that right?---That's correct, yep.

And it also, as you say in paragraph 30, requested an FSR of 2.5:1 along Roberts Lane and up to 3.5:1 for the remainder of the site. Correct?  
---Correct.

You then prepared an assessment report in respect of that amended planning proposal. Correct?---I did, yes.

30 And as you say in paragraph 31 you supported the amended planning proposal. Correct?---I did.

And then on the next page you outline the reasons why you supported it and they included, as you say at paragraph 31, that the Design Review Panel was generally in support of those proposed heights and FSR and overall design. Correct?---Correct.

And the layout of the buildings was largely in line with the independent advice provided by GMU back in 2016. Correct?---Correct.

And the proponent had also agreed by this time to lodge a Development Control Plan and offered to enter into a planning agreement. Correct?  
---Correct.

You also note there that council staff were seeking a widening of Roberts Lane to make sure that egress and ingress of vehicles could work in that part of the site. Is that right?---Yes, that's correct.

10 And did that become an issue of contention with the applicant or were they onboard with that at this time?---The, the proponent was onboard with the widening of Roberts Lane. It was part of the planning agreement from my recollection. So the applicant itself was onboard with Roberts Lane. I, I don't remember, apart from discussions later on about the planning proposal and the requirements for Roberts Lane to be listed in the planning proposal, sorry, in the voluntary planning agreement. The applicant saw the benefit of Roberts Lane road widening to allow that egress. It's where delivery vehicles would access the site from Roberts Lane so it had to be widened.

20 Okay.---Yeah.

And then of course in August 2017, the administrator of Georges – at that time Georges River Council was in administration, is that right?---That's right.

Yeah. And so the administrator accepted the planning proposal and resolved to send it off to the department for Gateway. Is that right?---That's correct.

30 Okay. I'm now going to ask you about some of the meetings you had with councillors on the Landmark Square planning proposal.---Ah hmm.

Now, just talking generally at first, there were a number of different forums in which you observed the councillors on the Landmark Square planning proposal, and one was of course in formal council meetings, is that right?  
---That's right.

You attended those from time to time?---Yes, I did.

40 Did you sometimes present on the Landmark Square planning proposal or was that someone else's job?---It was, it may have been a combination of both.

You mean both you and - - -?---And, and my staff, yeah.

All right.---But I did attend the meetings, yes, yeah.

And presumably you attended other council meetings where other planning proposals you worked on were being considered, is that right?---Whenever a planning proposal was before the council, I attended those briefings and meetings.

10

All right. So over the course of, when you started in February 2017 to about mid-2018, you would have attended how many council meetings, approximately?---I attended all the council meetings because it was under administration and there was a lot of work going up. So, yes, yeah. And then after the councillors were voted in - - -

Which was September 2017?---Yeah, I attended all the Environment and Planning Committee meetings. And whenever there was a briefing for a planning proposal or any other strategic piece of work, I attended those as well.

20

All right. So those are two other forums in which you might interact with councillors. One is the Environment and Planning Committee, you mentioned?---Yes, that's correct.

So was that a subcommittee of councillors?---It is a subcommittee of councillors. The minutes of the Environment and Planning Committee then go on to a full council meeting for adoption.

30 Yes. And both Councillor Hindi and Councillor Badalati were on the Environment and Planning Committee. The minutes will show exactly when they were on, but you have a recollection of them being on the committee in this period late 2017-2018?---Yes.

And you also mentioned councillor briefings. So that's a briefing to which all councillors would be invited prior to a formal council meeting, is that right?---That's right. Briefings are normally held on a Monday night now. Before, earlier on when the councillors first came back after the amalgamation and administrator was at, at times we held the planning proposal briefings after the Environment and Planning Committee meeting.

40

Okay. And I think you said over this time, sort of 2017-2018, you attended most councillor briefings?---Yes.

So not just on Landmark Square but on the other planning proposals you were working on?---Yes, that's right.

About how many other planning proposals were on foot around this time?

---On foot around this time, I'll have to list them to remember. We had the Civic Centre site, where the council's admin building is. We had the  
10 council car park in Treacy Street. 9 Gloucester Road. Bing Lee.  
Landmark. We had another one across from the Civic Centre in Macmahon Street. They were the ones in the city centre, Hurstville City Centre. As well, we had planning proposals external to the Hurstville City Centre such as 53 Gloucester Road, which is a nursing home site, Taylors Reserve, where we had to – yeah, yeah, so I, there was a number of them, yeah.

All right. And so outside of formal council meetings, the Environment and Planning Committee meetings and the councillor briefings, you also, from time to time, met with individual councillors on a more ad hoc basis?---We,  
20 in the earlier part of, after amalgamation, after the administrator, we had, prior to the committee meetings and the council meetings, we were, we, we were supplied food in the councillor suite as managers and directors, so we sat down and ate with them. So there may have been discussions during that time. There, if a councillor wanted to meet, it usually came through the director, and then those meetings, then the director, if it was a planning proposal, I attended. If it was something, anything to do with strategic planning, I attended. If it was in another section, that manager attended. I, my interaction with councillors also extended to phone calls.

30 Okay, and you've given some examples of those more ad hoc meetings and phone calls in your statement, correct?---That's correct.

I will take you first to the meeting on 31 August, 2018. So this is paragraph 42 of your statement. You say in paragraph 42, during 2018 and 2020, you had several interactions with Councillors Hindi and Badalati over Landmark Square. And you said, "I made contemporaneous file notes of some of these interactions as I felt that these councillors were trying to influence the process beyond their role." What did you mean by that, that they were trying to influence the process beyond their role?---They were – sorry.

40 They were questioning the process of the Landmark planning proposal that my team and I had put in place, the same process that we had for all the

planning proposal at that stage. They were questioning if a, because there was a master plan lodged with the planning proposal, why we needed a Development Control Plan. They were concerned about, they believed that my staff and I were inconsistent with the way we dealt with the planning proposal, compared to other planning proposals that were lodged at the same time.

And some of those planning proposals included the Bing Lee site and the 9 Gloucester Road site, is that right?---That's correct.

10

You recall some questions being asked by the councillors about that?---Yes, that's correct. They were concerned that they would lose the hotel in the, proposal for the hotel in the Landmark planning proposal because of what they saw as delays by myself and my team. They were concerned that council would lose, because of those delays that, that council would lose the, the voluntary planning agreement monetary amount of just over \$7 million. So, yes, yeah.

