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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION WITNEY

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 1 APRIL, 2021

AT 10.00AM

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THE COMMISSIONER: Yes, Mr Ranken.

MR RANKEN: Yes, good morning, Commissioner. I wonder if Mr Dewar could be recalled to the stand.

THE COMMISSIONER: Yes. Thank you, Mr Dewar. Good morning, Mr Dewar.

MR DEWAR: Good morning.

10

THE COMMISSIONER: Mr Dewar, I'll have the affirmation administered again, if my associate will come forward. Thank you.

THE COMMISSIONER: Thank you. Just take a seat. (not transcribable) gave evidence yesterday. I made a declaration under section 38 of the Independent Commission Against Corruption Act in respect of that evidence. The declaration I made under section 38 continues to apply to today's evidence.

10 MR RANKEN: Thank you, Commissioner. Now, Mr Dewar, where we got to in your evidence yesterday afternoon was the meeting of the council in June of 2015 at which meeting it was resolved that the proposed Local Environment Plan and associated planning documents that arose out of the Urban Design Study – as amended following the previous public exhibition and public consultation, principally to reduce the number of sites which could qualify for the bonus provision concerning height and floor space ratio – was to be publicly exhibited.---Yes.

20 And that public exhibition, would you agree, took place from 30 June of 2015 through to the end of July of 2015?---Yes.

That would accord with the general usual course for public exhibition of plans of this nature?---That's correct.

And as a result of that public exhibition, was Studio GL engaged to prepare a further report about the outcome of the exhibition?---Yes, I believe so.

30 So to report back to council about that?---Yes. I believe they prepared what we called an exhibition outcomes report.

And then were you then involved with synthesising the information in that report for the benefit of the councillors by the preparation of an agenda report of the kind we've seen already to date through your evidence?---Yes, I was.

And did you do that with Ms Ferguson?---Yes, I would have, believe I would have done it together with Ms Ferguson.

40 So could we perhaps first go to, just briefly, if I could take you to page 770 of Exhibit 24. That is the first page, or the cover page, of the, it says, planning proposal. It says October 2015. If we could go to the next page, and the next page. So it refers to the fact of the planning proposal having been prepared to implement new planning controls to the Five Dock Town Centre and that a site-specific draft development control plan was also prepared to guide future development to ensure the underlying objectives. If we could then go to page 788, and this is the outcomes report which forms part of this broader report that was being prepared by Studio GL for

the purposes of reporting back following the public exhibition of the LEP.
---Yes. I believe staff prepared part 1 and Studio GL prepared part 2.

So if we go to the next page, and the next page. So this part of the outcomes report was actually prepared council staff, was it?---That's correct.

10 In that there was a summary of all the submissions that – or you were synthesising the information that came back from the submissions that were received. Is that the position?---Yeah. I, I, think part 1 dealt largely with the issues on this page, which is car parking, traffic, public transport and other general matters, whereas part 2 related to building height rezoning and urban design-related matters.

And then in due course, you prepared, as you said, with Ms Ferguson, an agenda report for the next council meeting at which the matter was to be considered. So you may have noticed that this particular report was dated October of 2015. Did you notice from page 770, the very first page that I showed you?---Yes, yes.

20 And the council next had the matter before it on 20 October, 2015. Now, before I go to the agenda report that was prepared for the council meeting, if we could bring up page 734. Now, that is an agenda for a councillor workshop.---Yes.

And one of the items on that agenda was the Five Dock Town Centre Study with the outcome of public exhibition discussion on topics available going forward, with the presenter identified as begin Marjorie Ferguson.
---Yes. Correct.

30 Is it likely that you attended this councillor workshop?---That's likely, yes.

Do you recall, given the circumstances, that there had been this public exhibition of the LEP, the matter was to come back before the council in the end of October of 2015, was Studio GL, did they present – or if they did present, would that be identified on the agenda?---Normally it would be identified as, on the agenda, who, who the presenter was. I, I don't recall this particular workshop.

40 Is it likely that what was being discussed or gone through with the councillors were what had come out of the public exhibition, given that it says "outcome of public exhibition and discussion on options available going forward"?---Yes, we would have communicated what the outcome of the exhibition was. So it'd be the same information as contained in that report.

And then that information would have made its way into the report not only that Studio GL has prepared but also the report for the councillors that was prepared by Ms Ferguson and yourself.---That's correct.

Then could we then go to, perhaps start at page 930, sorry, 933. You can see from the header at the top, the very top, that it was part of the papers for the council meeting on 20 October, 2015.---Yes.

10 And it refers to the post-exhibition planning proposal draft Development Control Plan and draft Development Contributions Plan for the Five Dock Town Centre. Firstly, if I could just draw your attention in the executive summary to the second paragraph that indicates that following the exhibition period, 389 submissions were received, and the primary issue raised in submissions related to the proposed eight-storey height limit and the impact of this height on the public and private domain. Now, 389 submissions was a significant increase, even upon the number of submissions that were received following the exhibition after the Gateway Determination, is that correct? In late 2014, I think it was.---That's correct. Yes.

20 So, if one looks at the timeline of this process, after the – the study was initially exhibited in late December 2013 and January 2014, there was a receipt of some 31 submissions from the community, correct?---That's right.

And then following the submission to the Gateway Determination and the exhibition after it had received that Gateway Determination, there was I think 125 individual submissions, coupled with a petition concerning one particular issue about heights that was signed by some 400 signatories, but then following this further exhibition in June and July of 2015, a substantial increase on the number of actual submissions that were received by the council.---That's correct.

30 And it refers there to the fact that the – I'll just (not transcribable). And I took you to the fact that the primary issue raised in the submissions related to the proposed eight-storey height limit and the impact of that height on the public domain. I'll take you to another part of that. If we could then go to page 934, in relation to the issue of building height, you see about two thirds down the page, under an italicised subheading that says Building Height, it says, "The vast majority of submissions commented that they did not support increasing the building height from four storeys to eight storeys. 94 per cent of the submissions."---Yes, I recall.

40 Then if we could then go back to page 933, in the next paragraph, you've identified what the conclusion of the exhibition outcomes report was, which was that a maximum height of five storeys should be imposed, with the ability to construct to six storeys on certain large sites over 1,000 square metres. Correct?---Correct.

And that that would be done whilst retaining a floor space ratio of 2:5:1. ---That's right.

2.5:1, sorry.---That's correct.

So does that mean that what was being proposed was that, rather than have a bonus provision that included an increase of FSR to 3:1, which had been part of the previously floated or previously submitted bonus provision, if I could call it that, there was now a pullback further to not allow there to be a bonus provision of 3:1.---That's right, and this recommendation is consistent with the original urban design report that was prepared by Studio GL back in 2013.

10

So effectively coming back to the original position as advanced by Studio GL.---Yes, so we took a very circuitous route to get back to what was originally recommended.

20

THE COMMISSIONER: So is this – one conclusion one can draw from the post-exhibition report is that the residents speaking were not quite with one voice, it was 94 per cent of submissions were against high-rise in effect, that is eight-storey height limit, and were strongly sounding that in their view the height limit should be restricted as recorded in this report with an FSR of 2.5:1. With such a resounding expression of opinion, if you like, by the relevant public, was there ever any likelihood that that was going to be reversed from that point forward, that is from 20 October, 2015?---I can only speak on behalf of staff - - -

30

Perhaps I can put it this way. Just based on your experience, having a result such as that which is contained in the post-exhibitions report, based on 94 per cent of submissions all against high-rise development, could you ever see that situation, from a public interest point of view, being reversed? ---I didn't believe there was compelling reason to go against this recommendation, given the outcome of the exhibition and the overwhelming expectations of that community.

Yes. Thank you.

40

MR RANKEN: Thank you. And then one of the other issues addressed in this report prepared for the councillors was the issue of the possibility of rezoning that part of Waterview Street on the western side between Second Avenue and Barnstaple Road, and if we could go to page 938. And you can see about a third of the way down the page there is the italicised words, "Lane between Second Avenue and Barnstaple Road," and the paragraph after that refers to the fact that, "Two submissions proposed a substantial expansion to the B4 mixed-use zone to include land on the western side of Waterview Street between Barnstaple Road and Second Avenue," and that area was not identified for rezoning in the original Urban Design Study or the exhibited planning proposal. Correct?---Correct.

So this is the position, is it not, is that after the original exhibiting of the Urban Design Study there had been one submission from Ms Cassisi at

[REDACTED] that had been received suggesting an expansion of the Waterview Street site. Correct?---Yes.

That had been considered by council staff and the reasons for not changing the position in that regard were set out in its response to the council. Correct?---Correct.

10 That was ultimately adopted by the councillors unanimously when the matter was referred to the Gateway Determination. Correct?---That's right, that's right.

After the Gateway Determination there was a submission received on behalf of Deveme Pty Ltd and Anderlis Pty Ltd, that is a written submission. Correct?---Yes.

That did advocate for the extension of that zoning to cover the Waterview Street site.---Yes.

20 Again that was the subject of further consideration by Studio GL. Correct? ---Correct.

And again, the outcome of that consideration was that there was no public benefit in such a rezoning?---That's correct.

So it had been considered on a number of occasions up to that point, that's up to early 2015, correct?---Yes. It had been canvassed on a number of occasions.

30 And indeed, on two occasions, Mrs Cassisi had addressed council and on two occasions either Ms Miller or Mr Thebridge has addressed council, presumably in relation to the matters that were in their other submissions? ---Yes.

And then by June of 2015, the council had not resolved to extend that B4 mixed-use and had exhibited the LEP, and again, in response to that exhibition, there were further submissions that had been received, and was one of those submissions by Deveme Pty Ltd and Anderlis?---Yes. from memory, yes.

40 So there had been a further submission on behalf of the Deveme Pty Ltd and Anderlis, again seeking that rezoning?---That's correct.

And again, it wasn't supported because it didn't have any public benefit? ---Yeah. Staff didn't see any merit in proceeding with that.

And one of the things that you've identified is that – this is at page 938 – is that part of the western side of Waterview Street, between First and Second Avenue, is proposed to be rezoned to facilitate significant public benefit,

including a new town square. That's talking about that area up to Second Avenue but not further?---That's correct.

