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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 2.00PM

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THE COMMISSIONER: Mr Ranken.

MR RANKEN: Yes, thank you, Commissioner. Mr Dewar, just prior to the luncheon adjournment, we got up to I think just before the meeting of the council in December of 2016, and I had taken you to the email from Mr McNamara forwarding effectively the email that Mr Matthews had sent to you seeking a deferral of the issue and Mr McNamara's comments about the prospect of such a deferral and what he considered was the appropriate course for the councillors. Correct?---Correct.

Now, you are aware, are you not, that when it came to the actual meeting itself that that item, the exhibition outcome concerning the changes to the planning controls for land on Waterview Street Five Dock, was in fact deferred for consideration at a councillor workshop in 2017?---Yes, I'm aware of that.

20 Did you attend that councillor workshop in 2017?---Workshop or meeting?

The workshop.---Ah - - -

So there was the meeting in December 2016, that's the councillor meeting. ---I don't remember attending the workshop. I attended the meeting.

Okay, you are talking about the meeting in December of - - -?---Where it, where it was deferred, yep.

30 So there was the meeting in December 2016, and it was at that meeting it was deferred.---Yes.

And in particular it was deferred so that there could be a further councillor workshop before the matter came back before the council, would you - - -? ---I'd, I'd have to see the resolution, sorry.

If we could go to perhaps page 1364.---Okay.

40 So that's the resolution that was moved by Councillors Kenzler and Parnaby, who were the two Labor councillors, but was supported by McCaffrey and also by Cestar.---Yes.

Dr Ahmed apparently was not present at that council meeting. So we understand that there was a councillor workshop sometime in late January of 2017 and then the matter came back before council on 7 February of 2017. Do you remember – that's the meeting you were referring to before.---Okay, yes.

Is that right?---Yes, that's correct.

And if we could perhaps go to 1367, if I've got that correct. No, sorry, I've got that incorrect. Apologise.

10 THE COMMISSIONER: Just while we're waiting for that, do you know whether before 7 February, 2017, the planners who had sought deferral once before, those Pacific Planners, whether they set about formulating a case to support the contentions and criticisms set out in the letter that we looked at a short while ago, in other words, from the time they requested deferral on those two issues and 7 February, '17, did Pacific Planners produce written submissions or reports which provided the basis for any review to be conducted on the question of rezoning of the Water Street area?---No, I don't recall any evidence, reports, or further justification being provided at all.

20 Was it unusual for proponents in support of a proposition or proposal that they wanted council to consider and adopt, having raised the issues, then to do nothing by way of providing an affirmative case, once they got their deferral?---That is an unusual circumstance. Without any evidence, there's nothing for us to react to.

Do you know whether any explanation was ever given as to why, having argued for and obtained a deferral, they then didn't bother putting any affirmative case before council?---No, I was not in contact with the consultants and nor did I try to reach them.

30 MR RANKEN: I wonder if we could go back to page 1335. You can see there, there is the recommendations at that point. These were the recommendations that were prepared for the 6 December, 2016, meeting and there are the four points to the recommendation. Do you see that? ---Yes.

40 And then ultimately, again that recommendation there was deferred, or the consideration of the matter was deferred but if we just stay with that page for the moment. If you just look at those recommendations and if we could then go to a recommendation. So the recommendations in a subsequent report was prepared for 7 February, 2017, which we can see, if we go to page 1367, and then that's the agenda for the meeting on 7 February. And if we could move forward to page 1371, we can see that's the report that you prepared for this meeting, because it's your initials, PLD?---Correct.

And then if we move forward to page 1379, there are five points to the recommendation and if I was to suggest to you that the first four points effectively reflect the recommendation that we saw earlier in the earlier report that was prepared for the purpose of the 6 December, 2016, meeting, correct?---Yes.

The fifth point which is just, “That authority be granted to the general manager to make minor changes to the planning proposal and draft Development Control Plan prior to the finalisation of the LEP.”---Yes,

That was the recommendation in your report. If we go to the minutes of the meeting of 7 February of 2017, which commences at about, if you go to 1409. We can see the item in the minutes and it identifies the persons who presented, or addressed the council, which include Mr Matthews. Do you see that?---I do.

10

Is it likely that you would have been present at this – sorry. I think you told us that you were present at this meeting.---That’s correct.

And you recall being present at this meeting?---Yes.

Do you recall what submission, if anything, or what Mr Matthews said to the meeting on that occasion?---No. No, I don’t.

20

What about Mr Durkin? Do you recall what he might have said to the meeting?---No, I don’t.

You can see that the resolution that was proposed was proposed by Councillor Cestar and Councillor Ahmed and just on 1409, it continues over to 1410, you can see there is a sixth aspect to the resolution. Do you see that?---Yes. I do.

30

And that sixth aspect was, would you agree, that reflected, in a sense, the sentiment in the last sentence of the email that Mr McNamara had in fact forwarded to the councillors?---Yes, it’s very similar.

You said you could see that that motion was passed on the casting vote of the mayor, but underneath there is a reference to the fact that during the discussion on the item there was a foreshadowed motion that was moved by Councillor Kenzler, and that shadow motion is recorded below, but plainly that motion wasn’t ultimately passed.---Yes.

If I was to suggest to you that motion reflects the earlier motion that was put by Councillors Kenzler and Tyrrell back in August of 2016 - - -?---Yes.

40

- - - effectively that there be no change to the existing proposed developments.---Yes, it’s the same.

Development controls.---That’s correct.

THE COMMISSIONER: Just go back to the previous page. Thank you. Then go forward a page, please, one forward. Paragraph 6 talks in terms of the following, that if the owners of property in the area believe there is a better planning outcome to be achieved than the recommendation, they

lodge a plan proposal in the normal way. Whoever drafted that didn't define what "the area" means. Are you able to shed any light on that in terms of how that was meant to apply, that is paragraph 6?---I can only state that the area in the context of this resolution was the block bounded by Great North Road, Barnstaple Road, Second Avenue and Waterview Street.

I take it it's intended to be the owners of the property in Waterview Street - - -?---That's correct.

10 - - - about which rezoning had been sought.---That's correct.

And how do you draw that conclusion?---That was the subject of this planning proposal and the subject of this resolution. It wasn't about any other areas, it was about this area.

All right.

MR RANKEN: Because of course the other two areas that had been considered by Studio GL following the resolution of November 2015 had  
20 been quickly discarded as far as any changes to their controls progressing.  
---That's correct.

And that was part of the effect of the resolution of the council in August of 2016.---Yes.

THE COMMISSIONER: So this paragraph 6 then was, as it were, tailor-made for the owners and only the owners of the properties owned by the Sidoti family. Is that right?---I can't say just the Sidoti family.

30 Or may I say, perhaps I should add to that, Sidoti family and/or the corporations controlled by the Sidoti family.

MR NEIL: Well, I object to that, Commissioner. That just can't follow from the wording of it.

THE COMMISSIONER: I'm sorry, I can't hear you.

MR NEIL: I submit that just cannot follow from the wording of the clause.

40 THE COMMISSIONER: Well, we're talking about the owners of property in the area and I picked up the point to obtain clarification. There's nothing in paragraphs 1 to 6 that define what the area was. Isn't it clear that it only applies to, I understood the witness to say a moment ago it's a reference back to those properties – or perhaps I'll clarify with the witness – or is it broader than that? When you're talking about the owners of the property, what owners, to be specific, what properties are being there referred to?  
---There are more than one owner in this block, so it can't be defined just to mean the Sidoti family, however - - -

The Sidoti family.---But it's clear - - -

Not only their properties but the others in that area. Is that what you're saying?---That's right, it could equally apply to them.

Yes.---However, as this was taken directly from the email from Tony which did apply to the Sidoti family, it might follow that therefore that's who it was intended to apply to.

10

Right, okay. Well, there may be some evidence about that we'll come to in due course.

MR RANKEN: Yes. Now, can you say this though, that as far as the drafting of any resolutions, you weren't involved in the drafting of that particular paragraph to the resolution?---I was not.

20

Now just so that your evidence is clear about this – it may have been ambiguous as a result of my questioning – but I asked you about the recommendations that were in the report that you prepared for 6 December, 2016, and the recommendations that were in the report you prepared for 7 February, 2017. Perhaps if we could just bring up 1335 again. Now, you may recall that I pointed out to you that there were four parts to that recommendation or four paragraphs to the recommendation.---Yes.