20

All right. So there's nothing inappropriate per se with councillors asking some questions about a planning proposal that's on foot. What is it about the nature or method of their questioning that led you to say they were trying to influence the process beyond their role?---They kept questioning, they were very, they were persistent in their questioning regarding this planning proposal and none of the other planning proposals, only when they drew a consistency argument. Every step of the process, the Development Control Plan, the process to prepare the voluntary planning agreement, who was handling the voluntary planning agreement in my team, why, when, when was it going to be put on exhibition, public exhibition. It, it was just consistent and persistent questioning as compared to other sites within the city centre.

30

THE COMMISSIONER: I think you just said a moment ago they relied on other sites, and I assume for example, Bing Lee or (not transcribable) they picked out components that they thought were advantageous in those and sought to have them applied to these sites, is that right?---That's right.

40

But otherwise didn't do so? I mean, if there were things that might have been negative to them in those other planning proposals, they didn't rely on those obviously?---No. They only compared it against 9 Gloucester and Bing Lee.

Yeah. Was it the case then that, as you perceived it, they were trying to get the planning department to treat this particular application differently, or sorry, apply a different process?---I think they wanted to hurry up the process and not go through the process that had been implemented. So to hurry it up, yeah, yeah.

Hurry it up. Okay.---And, and by hurrying it up, they were asking questions about whether or not a Development Control Plan was required and one is, has been required for each of the city centre sites.

10

Well, I suppose that gets back to my question, that's really seeking to have different procedures or outcomes apply to this particular site.---Different procedures, I would agree with.

Yeah, yeah.---Yeah.

I think you said a moment ago that each of the planning proposals which were then being considered by the planning department were essentially treated the same way, that is, the same process was applied to them?---Same process. They all went through a Development Control Plan or we, we had the planning proposal lodged with the proponent's design. That was reviewed by our in-house urban designer, as well as our Design Review Panel at that stage, referred out internally within the staff, so traffic, landscaping, all the sections of council commented on it. Development Control Plan was proposed and worked on and also letters of office were received and so the voluntary planning process was followed. So each, each of the sites all follow the same process. Each of the sites are in different parts of the precinct and have different interfaces, so the outcomes couldn't be, you couldn't have the same heights and FSRs over each of the, over across all the sites. But we follow the same process for each of the sites, yeah.

30

Thank you.

MS HEGER: All right. And having given that general description of your interactions with Councillors Hindi and Badalati in paragraph 42, you then go on to give some specific examples of those interactions. Is that right? ---Yes.

And the first one is a meeting that occurred on 31 August, 2018, which you attended with Ms Bishop and Councillors Hindi and Badalati. Is that right?  
---Yes, that's correct.

Now, do you know who requested that meeting?---I think it was, it was booked in by Meryl Bishop and I believed, I believed it was called for by Councillor Hindi. I, I can't be sure but it was booked in by Meryl Bishop, yeah.

10 All right. But you didn't have any direct dealing with Councillor Hindi in terms of arranging the meeting? You're relying on what Ms Bishop told you about her interaction with him?---Yes.

Is that right?---I didn't arrange this meeting, no. No.

In the next paragraph – sorry. You say there you created a contemporaneous file note of the meeting, you forgot that you'd done that, so in May 2019, you created another file note - - -?---Yes.

20 - - - when requested by the Director of Legal Services and General Counsel to document your interactions with councillors over Landmark Square. Is that right?---That's correct.

On your understanding, why were you asked to document your interactions with the councillors?---I believe that we received a GIPA request 'cause the request for all file notes on interactions came from the council's governance section, so I believed it was a GIPA request.

30 Go to the next page, please. At paragraph 44, referring to this meeting, you say it was an uncomfortable encounter due to the level of interest expressed in the way that council officers were assessing the Landmark Square planning proposal. Can you just elaborate on why it was uncomfortable, from your perspective?---I, I felt that Meryl Bishop and I were under, were under scrutiny by the two councillors about how the planning proposal was being dealt with by myself and my team.

And did you consider that to be an unusual or unreasonable level of scrutiny?---In, at, in this meeting, I believed it was unreasonable.

40 Why was it unreasonable from your perspective?---From my perspective, we were following process. We were not, we were working with the

proponent to, with the planning proposal, the design. We were working with the proponent on the Development Control Plan and the voluntary planning agreement. We had, the proponent was at times difficult in responding to the requests for information for the Development Control Plan. And also voluntary planning agreements, for such a large site and for such a significant amount of money, do take time, and we, and as council officers, we employ, we, we get, we obtain legal advice on each stage, the drafting of the VPA is done by the council's lawyers, any changes have to go through an internal referral system and then be reviewed by the lawyers.

10 So it does take time to, to get a planning proposal to a point where you can actually recommend it to council for support, and council knows that because they've dealt with other planning proposals that have been lodged for a number of years and they do, and they know, when, when it goes up, they see the timeline and what's happened. So I think the councillors were being unreasonable wanting it moving quicker than, that it was, because it was being moved as fast, you know, as we could, along with all the other work that was being done.

20 And you say you found their questions to be short in tone and tight. Does that apply to both Mr Hindi and Mr Badalati or just one of them?---I think, no, it was it was both. They were both concerned that we were going to lose the VPA, the hotel, why we needed a DCP, and it was just the consistent questioning.

All right. And you mentioned in paragraph 45 that they asked questions about the loss of the hotel development and the planning agreement monetary contribution, is that right?---That's right.

30 And then they also questioned why a DCP was required and when the DCP would be exhibited, correct?---Yes, that's correct. Yeah.

And I think you gave evidence earlier that you understand that to be a concern about the delay with the planning proposal generally because it obviously was taking some time to finalise the DCP, is that right?---And the VPA, yes.

All right. I note the time, Commissioner. I have a few more questions for Ms McMahon but that'll take another 10/15 minutes or so.

THE COMMISSIONER: Well, why don't we take just 15 minutes now and then come back. You might want to go and get a cup of coffee or something.---Thank you.

MS HEGER: And I do understand there's an application to cross-examine Ms McMahon as well.

THE COMMISSIONER: From who?

10 MS HEGER: From Mr Hindi's representative.

THE COMMISSIONER: Okay.

### **SHORT ADJOURNMENT**

**[11.28am]**

THE COMMISSIONER: Take a seat.

20 MS HEGER: Ms McMahon, at paragraph 50 of your statement, I'll just show that on-screen, you say just prior to a council meeting, you were called in to a discussion between Ms Bishop and Councillors Hindi and Badalati in the councillors suite. Do you see that?---Yes, I do.