As part of the original expansion of the B4 mixed-use, correct?---That's right.

Furthermore, the rezoning of land on Waterview Street between First and Second Avenue, reinforces and widens the town centre around its central core, correct?---Correct.

10

And again, at the next paragraph, "The part of Waterview Street between Barnstaple Road and Second Avenue is further away from the core of the centre and there are no significant public benefits from its rezoning. The expansion of B4 mixed-use zone to land between Barnstaple Road and Second Avenue is not supported." Now, turning to the recommendations in that report, which are on the next page, 939. There are a number of recommendations there, a total of seven, in fact, if one goes over to page 940. But the recommendations of particular relevance, would you agree – and by all means take your time to read all of them before answering the question – are the first three recommendations? At least insofar as the proposed extension of the B4 mixed zone to cover Waterview Street site. ---Yes. They're the, they're the primary land-use planning recommendations. That's correct.

20

And effectively what was being proposed was that, having noted the matters that were raised in response, that is all the submissions, that the council approved the planning proposal and effectively that it then be submitted so that it could actually be gazetted and become the planning proposal. Is that correct?---Yes. Staff were seeking to have the matter finalised at this time.

30

And is it the case that if council had in fact followed that recommendation at this time, that is in October of 2015, insofar as the prospect of extending the rezoning of the B4 mixed-use zone to include the area of land north of Second Avenue, that would be at an end?---Yeah. It was not contemplated or proposed or recommended.

But in the ordinary course, the plan would go off to be gazetted and it certainly couldn't be included as part of the LEP?---No. We would have to go through another process if that was to occur.

40

Now, prior to that meeting on 20 October of 2015, I just want to take you to some emails that the Commission has obtained. If we could go to page 738 in Exhibit 24, please. And this is a chain of emails in early October, 2 October, 2015 to be precise, and as with all chains of emails, it's in reverse chronological order, so I'm starting page 738 with the first in time. And do you see it's not an email that involves yourself in the sense that it's from Mr Pavlovic to Mr McNamara and Ms Ferguson with the subject of John Sidoti, but in the body of the email it says, "Tone, as discussed, John presented to

the council today wanting to organise an appointment with Paul Dewar re Five Dock. He said he wanted to meet next week with Paul, together with his consultant planner.” Now, were you aware that Mr Sidoti had in fact, whether or not that was so, that Mr Sidoti had presented some, on possibly 2 October of 2015 at the counter wishing to arrange such an appointment?---I only found that out, found out about his attendance at council after the fact.

And how did you find, how was it brought to your attention?---I think Marjorie sent me this email chain for my information.

10

Okay. And can I ask this, was there a meeting that was arranged?---Not with Mr Sidoti, no.

Was there a meeting with someone else that was arranged?---Yes. I’m not sure whether it was at this time but there was a meeting between council staff and his planning consultant.

And who was the planning consultant with whom you met?---At that time it was Pacific Planning.

20

So that was at a point where Pacific Planning were representing Mr Sidoti’s interests or his family’s interests.---That’s correct.

And when you met with Pacific Planning, leaving aside when it may have actually been, in terms of what date, but this meeting with Pacific Planning, did you understand that they were representing Mr Sidoti or some other entity or persons?---I understood they were representing the land that the Sidoti family had an interest in. I didn’t know, they didn’t mention his name.

30

But whether or not that was around this time or at some later point, you’re not sure.---There would be a record of when the meeting was.

Perhaps I’ll come to that later then. You can see above the initial email that Mr McNamara forwarded it to Mr Sawyer, the general manager, asking what does he think about it, and if we go back to page 737 there is a response from Mr Sawyer to Mr McNamara, if you just, you can read that to yourself and if need be we can go over to the next page so you can see the end of it.---Yes.

40

Now, from your perspective did you understand, or what did you understand the effect of what Mr Sawyer had said Mr Tsirekas as the mayor had suggested?---That any proposals would have to have a planning basis or any, any requests in relation to the, any changes to the plan that council had prepared would have to have a planning basis and you would have to put a submission in like everybody else.

So in a sense when you received this email, and we can see from the top of the page that Ms Ferguson ultimately sent it on to you on 6 October, did you have some understanding that okay, well, effectively there wouldn't be a meeting with Mr Sidoti or his planner at that time, they would just be required to put in some further submission?---Yes, exactly.

And do you recall whether or not they did in fact put in formal submission after that point or had they already put in a submission as part of the exhibition process?---I'm not sure of the chronology, I'm not sure.

10

So moving to the actual outcome of the meeting of 20 October, 2015 – sorry, just before we go to the actual meeting itself, if we could bring up page 928 of Exhibit 24. This is I think, it looks like it might be an email, but it's in fact a calendar invite printout, as it were. And do you see it's a Five Dock council meeting, and the organiser is identified as yourself, and the attendees being yourself, Mr McNamara, and Ms Ferguson?---Yes. Yes.

And you've added a note to it saying, "Quick chat to discuss the interest of speakers registered to talk about Five Dock at tonight's meeting."---Yes.

20

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

And what was the purpose, and what did you mean by, "Quick chat to discuss the interest of speakers registered to talk"?---So, Tony, being the director, would usually attend council meetings and speak to items where questions were asked, and it was not uncommon for myself and my manager to brief him prior to those meetings, particularly on the submissions made by people who had registered to speak, so that he had a understanding of their issues and was prepared to respond.

30

So from time to time at those sorts of council meetings, when persons addressed the council, if it was something that was within Mr McNamara's department's purview, would he respond in the course of the meeting to the matters raised?---Yes, that was standard practice.

Now if we go to the meeting minutes themselves, which commence at about 941, and if we could – you can see that Mr McNamara was in attendance, and there's a list of the councillors who were in attendance. If we could then go to page 944. And there's a list of the persons who addressed council under item 2, correct?---Yes.

40

And one of those is Helena Miller from MG Planning Pty Ltd.---Yes.

So, and did you understand that she was one of the town planners acting for Deveney Pty Ltd and Anderlis Pty Ltd?---I, I did, yes.

So is it likely that you, at this meeting that you told us about earlier on in the afternoon of 20 October, 2015, that you would have spoken about, amongst

other things, the persons or the interests who were represented by Helena Miller?---I would have spoken to the contents of her submission, yes.

But would that have included identifying whose interests she was addressing the council on behalf?---As a minimum, I would have talked to the land that she represented and the changes she was seeking, which were changes to land on Waterview Street.

10 Now, again, as was your usual practice, or in accordance with your usual practice, did you attend the meeting on 20 October?---As a spectator, I would have been in the gallery, yes.

20 But because this was a meeting where it would actually be finalised, if the councillors were to adopt the recommendation that you and Ms Ferguson had put in the agenda report, then that would have been it, as far as this aspect of the Urban Design Study was concerned.---Yes. There, there was considerable interest in this project at this point, and I was receiving many enquiries from interested residents, and I knew that there would be a substantial attendance from the community.

So now do you have an independent recollection at all about that meeting and about attending that meeting?---I do, I remember I couldn't get in the room it was so full.

And so full of residents?---That's correct. The gallery was full.

30 And in terms of the enquiries that you'd received leading up to the meeting, what was the general tenor of what people were asking you about or telling you in relation to this issue and this item?---The, the primary concern I was receiving was in relation to what had been exhibited and what council staff were going to recommend, in terms of moving this project forward, and that revolved around the height and scale of buildings.

Now, as I understand it, and correct me if I'm wrong, prior to council meetings such as this, the papers that would be before the council meeting are put up or available online through the council website, is that correct? ---That's correct.

40 And that is usually arranged – is that usually arranged sometime in the week beforehand? So the council meeting's being on a Tuesday, correct?---Yes, that's right.

Is it usually about the Thursday or Friday that they're put up on the website?---Correct.

And so were the enquiries that you fielded in relation to the upcoming council meeting, were they enquiries that were received before the papers

went up on the council website or were they subsequent to it, but prior to the meeting?---I would suggest both.

So some persons may have been raising issues that had already been possibly the subject of submission as part of the exhibition of the LEP?
---Yes. There was a lot of residents who hadn't had a lot of exposure to the planning process. There was a lot of questions about what the process might look like in terms of the council meeting and the role of the councillors and the role of my report.

10

Was it necessary for you to point out to many of the persons making the enquiries of you that what was in fact being recommended was effectively going back to what was in the original Urban Design Study as far as heights were concerned, and floor space ratio?---Yes. I think I, I talked to the fact about once, once the agenda had been made public, I talked to the fact that my recommendation was consistent with the Urban Design Study.

20

And were there any enquiries that you received that were concerned with the possible extension of the B4 mixed-use zone further north past Second Avenue?---I don't recall anyone raising that or prosecuting that case, no.

THE COMMISSIONER: Just keep your voice up if you wouldn't mind.

MR RANKEN: So, do you recall what the outcome of the actual meeting was?---I recall that the matter was deferred.

Was that something of a surprise to you when it was deferred?---Yes, it was.

30

And why was that?---There was overwhelming objection to what had been exhibited and there were a lot of very passionate speakers to the item, against what was originally proposed. Yet I think the item was deferred to look at the advantages and disadvantages of the height, which was a strange, to me appeared to be a strange reason to defer this particular item.

That's because the overwhelming response had been we don't want extra height.---And it had been debated ad nauseam all the way up until this point.

40

THE COMMISSIONER: Well, having it tabulated into a form of advantages and disadvantages by this time didn't seem to be likely to achieve any substantive or additional outcome.---I would agree.

Because everyone knew that the advantages, when I say everyone, everyone who was at the – I withdraw that. The overwhelming feeling, as you say, being reflected by residents and people who were in attendance at this meeting that night was that the advantages favoured maintaining the status quo rather going high rise. So you can't conceive of any purpose of deferring this whole matter as of October 2015 simply so that somebody could write out on a form the advantages and disadvantages, the result of

which is already known?---That's correct. I don't believe that table of advantages and disadvantages would have revealed any new information that wasn't already known.

Has a deferral on that basis ever happened before or is that, in your experience, the first time you've ever seen such a thing happen?---I, I don't recall a deferral for that reason but it is not uncommon for council to defer items to enable them more time to deliberate on a particular matter.