30

And then when I took you to the report that you prepared for 7 February, 2017, which is at 1379, I identified that in fact there were five but the original four paragraphs were in fact reflected in the recommendation for 7 February, 2017.---Yes.

And you agree with that. But if I could just perhaps point out to you that in respect of those – and perhaps for the assistance of the Commissioner – that insofar as the recommendation for 7 February, 2017, is concerned, paragraphs 1, 3, 4, and 5 reflected what was 1, 2, 3, and 4 in the report prepared for 6 December, 2016, but there was the additional paragraph, was paragraph 2, which provided for the removal of the heritage item for the dwelling house on 39 Waterview Street. Is that - - -?---Yes, I follow.

40

If you need us to go to one or the other to be able to make that comparison yourself - - -?---I, I've noted that, yes.

So that was the only difference between those two recommendations, was the specific reference to the removal of the heritage item. Correct?---Yes.

But as I understand the resolution of the council in August of 2016, which was to go with option 2 in respect of that site, the Waterview Street site, that necessarily involved removal of the heritage item.---Yes, it didn't change the intent of, or the, or it didn't change the intended outcome.

So the only kind of, if there's any substantive difference between the resolution that was ultimately passed by the council on 7 February of 2017 was this additional paragraph 6.---Could you just take me back to paragraph 6? Sorry.

So yes, that's 1410. That additional - - -?---Yes, yes, that's correct.

10 Even that paragraph, would you agree, was not really of much substantive force in any way or practical force?---That's right, it, it appears to be advice.

Now, from that point, is it fair to say that the issue was effectively resolved as far as the extent of any changes to the planning controls for the Waterview Street area, site?---Yes, I believe council's role was finished, and it would now proceed to the Department of Planning.

THE COMMISSIONER: Sorry, I'm still having trouble hearing you. ---Sorry, the council's role had been completed and it would now proceed to the Department of Planning.

20

MR RANKEN: Did you become aware though that there was a rescission motion that was made by Councillor Kenzler?---I, I, I was made aware, yes.

And that rescission motion came before the council on the very next meeting of council on 21 February of 2017.---Yes.

But was defeated on the casting vote of the then-mayor, Helen McCaffrey. ---Yes.

30 And as far as council's role in the Urban Design Study and the associated planning proposals, was that effectively the end of their role, as in, council as opposed to council staff?---Yes. It became a procedural matter from this point forward.

40 Now, I just want to go back to a couple of things. There was one thing that I didn't cover in your evidence that I perhaps ought to. So I do apologise for coming out of sequence. But if we could go to page 692 in Exhibit 24, I just want to ask you if you can assist us. There's an email at 692 from yourself to an address which is drummoyne@parliament.nsw.gov.au and it's addressed, the salutation is John. I take it that that's an email from yourself to Mr Sidoti?---That's correct.

On 14 July, 2015. And you refer to attaching a copy of the inventory sheet for the house at 39 Waterview Street, Five Dock.---That's correct.

And if we go to the next page we can see the first page of the inventory sheet, correct?---Yes.

And then there are, I think, three further pages, including a photograph.  
---Yes.

What were the circumstances in which you came to be emailing a copy of this inventory sheet for 39 Waterview Street to Mr Sidoti?---I received a phone call from Mr Sidoti. He introduced himself and he raised the planning proposal.

10 THE COMMISSIONER: I'm still having trouble hearing. If you would speak to - - -?---Sure. He raised the planning proposal that was in relation to - I, I think this was around the time of the Five Dock Town Centre in 2015 and he, at that time, asked me why the northern side of Second Avenue was being treated differently to the southern side. I gave him a response. I cannot remember the particulars of the discussion. I believe I would have referenced the heritage item, the strata title, apartments and the fact that it outside the central core, because that was consistent with what we had always said and I had given him an undertaking to send him a copy of the heritage inventory sheet for the heritage item.

20 MR RANKEN: When you say, "Give him an undertaking," is that because he asked for a copy of - - -?---I may have offered or he may have asked, I don't recall.

Did he say anything in response to what you told him about the reasons why it has been treated differently to that on the southern side of Second Avenue?---Did he - sorry?

30 Did he provide any response to you when you - - -?---I, I don't remember the particulars of the discussion. It was, it was not a long phone call.

You were aware, were you not, that his family had property interests in that block?---Yes, I was aware.

When you say he introduced himself, how did he introduce himself to you?  
---He said, he called, he announced himself by saying, "I'm calling as a resident not as a local member."

As a resident not a local member?---Or something along those lines.

40 He didn't say, "As a property owner"?---Not that I recall, no.

But as a resident, and by resident did you understand him to be referring to, as a resident of Canada Bay or of the Canada Bay local government area, or a resident of Five Dock or what?---To be honest, I, I didn't think about it at the time. I just recall that introduction.

And other than asking why the northern side of Second Avenue, or the block north of Second Avenue was being treated differently, did he express

any views as to how it should be treated, other than just asking why?---I don't remember any further engagement in relation to his views, no.

And did you bring this communication, or the fact of this communication, to the attention of Mr McNamara or any of your supervisors?---I do recall letting Tony McNamara know at the time but it was just a, a comment, "I received a call from Mr Sidoti."

10 From time to time in your role at this stage as a planning coordinator, or coordinator of planning, was it uncommon or unusual to be contacted by a resident asking such a question and asking for, or seeking some information about the heritage listing and the like?---I received enquiries all the time from residents about these type of matters.

Is it common for you to provide them with copies of inventory sheets such as this?---Yes, if it's about heritage property, it's due process to give them the evidence that council has.

20 So there's no procedure that they would otherwise have been required to go through in order to get that information?---They could lodge what we call an access to information request, or an FOI, but to be honest, we're happy to share this information when someone asks.

And then there was just one other matter I wanted to raise with you. You may recall early on in the evidence, in your evidence, I asked you questions about protocols or guidelines relating to the contact between yourself and councillors or council staff and councillors. Do you recall that?---I do.

30 And I think your evidence was to the effect that you were aware that there was a protocol or guideline that was followed that would mean that there should be, contact should occur through managers.---If it's between councillors, ideally yeah, managers or the director level.

But you weren't aware of any specific guidelines, specific written guidelines where it was in writing, as it were.---It may be in the code of conduct, I just don't remember if it's specified.

40 So you're referring to the model code of conduct that's been, the code of conduct that has been adopted by the Canada Bay Council.---That's correct.

And in what context have you seen or been provided with a copy or been trained in relation to the code of conduct for the Canada Bay Council?  
---We have had training on the code of conduct, specifically anticorruption training, and I think staff's obligations when dealing with external parties.

And so firstly is it just the one lot of training you've had in respect of the code of conduct or is there refresher training, as it were?---I've been with council for an extended period of time - - -

Since 2004?---2001, so 20 years, and over that period I've had training on a number of occasions.

But when you say a number of occasions, is that more than, obviously more than two, more than three.---Yeah, three or four times.

Three or four times over 20 years, so about once every five years or so.  
---That sounds correct.

10

Do you recall when the last occasion was that you were taken to the or trained in the code of conduct?---Not off the top of my head, no.

If we could, in Exhibit 25, not 24, Exhibit 25, if we could go to page 103, that's the code of conduct that was adopted by the City of Canada Bay in 2013?---Yes.

Is that a document you recognise as far as at least the front cover of it?  
---Yes, it is.

20

And in terms of the training that you've had in relation to the code of conduct from time to time, what did it consist of, was it sitting down with someone going through the code of conduct or was it some presentation that was done by way of PowerPoint or - - -?---I recall there being a presentation and I also recall there being an exercise where we would break into groups and play through a scenario and come back and talk about how we're going to manage risk or mitigate potential exposure to corruption and inappropriate practice.

30

And how long would the training go for?---I believe that was a two-hour training session.

And was that the way it went on each occasion you've had this training or has there been a development over time in terms of the detail and the manner in which the training is given to council staff?---I do know that more recently there is a training module that all staff can complete online, so staff can do the training remotely, aren't required to attend a particular training session.

40

Have you done that online training in relation to code of conduct matters?  
---I don't believe I completed that yet, no.