And you say Mr Badalati requested that the planning agreement be handled by Ms Connolly and Ms Bishop. Ms Connolly was the general manager at the time. Is that right?---That's correct.

30 And that Nerida Stores, the officer dealing with the planning agreement, be removed from the matter. Did Councillor Badalati explain why he was making that request?---He, he probably did but I, I can't recall, I'm sorry. Yeah.

That's fine. And you were Ms Stores' supervisor at the time. Is that right? ---That's correct.

Did you have any concerns about how she was handling the VPA?---None at all.

And I take it that's why you refused the request. Is that right?---That's correct. She was the best officer. She dealt with all our voluntary planning agreements.

Right. Could I ask you then about paragraph 53 of the statement. There you say, "On 15 January, 2020, I was asked to respond to a request for information from Councillor Hindi which I received via Ryan Cole, the Manager of Development Assessment." Could I then take you to an annexure to your statement, page 167 of your statement. So these are text messages between Mr Hindi and Ryan Cole.---Mmm.

It says from Mr Hindi, "Ryan, Cathy advised two weeks before Christmas that council boys will be registering a caveat on title for Landmark PP to ensure that VPA is captured on title." Is the reference to "Cathy" do you understand that to be a reference to you?---It, it is a reference to me.

Right. "Once that is done, the PP will be gazetted and signed by GM. What is the status of the caveat, please? Has it been registered?" Now, at this time, the VPA had been signed by both parties but not registered on title. Is that right?---Yes, the VPA was signed in August 2019.

But it hadn't been registered on title at this point?---No, hadn't been registered on title.

And to be registered on title, is it your understanding one needs the consent of each person with an interest in the relevant land, is that right?---That's correct.

And is it your recollection that at the time the proponent was having some difficulties obtaining the consent of the other parties with an interest in the land?---That's correct, it was.

And around this time one alternative arranged by that proponent was that council could just lodge a caveat on the site instead, is that right?---That's correct.

Now of course, at this time Mr Hindi knew that you were the manager responsible for the Landmark Square planning proposal, is that right? ---That's correct.

Was Ryan Cole doing any work on the VPA for the Landmark Square planning proposal around this time?---No. He was probably acting director at that stage and that's why he was probably contacted by Councillor Hindi.

All right. He was Acting Director of Environment and Planning at that time?---Yeah. Meryl would have been on leave, my recollection, yeah.

10 I understand. And Mr Cole replies, "Hi Con, I will look into it and get back to you." Then on the next page, page 168 of your statement – just flick over to the next page, please. Sorry, I must have mentioned the wrong page. Is there another email, 16 January, 2020? Yes. This is an email from you to then Councillor Hindi, 16 January, 2020 at 9.48am. You say "Councillor Hindi, I refer to your request via Ryan yesterday." And you'll see from the email below, Mr Cole has asked you to respond, is that right?---That's correct.

And then you provided some advice to Councillor Hindi.---That's correct.

20 Which expressed the view that the VPA had to be registered.---That's correct.

And why did you hold that view?---It was a requirement of the voluntary planning agreement that the VPA had to be registered on title. It was also the position of council officers and the general manager.

30 All right. And then at page 169 of your statement, if you can just flick through to that, please, it seems that Ms Bishop also responded to Mr Hindi, as you can see at the bottom, there's an email from Ms Bishop addressed to a Con dated 7 February, 2020 at 1.45pm. Do you see that?---Yes, that's correct.

And Ms Bishop also expresses the view that the VPA should be registered on title, is that right?---That's correct.

And Councillor Hindi responds, "Meryl, thank you. I agree, they must comply with our VPA procedures. We must ensure that council is fully protected." Do you see that?---Yes, I do.

40 So did you understand at this time that Councillor Hindi was satisfied with the response that you and Ms Bishop had provided?---Yes.

Then if you just scroll through to page 171 of your statement you can see there's an email at the bottom of the page from Adrian Liaw, dated 17 March, 2020, which is addressed to Mayor Greene and Deputy Mayor Hindi. You see that?---Yes, I can.

And in that email, Mr Liaw sets out the difficulties in obtaining the relevant tenants' consent to the registration of the VPA. That's just at the bottom. You'll see in that last paragraph. You see that?---Yes. Yes, I can.

10

Following Mr Liaw's email on 17 March, Mr Hindi then wrote to Ms Bishop and yourself on 23 March, 2020, at 11.46am. You see that?---Yes, I can.

And says, "Meryl, is there any reason why a caveat cannot be registered on title in accordance with clause 32 of the agreement?" See that?---Yes, I can.

20 And then there's another email from then Councillor Hindi to yourself a week later. It says, "Cathy, could you please discuss with Meryl to ascertain whether a caveat would suffice to progress this issue. I've seen many council use caveat instead of registration of VPAs, such as Parramatta, Cumberland. I'd like to get back to the applicant, please." See that?---Yes, I do.

30 Can you recall whether you or Ms Bishop responded to Mr Hindi's email of 23 March, 2020?---I responded, advising Councillor Hindi that he would need to take it up with the general manager. I got advice from the general manager at that time that any further questions regarding the caveat to send to her and she would respond. So I did advise Councillor Hindi in an email back that I had forwarded his email to the general manager.

And so even after you'd given him that indication, Mr Hindi wrote to you again on 30 March and asked you to again please discuss whether a caveat would suffice, is that right?---That's correct.

40 And you say in your statement at paragraph 54, if we go back to that, in the last sentence you say, "I believe Councillor Hindi was trying to influence council officers to proceed with registering caveats on the land to ensure the planning proposal was sent to the Department of Planning, Industry and Environment for gazettal as soon as possible." Can you just elaborate on your basis for that belief that Councillor Hindi was trying to influence

council officers in that way?---Even though Councillor Hindi was advised by the general manager that we weren't going to, that council's position wasn't to register a caveat on the property, he was still pursuing that line of requests to myself.

And are you saying before that 30 March email the general manager had spoken to Councillor Hindi about this?---I'm sure, it may have been about the – I don't recall the, the date or the time.

10 All right.---I'm sorry. But he, he has been, he had been advised that we weren't going to go ahead with a caveat. I'm sure, but I don't, I can't recall, yeah.

All right. So it may be that there wasn't a discussion, well, you don't know whether there was a discussion between the general manager and Councillor Hindi about this before 30 March?---No. No.