10 That's why the further deliberations seemed to be advisable?---Well, in, in the opinion of the council, yeah.

MR RANKEN: Now, Mr Dewar, following that deferral of the matter, were you then involved in the preparation of the addendum report that set those advantages and disadvantages out in a tabular form?---I, I believe I would have authored that document.

That would have been your document?---I believe so, yes.

20 We'll come to that in a moment, but prior to the next time that the matter came before council, which was I think on 3 November, 2015, so it was only a two-week adjournment of a deferral of the matter, does that sit with your recollection of the matter?---Yes.

That was just solely to enable yourself, and perhaps with Mr Ferguson and others in your department, to prepare this tabular comparison of the advantages and disadvantages. Correct?---That's correct.

30 In that two-week period were there any further councillor workshops that may have been conducted or you don't know?---I don't remember. I don't think so.

THE COMMISSIONER: It wouldn't be likely that there would be any further workshops on the subject matter of the council's meeting of 20 October, 2015. Is that right?---I can't - - -

40 Given the outcome of the meeting of 20 October, 2015, it didn't appear to leave any scope for any further workshop discussion about other aspects of the matter. Is that as you see it?---There was no new information, so yes, I don't, I'm not aware of what a workshop would achieve.

MR RANKEN: Now, could we perhaps then just in terms of your document that you prepared for the next council meeting, firstly if we could go to page 975 of Exhibit 24. Now, this is the report that has Ms Ferguson's initials as being the author, but it was prepared following this deferral, and we see that from the introductory remarks at the top of the report. Correct? ---Correct.

And if you need to, go through the report to satisfy yourself, but effectively from the point where it says, "Executive Summary," on up until, and if you flick through, go through till page 981/982 and the recommendations there, is that effectively just the original report that had been prepared for the October meeting of council?---Yes, it's ostensibly the same report.

Same report but with that added part at the beginning. And then if we go to page 983 we see your document, which is the tabulated format of comparing the advantages and disadvantages.---Correct.

10

And then that goes for, well, it goes for a number of pages but there is also included some drawings that were taken from the exhibition outcomes report.---Yes.

20

So you've done your work, but prior to the meeting on 3 November, 2015, there was something else that you were involved in doing that I want to ask you about. And for this purpose could we go to page 959 of Exhibit 24. Do you see there's an email from yourself to Mr McNamara, "Draft resolution Five Dock Town Centre," and it says, "Draft resolution to investigate additional areas for rezoning." So this is dated 30 October. And if we could go to the next page we see what is effectively a draft resolution at the bottom of that page.---Yes.

30

Are you able to assist us in the circumstances in which you came to be drafting this particular resolution, because firstly would you agree that the resolution does not really align with anything to do with the planning proposal as had been recommended up to that point?---Yeah, it had nothing to do with my report. So Tony approached me one day, and he asked me to draft this resolution.

40

Did you ask him why you were drafting a resolution of this kind?---I did. And I, I asked him specifically why these blocks, and he responded that the East, West, and Henry Street, and the corner of Ramsay and Fairlight were being added so as to distract from the fact that the Waterview Street one was the true intent of this resolution.

So what did he actually say to you, in terms of when he came and asked you to draft this resolution? Did he, would he say, "Can you please draft a resolution of" – what were his words?---I think he was – I, I don't remember his exact words. It's five years ago. But he was very specific about the locations to which it was to apply.

THE COMMISSIONER: Sorry, he was?---Very specific about where it was to apply.

Sorry, couldn't hear.---Specific.

MR RANKEN: Did he say from where it had come, this idea to actually even have a resolution of this kind?---I recall he said it was from a councillor, and they were likely to move a motion.

Did he identify which councillor it was?---Mmm, I, I don't remember him saying which one.

10 Did you ask him why on earth we, you were looking at, the councillors were thinking about moving this resolution?---I, I didn't ask the motivations of the councillors, no.

Did you make any comment to Mr McNamara about the appropriateness of this kind of resolution, given the extensive process that had already been undertaken in relation to the Urban Design Study and associated planning proposals?---I don't, I don't believe I made a comment about the appropriateness of the resolution. I think he understood what my views were. I don't think he was seeking my opinion at this time.

20 But so you didn't express your views as to - - -?---No, and I, I, I wasn't going to own this resolution, I was simply drafting it as requested.

THE COMMISSIONER: Can I ask you now, in retrospect, and with all your involvement and experience in relation to this – could we have that last back on the screen, please – with this town centre plan, whether you saw any utility at all in the course of action that was proposed in this document at page 960?---I didn't believe it was required or necessary.

30 It speaks of "There are various areas on the edge of the Five Dock Town Centre," and then it sets out those areas, three dot points. Each of those areas had already been investigated, had they not, at the time of this proposed resolution?---I believe council had formed, or council staff had formed a view on the Waterview Street, and it's expressed in our various reports. The other two sites, I don't think they were, had been investigated, but there had been a conscious decision not to investigate them.

Perhaps the word 'investigate' is not the appropriate word. They had been the subject, the three areas in question had been the subject of consideration in the Studio GL report, had they not?---That's correct.

40 And having been considered by Studio GL, am I right that Studio GL concluded that none of those three areas should be considered for rezoning? ---That's right, if they believed that these areas were appropriate for change, they would have, have recommended it in their report.

Well, then if the very question of rezoning, which is said in the document to be the issue, that these various areas on the edge for future rezoning, the question of possibility of future rezoning, having been expressly considered by Studio GL, there was no work left to be done on that subject of a possible

rezoning of those areas, is that right?---I agree staff and Studio GL would not have initiated this if it were not for this resolution. Only if council required us to investigate potential change would we turn our mind to this issue.

MR RANKEN: And indeed, but for the deferral of the consideration of the matter on 20 October, 2015, this would not have arisen at this time?
---That's correct. That's right, it wasn't on my radar up until this resolution came along.

10

Up until you were approached by Mr McNamara?---That's correct.

So there was nothing that was said at the council meeting that gave you any inclination that this might be in the works, the possibility of a motion such as this?---Not at the time the, the planning proposal was deferred. It wasn't mentioned.

20

And what about what you said Mr McNamara told you about the need to include the properties that are referred to at B and C in the resolution or – sorry, perhaps not properties – the areas referred to in B and C of the proposed resolution being necessary to hide the fact that, I think your words were, they were necessary to hide the fact that it was about the Waterview Street site?---I don't know if they were his exact words but it was to distract.

It was to distract.---Or make sure that the focus wasn't on one particular area.

30

Was that of itself a matter of concern, that there might be effectively a resolution requiring work to be done in relation to areas that there was absolutely no apparent intention to actually consider rezoning?---I, I, at the time I was questioning to myself, clearly there's an agenda here.

THE COMMISSIONER: Well, speak freely. What was the agenda as you saw it?---To, to facilitate change on Second Avenue, that that was the objective of this clause.

40

Well, if the proposal was to investigate Second Avenue, that is between Second Avenue and Barnstaple Road, the first dot point, that the other two were just put in to make it look as though it was not being singled out, but that there was a real reason to investigate the other two, when there wasn't a real reason to investigate the other two, if that be the case, that would simply be a contrivance, wouldn't it?---I believe so. And, I mean, that's how it was expressed to me by Tony.

Well, a contrivance in the sense that the real purpose behind this proposal to investigate the three areas, if it were the case that the real intent was to get the Waterview Street re-investigated for future rezoning, there was no real interest in the other two but they were just put in as padding, as it were, to

make it look as though it was but one of three areas seriously under consideration, and those two were not really under consideration at all, then that would be, as I put it before, nothing more than a contrivance?---Yes.

Have you ever encountered such a manoeuvre or a strategy in all your time in local government?---No but my, I am not, I am not at the direct level, so I am not often exposed to what happens at the political level.

10 MR RANKEN: Did you ever come to learn who the – or which councillor or councillors had requested that such a motion be drafted?---No, I, I wasn't told.

Now, when we come to the, we now come to the meeting of 3 November, 2015. Again, as we've already taken you to the agenda report that you and Ms Ferguson had prepared that included your document setting out in tabular format the advantages and disadvantages of heights and other things, and the recommendations were as for the meeting of 20 October, 2015, and when we come to the meeting minutes for 3 November, 2015, if we could
20 go to page 990. We see the item is identified there and then we see, as far as a resolution is concerned, there's a part A which is that, "The council note that the matters raised in response to the public exhibition have obtained the proposal draft Development Control Plan and draft Development Contributions Plan for the Five Dock Town Centre." That was consistent, was it not, with the recommendation that you and Ms Ferguson had put forward?---Number 1, yes.

Number 2 though, we see that, "The planning proposal and draft Development Control Plan be amended to include a maximum height of seven storeys." Now, that was different. Correct?---That's correct.
30

Because the LEP that had been exhibited and that had been supported was one that only provided for six storeys on a bonus basis for properties in excess of 1,000 square metres. Correct?---Yes. Our recommendation was a maximum of six.

So do you know where this resolution as in part 2, paragraph 2 in part A, from where that came?---I believe it was just moved off the floor as a compromise in relation between what was exhibited and what was recommended.
40

When you say moved from the floor, by whom, by one of the councillors or - - -?---Yes. I don't recall which one.

Was it either Councillor Kenzler or McCaffrey, given that they're the two movers of the actual motion?---It appears that way, yes.

And I think you told us before that Councillor Kenzler was someone who was very much in favour of increased heights for bigger blocks to encourage amalgamation.---Yes, that's right.

But in paragraph 2 there are various aspects to how that height of seven storeys might be done as far as setbacks and the like.---Yes.

10 Moving to the next page, in addition to that change there was another change that was being proposed that was different to what had been recommended by yourself and Ms Ferguson as coming out of the exhibition report.---Yes.

Being the floor space ratio of 2.7:1 on sites that would get the bonus height of seven storeys. Correct?---Correct.

So again was that something that was moved from the floor?---It wasn't in the recommendations, so yes, it would have to be done on the night.

20 4 is then to facilitate effectively those changes.---Yes.

And 5 and 6 are as were before in your recommendation. Is that correct? ---They're unchanged.