And that's as an alternative to attending an actual session.---I believe it's an option available to all staff at any time.

But if a staff member was to do the online training module, would that then obviate the need for them to attend an in-person training session?---I believe so.

And therefore would not need to be part of any roleplaying exercises or - - -  
?---I, I mean, I'm not the training coordinator, so I don't know what the  
expectations are around the next rollout of a particular training program. It  
may be a requirement that all staff have to attend irrespective of whether  
they've done the online module, I, I do not know.

10 All right. And in terms of doing the online module, you said that that's  
something that's been available more recently. Do you know if that's in  
response to COVID-related issues, or is it just something that became  
available as an online alternative or an online option prior to the COVID  
pandemic?---I believe it was prior to COVID, it's one of many modules that  
are available to staff.

Now, given the date of this code of conduct being adopted in 2013, is it  
likely that soon after the adoption of the code of conduct there would have  
been some communication to staff that the council's adopted the code of  
conduct and then there would be some training in it?---Yes, I, I, I recall the  
training not long after this was adopted.

20

And was that training, did that involve the roleplaying?---From memory, it's  
going back a few years, but I, from memory that was the one. It, oh, I, I  
don't want to confuse my training, but it, I - - -

All right, because I'll come to a later version of the code of conduct in a  
moment, but this in 2013, this one. But as part of the training did you go  
through, did someone take you through the provisions of the code of  
conduct?---Yes, there was I believe a PowerPoint where they talk through  
the relevant provisions.

30

Could we just go back to page 113 in Exhibit 25, and could I draw your  
attention to the part that deals with obligations of councillors and  
administrators, and at clause 6.2, where it says, "Councillors or  
administrators must not (a) direct council staff other than by giving  
appropriate direction to the general manager in the performance of council's  
functions by way of council or committee resolution or by the mayor or  
administrator exercising their power under section 226 of the Act." Does  
that ring familiar to you, that detail?---Yes.

40 And that "(b) in any public or private forum direct or influence or attempt to  
direct or influence any other member of the staff of the council or a delegate  
of the council in the exercise of the functions of the member or delegate."  
---Yes.

Or "(c) that councillors or administrators must not contact a member of the  
staff of the council on council-related business, unless in accordance with  
the policy and procedures governing the interaction of councillors and

council staff that have been authorised by the council and the general manager.” Do you see that?---I do.

And in relation to that paragraph (c), you’re not aware, as I understand your evidence, of any such written policy and procedures governing the interaction of councillors and council staff as having been authorised by the council or the general manager?---I’m not aware, but our governance officer may be able to elaborate.

10 And who is the governance officer?---At the moment, Melissa Lee, I think, or potentially her director, Bob Pigott.

Bob Pigott?---That’s right.

Thank you. And if we could then go to the bottom of the page, you see at 6.7, it talks about inappropriate interactions. It says, “You must not engage in any of the following inappropriate interactions. Firstly, at (a),  
20 “Councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters other than broader workforce policy issues.” And if I could then also take you to (g), which is over the page, I think, “Councillors and administrators directing or pressuring council staff in the performance of their work or recommendations they should make.” Do you see that?---I do.

And that’s a clause you’re familiar with or were you not, prior me taking this to you?---I can’t say I, I could have quoted that verbatim but I was aware that councillors shouldn’t be pressuring staff in relation to their recommendations.

30 And did you, in the course of dealing with this particular issue concerning both the Urban Design Study and associated planning proposals and then the additional sites issue, did you ever consider that you were being pressured by councillors in terms of the recommendations you should make?---Only on the one instance, and that’s when we had the council workshop, regarding the study and, and subsequent planning proposal where we were directed or pressured to increase the heights and floor space ratio.

40 That’s going back to the – you’re talking about the council workshop that was conducted on 8 April, 2014, after the Urban Design Study had been publicly exhibited in December of 2013 and January of 2014?---That’s correct.

And the meeting after which you drafted that email that you sent to yourself at the time intending to forward it onto the Department of Local Government?---That’s right.

But other than that occasion, you never considered yourself, in relation to these matters, that is the Urban Design Study and associated planning

proposals and then the additional sites review that was conducted and LEP that came off the back of that, you never considered that you were subjected to any pressure in the performance of your work or the recommendations you should make?---No. I believe we always put forward the recommendations that we deemed to be appropriate.

10 And just to close off on this issue about the code of conduct. If we could perhaps go to page 269. This is the cover page for the code of conduct that was adopted on 26 September, 2017, and I understand this is the current code of conduct that has been adopted by the City of Canada Bay?---Yes.

Now, I appreciate that in appearance it is identical to the previous code of conduct, but for the date of adoption and the effective date. Would you agree with that?---I would agree.

20 But are you able to say that when this code of conduct was adopted, you were advised that it had been adopted and was there training provided to council staff in relation to it?---Yes. I believe, I remember because there was a change to the, I think a general code of conduct across New South Wales. I'm not, I'm not sure. So this had to be updated to align with that.

But insofar as the particular part of the code that I took you to, part 6, dealing with the relationship between council officials, if we could go to page 279 in Exhibit 25. If you look at clause 6.2, particularly subclauses (a) through to (c), they are in identical terms as the 2013 code of conduct? ---Yes.

30 And then at 6.7, the particular clauses there are also – you will need to go over the page to 280 as well for (g). They are identical as well?---Yes.

Just one moment, Commissioner. Yes. Thank you, Mr Dewar, they're all my questions.

THE COMMISSIONER: Is there any application to cross-examine Mr Dewar?

MR NEIL: Yes. I would apply, Commissioner.

40 THE COMMISSIONER: Yes.

MR NEIL: Thank you. Mr Dewar, I act for Mr John Sidoti. Now, other than the occasion about which you've given evidence where Mr Sidoti spoke to you on the phone, have you had any other discussions with him about any of the matters relating to a Waterview Street site?---No, I have not.

Have you had any discussions with him about anything else at all, other than the one matter you've given in evidence?---No, I don't believe I've ever spoken to him about any other matter.

Thank you. Have you ever attended any function at 120 Great North Road function centre?---No, I have never been in that building.

10 Thank you. Now, LEPs are very important documents, correct?---Yes.

And they're meant not only for the times immediately following their gazettal but they're generally speaking meant to cover a long span of time, correct?---Yes. They're not lightly changed, that's correct.

And when a proposed LEP, would it be a case that it might have to be considered by council on more than one occasion?---Yes, depending on the complexity, we do often report on multiple occasions.

20 And could it also be the case that it might involve more than one occasion of public exhibition?---Yes, if substantive changes are made to what was previously exhibited, we would re-exhibit again.

And it also involves have to go to the Department under what's called the Gateway process, is that right?---That's correct.

After which it comes back to council for exhibition?---Yes.

30 Does the Gateway, at times, recommend some amendments?  
---Occasionally.

And is it reasonable to suggest that a typical process for a major LEP, such as a town centre LEP, could span some months or even years in terms of it being conceptualised, discussed at council and finally approved?---Yes.

Thank you. Now, I just want to ask you something about – if the witness might be shown, Your Honour, page 1276 of Exhibit 24. Now, you have told the Commissioner that when discussing matters of planning, the terms zoning has a particular meaning, correct?---Zoning, yes.

40 And rezoning can have a particular meaning, is that right?---That's right.

But I want to ask you, are there occasions when the word zoning or rezoning is used to describe something that is not strictly zoning or rezoning?---In the context of this email, I have used the word rezoning when there was no rezoning proposed.

That's what I want to ask you. Where you say, "The Waterview Street rezoning in Five Dock was notified," that is the use of a word in more general sense than the strict word "rezoning", correct?---That's correct.

Because if we look at page 1330, do we see there some information about the notification to affected and adjoining properties on 30 August, 2016, referred to in your email on page 1276?---Sorry, what's the question?

10 I'm sorry. Let me take you back to 1276, if we might, and I'll start again. In the sentence commencing, "The Waterview Street rezoning in Five Dock was notified to affected and adjoining properties on 30 August, 2016," having drawn your attention to that I now ask you to look at 1330. Does 1330 under the heading Public Exhibition set out, at least in some form of summary, what had happened about the council writing to affected and adjoining landowners on 30 August, 2016?---Yes, it does.

Seeking feedback on the draft planning controls. Correct?---That's right.