But certainly you had advised him of the position, as we've seen in the emails.---Yes.

20

And Ms Bishop had advised him of the position.---Yes.

As we've seen in the emails.---Ah hmm.

Did you have any oral discussions with Mr Hindi on this topic around this time?---I'm sure he did phone but I can't remember the date nor the time, but he did, he did phone about asking about a caveat because my recollection, whenever a councillor phoned me, and I still do it now, is that I go and check with Meryl, my, my director, about the response that we should give. So, and I remember doing that, so yes.

30

All right. But you didn't make a note of that telephone discussion?---No.

But your recollection is that it concerned this same issue around the caveat? ---The caveat, yes.

In your experience, was it usual for councillors to engage with this sort of detail on a planning proposal, that is the mechanism by which council would obtain security in respect of the land, in respect of the VPA?---No, it's not, it, this is the first time I'd come across it. Especially also since we had a number of planning agreements going through at the same time. This is the

40

one, this Landmark was the one where I received the, most of the approaches from Councillor Hindi, as compared to any other councillor or any, any other planning proposal at that stage.

Okay. At paragraph 55 you refer to another email from Councillor Hindi on 3 June, 2020. We'll just go to that. It's at page 175 of the statement.---Ah  
hmm.

10 And you'll see at the bottom, the email chain starts with an email from Mr  
Cam Ly on 21 May, 2020 at 6.48pm. Do you see that?---Cam Ly, oh, yes,  
yes. From the, on - - -

So it's addressed to the Minister for Planning.---Yeah. Yes, yep.

20 If we just flick over to the next page. Oh, I think we might have gone too  
far. I just wanted to see the bottom of that email from Cam Ly, if we have  
it. Sorry, I was unclear. Oh, I'm sorry. It ends on that page. In any event,  
you can see that Mr Cam Ly had written to the Minister for Planning, if we  
go back to the page I was on, page 175. And then there's an email from  
Councillor Hindi to yourself on 3 June, 2020. "Catherine, I have received a  
phone call last Friday from one of the owners asking me to respond to his  
lawyer's email," which presumably is a reference to the lawyer below.  
"Could you please advise if there's been any progress?" And you respond  
the same day.---Yes.

"Councillor Hindi, I advise the proponent has confirmed this afternoon they  
have lodged the required information together with the requisite CTs and  
consents." What was CT referring to?---Certificate of title.

30 Okay. And so is this addressing the same issue around the relevant tenants  
consents to registration of a VPA?---No. The consents was one issue with --  
council was waiting on the consents from, from all interests but the  
proponent had advised Nerida Stores and I that they were also waiting on a  
new certificate of title and that would, was holding lodgement of the  
planning, of the planning agreement on the title as well. So there were two  
issues. One was the consents and the other issue was the proponent's issue  
and that was the certificate of title.

40 But when you say "the consents" that relates to the consent for registration  
of the VPA. Is that right?---Yes, that's right.

All right. So you understood this to be another inquiry from Councillor Hindi on that topic?---Yeah, on that topic, yes, it is.

All right. And then at page 177 of your statement, and we can just scroll straight through to it, Councillor Hindi writes to you on 17 June, 2020, at 1.07pm, “Catherine, when do you anticipate that the PP will be gazetted, that is, signed by GM subject to gazettal date? When does council expect to receive the VPA money? Is it instalment or a lump sum as council needs the money and can be used for capital projects as outlined by the minister.”  
10 Do you see that?---Yes, I do.

And was it usual in your experience for councillors to make inquiries of you about this sort of detail, i.e. when exactly it will be gazetted or when exactly the money is going to be received and will it be in instalments or lump sum?---It’s not unusual in, when a planning agreement goes to council for adoption after it’s been negotiated, the councillors do ask similar questions, like the amount, how we came to that amount and the staging. So it wasn’t unusual but it’s normally at a council meeting. So in itself, this was unusual in that it just focused on the Landmark Square proposal, sorry.  
20

But I take it from your evidence unusual in that it was a direct email to you rather than being a question raised in a more formal meeting or briefing?  
---Yes.

Is that your evidence?---That’s correct.

Okay. And at paragraph 56 of your statement, we don’t need to go to it, but you’ve said there, you perceived this representation as an attempt to pressure you to finalise the planning proposal. Is that still your view?---He,  
30 Councillor Hindi’s, he was, he was persistent in making sure that we, he seemed to know when the proponent had lodged something in and so he, he knew that the consents had been lodged, so therefore he emailed and said when it would be signed or the VPA would be registered on title. He knew that we were getting close to a gazettal - - -

Well, just pausing there. You say he knew the consents had been lodged. Would he not have been notified in his capacity as councillor at some sort of formal briefing or the like about that topic?---No, not, not when the consents are lodged by the proponent, no. We, we don’t, once council accepts the  
40 planning proposal, accepts the voluntary planning agreement, the report to council on the voluntary planning agreement delegates to the general

manager to do any further steps in the process. So they don't, councillors don't, they don't see the, the final voluntary planning agreement. We, we may do a councillor briefing note on it to say it's been, like, the planning proposal's been gazetted, it was gazetted on such and such a date, it's accompanied by a voluntary planning agreement and, and that's now active. But we don't, we, we don't advise councillors when consents are lodged, no, no.

Or indeed when the planning proposal is nearing gazettal?--No.

10

You don't keep them sort of updated on a regular basis as to when you expect gazettal's going to take place, i.e. within the next month, weeks or the like?--Only if they ask, we, we do. And, but, no, only if asked. We, we only advise the councillors when it's gazetted, and we do that via a councillor information bulletin under the Georges River Council process, yep.

All right. I have no further questions for Ms McMahon.

20 THE COMMISSIONER: Thank you. Mr Hindi's representative has asked to ask you some questions, which I'm going to allow him to do.---Ah hmm.

But he'll be doing it via audio-visual link.---Okay.

MR KUTASI: Thank you, Commissioner. Ms McMahon, I just want to ask you firstly about the DCP process. You agree that councils have an option to have a DCP, it's not compulsory, correct?---It's not compulsory, correct, yes.

30 And at no stage did any councillor suggest there was not going to be a DCP for Landmark Square, correct?---I was questioned why we were doing a DCP in one of the, in the first meeting. I think it was August two thousand and – 31 August, 2018, I think. So I was questioned by Councillor Hindi and Councillor Badalati as to why, given that there was a master plan that had been lodged with the planning proposal. We, we don't - - -

The question I asked was did any councillor suggest that there wasn't going to be a DCP?---No councillor – we didn't give councillors the choice. It is process and we put up the recommendation when we're supporting a  
40 planning proposal that we do an amendment to the Development Control

Plan. We don't give the councillors a choice for the large sites. It's just part of the process.