And 7 is also unchanged. But then there is an additional part B which reflects the wording of the resolution that you had drafted.---Yes.

30 And that resolution, both part A and part B, they were passed effectively by a majority of the councillors present except for Councillor Cestar and Councillor Tyrrell.---Yes.

Now, did that mean then because of those changes that there would have to be, changes to the LEP that there would need to be some further public exhibition of the LEP again?---I don't believe so. This resolution would require us to prepare another report on those three areas.

40 Those three areas. So, but in addition would there need to be further changes and a further public exhibition of the LEP or the planning proposals, given that there were now to be further changes than that which had been recommended, or not?---Can you scroll back up?

Or by that stage – sorry.---It, it appears that we were recommending that the planning proposal proceed straight to gazettal, and then a separate piece of work be undertaken in relation to those three sites.

Right. So effectively, a bifurcating of the process? Would that be occurring at this point?---That's correct. Yes.

So the increased height of seven storeys and the increased floor space ratio would go through as part of the LEP to gazettal?---Yes.

But there would be some separate LEP that would ultimately in due course be prepared in relation to the rezoning of the Waterview Street site if the further report came back in favour of such a proposal.---Yes, subject to that further report being done.

10 And indeed, not just the Waterview Street site, but the other two sites as well.---Yeah, it, at the, having passed the resolution, staff would now have to look at all three.

And to that end, were you and Ms Ferguson responsible for engaging Studio GL to prepare a report on those three sites?---Yes.

Now, Ms Ferguson, I think she finished up with the council sometime in December of 2016, would that be - - -?---That, that sounds correct.

20 2015, sorry.---Yes, that's right.

But did she have a period of leave before she actually officially left? ---Yeah, she had a secondment to Urban Growth, who were looking at the Parramatta Road Corridor at that time, and I was acting in her role while she was working with Urban Growth.

Oh, was that another project or another planning project that the council was dealing with at the time, was it?---Yes, it was a significant project for council.

30 So was it at that point that you then became the Manager of Strategic Planning, in an acting role initially?---That's correct.

Then ultimately in 2017, there was a public advertisement of the position, correct?---Correct.

And you obviously applied and were successful in obtaining the permanent position.---That's right.

40 And that's the position you continue to hold today.---Correct.

Now, just going back to the progress of matters concerning the Urban Design Study, after the bifurcation, and we're just focusing now on what was happening in relation to consideration of the rezoning of the other three areas of land, and in due course Studio GL did prepare a report to be submitted to council about those three sites in about March of 2016. Is that correct?---They did, yes.

And is it the case that in fact, as far as rezoning any of those three sites, the conclusion was that it was not supported by Studio GL?---In terms of zoning?

Yes.---I don't believe they were recommending any changes to zoning. I think they recommended that if council was to turn its mind to these three areas that there are specific development controls that should be in place to guide future development. But I don't believe they recommended changes to zoning.

10

THE COMMISSIONER: Was there any material put forward by any interested party to support the three sites rezoning issue?---Other than the submissions we had received through the previous exhibition periods, no, I don't believe there was any reports.

There was no – Mr Ranken, you might be able to help me on this.

MR RANKEN: There were no actual written submissions following the - -

20 THE COMMISSIONER: Apart from submissions, I'm talking about whether there was any planners' reports put before council to support a rezoning of the three sites. Are you able to say whether you understand there was or wasn't?

MR RANKEN: I understand there weren't any actual - - -

THE WITNESS: I'm not, I'm not aware of there being any reports.

THE COMMISSIONER: No. Okay, thank you.

30

MR RANKEN: No. And nor were there any actual written submissions that were provided to council setting out a proper planning basis for - - -? ---Not in – mmm, not in the period we were undertaking this investigation.

But along with Studio GL preparing a report in relation to its investigation of the sites, HillPDA also prepared a feasibility study in relation to the sites, is that correct?---That's correct.

40 So, the report of Studio GL was finalised in about March of 2016, and if we can perhaps go to that report. That's at page 1010. There first page is at 1010 and you can see the date is – Proposed Development Controls for Additional Sites, and the date is 3 March of 2016. And if we go to page 1012, there are the three sites. There are site A, site B and site C and just to identify those sites and orient yourself – although no doubt you're well familiar with them – if we could to page 1014. There the three sites are identified, correct?---Correct.

And the particular site we're obviously interested in is site B, correct?
---Yes.

In respect of site B, there were two options. If we go back to page 1012. There were two options that were identified as possibilities for considering development controls. Is that correct?---Correct.

10 One of them effectively was one in which the heritage status of 39 Waterview Street was retained and the other option involved the removal of the heritage status. Is that correct?---That's correct.

But otherwise the two options are otherwise the same?---Once the heritage item was removed, there was more development capacity possible.

And why is that?---With the heritage building, we had to consider its curtilage and its setting and that meant lower buildings on its edges.

20 And what such things as laneways, like having the extension of the laneway which we talked about before in your evidence yesterday afternoon. Would the heritage listing be an impediment to being able to provide for a laneway?---I would have to look at the option that, had the heritage been retained to answer that question. I'm not sure if it included a laneway or not.

So if we go to option 1, which is at page 1021. That's the option that involves the retention of the, of the heritage listing.---Is there a, a plan?

30 If we go to, I think, page 1023. Does that provide for the laneway or is it just landscapes?---There is no laneway in option 1.

So there is no laneway in option 1. So if we go to option 2, which is at 1027, and you can see at 1027 it says that that does propose to remove the local heritage listing and then if we go to page 1029, we see the plan there and it does have a laneway?---It includes the lane, yes.

So does it follow that the heritage listing was something that provided impediment to the possibility of having a laneway?---Yes. This, this report did not envisage a laneway with the heritage being retained.

40 And I think you told us yesterday that a laneway does have some public benefit?---Yes.

But also has benefits to the private property interests of the owners of the properties?---Yes.

But in either case, if we go back to perhaps just briefly at page 1022, as far as land-use zoning is concerned, this is in relation to option 1, "It was recommended that the zoning remain R3 medium-density and that the B4

mixed-use is not recommended as it is not seen as desirable to increase the commercial development away from Great North Road and the town centre core, or locate businesses along this section of Waterview Street.”---Correct.

And that’s consistent with the position that had been advanced since the very beginning of the Urban Design Study?---That’s right.

10 And equally when one comes to option 2, which is at page 1028, the very same matters are noted concerning the zoning remaining R3 medium-density.---Yes.

And then turning to the feasibility study that was conducted by HillPDA, this commences at page 1058 in Exhibit 24. Just from your recollection, what was the whole purpose behind the feasibility analysis that was conducted by HillPDA?---The purpose of this piece of work was to determine if we were to implement these controls would we see redevelopment, based on their viability or feasibility.

20 So because the controls that you were looking at, you were looking at effectively allowing controls that would allow for greater development. ---Yes, there was an intensity of development, that’s correct.

And what you wanted to see is, well, if we’re going to allow for this greater development to be able to occur, then would it actually occur if one looks at the economics of it. Is that the thinking?---That’s exactly right, yes.

30 And the outcome of the – do you recall what the outcome of the feasibility analysis that was conducted by HillPDA was?---Yes. Almost all sites were unviable in that market, based on the controls that were recommended. I think there was one instance where a site was marginally feasible.

And perhaps if we just go to page 1068, we see the conclusion which says, “Of the total 11 options our modelling revealed that site B1 retain heritage building was the only option to achieve a marginally feasible scheme at an FSR of 1.28:1.” Is that correct?---Yes.

40 So that is something that would mean that there was no, unlikely to be any development for example encouraged by an increase of FSR to say 2.5:1. If 1.28:1 is the FSR at which there might be some marginal - - -?---What’s your question?

Well, that you wouldn’t need to change the FSR from 2.5:1.---Well, if you change it to 2.5:1 you would get very different results in relation to feasibility. Development would be much more viable.

Would be much more viable.---Yes.

Right. Okay. And perhaps I'm misunderstanding the outcome of the feasibility study. This was in relation to the western side of Waterview Street, was it?---Yes.

And at that stage the FSR was 1:1, was it?---I think it was 0.5:1.

0.5:1.---For a house. I don't think we had a floor space ratio for the townhouses.

10 And the only way one could get an increase to an FSR of 2.5:1 would be if there was a rezoning of the area to make it B4 mixed-use. Is that correct?
---That's right, you'd need to amend the LEP.

But that was something that was seen as not having any public benefit.
---That's correct, and it wasn't what was recommended through the report prepared by Studio GL. They were not recommending a 2.5:1 FSR.

But even so, you wouldn't be able to get that with a residential R3 zoning.
---It would be unlikely.

20

So the particular option here, site B1 retain heritage building, does that mean effectively you could possibly get development on the western side of Waterview Street between Second Avenue and Barnstaple Road, only if you retained the heritage status of that building?---I don't believe that B1 included the heritage building but it was the scenario with the heritage building being retained.

30 And does that mean that effectively there wasn't really any, it wasn't likely that there would be any development of any of the properties in that block if there were these suggested changes that had been considered to the planning controls?---That's correct. And if change did occur it would be very incremental and over a very long period of time due to changing market circumstances.

So, the matter then came back before the council, I think, on 2 August of 2016 and in advance of that you prepared a report, as was your usual practice. Is that correct?---That's correct.

40 In which you outlined the outcome of the review that was conducted by Studio GL and HillPDA. Is that right?---That's right.

And perhaps if we go to page 1154 of Exhibit 24. That's the first page of your report?---Yes, that's right.

And if we then go to, if we could go to page, start at, 1156. You see halfway down the page – well, at the top of the page there is the land between Second Avenue and Barnstaple Road on the western side and after a description, you then go into the details of the two options and the

recommendations in respect of that. There is a reference in that document to the future – if we go to page 1157. It says, “A report on 39 Waterview Street by Futurepast Heritage Consulting on behalf of the owners of 120 Great North Road and 2 Second Avenue states that the existing modifications to 39 Waterview Street are substantial and lessen the heritage values/significance of this locally listed item.” And you then go on to refer to some information that was confirmed by the council’s heritage adviser. Who was that at the time?---I believe it was Kate Higgins.