20 And thereafter it points out which submissions supported changing the controls and which submissions did not support changing the controls. Correct?---Correct.

And if I take you back to 1276, where you use the word "rezoning" was that in fact a reference to the draft planning controls referred to on page 1330? ---Yes, it was talking about the amendment to the LEP generally.

30 Thank you. And if you look back at 1276, please, and go towards the top of the page, in the email from Mr Matthews which starts at 1275 saying, "Hi, Paul. Thanks for the update." At the top of 1276 Mr Matthews states in the second paragraph, "Further we do have some comments on the Waterview Street rezoning." Is it fair to say he's there picking up your use of the word rezoning, although the real reference is to planning controls?---He may have picking up my reference, from my recollection he was also seeking a rezoning.

At that time isn't it the case that the question of any possible zoning of the Waterview site as B4 had been resolved?---By council, but Pacific Planning were still pursuing that objective.

40 Are you able to show any written material in which they were putting forward any argument to that effect?---It would only be the submissions that they provided to council which would be on the record.

So to clarify that point we have to go to those submissions. Is that right? ---Yes, if they make reference to zoning they will be in those submissions.

All right. If I take you to page 1320, at the lower part of the page there we see an email from Mr Matthews to you which I think you sent on to Mr

McNamara. Mr Matthews says, “I am representing the views of 2 Second Avenue and 37, 39, 41 and 43 Waterview Street.” Do you see those?---I do.

Do they include Mr Durkin’s property and Mr or Mrs Cassisi’s property?  
---Yes, they do.

Was Durkin [redacted] and Cassisi [redacted]?---That’s correct.

10 And if we go towards the top of page 1320 do you see that Mr McNamara in his last sentence says, “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 with appropriate planning justification.” And if we go to page 1410, which is part of the minutes of the meeting of 7 February, 2017, we see there that item number 6 has been added to the staff recommendations, correct?---Yes.

The page before, 1409, shows that Ms Cassisi and Mr Durkin both addressed the council, correct?---Correct.

20 Mr Matthews addressed the council, correct?---Correct.

And the owners of the property in the area, would you not agree that the area there being referred to is the area of the western side of Waterview Street between Second Avenue and Barnstaple, but to the east of the properties that are in Great Northern Road between Barnstaple and Second Avenue?---My reading of that clause 6 is it applies to the block bound by Barnstaple, Waterview, Second Avenue, and Great North Road. The person that raised this motion would be able to answer the question of what their intent was.

30 I see. But owners of property in the area you’ve just described would have to be, well, in the order of 20-odd, at least, would you agree?---Yes.

All right. Yes, thank – pardon me. Now, just one matter, on the occasion that Mr Sidoti did telephone you, you reported that to your – I think Mr McNamara, is that right?---Yeah, I, I spoke to him, but it, it was just to let him know that it had occurred.

40 Yes, it was not a complaint.---No, it was just to alert him.

Thank you. You had not had any pressure applied to you as far as you understood from Mr Sidoti?---No, it was not – no, there was no pressure.

All right, thank you very much. Thank you, Commissioner.

THE COMMISSIONER: Yes, thank you, Mr Neil. Anything else?

MR RANKEN: Nothing arising.

THE COMMISSIONER: Mr Dewar, I thank you for your attendance. You are excused.

**THE WITNESS EXCUSED**

**[2.58pm]**

10

MR RANKEN: Commissioner, the next witness I call is Michael Megna.

THE COMMISSIONER: Thank you. Is there somebody there to – yes. Come forward, Mr Megna. Do you wish to take an oath or an affirmation? ---Oh, the oath, thank you.

Affirmation?---Oath.

Oath.

THE COMMISSIONER: Yes, Mr Megna, would you state your full name, please?---Yes, Michael Joseph Megna.

Thank you. Are you legally represented here?---No, I'm not.

You're not.---No.

10

I think you're aware of the fact that a witness may object to the questions in order to, or which has the effect of providing some measure of protection. That is to say, the evidence cannot be used against the witness in the future other than for in a case such as an offence under this Act, the Independent Commission Against Corruption Act, an example of which would be deliberate misleading of the Commission or perjury, but aside from those exceptions, it provides that protection. Do I understand that you wish to avail yourself of that protection?---I understand and I do wish to, thank you.

20

Thank you. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Megna and all documents or things, if any, produced by him during the course of this public inquiry are to be regarded as having been given or produced on objection. Accordingly, there is no need for Mr Megna to make objection in respect of any particular answer given or document or thing produced.

30

**DIRECTION AS TO OBJECTIONS BY WITNESS: PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR MEGNA AND ALL DOCUMENTS OR THINGS, IF ANY, PRODUCED BY HIM DURING THE COURSE OF THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. ACCORDINGLY, THERE IS NO NEED FOR MR MEGNA TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

40

THE COMMISSIONER: Mr Ranken.

MR RANKEN: Thank you, Commissioner. Mr Megna, what is your current occupation?---I am an accountant. I have a business in Five Dock.

And is your business located in the Five Dock Town Centre?---Yes. On Great North Road, near Lyons Road, yes.

Near Lyons Road. Is that towards the northern end of the Five Dock Town Centre, is that correct?---Correct.

And in addition – sorry. How long have you been an accountant?---Oh, 40 years.

And have you always conducted your business from an address in Five Dock Road?---Yes. Yes, in about three different place in Five Dock, yes, on Great North Road.

10

You are also a councillor with the City of Canada Bay Council, is that correct?---Correct, yes.

And when were you first elected to the City of Canada Bay Council? ---Canada Bay, 2004.

And have you continued to be a councillor at the City of Canada Bay Council on a continuous basis since 2004?---I have.

20

Obviously successful in every election since that time until the present day? ---Correct.

Joining the City of Canada Bay Council, was that your first experience of becoming a local councillor?---No. I was a councillor on the Drummoyne Council from '87 to 2000, which formed, which merged with Concord Council in 2000 to become Canada Bay.

And so there was a break, was there then, from 2000 to 2004?---About three years, yep.

30

After the amalgamation of those towards councils?---Yes.

Did you grow up in the Drummoyne area?---Yes, in pretty much Five Dock, Abbotsford, Chiswick area, yes.

And is it the case that you are a member of the Liberal Party?---Correct.

And when did you first join the Liberal Party?---1973.

40

And have you maintained your membership of the Liberal Party since that time, since 1973?---Yes, I have, yes, yep.

And does it follow then, on each occasion you've been elected to council, be it the Drummoyne Council or City of Canada Bay Council, it has been as a member of the Liberal Party, as a Liberal candidate?---Correct, yes, yep.

And do you know Mr John Sidoti?---I do.

And how do you know Mr Sidoti?---I've known him for, I've known him for about 40 years, probably. My parents knew his parents, or know his parents. So we've just known each other as being, living in the Five Dock area.

Is there any other relationship between you and the Sidoti family?---No other, no.

Is there any other family connection?---No, we're not related, no.

10

Any godparents or - - -?---Oh, I'm sorry. My father – no, not a godparent. My father was John's confirmation sponsor, which is a religious service, yeah.

You're obviously aware that Mr Sidoti became the Liberal member for the state electorate of Drummoyne in 2011?---Yes.

Prior to 2011, the electorate of Drummoyne had been held by a Labor politician, is that correct?---For about 50 years, I think. Yeah.

20

So that was quite a significant moment for the Liberal Party at least in Drummoyne, correct?---Yes, yes, it was.

And the Drummoyne state electorate effectively is taken up almost entirely by the City of Canada Bay, is that correct?---It is now, yeah. Pretty much now, yeah. Look, the boundaries have changed over the, over the last 10 or so years but pretty much Canada Bay and Drummoyne are, have the same boundary.

30

But since 2011, since Mr Sidoti's election to Parliament?---I can't tell you, I'm sorry, I don't know. Sorry, parts of Concord I think are out of it now and form part of the seat of Strathfield, but to give you the exact lineage I'm not sure.

But I suppose one point of it is though is there is no other council or local government area that is within the state electorate of Drummoyne.---No. Oh, there's a little bit of Strathfield that cuts across into outside of Parramatta Road, so that may form part of John's electorate, I can't be sure but there's a little splinter of an area that comes across.

40

If anything it's a small, small part - - -?---Oh, it's I don't know how many houses, it would be very small.