You say you don't give them a choice, but there's other, there were other projects in Georges River Council, weren't there, without DCPs that had LEPs, correct?---Not, not within the Hurstville City Centre, to my recollection. Gloucester Road has an amendment to a DCP. Bing Lee. We're proposing a DCP amendment to the, for the Civic Centre as well when that planning proposal goes on exhibition. If it's outside the city  
10 centre, sometimes we haven't. But even then the small nursing home in Gloucester Road we prepared a DCP amendment. It's, it gives, it, planning proposals come in with concept plans. So the DCP – and if we're supporting the planning proposal and ultimately that concept plan, the only way that we can ensure that that concept plan is eventually built is via a DCP.

But you agree that there's other, there were other planning proposals in the Georges River area that didn't involve DCPs?

20 THE COMMISSIONER: I think the witness made clear that it concerned the CBD or the central planning - - -

MS HEGER: Ms McMahon, did you say you were having difficulties hearing?---Yeah, I'm having, I'm wearing a hearing aid, and it is on but I'm having difficulty hearing his questions, I'm sorry. Yeah.

Not a problem. You feel free to indicate if you don't hear or don't understand a question.---Yeah, I, yeah, yeah.

30 All right, thank you.

MR KUTASI: Ms McMahon, do you recall the East Quarter project? ---I wasn't involved in the East Quarter project, and that was, that was, no, I haven't been involved in the East Quarter project since I've started at Georges River in 2017. It was not one of, of the legacy - - -

Yes. Yes, yes, but I'm going to suggest to you that that was also a project that didn't have a DCP.---I, I can't answer that. I don't have – it wasn't, it wasn't a planning proposal that I had to deal with when I first started at  
40 Georges River.

So in other words it was your preference that the DCP is done at the same time as the LEP, correct?---It's, it's not my personal preference but in a planning, as a planner of 37 years, it should be done with a major LEP. You, you need your DCP. It's, an LEP only gives you height and FSRs, it doesn't give you the setbacks or the pedestrian links or where your active street fronts will be, or your shop awnings. So in my experience you need a DCP.

10 Are you familiar with the Kogarah North precinct?---I am familiar with the Kogarah North precinct DCP, I wrote it. I, I wrote it in conjunction with consultants, yes.

When was the DCP for that project written?---It was written after the city plan Kogarah LEP was gazetted. That was, well, the Kogarah city plan LEP was actually with the Department of Planning when I arrived, so I had no, I, I had very limited input into that. It was already with the Department of Planning. The first thing, though, it was recognised by myself and my team that we had to prepare a Development Control Plan but the first thing you did down there was a master plan work and then that fed into the  
20 Development Control Plan that I worked on.

You agree that was another project in which the LEP preceded the DCP?  
---Yes. And we received a lot of backlash from the community for that.

And you said today that Councillor Hindi was very persistent in his questioning of you about Landmark Square. Do you recall giving that evidence?---Yes.

30 And by "persistent" what you mean is that he asked you a lot of questions, right?---Yes. He didn't let up.

Okay. And your complaint is about the detail of the questions, isn't it?  
---No. He kept asking the same questions, why we needed a DCP, we were going to lose the voluntary planning agreement money, we were holding up the process we weren't being consistent. They were the same questions that I heard over and over from Councillor Hindi.

40 You've also given evidence that you took files notes or contemporaneous file notes, I think you said, about your interactions where they concerned you. Is that your evidence?

THE COMMISSIONER: I don't think it was.

THE WITNESS: No. I don't think it was my evidence.

THE COMMISSIONER: No, I don't think it was the evidence.

MR KUTASI: So you took some files notes. What was the purpose of taking those file notes, Ms McMahon?---I, the purpose, the files notes I take are a summary of the record of conversations that I had with councillors and also with proponents. That's the purpose of files notes.

Okay. And I know you described them as contemporaneous, but the file note about 31 August, that wasn't actually written until 2019, was it?---No. it was actually, I did write a file note on 31 August but, sorry, 31 August, I think, but I forgot that I actually wrote it and it was, and I think it was found as part of the evidence that, that ICAC found. So, I did write that note at that time.

Okay. And that's the one that's found at page 151 of your statement, is that right?---I'd have to view the statement.

THE COMMISSIONER: Yeah. Can we put that up on the screen, please?

THE WITNESS: No. That's not the one I wrote on 31 August, that was the file note that I had to do back in May 2019 at the request of our Governance Section. I had an original file note and it's earlier in my annexures, I believe.

MR KUTASI: Why did your Governance Team ask you to make another file note about that meeting?

THE COMMISSIONER: I object to that question. What possible relevance can that be?

MR KUTASI: I withdraw it. And in the file note, there's no mention of any pressure or persistent questioning made by Mr Hindi, is there?---In paragraph 3, I put "both councillors were questioning the assessment of the planning proposal" so I was, I was probably being diplomatic.

Why were you being diplomatic in a file note?---I wanted to just state what they were questioning and the responses given by Meryl Bishop and I.

Okay. And I should ask Counsel Assisting if the other file notes can be brought up on the screen for Ms McMahon's benefit.

MS HEGER: You mean the other file note of the 31 August meeting?

MR KUTASI: Yes, please.

MS HEGER: We'll try and locate that.

10

MS ALDERSON: Commissioner, if it assists, it may be page 146 of the - -  
-

THE COMMISSIONER: Thank you.

MS ALDERSON: Yeah. Thank you.

MR KUTASI: And just have a moment to refresh your memory about that, Ms McMahon.---Yes.

20

And there's no mention in this file note of persistent questioning or anything they asked.

THE COMMISSIONER: Why would there be? It's just a record of one meeting.

MR KUTASI: I suggest to you, Ms McMahon, that the reason you didn't make any note about it is because it didn't happen.

30 THE COMMISSIONER: What didn't happen?

MR KUTASI: There was no persistent questioning.---I disagree. There was.

On page 152 of your statement, there's a contemporaneous file note you say was made in relation to a meeting in May 2019, sorry, February, 2019, my apologies, Ms McMahon.---Yes. I have it in front of me.

40 And in that file note, sorry, paragraph 44 of your statement you again stated "persistent questioning" and that the councillor's questions were short in tone and tight.---Mmm.