10 And so did you have a conversation with her or did you have some correspondence with her about the modifications to the 39 Waterview Street site and the implications for them as far as the heritage listing was concerned?---I had written advice from Kate on this particular issue.

And the effect of that advice was that the modifications to the house and changes to the original setting of the house did not provide sufficient justification for a change in zoning?---So, Kate recommended two things. First of all that she didn’t agree with the delisting of the house based on the evidence in that report, but she did go on to say that if there were other
20 planning public-interest outcomes that would be achieved for the whole block, then that, that’s also a relevant consideration. But her primary was position was the house should not be delisted.

And do you recall the actual Futurepast report?---I do.

And you were aware that that report was one that had been obtained on behalf of the owners of 120 Great North Road and 2 Second Avenue?---I do.

30 And you understood that they were owned by Deveme Pty Ltd and Anderlis Pty Ltd?---Yes, I knew who they were acting on behalf of, yes.

And did you understand at that time that that the Sidoti family had some interest in those companies and/or properties?---Yes.

Now, turning to the recommendations in your report, if we could go to 1160. You make the point, under the heading of Feasibility Analysis that, “The testing revealed that all but one development option is unviable in the current market. The site that was shown to be marginally feasible is located
40 on the corner of Barnstaple Road and Waterview Street and would accommodate a four-storey apartment building.” And then in terms of your final assessment, you make the point that, “It is strongly recommended that controls should not be increased further than recommended by urban design advice in order to facilitate viable outcomes.” Now, by the reference to urban design advice, are you referring to beyond that which was recommended in the Urban Design study or are you referring to something else?---I was referring to the most recent report prepared by Studio GL in relation to these three sites.

And you then outline the alternative options, which are “To leave the current zoning and controls unchanged or proceed with changing the zoning and controls in accordance with the urban design report prepared by Studio GL dated 3 March.” Do you see that?---Yes.

And then if you go over to page 1161, you then set out in a tabular format advantages and disadvantages with those various, those two options. Correct?---Yes. Yes.

10

Was that you anticipating that there might be another request for council that they – or another deferral of the matter so that it could be set out in a tabular format?---Well, so I, I, I’d already started working on this table, and I incorporated it within the report.

Now, when you – going back to page 1160, leave the current zoning controls unchanged, as far as the zoning of the Waterview Street site is concerned, that would mean that that would remain as R3 medium-density residential.---Yes.

20

The second option, which is “to proceed with changing the zoning and controls in accordance with the urban design report prepared by Studio GL dated 3 March, 2016,” in respect of the Waterview Street site, that would again still not result in any change to the zoning.---Yes, there was no recommendation to change the zoning.

But what might be changed, as so far as controls and particularly the removal of the heritage listing for number 39 Waterview Street.---If council resolved to pursue the option that involved removal.

30

If that was the option that was pursued. Then just going to page 1162, sorry, I withdraw that, 1163, right at the end of your conclusion and just immediately before the recommendation, you make the comment that “Should council resolve to proceed with the rezoning, it should be on the understanding that extensive amalgamation and redevelopment is unlikely to occur in the short term.” Correct?---Yes.

And that’s something that was consistent with what had come out of the HillPDA feasibility analysis.---That’s correct.

40

So that was the report that was prepared for the 2 August, 2016. No actual recommendation as to what would be the preferred option.---At this stage, we were just reporting back the outcome of the analysis that was undertaken.

So what did you anticipate might be the outcome of consideration of the report and these issues by council on 2 August, 2016?---To be honest, I didn’t know how they were going to move forward. There, there was

reasons, there were advantages and disadvantages for all options presented. I, I recall prior to the meeting that I was asked for a number of, to prepare a number of resolutions, potentially moving it forward and potentially not moving it forward, so I didn't know what was going to happen on the night.

So who asked you to prepare the resolutions?---From memory, my director.

10 Is that Mr McNamara?---No, I think – I might be getting my meetings confused, but I, I, I think it was a different – was it a – was Tony McNamara at the next meeting? Can I confirm that?

We can, in fact your recollection may serve you well, if we go to page 1164, we have the, that's the minutes of the meeting, and you see that Mr Pavlovic was in attendance but Mr McNamara does not appear to be identified as being in attendance.---Yeah, so, oh, it must have been Tony Pavlovic.

20 So you have actually a recollection of actually Mr Pavlovic asking you to draft some resolutions?---Yes, and they should be on the record if they were drafted.

If they were drafted, they should be on the record in which way? In terms of - - -?---Oh, I would have emailed them to him, or - - -

And would you expect them then to appear in the minutes of the meeting as having been moved by one or other party?---Yes, unless they were amended on the night.

30 I mean, do you – because ordinarily, or up to this point, most of the resolutions that we've seen passed at council meetings, unless there was a motion that the matter be deferred, but they usually reflected the wording of recommendations made by council staff. Would you agree with that? ---Generally, yes.

But in this case, at this point, the recommendation in your report didn't actually set out a proposed resolution other than, effectively, you work out what you want to do, and then, and resolve it that way.---Yes, it, it left it open. That's correct.

40 So when we come to the resolutions of this meeting, if we go to page 1168 – oh, actually, Commissioner, I just note the time.

THE COMMISSIONER: Yes, very well. We'll take a morning tea adjournment for a 15-minute break. I'll adjourn.

SHORT ADJOURNMENT

[11.31am]

THE COMMISSIONER: I understand there's been some technical problems, Mr Ranken.

MR RANKEN: Yes, I understand that's so, Commissioner.

THE COMMISSIONER: All fixed?

MR RANKEN: They have been resolved, yes.

10 THE COMMISSIONER: Yes.

MR RANKEN: Yes, we got up to the point of 2 August, 2018, which was the next consideration of this issue that had been the subject of the resolution in November of 2015, coming back before council for consideration, and I'd taken you to your report on the back of the reports that had been prepared by Studio GL in March of 2016 and the feasibility analysis conducted by HillPDA, which was dated May of 2016. Moving then to August 2016, if we could go to the minutes of the meeting, which are at page 1164. And we had identified that Mr Pavlovic was in attendance
20 but not Mr McNamara. Is it likely again that you attended this meeting?
---Yeah, it's likely.

Given that you in fact prepared the report that was part of the agenda and the papers before council. Correct?---Yes.

And you told us before the morning tea adjournment that in between providing your report and the meeting itself, Mr Pavlovic had asked you to draft various resolutions.---To the best of my recollection, that's correct.

30 And what do you just, in the same way as you prepared the resolution back in November 2015, did you do a document and then attach that to an email to Mr Pavlovic or something of that nature?---Yes, and I believe there were two options, one recommending that it go forward and one recommending that it doesn't, from memory.

Then if we go to page 1168, at the bottom of the page you will see that the item is referred to as the Five Dock Town Centre additional sites, and it identifies that each of Councillors Fasanella and Megna declared a pecuniary interest in the matter and left the meeting.---Yes.
40

And then when we go to the next page it identifies the persons who addressed the council, and they include a Mr J Matthews from Pacific Planning, representing various landowners, landholders, sorry. Do you see that?---I do.

Do you know who J Matthews is?---Yes, a planning consultant.

And do you recall now for whom he was appearing?---I think he stated that he appeared for - - -

THE COMMISSIONER: Sorry, just keep your voice up, please.

THE WITNESS: - - - 120 Great North Road, Second Avenue and a number of properties on Waterview Street.

10 MR RANKEN: And did you know who the persons who were associated with those properties ultimately?---I recognised their names due to the history of this matter, but I didn't know them.

So does that mean you had an understanding that at least some of the, that Mr Matthews was representing, amongst others, the Sidoti family interests in those properties?---Yes, that was understood.

Also referred to there is Mr Durkin. Do you recall him addressing the meeting?---I recall his presence, I don't recall what he said.

20 If you need to, by all means take the time to look at it, but there is a motion recorded there that was moved by Councillors Kenzler and Tyrrell, and it goes over the page from 1169 over through to 1170. When you read that motion that was moved, if you could just reflect on it and say whether or not that accords with your recollection as being something that you had drafted. ---That does not read like a resolution that I would draft. It's very wordy.

So this is unlikely to have been one of the resolutions that you drafted?
---I can't recall my resolution but it doesn't look like mine.

30 In any event, that motion was put and lost on the casting vote of the deputy mayor. Do you see that?---I do.

Now, at that time, this was August 2016, did you understand that, or had Angelo Tsirekas, had he, was he still the Mayor of the City of Canada Bay or had he resigned?---I believe he had resigned to pursue Federal Parliament.

40 And that meant that Councillor McCaffrey, as the deputy mayor, was the presiding councillor at the meeting. Is that - - -?---That's correct.

And this particular resolution was moved but did not pass because of the casting vote of the deputy mayor?---Yes.

And if one looks at the particular, the people who voted for and against, you can see that the two Labor councillors and the Green councillor were in favour of the resolution, correct?---Yes.

And the three Liberal councillors who were entitled to vote, or able to vote, on the matter, they all voted against the motion?---Yes.

THE COMMISSIONER: Just go back to the first resolution, please. Thank you. Yes, thank you. And then the next page, thank you. The minutes record that Mr Matthews spoke at this meeting. Do you recall him speaking and what matters he raised?---I recall him speaking but I don't recall the contents of his presentation.

10 Right. There was no written presentation by him that you're aware of?
---No. I believe it would have been verbal.

Sorry, verbal?---Verbal.

Well, it does say that he spoke in this meeting.---Yes.

The second resolution states that, "After careful consideration, the existing zoning and controls applicable to the three sites identified in the report, 1) western edge, 2) eastern edge, 3) southern edge, remain unchanged for the
20 following reasons," and then four reasons are set out which are in line with the consultants' reports. And the third is, "That the affected residents and landowners be notified of this resolution." And the fourth is, "That the general manager write to the Minister for Planning seeking details of the time frame et cetera." Are the Liberal councillors voting against the resolution? It appears that that vote by the three councillors served no other purpose than to, as it were, block the outcome of the consideration that had been given by the consultants to the three sites. Is that the way it appears to you or was there any other explanation that you can see that would be served by the three councillors voting against the resolution, which was, for
30 example, that the zoning remain unchanged, the residents be advised and the letter written to the minister? Can you understand any rationale or explanation for those councillors, as it were, blocking those resolutions going through?---I, I don't understand their rationale because I, I wasn't privy to their decision-making process. All I can say is by blocking this resolution they had an alternative resolution that they wanted to pursue.