But effectively the constituents of the City of Canada Bay local area almost at one with the constituents of the Drummoyne state electorate. Correct? ---Yes, yeah.

Now, as a longstanding member of council, are you familiar with the code of conduct for councillors?---Yes. It's changed over the, well, it's changed in various ways over the years but yes, I am familiar with it, yeah.

And how have you been able or how have you familiarised yourself or been able to become familiar with the code of conduct?---Oh, council staff, the general manager or the relevant director would raise it at a meeting or at a workshop and we'd go through it. They would pretty much just tell us what the changes were and then it would be adopted at a council meeting.

10

When you first became a councillor of Drummoyne, was there such a thing as a code of conduct back then?---No, no, not at all.

So it's been something that you have seen come into the work of being a local councillor over the course of your long career in being a local councillor.---Yes, yes.

And is it common these days that when a person is first elected to council that they are provided any induction in relation to the code of conduct?

20

---Well, I think there are induction seminars or courses for new councillors, yes.

What about for persons who aren't necessarily new councillors but have been re-elected to council?---I don't think there's a refresher course, no.

There's no refresher course.---You could, you could, you could go to a course where new councillors go, or you don't have to. I mean there's no, there's no requirement, as far as I'm aware anyway. No, it hasn't really been brought to my attention that there's a requirement that every few years you have to be brought up to speed.

30

What about when the code of conduct first came in, because obviously when you first started there wasn't such a thing as a code of conduct, were there any requirements for councillors to undertake training in respect of the code of conduct when it was first brought in?---I can't recall going to any training, no, I can't recall that we, like we went en masse or one on one and had training or were taught what we should be doing. I think it was, there's the code of conduct, read it, and that was about it really.

40

Have you personally ever had any training in the code of conduct?---No.

Have you ever sought to undertake the training courses that are available to new councillors?---No, I haven't. I've read, I've read the document when it comes up, they tell us if there's any changes, I read the changes and accept them, but I haven't been to any courses, no.

Now, as you're aware that the Commission is interested in the circumstances surrounding the Five Dock Town Centre Urban Design Study and the associated planning proposals.---Yes.

And that was a matter that had a – was that a matter of some significance to the Five Dock, suburb of Five Dock?---I'd say so, yes.

And obviously as a business owner within the town centre area it was a matter of some interest to you personally.---Yes.

10

But in your role as a councillor, you appreciated that you had a pecuniary interest in the matter and so were not able to participate in any decisions regarding the Urban Design Study or the planning proposals that arose from it.---Correct.

Is that correct?---Yeah.

20

And is it fair to say that on each occasion the matter came before the council, if you were present for that particular council meeting, you declared a pecuniary interest, correct? And when the item was being discussed you in fact absented yourself from the room.---Exactly, yep.

There was another member of the council over this period from 2013 through to about 2017 - - -?---Yes, Tony.

And that was?---Tony Fasanella.

30

Tony, he also had property interests and - - -?---Yeah, he, he, he's got a property on Great North Road.

The property that you own within the town centre or that was potentially affected by this study and the associated planning proposals, was it limited to the property from which you conduct your business as an accountant? ---No. No, my family, my parents had bought some properties on Great North Road over the last 60 or 70 years.

40

Oh, so your family, it went broader than just your own direct pecuniary interests, but you also had family members who had property interests in the area as well.---Yeah. Yep. Yes.

And do I take I that even if you did not own the property from which you actually conduct your business, you would likely, have declared a pecuniary interest, simply by reason of the fact of your family's property interests in the area?---Yes. Correct.

Now, obviously you'd been a member of the Drummoyne Council for some years before the amalgamation in 2000. When you were a member of the Drummoyne Council, did that incorporate the area of Five Dock?---Oh, yes,

that's always – Drummoyne was pretty much Five Dock, Abbotsford, Chiswick, Rodd Point, those little areas there. The, the eastern half of what is now Canada Bay.

So it follows then, doesn't it, that for a very lengthy period of time, would you accept, in excess, well in excess of 30 years, you've been a local councillor for the area of Five Dock?---Oh, well, for – it wouldn't be specifically – we don't have wards. So it's not specifically Five Dock.

- 10 No, I understand that.---I represent all of Drummoyne when it was Drummoyne, and now it's all of Canada Bay. I'll get enquiries from people from Rhodes or Concord, even though I live in Abbotsford, so - - -

Certainly. Sorry, I wasn't seeking to imply that you were only representative of Five Dock.---No. Mmm.

- 20 But certainly, persons, residents of Five Dock and business owners, the shopkeepers if you will of Five Dock, they would certainly know you as being a member of council and a longstanding member of council, correct?  
---Yes. I would say so, yeah.

Now, it would follow, would it not, that from occasion residents and shopkeepers and business owners in the Five Dock area would come to you with issues that were coming up before the council affecting the Five Dock area, and might ask you questions about it or express their views about it, is that correct?---They'd come for any reason, for anything from a pothole to a bus stop, or a problem, anything like that. Not necessarily development applications.

- 30 No, but can I ask you this, what about circumstances where there was an issue before council affecting, let's say Five Dock, but it was a matter in which you had declared a pecuniary interest, such as the Five Dock Town Centre Urban Design Study, and a resident approached you with a particular issue that they had with it or that they wished to be raised with council about the matter.---Mmm.

In those circumstances, you had a pecuniary interest in the matter, which had been declared, correct?---Right. Yes.

- 40 What did you do to manage the approach from the resident or shopkeeper who was wishing to raise with you their issues, their concerns about their matter, with a view to it being placed before council?---Okay. Yeah, mostly with those sort of issues, if it was – certainly nothing I was voting on, or I wouldn't be able to vote on it, then I would tell them I couldn't vote on it. But if it was, put an enquiry through, like someone like Mr Dewar or his, his boss, or the general manager, I would email or call the relevant person in the council at that staff level that we're allowed to be in contact with, and say, "Mr Smith from such and such a street has an issue, can you please see what

you can do about it?” So I was pretty much a conduit by the resident to someone in the council.

Right. So you didn't think that it might be appropriate to say to the person, “Look, you may not be aware, but I have a pecuniary interest in that matter and am unable to have any involvement in the decision-making of it”?

10 ---Well, I don't think I was making a decision on it. I wouldn't have been voting on anything like that. So, to me it wasn't a decision that I would be effecting, I would be coming to a conclusion on a decision for that person. I was just being a conduit to the relevant staff person.

But so then there would be an approach though made by you, who was someone who had declared a pecuniary interest to a member of council staff about the very matter on which you were unable to participate in the vote or the decision?---Not – yeah. I see what you're getting at but it, it, it wouldn't have been anything that I was voting on. If it was something I, I had to vote on or couldn't vote on, I wouldn't have, I would have told them that I can't vote on it and I think I told people that on numerous occasions, “I can't vote on it, I can't help you.”

20

But as to suggesting that because you couldn't vote on it, it might be more appropriate that they simply direct their - - -?---To someone else?

- - - query to someone else, you didn't see that your pecuniary interest would preclude you from doing that?---Yeah, no. I hadn't thought of it that way. I just thought I'll, I'll just pass on the message to the person that he should be talk to, really.

30 And we've heard some evidence in this inquiry about the conduct of councillors' workshops in relation to matters that were coming before the council for consideration and you were aware that there were a number of workshops that were conducted from time to time in relation to the Urban Design Study and associated planning proposals, correct?---Yes.

And did you attend any of those workshops where such an item was on the agenda?---Where it was on the agenda?

Yes.---I would, I would have been present but when the item came up, I would leave.

40

And would you declare the pecuniary interest and leave?---Yeah, yes, yes.

And are you comfortably certain and satisfied that you did that on every occasion?---I'm 99.9 per cent sure I would have done it on every occasions because when, when Tony would get up, Tony and I would both get up, declare our interest and walk out. So, sorry, there wouldn't have been an occasions where I would stay in and he would leave or he would stay in and I would leave. We, we both did it at the same time.

The council workshops were for the benefit of councillor, correct?---Yep.

And do enable them an opportunity to discuss with council staff and possibly with experts who would have been engaged by council staff the various issues and questions that they may have in their mind about matters of some significance and substance, correct?---Yep.