And you make no mention of that in your file note, do you?

MS HEGER: Sorry, could I just clarify that? You've taken Ms McMahon to a file note of February 2019, but paragraph 44 is a reference to the 31 August, 2018 meeting.

MR KUTASI: Oh, is it? Just bear with me for a minute. Sorry, I didn't follow that from the way it's written. My apologies. I withdraw that.

10

MS HEGER: I'll stand to be corrected by Ms McMahon, but that's my understanding.

THE WITNESS: No, you're, you're correct, yeah.

MR KUTASI: And can I take you, well, can I ask Counsel Assisting to bring up volume 9.3, starting on page 266. It's the council, council interaction, council and staff interaction policy. And are you familiar with that policy, Ms McMahon?---Yes.

20

And would you have described any of the interactions you had with Councillor Hindi as attempting to direct council staff in their performance of their duties?---From my perspective and my interactions with Councillor Hindi, he tried to pressure you, but it didn't, it didn't result in any influence.

So you say he tried to direct you to do certain things?---No, he just tried to pressure with the consistent questioning of how we were dealing with the planning proposal and the planning agreement, comparing it, comparing it to other planning proposals within the city centre. So it was just the persistent pressure and make – sorry, the persistent questioning on whether or not we were following the same process for all the planning proposals, and it, it, he just kept questioning that. And – yeah.

30

So if you considered that to be improper, did you raise that concern with anyone?---In each of the meetings that I had with Councillor Con Hindi and also with Councillor Badalati, I did do file notes if, or if I had a phone call from Councillor Hindi, I went and spoke to my director. So I followed the process that's been put in place. He – it, it was just the consistent questioning, and I knew that I was right in the process of all those applications. So they were all being treated the same. So I knew Councillor Hindi was incorrect in saying that we were being inconsistent, but I did go

40

and advise my director after any telephone conversation. And any meeting I had, Meryl was in attendance with me.

She was in attendance with you at all your meetings with Con Hindi, was she?---My recollection is yes.

10 You say you didn't meet with Con Hindi or have any conversations with him at any time about the Beverly Hills Master Plan?---I had conversations with Councillor Hindi and also Councillor Badalati on the Beverly Hills Master Plan when they attended the councillor, when they attended workshops with the community that we held in Beverly Hills. I think they attended two of the workshops together. Also had Councillor Hindi also ask questions when I was in the councillor chambers, when we were having meals before committee meetings or council meetings. But, but the questions, we, the Beverly Hills Master Plan has taken a period of about four years. So I would have had a number of discussions but both councillors were involved in the community workshops as well.

20 And did you make files notes about the Beverly Hills Master Plan interactions with Councillor Hindi?

THE COMMISSIONER: How is that relevant?

30 MR KUTASI: Oh well, Commissioner, it's being put here that there was something untoward about the communications between Councillor Hindi and Ms McMahon in respect of Landmark Square and I'm putting to the witness that there were numerous other communications about a range of projects and the keeping of files notes or otherwise is relevant to the sincerity of that claim.

THE COMMISSIONER: Well, I just don't know where this is heading and how it will help you in any event. I mean, what the witness is doing is giving evidence based upon her observations of Mr Hindi's behaviour and his involvement in the process and they are objective facts. It overlooks the emails, it overlooks the evidence that the witness has given in relation to what Mr Hindi was doing, and indeed it overlooks such matters as the suggestion by Mr Badalati in Mr Hindi's presence to get rid of Ms Stores.

40 MR KUTASI: Commissioner, her feelings about pressure applied to her is not an objective fact, with respect.

THE COMMISSIONER: No, no. Just a moment. She recounts what she observed and the conclusion she would draw from that. What she observed is an objective fact.

MR KUTASI: Oh well, I respectfully disagree, Commissioner. Nonetheless, I understand your point. Ms McMahon, you gave some evidence, you may recall earlier, pertaining to paragraph 54 of your statement about Councillor Hindi having some interactions with you about a caveat being filed on the Land Registry Services in respect of the Landmark Square project. You recall that?---Yes.

Was it not the case that you originally proposed that a caveat be filed?  
---A caveat under the planning agreement was permitted and our council solicitors indicated that if, in the event the planning proposal was gazetted without the voluntary planning agreement being registered on title, then they wanted to have the caveat ready. So it, it was an option. However, the direction from the general manager was that a caveat was not, was not appropriate and that we, that the conditions of the planning agreement requiring the consent for all, from all land, from interests from all landowners had to be complied with.

When was that direction from the general manager?---About the same time as this was, I mean, probably about the same time, February/March, but I can't recall the date.

Right. And can I ask Counsel Assisting to bring up page 166 of your statement? You were taken to this email earlier by Counsel Assisting.  
---Yes.

Just take some time to familiarise yourself with it.---No - - -

If you go to about half – sorry?---I'm familiar with it, yeah.

If you go to about halfway down the page at your fourth dot point.---Yep.

Note you say, "I have asked for a caveat to be prepared."---Yes, I did ask for a caveat to be prepared, in line with our council solicitor's instructions to have one ready in case the planning proposal was gazetted. However, the position of the officers was that the, the condition in the planning agreement be complied with, and that was that all interests in the land, be that the

consent from all landowners or anyone that had an interest in the land, be lodged with council.

And when do you say that was communicated to Councillor Hindi that the caveat wasn't going to be lodged?---I think that's in my statement, when – I think Meryl Bishop emailed Councillor Hindi to indicate that we weren't going to go ahead with the caveat on the property. We were waiting on the consent from interests in the property.

10 That came later, though, didn't it?---I haven't got the attachment in front of me, so I assumed it came later, yep.

7 February. It's on page 169 of your statement. See, what I'm putting to you and suggesting to you, Ms McMahan, is that there was nothing unusual about Councillor Hindi asking why the caveat hadn't been filed in the circumstances where you told him it was going to be prepared, correct?

20 THE COMMISSIONER: That has an implicit assumption in it that it was appropriate for Councillor Hindi to be dealing in this way generally, doesn't it? That is, following this up directly over and over again.

MR KUTASI: I'll – Commissioner, I refer back to the policy of interaction, which is found at page 266 of volume 9.3.

THE COMMISSIONER: Yep.

30 MR KUTASI: If one goes to page 4 of 10 of that document, which is page 269, clause 1.3 outlines the circumstances under which councillors and council staff should interact.