By blocking this - - -?---This particular resolution, there was an alternative that they would want to put forward.

40 That was an alternative?---There had to be if this wasn't the one they wanted to pursue.

Yes, thank you.

MR RANKEN: But it is fair to say though, that had this motion passed that the question of additional sites and some further LEP being developed for those additional sites would have come to an end?---Yes, if this resolution had passed, then no change would occur on these three sites.

THE COMMISSIONER: Well, the whole question of having these three sites investigated for possible rezoning arose from councillors, is that right?
---Yes.

And do you know which councillors had been responsible for making the, for putting the proposal that the three sites be investigated?---If I recall the previous resolution, all councillors with the exception of Cestar and Tyrrell.

10 So that meant that Ms McCaffrey was one of those who supported the resolution to have these matters, these three sites investigated, investigation did take place, and then we find now that she's one of the three who are opposing or blocking the outcome of that investigation which she originally was party to requesting.---I don't believe the investigation itself made a clear recommendation as to whether council should or shouldn't move forward with these proposals. It just recommended what measures should be put in place in the event that council move forward with the proposals.

20 But the resolution 2 was putting forward for council's consideration the very question of whether there should be or should not be a rezoning of the existing zoning for those three sites. But, and that was the very issue that had been put forward previously for consideration. Is that right?---Well, the resolution that led to this report or analysis being prepared was to investigate, and that investigation did occur. It was really up to council whether they wanted to take any further action in response to that investigation.

Investigation did occur, with an outcome. So far as the consultants were concerned, they said there was no basis for rezoning.---And - - -

30 And that, and then the resolution 2 was drafted on that basis, wasn't it?
---Yeah, if the discussion is specific to the matter of zoning, that's correct.

All right, thank you.

MR RANKEN: But just dealing with one aspect arising from that, Mr Dewar, as you said, as far – the original recommendation, or sorry, the original resolution from November 2015, for the investigation of these sites to be undertaken, was passed by all members of council other than
40 Councillors Cestar and Tyrrell. Now, Councillor Cestar, or the effect of Councillor Cestar vote or, against the resolution on 3 November of 2015 was that she was saying, "Don't proceed with the investigation, don't proceed with any further changes to the development controls in relation to those three sites," correct?---Yes.

So when one comes to the investigation having been then done, and the motion that was put forward by Kenzler and Tyrrell, would one not have expected that, consistent with the position that Councillor Cestar had

indicated on 3 November, 2015, that she might be in favour of the resolution that was being moved by Councillors Kenzler and Tyrrell, because that would effectively preserve the status quo for which she had voted in favour of in 2015?---I don't want to presuppose was Cestar, Councillor Cestar was thinking. I, I don't know whether she changed her mind, or whether she had regard to this new report and took into consideration new factors, I just don't know why she would vote differently from meeting to meeting.

But it is a change of position, would you accept?---Well - - -

10

A change of position from not being in support of even investigating the possibility of changing the development controls to one which was effectively blocking the position she had voted in favour of on the previous occasion?---Yes, she's changed her position.

And then you referred to the fact that the councillors who voted against this motion that was put forward by Councillors Kenzler and Tyrrell, had an alternative motion, and if we go to page 1171 we can see the alternative motion that was actually put forward by Councillor Cestar and Councillor Ahmed that was proposed.---Yes.

20

Now, if you could read to yourself that motion, which was ultimately passed and became a resolution of council.---Yes.

Having read that motion, are you able to say anything as to whether or not you drafted that motion or had any role in the drafting of that motion?

---That appears to be one of the two motions that I prepared. This is the one that was in support of change.

30

And that was one of the motions that you drafted at the request of Mr Pavlovic or you don't know from whom you received that request?

---I believe it was Mr Pavlovic, yes.

Are you able to say or can I ask perhaps this this way. Is it your evidence that you were never approached by a councillor to draft this motion directly?---I don't – no, that wasn't the case.

Have you ever been approached by a councillor to draft a particular motion?

---No, I have not.

40

And if a councillor were to approach you to draft a motion, what would your response be to that?---I would speak with my director and I would ask that any communication be undertaken through him or her.

And that's consistent with your understanding about the protocols concerning contact between councillors and council staff.---That's correct.

Now, but in any event your, if I understand your evidence, your clear recollection is that you were never actually asked to draft a motion in relation to these matters directly by a councillor.---I don't recall that happening.

10 And I'm not suggesting it was, but I just wanted to make sure that I understood your evidence and the extent of your recollection about these matters. And you said this was one of two motions. So there was one motion that was simply a motion that there be no change to the planning controls. Is that correct?---Yes, that's what I remember, yes.

And was that effectively a one-paragraph motion, one-paragraph recommendation or motion?---I can't remember the, the, the resolution itself, I just remember there were two versions, one for and one against.

20 But the one that was for was specific in relation to the option concerning the additional sites report, because it says that option 2 in the additional sites report for land between Second Avenue and Barnstaple Road on Waterview Street be endorsed.---Yes.

But no change would occur to the zoning controls for the other two sites. ---That's right.

And then the remaining paragraphs of that resolution are effectively, are they effectively the mechanics by which you would give effect to the, particularly paragraph 1 of the resolution?---That's correct.

30 And that resolution was ultimately resolved on the casting vote of the deputy mayor. Correct?

And the vote being along the lines of all Liberal councillors in favour and all non-Liberal councillors against.---Yes.

Now, the effect of that resolution was that the matter would be, there would need to be a development, sorry, an LEP drafted up that reflected that. ---Yes.

40 And submitted to the Department for a Gateway Determination. Is that right?---That's correct.

And that would require that some, it would likely require that following a Gateway Determination the matter would need to be again put on public exhibition following that Gateway Determination.---Yes.

And do you recall what was the outcome of the Gateway Determination? ---The Gateway was issued and permission was granted for council to proceed with the exhibition of the planning proposal.

Given that the proposal involved the removal of the heritage listing on number 39 Waterview Street, was there any condition of the Gateway Determination in respect of that aspect of it, in terms of the obtaining of reports or the like?---I recall we had – I believe we had to notify the Heritage Office and seek their feedback prior to finalising the LEP.

Was there not also a requirement that there be some report obtained regarding the removal of the heritage listing?---I believe we needed to have a heritage assessment, that's right.

10

And did council obtain a heritage assessment?---I believe we used the heritage assessment we had at our disposal.

And was that the Futurepast consultant report that been submitted to the council on behalf of the – well, had been obtained by, I think the planners who were acting on behalf of Mr Sidoti's family?---That's correct.

20

And on what basis was it determined that that would be sufficient to satisfy the condition in the Gateway Determination?---We had that heritage report at our disposal and it addressed the heritage significance of the site and it was the same report that we had consistently referred to throughout this process. It was also that same report that we had referred to our heritage adviser and it's the report we referred to the Heritage Office.

30

The heritage adviser though, at least at council I think you indicated, disagreed with the conclusions of that report concerning the heritage listing?---Yeah. Her, her primary feedback was that she did not support the delisting of the house on the basis of the contents of that report. She did go on to say that, you know, there are other planning considerations that we have to, to consider and it's, it's really a matter of whether there's any other public-interest considerations that need to be taken into consideration. It's not solely a heritage matter. This was a planning proposal for an entire street block.

And so does that mean that the ultimate decision would be for the Heritage Office about that? Because I take you submitted the Futurepast consultant report to the Heritage Office?---I did.

40

And then what was the purpose of the Heritage Office, what were they going to be doing with it?---It was a condition of the Gateway that we needed their – I don't know if it was concurrence but certainly advice in relation to the removal of the heritage listing from that property and I do recall they wrote back to council and raised no objection to the delisting.

And so was it on that basis that it was deemed that the condition, as far as the Gateway Determination was concerned, had been satisfied?---In part. We also considered the planning proposal following the exhibition based on

planning considerations and on that, on that basis we recommended that the delisting should proceed.

Now, following the Gateway Determination, the matter was to come back to the council, I think, in December of 2016. Do you recall the circumstances in which it was coming back before the council?---What do you mean by circumstances?

10 So perhaps I'll deal with it this way. In August and September of 2016, the draft planning controls for the Waterview Street site that reflected the option 2, as it were, were publicly exhibited. Does that accord with your recollection?---Yes.

And would you agree that there were submissions that were received from the public?---I do.

20 And do you have a recollection as to in ballpark figures how many submissions were received from the public?---Off the top of my head, I can't recall. I remember we had submissions for and against the changes that were proposed.

And as far as those, do you remember the split in terms of the numbers who were for and numbers who were against?---It was something like 60/40 or, in that (not transcribable)

30 60 in favour or 60 against?---60 against. I recall that the landowners on the eastern side of Waterview Street, being the predominantly residential side, were against and the landowners on the western side, being the side that backs onto the B4 mixed-use zone, were in favour.

And were the primary issues as far as those who were opposed to the plans, were they, did they relate to height?---Yes, they did.

And was that the principal concern?---That was the principal concern, and other related matters associated with any increase in the number of apartments that could be built, such as traffic, you know, impact on their amenity.

40 And the matter was to come back before the council in December 2016, but in November of 2016 did you attend any meetings with planners on behalf of the Sidoti family interests?---I do recall I attended one meeting where Pacific Planning was present.

And was that in about November 2016?---That sounds right.

And is this the meeting that you were talking about possibly when you gave evidence earlier on today about meetings with planners?---Yes.

So it was just the one meeting that you attended with - - -?---Yes, just the one meeting.

Perhaps if we could bring up page 1282 in Exhibit 24. Here there's an email from, well, it's from yourself and it, there's an email from yourself to yourself and others that says, "Hi all. This meeting is to discuss two separate matters, planning proposal for land on Parramatta Road and Five Dock Town Centre Waterview Street rezoning." Does that assist you with your recollection?---Yes, I remember this meeting.