10 And was that so that they could – is this how you understood it – that it was to assist councillors in being able to come to an informed decision as to how to decide the matter?---Yes. It would come up usually just before a council meeting. So it was our way of having a briefing, a background on what the report was, was about, if there were any questions for staff, or if an applicant or a present was there, we could ask that person a bit more information and then there wouldn't be a lot of deliberation and argy bargy going on at the council meeting, and asking the staff, "Oh, can we have more information," which would delay the process. It was pretty much, our questions would have been answered at that meeting or certainly, if there were questions coming out of the workshop, we would have those answers before the council meeting.

20 What about the formulation of recommendations by council staff to the council in advance of meetings? Did you see workshops as an opportunity for councillors to have some input into the framing of the recommendations that council staff might make?---Oh, I can't recall any that, where that would come into play. It was basically they would come in and say, "We're proposing to put in, like, a cycleway," or, "We're proposing to put in," I don't know, something to do with playgrounds and parks. They would tell us what they're proposing to do and we would question various aspects of it, you know, is it soft-fall, is it hard-fall, that sort of thing. So, no, I don't think there was any, any way or any opportunity where councillors would then say, "We want this outcome."

30 Are you aware of any circumstances where, as a result of, or following a councillor workshop, there was some change to the recommendations that the council staff were putting forward, which had arisen from matters that were raised by councillors during the course of the workshop?---No, I wasn't aware of those.

40 I'm not talking, obviously not in relation, necessarily in relation to the Urban Design Study.---Oh, okay.

I'm just talking in general terms.---In general, no. If I had an interest and I was out of the room, whatever they discussed, they discussed.

I take it that you, for that reason, you wouldn't be able to comment at all on the recommendations in relation to the Urban Design Study itself and what was discussed at the - - -?---I didn't even read it.

You didn't even read the design study.---No.

Not even out of your own personal interest?---I read the recommendation to say what the council staff proposal was. I was happy with the recommendation and that was, that was it, really.

Of course there was nothing preventing you as a, as a citizen and as a - - -?  
---No.

10

- - - a constituent from reading the material, correct?---No.

The material was available online via the council's website, is that correct?  
---I think it would have been online by that stage, yeah. We used to put them in libraries or public places, but certainly online by that stage, yep.

20

And there was nothing in the code of conduct that would preclude you from reading it?---No, no. Oh, can I just add, the reason I, probably why I didn't read it, one of the reasons was I had an interest and it didn't concern me, I didn't need to be briefed on it. I was just finishing off or going through a long-standing legal matter, a defamation case I took out against a former councillor, and that had gone in and out of courts for ages. We were getting down to the nitty-gritty around about that time. I was up to here in court cases. I didn't really need to be reading things I didn't need to be reading. So - - -

So there were a number of aspects to the - - -?---A few aspects, yeah.

30

- - - to your lack of interest in the substance of the report.---Yes.

That, when you're talking about that, you're talking about the time of the study being completed in about, in late 2013, being publicly exhibited in late 2013, early 2014?---Yeah, I think the case, court case finished in about '15, I think.

40

You are aware, though, simply by reason of being a member on the council and a councillor, that the issues concerning the Urban Design Study and associated planning proposals continued to come back before the council on numerous occasions right up until February of 2017?---Yeah. If that was the date, yeah. I knew it went up, pretty well up to the time of the, leading up to the election, council election.

The council election you're referring to is the election in September of 2017, is that correct?---2017, yes.

Now, the Urban Design Study and associated planning proposals were first before the council, I think the study itself before the council in November 2013 and then put on public exhibition late 2013, January 2014, and was

then to come back before the council in May of 2014. Does that accord with your general recollection of it?---The dates I'm not sure of. I know it's around, between those, those years, but I know it bounced around a few times, but if, if they're the dates you say, I take it on board.

It was a matter of some interest in the community, would you agree?  
---Mmm.

10 Particularly the Five Dock community. Would you agree with that?---Oh, yes. There were, there were people against extra height. A lot of people said they wanted to keep the village look of Five Dock. Others wanted the extra height (not transcribable)

And that's something that you were aware of without even reading the reports.---Yeah.

Is that just from people, constituents expressing their views to you?---Just talking. Mmm.

20 Are you able to – perhaps I'll withdraw that. Did you ever discuss the Urban Design Study with Mr Sidoti?---Yes.

And just if we could perhaps stay with the early period, and I'm talking perhaps early 2014, did he express any particular views to you at that time about the study and the proposals or recommendations of the study at that time?---Yeah, it was that the, the changes didn't incorporate the property or the properties that his parents owned. It seemed to stop at his border and then continue further up the street, so his were sort of excised from the whole thing.

30 So - - -?---That was my understanding.

But you didn't do anything to inform yourself as to whether or not what he was saying to you was correct.---No. No. Oh, look, I may have asked, I may have asked a – I may, may have asked Tony McNamara at a council meeting. I didn't sort of go out of my way to jump on the phone straight away. I think the next time I spoke, I saw Tony, I would have asked him, you know, why is that left out, and he explained, I think it had something to do with the strata building on the corner, there were too many owners or  
40 some such thing and it was hard to get them all together. I don't really know what that had to do with it but that was, that was his explanation.

Before you spoke with Mr McNamara did you even look to see the study area and to see what was being proposed to see whether or not what Mr Sidoti was suggesting to you was correct?---We did have, I think they gave us maps to look at, all councillors received maps, so I probably would have looked at it, yeah.

I wonder if we could bring up in Exhibit 24, page 232. Now, do you recognise that as being a kind of aerial view of the Five Dock Town Centre area?---Yeah.

And can I, you can see Lyons Road up towards the northern end.---Ah  
hmm.

And your business is on, is it on the western side or the eastern side of Great North Road?---It's on the eastern side, it's between Rodd and Lyons.

10

So right towards that end.---Mmm.

And prior to the Urban Design Study, your business property was within an area that was zoned as B4. Correct?---Ah hmm, yes.

And can you see that the – if you look at the outline of the study area, when you get down to about Second Avenue on that eastern side of the study area, there is a portion where there are some, there's a dotted line within the heart, within the - - -?---Oh, yeah. Ah hmm.

20

Now, if I was to suggest to you that the dotted line there represents what was the outer limit, the outer limit of the B4 mixed-use zone prior to the recommendations of the study, would that seem to be about right to you from what you recall of - - -?---I'd say so, yeah.

- - - the existing - - -?---I can see where Great North Road is, yeah.

- - - the pre-existing position in relation to zoning?---Yeah.

30

And did you become aware at some point at least that what one of the aspects of the study was to recommend an expansion of the B4 zone to include that additional area on the western side of Waterview Street, I think between First Avenue and Second Avenue?---Yeah, I think I became aware of that after, like a while after. My original understanding was just Great North Road and the shops fronting on, or the properties shopping on, fronting onto Great North Road.

And then do you see that – Mr Sidoti's family had a property at 120 Great North Road?---Yeah, yes.

40

Which is where the function centre was - - -?---Exactly, yeah.

- - - that his family operated, had operated for some years from about 1992. ---That would be about right, yeah, early nineties, yes.

And were you aware of any other properties that the Sidoti family owned in the Five Dock area at that time?---The house or a house directly behind the function centre, John and his wife, Sandra, lived in it.

They had in fact lived in 39 Waterview Street. Is that correct?---Whatever the number was, it was one of the houses directly behind.

But as at 2013 they, they were no longer the owners of that property?  
---Well, he did move, I'm not sure when he moved to Drummoyne, yeah, it was probably round about that time.

10 But leaving aside those two properties, you weren't aware of any other properties owned by the Sidoti family?---No, no.

But can I suggest to you that when you look at that map, the extension of the B4 mixed zone was, went up to Second Avenue, but there was no leaping over the block and then continuing with an expanded area of B4. Would you agree with that?---I can see that, yeah.

20 So to the extent that Mr Sidoti had represented to you that there had been effectively a leapfrogging of his block or the block in which his family's properties - - -?---Or his was left out I think the words were. Something like that. In my, in my mind – I'm sorry to interrupt – in my mind the impression was that his was excluded.

I think when you gave your evidence a short moment ago, you said - - -?---It stopped.

- - - and then it continued after his property?---Continued after that, yep. Up until Fairlight Street, I think. I forget how far it goes up to now.