THE COMMISSIONER: Can interact, but it doesn't explain at all why, if this witness is to be believed, Mr Hindi was acting in the way that he was. Surely you can point to something that says, well, it wasn't a breach of that policy to do so, but it leaves open the question of why was he doing it.

MR KUTASI: That was the nature of the questions, Commissioner. I understand there was a different question that may follow from that, but that's not the question I'm asking.

40 THE COMMISSIONER: Well, what's the relevance of the policy, then?

MR KUTASI: Commissioner, I think it's been asked and answered. I have no further questions.

THE COMMISSIONER: Thank you. Nobody else, is there?

MS HEGER: Not to my understanding, Commissioner.

THE COMMISSIONER: No. Thank you very much for your attendance. You're discharged from your summons and thank you for your assistance.

10 ---Thank you. Thank you, Commissioner.

**THE WITNESS EXCUSED**

**[12.43pm]**

MS HEGER: I tender the statement of Ms McMahon under her legal name, dated 30 September, 2021.

THE COMMISSIONER: That's Exhibit 169?

20

MS HEGER: It is.

THE COMMISSIONER: Thank you.

**#EXH-169 – STATEMENT OF CATHERINE AMATO DATED 30  
SEPTEMBER 2021**

30 MS ALDERSON: Commissioner, may we be released from the public hearing room?

THE COMMISSIONER: Yes.

MS ALDERSON: Thank you very much.

THE COMMISSIONER: Thanks for your help.

MS ALDERSON: Thank you.

40

MS HEGER: Commissioner, I next call Malcolm Gunning.

THE COMMISSIONER: Sure. Mr Gunning, come forward. Mr Gunning, will you take an oath or an affirmation?

MR GUNNING: I will.

THE COMMISSIONER: Oath or affirmation?

MR GUNNING: Beg your pardon?

10

THE COMMISSIONER: Oath or affirmation?

MR GUNNING: Yes.

THE COMMISSIONER: Sorry.

MR GUNNING: Sorry, start again.

20 THE COMMISSIONER: You can take an oath on the Bible or you can make an affirmation which has no reference to the Bible and doesn't say one way or the - - -

MR GUNNING: I'll take the oath on the Bible.

THE COMMISSIONER: Thank you very much.

THE COMMISSIONER: Now, just bear with me, Mr Gunning. I see you're unrepresented?---Yes.

All right. Let me just explain your obligations and your rights as a witness before this Commission. As a witness, you must answer all questions truthfully and you must produce any item that I require you to produce  
10 during the course of your evidence. I can make what's called a section 38 declaration under the Act and the effect is that although you must still answer the questions asked or indeed produce an item I require you to produce, your answer or the item can't be used you in any civil proceedings or, subject to one exception, on your part, in any criminal proceedings.

The exception is that the section 38 protection does not prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act, most importantly, the offence of giving false or misleading evidence. I'm not suggesting in any way that you're going to do so, but if  
20 you were to give false or misleading evidence, you would commit a very serious criminal offence for which the penalty could be imprisonment for up to five years. Now, my practice generally is that when a witness turns up unrepresented, I make that declaration. In other cases, where there's counsel here, I make it if it's sought by their counsel. Would you like me to make that declaration?---Yes.

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  
30 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  
40 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: Thank you.

MS HEGER: Mr Gunning, could you please state your full name for the  
record?---Malcolm Bruce Gunning.

10

And you are a partner and sole director of Gunning Real Estate. Is that  
right?---Correct.

And before that, it had different names, Gunning Commercial. Is that  
right?---Correct.

Before that, Malcolm Gunning Partners?---Correct.

20 And you've worked in the real estate industry for about 30 years. Is that  
right?---40 years.

40 years. I'm sorry. And Gunning Real Estate mainly deals in commercial  
and industrial real estate?---That's correct.

And at the moment, Gunning Real Estate is primarily run on a day-to-day  
basis by two others. William Gunning. Is that right?---Correct.

30 And James McKenny. Is that right?---They, they operate, they manage our  
Hurstville office which, we've had an office in Hurstville for over 30 years.

30

All right. But you still work in Hurstville from time to time?---I do.

And you're trained as a property valuer?---I am.

And you know Vince Badalati. Correct?---I do.

How long have you known him?---20-plus years.

40 And how did you meet?---When, when we first opened our business, we  
made it our, our policy or our work to obviously get to know Hurstville  
Council. Being commercial agents and property valuers, we do a lot

directly with development applications, like, just everything from development applications for shops all the way through and also, too, we'd provide advice back to the property developer. So if we're not aware of the, the Local Environmental Plan or really the way council's thinking, you know, you're, you're coming from a long way back. So it's for, as a professional, we work with a lot of town planners and we work from, with, initially with projects from the ground up. So it's important that we have an understanding what, what council's all about.

10 And can you recall how you met him?---We were invited, look, we're invited to a lot of, back in the sort of late '90s, early 2000, to a lot of planning meetings. They invited major stakeholders - - -

When you say "they invited" do you mean council?---The council. The council invites major stakeholders into those meetings. And at that stage, I was, I was involved in some of the, the business council and that type of thing, so we were very active within the, within the Hurstville community, Hurstville business community. We made that our, that was the way we operated, to be able to work within that community. So, I met Vince and  
20 many of the other councillors and council officers during those processes and we were actively involved with the future of Hurstville from a practical side.

All right. And from time to time you had discussions with Mr Badalati about particular commercial or industrial real estate opportunities, is that right?---I did but it really came from when we were marketing property. We sold quite a number of the major development sites in Hurstville. So I was questioned often, I was asked by the councillors what was going on. You know, really, because they were, they were, they were impacting on  
30 that, on the council CBD. At that stage the council CBD was going through a change. So they were, they were really actively trying to reinvigorate the place back in sort of the 2000s, that sort of thing. So we were selling a lot of the property in that area at the time, so often a, a councillor would ask me what's going on around the place, which wasn't unusual.

All right. And that includes Mr Badalati?---Mr Badalati. So I used to see Mr Badalati, because he was walking around the town. I, I would have lunch, have a coffee and you'd, I'd sit there and have a yarn to him.

40 All right. You also know Philip Uy, is that right?---I do.

And how did you meet Philip Uy and when?---Again, he represented us. We lease Liu's, Philip's offices. Okay, they were in an building that we managed and reside ourselves. So they, we used to see them regularly within the building that we, our office was in.