10

And the meeting is identified as being on 14 November, 2016.---Yes.

So you recall the meeting. Apart from yourself were the other attendees, are they identified there in the original appointment email?---There was one other attendee.

And who was that?---Michael Megna.

Michael Megna.---Yes.

20

So, Paul, you were present, Mr McNamara was present.---Yes.

Helen McCaffrey was present.---Yes.

And given she was a councillor, why was she present at this meeting?
---This meeting was set up after I received a phone call from, I believe it was James Matthews, advising me that he had been speaking to the mayor and she would like to convene a meeting with them to talk about these two matters. I then went and spoke to my director, Tony, and asked whether he was amenable to attending such a meeting. He agreed for the meeting to occur and he agreed to attend with me.

30

So he attended the meeting with you, did he?---That's correct.

THE COMMISSIONER: Just in relation to this proposed meeting with Pacific Planning, the second item that the meeting was to discuss as Five Dock Centre Water Street Rezoning, but rezoning by this time, wasn't it might be said to have been dead in the water? That is to say it had been dealt with time and time again, and then the additional sites report finally dealt with it. So what, did you have any idea of what now, on 14 November, 2016, was to be discussed about rezoning of Waterview Street?
---At this point we were just going round in circles and just going over the same ground over and over, I - - -

40

Sorry, at this stage, you were going around?---In circles. There was nothing new for me to contribute, but they were coming in to meet with us, they wanted to have this on the agenda.

Who wanted to come in to talk about rezoning?---Pacific Planning.

Who from Pacific?---James Matthews, and there was another gentleman present.

Can't remember his name?---Matt Daniels.

10 So not one but two people this time now from Pacific Planners wanting to discuss rezoning of Water Street.---Yes, as they had consistently requested over the course of this process.

Well, was there anything left to discuss - - -?---I'm not sure - - -

- - - about rezoning Water Street as at 14 November, 2016, given the prior history which we've been through?---Not in my view, there was nothing new to table.

20 MR RANKEN: Indeed, the question of rezoning Waterview Street wasn't even part of the LEP that had been proposed and had been passed by council on 2 August, 2016.---The, the word 'rezoning' may be a general word used to describe any changes to the LEP. It, it was just a description that I used to describe - - -

THE COMMISSIONER: Well, anything's possible. But in the world of town planning, 'rezoning' has a special meaning, does it not?---That's correct.

Well understood.---That's correct.

30 MR RANKEN: And you say you – so Helen McCaffrey was then the acting mayor, or if not, or had she, she'd been elected the acting mayor by that time, had she?---I, I believe so, yes.

And did you see anything inappropriate about the mayor being present for such a meeting?---I thought it was unusual, but as I had my director with me, I wasn't concerned.

40 THE COMMISSIONER: Well, the fact is that Ms McCaffrey had been quite actively involved in events concerning the rezoning, had she not, prior to this time, prior to 14 November, 2016?---Active?

Well, active in the events to have this Waterview Street rezoned.---Well, she's a member of the council and was voting on matters as they came towards meetings.

Yes, and had she been involved in drafting resolutions, proposed resolutions about this question of rezoning Water Street prior to 14 November, 2016, to your knowledge?---Not to my knowledge but I wasn't privy to that.

But you now know that she had been involved in - - -?---Now, now I know.

- - - the proposal, proposed recommendations to rezone Water Street, Waterview Street.---I know that now, I know that now.

10 Well, with that knowledge now looking back, how appropriate would it be then for Helen McCaffrey to be involved in any meeting or discussion as now proposed on 14 November, 2016, in your view?---I mean, that's not really my role to tell what elected councillors meetings can, they can or can't sit in, especially the, the mayor.

You don't have a view about it? Or you do have a view, but you're reluctant to express it? What's the situation?---I mean, I, yeah, I can't, I can't say. I don't know.

20 MR RANKEN: But you certainly considered it to be an unusual circumstance?---I did, it was very rare for me to be in the same room with a councillor about a planning matter.

And do we take it that you raised that with Mr McNamara at least, that this was unusual?---No, I, I, I just put the request forward to him and asked whether he was amenable to attending the meeting.

30 Did you have any conversation with Mr McNamara about why would we be looking at that, why would the mayor want to set up a meeting like this? Because as I understand your evidence, you were contacted by Mr Matthews, and Mr Matthews had said that the mayor wanted to set up a meeting.---That's correct. He, he did come – the request did come through Mr Matthews, and he was the one who suggested that the mayor would like to be there.

Right. And so when you raised it with Mr McNamara, did you raise the topic of the mayor being present and did he express any view about that? ---Yes. No, I don't recall him saying anything, no.

40 When Mr Matthews made the original request to set up the meeting, was there any suggestion that Mr Megna would be attending?---No. I didn't know that he would be there until he arrived.

Because he's actually not identified on this original appointment record that we have here at page 1282 of Exhibit 24, correct?---Correct. Can I just state that midway through the meeting when we moved onto Five Dock Town Centre, Mr Megna did excuse himself and left the room.

Because there were two matters that were for discussion?---That's right.

One of those matters was the planning proposal for land on Parramatta Road?---That's correct, and that, that was the bulk of the conversation of the meeting.

So, at the conclusion of that matter, Mr Megna excused himself?---That's right. He, he advised that he had a conflict and he left.

10 Even so, just dealing with that first aspect of it, the Parramatta Road development, and you had two councillors that were present at a private meeting involving town planning consultants, correct?---Yes.

And council staff?---Yes.

And the planning consultants, Pacific Planning, they weren't the council's experts on the Parramatta Road matter?---No, they were, they were private interest.

They were representing private interests?---That's correct.

20 And I take it there were no minutes taken of this meeting?---It's typical that I would take minutes of a meeting like this. I don't recall if I did or not. If I didn't, Tony might have but I, I, I don't remember.

But it would be quite unusual though to have two councillors present in a meeting with council staff?---It was not common.

And planners representing private interests in the Parramatta Road development.---That's right. That's right.

30 And each of those councillors who were present were Liberal councillors? ---Yes.

They didn't necessarily represent a cross-section of the political affiliations of the members of council?---That's right.

But as you say, when it came to discuss the Five Dock Town Centre Waterview Street rezoning, Mr Megna did excuse himself?---He did.

40 What was the discussion then about the rezoning of Waterview Street in that meeting?---To be honest, I, it's over five years ago. I cannot remember but I remember the Parramatta Road discussion vividly. I do not remember the Five Dock discussion. It was a very short part of a, a meeting that was held.

Was there any discussion, or was it raised at that meeting by anybody, the possibility of revisiting the question of whether or not that that area, the Waterview Street site, could be rezoned as B4 mixed-use?---I can't say with any confidence that zoning was specifically mentioned. I know that they

were continuing to advocate for change but I don't remember what that change was.

You don't remember the detail of the change?---That's right. It, it, they were certainly pushing for more than what had been recommended to date but I don't remember what that was.

And by that do you mean pushing for more than that, even which was actually exhibited as part of what had gone through the Gateway
10 Determination following the motion that was passed on 2 August, 2016?
---That's correct.

And what was passed at the meeting on 2 August, 2016, was the option that provided for the greatest amount of development out of all of the options that were considered by Studio GL?---That's correct.

And yet Pacific Planning were advocating for something more than that?
---Yes. I believe there was more height and more floor space.

20 THE COMMISSIONER: More height?

MR RANKEN: More height.

THE WITNESS: And more floor space.

THE COMMISSIONER: More floor space. Well, by this time, those two issues have been well and truly examined, subject to submissions, council consideration.---The timing of this meeting, can I just confirm, was it while the planning proposal was on exhibition? Because there was an opportunity
30 for landowners and their consultants to provide feedback to council and they may have been exercising that right. I'm not sure.

All right. Well, we can check that out.

MR RANKEN: As I think I indicated, the draft planning controls for the land on Waterview Street were publicly exhibited through August and September of 2016. This meeting was occurring on 14 November of 2016.
---So it was after the event.

40 And indeed do you recall whether any – 18 submissions were received – sorry, perhaps I'll just take you to the document. If we could go to page 1327. That's the report that you prepared for the purposes of the council meeting on 6 December, 2016, and it refers to the fact that, in the first paragraph of the report, that the draft planning controls for the land on Waterview Street in the Five Dock Town Centre were exhibited in August/September 2016.---Yes.

So plainly this was outside that public exhibition period, but you refer to the fact that 18 submissions were received and the primary issues raised in submissions relate to the height facilitated by the proposed building controls and the impact of the additional development on the established community. Now, as far as those 18 submissions are concerned, do you recall whether or not there was any written submission that was received by Pacific Planning on behalf of any of the landowners or by the landowners themselves?---I do recall a submission from Pacific Planning, yes.

10 A written submission?---Yes.

THE COMMISSIONER: From which consultancy?---Pacific Planning.

MR RANKEN: If we go to page 1330, there's the details of the public exhibition, and it says that the council wrote to affected and adjoining landowners on 30 August seeking feedback on the draft planning controls. A total of 18 submissions were received and of those submissions, 12 did not support changing the controls and six submissions did. Do you say one of the submissions that was in support of it was a submission from Pacific
20 Planning?---I recall a submission from Pacific Planning, yes.

Do you recall the detail of the submission in terms of what it said? And for example, did the submission simply say the controls are supported, or did it say actually it should be going further?---I recall that the submission sought the controls to go further in terms of additional height and additional floor space and I also recall that there were some suggestions around the laneway and how it could be configured.

30 But was there any part of the submission that suggested that there ought to be some rezoning of that area to B4?---I don't recall that.

And when you say you don't recall, does that mean that you just don't have recollection one way or the other or is it your recollection that there was no such suggestion?---I don't have recollection one way or the other.

I'm taking you to the report that you prepared, but if you go to the recommendations on page 1335, there's a reference to a exhibition outcomes report that was prepared by Studio GL dated 26 November, 2016. Do you recall that report?---I do.
40

And did that report effectively recommend that there be no changes to that which was proposed in the original – or that which was adopted by the council back in August of 2016, as far as these particular sites were concerned?---I believe we did agree to make minor amendments to the laneway and the way it ran through the block, but I don't believe that we recommended any changes to the height or density.