30 So that suggests, though, that suggests that he was suggesting to you, or the impression you had from your conversation with Mr Sidoti was that it had been excluded but it then had continued on. There was continued expansion of the B4 mixed-use zone further north of his property, of the block that had his property.---I knew it had gone all the way up to the top end of the shopping centre, yes.

You knew about that?---I knew, I knew, yeah, so I knew that his, if his was excluded, well, then it was continuing after his place, after his, his buildings, yes.

40 And this may be that I'm looking at things in a reverse way to the way you're looking at. When you talk about it continuing after his place, are you talking about continuing after moving south rather than moving north?  
---Yes. Yeah, I'm sorry, yes, going up the street, which is heading south.

But what we see in this diagram on page 232 is that the main expansion of the B4 mixed-use is that portion on the eastern side that goes up to First Avenue.---Ah hmm.

And the portion on the western side that goes, also goes up to, I think, sorry, goes up to – I withdraw that. The portion on the east that goes up to Second Avenue.---Second Avenue, yeah.

And there's a portion on the west that expands it up to – I don't recall the street that that is.---Opposite, so that'd be Henry Street I think.

10 Henry Street.---Yep, 'cause there's a public school on the other end. Yes, so it's Henry. Oh, no, it's not Henry Street, I'm sorry. Henry Street's further down.

It's a little bit further south of Henry Street.---I don't think it's a street. It's probably just a border of, of, of a property, mmm.

And then there is a portion on the south-western - - -

THE COMMISSIONER: Perhaps if you could use the cursor when you're taking the witness through.

20 MR RANKEN: If we could move the cursor to the south-western portion of the – down towards Kings Road, where it says Kings Road. The south-western portion of the – yes.---Yep.

There's that area as well.---Ah hmm.

So they're the areas of the expansion of Waterview Street, so the expansion of the B4 mixed-use.---Yep.

30 Correct?---Yep. I actually thought it went to Queens Road but it only goes to Kings. Okay.

But the main point of that is that there was no leapfrogging of that block in which Mr Sidoti's family's properties were at all.---No. No.

So it would be quite incorrect to say that his had been expressly missed out and then jumped over and the expanded zone continuing, correct?---I either misunderstood him or it's not correct, no.

40 So it's quite possible then he may have just said to you that block's been left out, and you've just assumed that he felt that it had been - - -?---I can't remember the exact words, but in my mind it, it stopped at his and it continued after that, yeah.

THE COMMISSIONER: And did he express his view about the land in question being left out?---Oh, he wasn't happy.

And how did he manifest that by what he said?---Well, I, I, I can't recall now. I knew he wasn't happy, and he was going to probably speak to the

general manager or Tony McNamara to find out why. As I said, I didn't chase it up. I, I think for my own edification, I asked Tony McNamara or, or the GM. Probably would have been Tony McNamara next time we had a council meeting.

Would it be true to say that over the years that unfolded after, including that followed 2014, he discussed this issue of what might be said to be the exclusion of the properties from the B4 zoning on many times?---With me?

10 Yes.---Yeah, but it probably went past being mentioned as the exclusion. It was more of the parameters of the zoning.

What sort of things was he saying over the years as this – I'll call it the saga because it did go on for a long time, as you know.---Well, it was more a case of he was trying to convince the, the, Tony McNamara I'm, I'm assuming it would have been, he would be the one that he would be talking to, of the, of the merits of what he wanted.

20 And what did he want?---Well, he wanted his, his area included.

When you say his area, his area based on what properties?---Well, I, I don't know. I'm, I'm assuming it was the reception hall and I found out later that it, it, it covered the Waterview Street, so I'm assuming the house that he owned behind. But if, if, if, in 2013 he no longer owned the house, I, I, it was just the reception hall.

30 MR RANKEN: The reception hall itself was already within the B4 mixed-use zone. So there was no need to expand that. Did he express to you why it was that he wanted the whole of the block included?---No. No. no. There was no reason why.

Why he wanted it?---No. There was no reason. Still in my mind it was because he wasn't getting what the rest of Great North Road was getting?

What do you mean by, "Wasn't getting"?---He wasn't getting the - - -

40 What wasn't he getting?---Well, getting the, the, the, either the floor space or the zoning, the same zoning as the other, the other buildings were getting, the other properties were getting.

But his particular property had the same zoning, correct?---Yeah, well, yeah. As I said, as I said originally, I, I - - -

MR NEIL: Commissioner, could I just ask that, for the record, that my learned friend would confine himself to the parents' property, not saying his property.

MR RANKEN: I'll just refer to it as 125 Great North Road, the function centre.---Okay, sure.

That particular property. In 2013, do you know who was the registered proprietor of that property?---Of the reception hall?

Who was actually the registered proprietor of 120 Great North Road?---No. I just assumed the parents owned it. Because they would have owned, sorry, they would have bought it 30 or so years earlier and John would have only been a teenager, I'm assuming.

So when you use the term his property, you're referring to his family's property?---His family, yes. Yeah, yeah.

Is that fair to say?---Yes.

As far as you understood it, correct?---Yep, yes.

And appreciating that you didn't actually know who was the registered proprietor at that time?---No. I just assumed the parents, yeah.

I trust that meets my friend's objection.

THE COMMISSIONER: Yes. I think you clarified that.

MR NEIL: Thank you.

MR RANKEN: But that property was already zoned as B4 mixed-use, correct?---Ah hmm, yes.

But did you understand, maybe you didn't, that because that block was essentially split-zoned, because you had on one side, on the Waterview Street side of that block, you had R3 medium-density residential backing up to properties that were part of B4 mixed-use, that naturally there would be some controls or limitations on the extent of development that could occur along the Great North Road fronting properties, correct?---It couldn't be wall-to-wall commercial, there would have to be setbacks and tapering down. Yes, I understand that.

Did Mr Sidoti, at this time, when the plan and the urban design was first being publicly exhibited and about to come back before council, did he express a view as to why it was that he believed that block and his parents' property had been left out?---Yeah. He, at some stage, he, he said that he thought there, there was political reasons why.

What sort of political reasons might there be for that block to be left out? Did he express what he considered them to be?---Well, he thought it was the Labor Party, Labor-controlled council who were - - -

THE COMMISSIONER: I can't – please, if you just slow it down a bit and speak into the microphone.---I'm sorry, I'm sorry, yes.

Sorry, you said something about the Labor Party.---Yeah. He, he thought it was the Labor controlled council or the Labor Party that were, like, doing this to him so to speak.

MR RANKEN: Doing it to him?---Well, yeah.

10

What did he say about that?---Oh, he was upset about it.

But what did he say about in terms of the Labor Party doing it to him?  
---Yeah, well, I, I put it down to – he didn't say it himself, but in my mind, I thought he won this seat off the Labor Party who had had it for yonks, 50 years, and they were upset.

20

But is that what he expressed to you about it, that it was Labor Party and - -  
-?---No, no. Oh, yes. Yeah, that it was the Labor Party and I, and that's the way I put it in my head. There were other circumstances where he had, he had a whopping big canvas sign across the road from his house, and it said, "Report tree vandalism." And apparently down the street, someone had cut mangroves, knowing they're in front of his place, but a sign went in front of his house almost from the time he was elected. And I put it down as a bit of a tit-for-tat sort of, you know, ALP just having a, a go.

THE COMMISSIONER: All right, just leaving the mangroves to one side for a moment.---Yeah.

30

Coming back to your evidence that you considered that the reason he was upset was you said for political reasons.---Mmm.

But you prefaced that by saying "at one stage." At one stage, he was talking about political reasons, the Labor Party were doing it to him.---Mmm.

When you said that, used that expression "at one stage," did that alter later and change?---No, it didn't change. It didn't, it probably - - -

40

Why did you say "at one stage", then?---Well, at, at that first stage, that's when he mentioned it. I don't think he mentioned, he kept on mentioning it after that.

I see. So it was a continuing refrain, in effect, that he believed that there was some dirty work at the crossroads, to use the expression, by the Labor Party?---Well, at, at that stage, yeah, but as I said, he didn't continue – he, he wasn't harping on it every time we spoke about it. He, he brought it up that once, I put two and two together, as I said, with the, with the sign, and I thought, maybe they are just, you know, needling him.