When you say "them", who are you referring to?---Capital One. So, Liu, as we knew him, Mr Liu - - -

10 Mr Liu, is that Wensheng Liu?---Yes. Philip Uy, Philip was always actively working with, as we called him, Liu at that stage. So he would come and talk to us about properties that we may have on the market or they would ask advice sometimes about what they were doing.

Okay. And did you say you were leasing the office to One Capital Group, is that right?---We were in the building, same building. We leased it to them, we weren't, we weren't the property manager but we leased it to them.

20 Okay. And you say that Mr Uy and Mr Liu sought your advice on properties from time to time?---They did, because we would marketing our properties and they then would enquire and we would have a meeting or we would, we'd normally produce a property report, quite a detailed property report so they would want to discuss that. Really it's about purchase price and end value.

Okay. So did you have meetings with Philip Uy and Wensheng Liu, the three of you together?---No. Look, mainly Philip did all of the reconnaissance work. Liu sat back to a certain extent, okay, he was the decision maker, which is very typical of Chinese protocol.

30 All right. So to the extent you engaged with Philip Uy about particular properties, you understood he was doing that on behalf of Mr Liu?  
---Correct.

And that applied to all your dealings with Philip Uy?---In most cases, yes.

40 Okay.---I don't believe, I don't recall any other discussions. Potentially, William Gunning and James McKenny may have, because they were more actively involved seeing him in the lift or seeing him in the foyer, where he may be asking about – look, with, when you're actively involved in a community such as Hurstville, which is not, not a huge community, there's, you see people in the street and you're constantly asked about what's going

on, what's selling, what's sold, how much for, and they're the sorts of questions that we're asked by a range of people.

All right. Were you ever actually engaged by Philip Uy?---No.

All right. So it was more of an informal kind of meeting?---Correct.

10 What do you think's the value of this site, that sort of thing?---Yeah. They were, they were prospective, we were well-known they were prospective purchasers and so they were on our database and had been, because they enquired. Anyone who enquires with our company, particularly if you're on a property that we have, is immediately registered on our CRM, our database. We have about 10,000 investors. You can imagine, having been in business over 30 years. So they were registered, so they were constantly getting information, information flow about property we had around metropolitan Sydney and so there would be questions asked, which is not uncommon.

20 And those meetings that you had with Philip Uy, did Mr Badalati ever attend as well?---He did.

30 Okay. Can you recall some instances?---Look, it's primarily – I'd have to reflect back on some of the emails because a lot of the inquiries came via email and we responded. So the way it would normally take place, if an inquiry came in from The One Capital Group, we'd send an email, information memorandum, and there'd be discussion, there might be a meeting. I didn't have a lot of meetings with, with Mr Badalati and Philip together. There were occasions, particularly on a couple of the properties we were selling at that stage. But they were very, really superficial at that stage.

40 Yes, I'll take you to some of those emails in a moment. And over what sort of time period were you having dealings with Philip Uy, as best you can recall?---I'll just, again I'll put a bit of context around that. We can talk, I'll talk about our office having contact more than I. William Gunning and James McKenny would have had a lot more casual conversations. I'm not always in that office. We have an office at Surry Hills too. So they, those two gentlemen would, would have had quite a bit of general conversation. Philip would walk up, come into the office and say, look, what about this property and what about that, as I understand. So the only time I'd meet

with Philip Uy and/or Mr Liu would be when it got a little bit more, if I was handling a property and there was more detail required.

Okay. Can you say what year that sort of meeting might have first occurred with them?---Oh, really, probably 2016, '15, '17, in those sorts of times. Could have been earlier.

10 All right.---But really I can, really we only had two or three properties where I was actively involved. The emails will probably give you a bit more specific contact.

Yes, I will go to those emails in a moment. I'm just asking you generally at this stage. For how long have you been in the same building as One Capital Group?---Well, they're no longer there. I would have thought, I think we moved into that building in about late 2019, early in 2017 – look, I've got to check.

Okay.---It was probably more than 10 years.

20 Okay. I'll take you to one of the emails, then. Volume 11.1, which is Exhibit 140. This is an email, for the record, from yourself to Liu. That's Wensheng Liu, correct?---Ah hmm.

And Mr Badalati. Dated 21 November, 2013. And you say, "Liu and Vince, please see following response from Daniel O'Brien-CBRE regarding our offer of an unconditional purchase of the subject site." And the subject site was Hurstville Business Park, is that correct?---That's correct.

30 Where's that situated in Hurstville?---Corner of Gloucester Road and Forest Road.

All right, so in the city centre?---Yes. Just on the fringe of the city centre. A major site, primary site.

40 All right. So presumably you sent this email to Mr Liu because you anticipated he'd be interested in this site, is that right?---The way that came about – and I reflected on that 'cause I read some of the earlier transcripts – I'd see Vince Badalati often walking around the town, and he would ask what's happening. And I'd say, "Well, did you know that Gloucester Business Park," which it was known as, "was on the market?" And he

would say to me something like that, or he said in this particular instance, “Look, you should talk to Liu about that. He might be interested.”

And that’s what you recall happened in relation to Hurstville Business Park?---That’s what I did. So being a prudent agent, I’d send out, I would probably have made the call. Bear in mind, I wasn’t the agent. And the conversation would have gone along the lines that, look, this is coming on the market. If they showed interest, I would have said, well, you’d need to engage me as your representative, as your buyer’s agent. Again, I wasn’t  
10 going to waste my time. The CBRE wouldn’t have, wouldn’t have, what we call conjuncted with us.

THE COMMISSIONER: I can understand why you may have emailed Mr Liu but can you just explain to me why Mr Badalati was included in that? ---Well, Vince was the one who suggested that I should talk to Liu and may well have been some other inquiry that, look, Vince, at that stage, I was aware that Mr Badalati was, had an active involvement with, with Mr Liu.

And how were you aware of that? How were you aware of that?---’Cause  
20 he’d inquire on property, a number of properties earlier on and, and he would be, would direct me to Mr Liu.

All right. Did you form any opinion, based on your interactions with him, as to what his role was, if any?---An unusual role. Not normal.

For a councillor?---No.

We might just leave it there and come back to that after lunch. We’re going to adjourn. I think we should adjourn till, let’s say, 1.45. Is that pushing it?  
30

MS HEGER: That’s suitable for me, Commissioner.

THE COMMISSIONER: If you come back at 1.45 and then we’ll continue and hopefully deal with your evidence this afternoon.---Yes, Commissioner.

Thank you.

**LUNCHEON ADJOURNMENT**

**[1.02pm]**

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