And then if we go to page 1336, that's the first page of the report. So was it often the case that your report would be provided to the councillors as, essentially, an executive summary, as it were, or a council staff summary of the more detailed report that they would then also have to consider if they wished to look at it in more detail?---That's correct.

10 And then, as I said, this was prepared for the meeting of 6 December, 2016. Could we go then to page 1313 of exhibit 24? Can you see there's an email, it's a bit of an email chain, and the email chain at the top is an email from you to Mr Matthews, copied to Mr Daniel and Mr McNamara, but the original email that you are responding to is one that Mr Matthews actually addressed to yourself?---Yes.

Because the salutation is, "Hi Paul." And it indicates that, "I am representing the views of 2 Second Avenue and 37, 39, 41 and 43 Waterview Street." Do you see that? It's in about the fifth line of the first paragraph of his email?---I do, yes.

20 Now, there's no reference there to 120 Great North Road, would you agree?---I agree.

But each of the properties that are represented there form part of the block that is on the western side of Waterview Street between Barnstaple Road and Second Avenue, that is not within the existing B4 mixed-use zone? ---Yes.

And 2 Second Avenue was the property that was owned by Anderlis Pty Ltd, correct?---Correct.

30 Which you understood had some association with the Sidoti family?---I did by this time, yes.

And did you understand the Sidoti family to have any interests in any of the other properties that are there identified?---No. Not that I was aware, no.

40 And do you see that the point that is made by Mr Matthews is that those lots form more than half of the block that are the subject of the planning proposal and that they request that the matter be deferred due to a number of concerns with the content and level of analysis of the recommended controls, particularly with regard to the feasibility and lot amalgamation, correct?---Correct.

And that that would then enable their consultants – or sorry – enable them to meet with your consultants. That would be Studio GL, correct?---Yes.

And possibly with HillPDA?---Possibly.

Given the reference to, “With regard to feasibility,” would that be right?
---Well, that’s what they’re requesting, yes.

And did you have a view about that, about the appropriateness of deferring the matter so that they could meet with council’s experts?---I believed it was unnecessary.

10 And why did you believe it was unnecessary?---All the matters had been canvassed in a public forum through the publication of our reports and the, and throughout the exhibition process they were, I guess, submitting these requests for a deferral the eleventh hour with no substantive justification.

And in addition though, they had also attended a meeting with yourself and Mr McNamara, and the then-mayor Helen McCaffrey. Correct?---Correct.

And there had been discussions about the planning controls at that meeting as well.---Yes. I can’t say that we gave any ground at that meeting, but we certainly discussed it.

20 But is that not the point? Was it raised at that meeting or do you not recall whether it was raised that there were particular flaws in the analysis that had been conducted by council’s experts?---I’m not sure about the details of the discussion, but I’m confident they would have been advocating for additional development opportunities than what we were recommending.

The email goes on to say, “For example, the report notes that development feasibilities are dynamic, rather than undertaking further analysis of the impact” – I think it’s supposed to say “on development” or – “impact no development will have on the desire to facilitate a laneway and resultant design and transition impacts.” Perhaps it should be – it is spelt correctly, is it?---(No Audible Reply)

30 “Impact no development will have on the desire to facilitate a laneway and resultant design and transition impacts.” Do you see that?---We, yeah, we weren’t proposing no development. We were just stating that limited development would, would occur as a consequence of the feasibility. But we wanted to make sure that appropriate development controls were in place, rather than imposing development controls that were inappropriate simply to achieve a viable outcome.

40 Can I ask you this? Either prior to this email, that’s on 5 December, 2016, or indeed afterwards, were you ever provided with, by Pacific Planning or anyone else on behalf of the landholders along the Waterview Street site, with any further analysis of the impact no development would have on the desire to facilitate the laneway and resultant design and transition aspects? ---I do recall Pacific Planning providing, I think it was a letter prepared by some sort of economic consultant. But I, I don’t believe it was particularly compelling.

When was that provided?---I think it was a late submission.

So when you say late submission, a late submission after this email, or a late submission after the public exhibition that had occurred in August and September of 2016?---I think it was a, it would have been a late submission after the public exhibition, I believe.

10 So would it have been prior to the meeting in 14 November, 2016?---As far as I recall, yes.

So that was a matter that the council had already taken into account or had already had an opportunity to consider before the meeting on 6 December, 2016? Actually council staff at least.---I, yes, I believe so.

And was that considered in fact as part of the submissions that had been received resulting from the public exhibition?---Yes.

20 Given the timing of the report to council and the timing of the council meeting on 6 December, 2016, is it likely that when you refer to 18 submissions that were received by council that that was part of the 18 submissions? Or is it an additional one over the top?---I, I, I can't remember, sorry.

You can't remember.---Yes.

30 Okay. So it goes on to say further, "The report notes that opportunities for consolidated and amalgamated lots are limited due to the location of the strata properties on Great North Road," and then goes on to identify that it "doesn't consider the impact of strata reforms which allow the majority of owners at the 75 per cent, based on the number of lots, to agree to end, sell, or redevelopment their strata scheme". Now, essentially the suggestion there, is it not, is that there had been some recent changes in strata law. Correct?---Correct.

40 That meant that no – that where, if a strata scheme wished to redevelop, they no longer required 100 per cent of the members of the strata scheme to vote in favour, but they could do so on the basis of a 75 per cent majority. Correct?---That's correct.

And what do you say to the suggestion that that wasn't taken into account? ---I recall that it was taken into account. I don't, it wasn't, that wasn't the primary consideration that we were using to determine maximum building heights. We had other considerations that we had used to justify the conclusions that we had drawn.

But would you agree with this proposition, that whether it be 100 per cent or 75 per cent majority that was required, that was still of itself some

impediment to the prospect of a strata scheme being able to redevelop?
---It's still a significant impediment, yes.

They appear to be the only two matters that, at least in this email, were raised by Pacific Planning as matters that suggested that there was some flaw in the analysis that had been conducted by Studio GL or HillPDA, correct?---Correct.

10 And by this stage, if I understand your evidence correctly, they had already been taken into account and considered.---That's right. And there was a report that had been published with the agenda addressing their concerns.

THE COMMISSIONER: In the last paragraph there's observation made that "It is requested the matter be deferred for further consideration at the next council meeting to allow us to meet with the council's planning consultant on behalf of the landowners to understand the level of analysis undertaken to inform recommendations that have a significant impact," et cetera. Had landowners been provided with the opportunity to examine, test, discuss the analysis of the consultants that the council had engaged in this matter?---You mean directly with each other? No. We were not
20 inviting landowners or their consultants to meet with our consultants.

But if any landowner had at any stage requested to be able to consult with the consultants that the council had engaged, would there be any reason that would prevent that from having taken place?---I don't recall us ever getting a request, and even if a request was made, we would likely have advised the person making that request to put their request in writing. It's - - -

30 But would there be any reason why the council would stand in the way of communicating with the council's consultants if they genuinely wanted to understand their analysis and recommendations?---I don't know if we would stand in the way, but we wouldn't be encouraging that. I mean, we had a lot of different interested parties. We weren't going to allow one particular party to access the consultants. We'd have to afford that opportunity to anyone if it started being asked. We preferred to, for people to put submissions in as part of the formal exhibition process in the standard manner.

40 Yes. This letter seems to contain a number of assertions on particular matters that Counsel Assisting has just taken you to and then concludes by a contention, as set out towards the bottom of the page, that "The designated development controls are inequitable in comparison with similar sites. The rationale and justification was in many ways flawed." Had Mr Matthews or anyone else from this planning consultancy ever made those assertions before this date?---Yes, that was the crux of their submissions, that they should be treated as, the same as the block to the south of Second Avenue. So we had, we had addressed this many times.

Sorry?---We had addressed this very point many times.

Yes. All right, thank you.

MR RANKEN: One of the key differences, though, between the block that was south of Second Avenue and this block was the fact that, was the proposed rezoning of the block that was south of Second Avenue to B4.
---That's right.

10 Now, at the top of page 1313 we see that you responded to Mr Matthews saying, "Hi, James. Thanks for your comments. Your request will be circulated to the councillors." And you copied in Mr McNamara in that email. I'll just take you to page, if we could go to page 1320, do you see down the bottom of that page there's a copy of Mr Matthews' original email to you and Ms Boyle that we've just been going to but it was at page 1313.
---I see that.

And Mr McNamara has forwarded it on to all of the councillors and also Mr Sawyer, Mr Osland, Mr Wolfe and Mr Cook, all of whom are members of
20 the executive team. Is that correct?---That's correct.

And perhaps if you could take the time just to read to yourself the response or what Mr McNamara has said about the request for the deferral.---Yes.

Do you agree with the views that Mr McNamara has expressed in that email?---Yes, sorry, wholeheartedly.

Effectively, he was saying, was he not, that this has all been considered, had all been very well and truly considered and that the matter should just
30 simply proceed as the council had originally determined back in August of 2016?---Yes.

And the matter should not be deferred for some further consideration of the issue?---I, I agree with that.

Now, in particular, I just draw your attention to the last sentence where it says, "Rather than deferring this item, may I suggest the item be adopted as per the recommendation and Mr Matthews be advised to submit a planning proposal setting out his client's preferred position for future development
40 with appropriate planning justification." Now, was that effectively saying, "Look, this is not a matter that council should be considering any further as far as changes to LEPs and the like, but that doesn't preclude Mr Matthews or those on whose behalf he acts from submitting their own planning proposal to council to be considered in the usual way"?---That's right. if the applicant was dissatisfied with the outcome, they could always lodge their own application, which we would give due consideration to. But suggesting that council staff should change their recommendation as per their requests was not something that we were going to support.

THE COMMISSIONER: Mr Ranken, I'll just intervene at this stage. I see the time. How much longer do you think you'll be with Mr Dewar?

MR RANKEN: I think I've only got about 10 minutes really.

THE COMMISSIONER: All right. Very well. Well, we'll take the luncheon adjournment and I'll resume at 2 o'clock.

10 MR RANKEN: Thank you.

LUNCHEON ADJOURNMENT

[1.04pm]