So did he continue from time to time suggesting that the Labor Party were behind the exclusion of this block, or did that disappear over time?---Oh, look, we - - -

10 Did he maintain it, or - - -?---No, he, I don't think he maintained it any further. We didn't talk about it that often. As I said, I was out of the picture. I was, had other concerns, and I didn't really sit down and have proper conversations with John about it, for a variety of reasons. I had my court thing, I was out of the picture. I didn't really want to know about it, really.

MR RANKEN: But there was something that he said to you though that gave you cause to put two and two together, as you said, and arrive at the conclusion that Mr Sidoti believed that there was some targeted reason against, involving him specifically by the Labor Party, to exclude this particular block from the study area.---Mmm, mmm, yep, yes.

20 THE COMMISSIONER: If there was any substance to that allegation, it would be a most alarming allegation, would it not? That is to say, to suggest that zoning for the new town centre plan has in effect been rigged. ---Mmm.

Yes?---Yes.

Well, with such a serious allegation such as that, if it be true, if there be any substance to it, that'd cause you significant alarm as a fellow councillor, for a start, would it not?---Yes, well, yes, it would, yes.

30 Well, did you say to him, "Look, John, this is serious stuff that you're talking about"?--- Well, John actually - - -

"And if there's anything to it, we better not let it lie, but we should out it"? ---Mmm. John actually said at one stage, and I'm not sure when it was, that he was going to refer the whole thing to ICAC.

Yes.---And I don't know if he did or not.

40 And he having said that to you, you remained concerned, did you, about what was perhaps going on?---I didn't really sit down and put my mind to the whole thing. This was something in John's jurisdiction and John knew what to do. If he wanted to refer to ICAC, he could. If he wanted to take it up with the general manager or the director of planning, he could, and did. I left it to him.

Did you have your doubts about whether what he was saying had any substance and that's why you were not overly concerned?---Well, I knew

that the, the, the report and the planning was done outside of council, so it was done by a – sorry, it's done by an, a - - -

Independent consultants.---Independent party, that's right. So, I doubt that they would have been got at.

10 Indeed, would that not have suggested to you that this allegation that he was making to you was most likely had no substance to it, because the council had taken the precaution of engaging outside consultants, including reputable consultants Studio GL and others. That right?---Mmm. Yes.

All right. And did you challenge him and say, look, you shouldn't be making allegations like this unless you - - -?---Well, he wasn't - - -

- - - unless you are in the position to substantiate them?---Well, it wasn't a public allegation. He wasn't, he was telling me and, as I said, it was up to him if he wanted to do anything about it.

I see.

20

MR RANKEN: But it involved, the allegation involved necessarily a distortion of a planning process that would affect the constituents of Five Dock, correct and thereby would affect his own constituents, correct? ---Yes.

So would he not be duty-bound, if there was any substance to the allegation, in his role as the Member for Drummoyne, to do something about it?

30 MR NEIL: Well, I object to that, Commissioner. That's, in my submission, not for this witness. It may be - - -

THE COMMISSIONER: Well, he's a councillor of great experience. He's aware of the code of conduct and ethics and so on. I think he's probably one of the most suitable person in this room to answer that question, Mr Neil.

MR NEIL: If it please the Commission.

40 THE COMMISSIONER: Yes.

THE WITNESS: Sorry, can I have the question again?

MR RANKEN: I think you accepted the propositions that I put to you, that it would affect the constituents of Five Dock, correct? And it would affect the constituents of Drummoyne? And that he would be therefore duty-bound in his role as the Member for Drummoyne to do something about it if there was substance to the allegation.---Yes.

Now, did you ever attend any meetings with Mr Sidoti and other Liberal councillors at which there was discussion about the Urban Design Study and what was to occur in meetings, upcoming meetings of the council?---No, not that I can recall. I didn't go to any meetings.

You didn't go to any meetings with him?---No.

10 Were you a party to, whether as a recipient or a sender, any emails or other correspondence that was directed to arranging such meetings?---Yes, I was looped into emails, yes.

Perhaps before we go to some of them, you're a member, are you, of the Five Dock Chamber of Commerce?---Yes.

And would you regularly attend their meetings?---Well, to tell you the truth, it was, it was a chamber that didn't really meet and didn't have a lot of members at that stage. It had peaked and troughed for a few years before that, so it was, it wasn't really an active chamber.

20 But it did have meetings from time to time.---Yes.

And sometimes were there not occasions when there were guests who attended the meeting?---I didn't go to any, to tell you the truth.

You never went to any meetings?---I didn't go, no. They were usually held at night and I didn't go to meetings at night. I had enough night meetings to go to.

30 Were you ever given – but would you be given notice of the meeting so you were at least aware of the opportunity to attend?---Yes, I'd say so, yeah.

Are you aware of a meeting of the Five Dock Chamber of Commerce that occurred on 7 April of 2014, which was attended by, amongst others, the Honourable Craig Laundry MP, who is the federal, Liberal federal - - ?  
---At the time, yes.

- - - member for the electorate of Reid, is that correct?---Ah hmm. Yeah.

40 And also the mayor of the Canada Bay Council, who was the Labor mayor, Mr Angelo Tsirekas.---Right.

And the Honourable John Sidoti as the State Member for Drummoyne.---I can't recall being at a meeting where Craig Laundry was there.

I thought I understood your evidence to be that you hadn't attended any meetings with the - - -?---No, you just asked me if I'd been to a meeting - - -

No, I asked if you were aware - - -?---Aware. Oh, I'm sorry. No. I'm not.

No.---No.

And does that mean that you never attended a meeting of the Five Dock Chamber of Commerce which was attended by Mr Laundry or Mr Sidoti?  
---I'm pretty sure I haven't been to a meeting. And the rare meetings that I would have gone to of the Chamber of Commerce, Craig wouldn't have been there.

10 At any meetings at the Chamber of Commerce that you did attend, was the Five Dock Urban Study ever discussed, do you have a recollection of that?  
---No.

Could we bring up page 356 of Exhibit 24. So this is an email chain and I'd like to draw your attention to the email at the middle of the page, which is dated 7 April, 2014 at 9.02pm. Do you see that?---Yep. Yes.

And it says, "Dear Councillors, I would like to organise a meeting, day or night, over the next week at a time convenient to all in the presence of the  
20 Five Dock Chamber of Commerce President and Vice President." If I could just pause there, that's Joe di Giacomo and Glen Haron. Is that correct?  
---Yeah, Glen Haron, yes.

Glen Haron, is that how you pronounce it?---Yep.

"To discuss the Five Dock Urban Study and the very misleading statements by council staff in an attempt to sell the business community of Five Dock a pup. Please be well-informed on this subject and challenge the thoughts of the staff. The survival of the centre is at play. I await your reply, John  
30 Sidoti MP." Do you see that?---Ah hmm.

Now, do you recall receiving this email?---I can't recall it but I see that I was looped in it and I replied to it, so I would have received it.

Plainly. And your reply refers to the fact that, "We have a workshop on the Five Dock Urban Study tonight." Your reply was the next day, on 8 April.  
---Right.

"Then I think it will come to council next Tuesday." Do you see that?  
40 ---Yes.

Now, your reference to the fact that, "We have a workshop on the Five Dock Urban Study tonight," do I take it that you were aware that you were talking about the councillors plural had it?---It's a council-organised workshop, yes.

And you may have attended that workshop but at the time the particular item was discussed?---If it was only a workshop for the Urban Study I wouldn't have gone.

You wouldn't have gone.---Because there's no point in going to walk in the door, excuse yourself and walk out again. So if there were other items I'd wait when that item was being held or they may have organised the agenda, because being Tony and I they would have organised the agenda, that was the last item and then we'd just go home.

10

Could I ask you then, I just want to ask you about the email that Mr Sidoti had sent to you.---Mmm.

Did you ever have any conversation with him or did he ever explain to you what he meant by the phrase, "The very misleading statements by council staff?"---No.

No. You never had a conversation with him about what did he mean about this?---Well, I would have put it down to the original conversation we had where his area was being excluded from, from the rezonings.

20

THE COMMISSIONER: But this time the subject of his charge or allegation has moved to council staff, suggesting that they've made, "Very misleading statements in an attempt to sell the business community of Five Dock a pup." That's a serious allegation, isn't it?---Well, it is, yeah, but I didn't think the staff were doing the report, it was an outside group that were doing the report.

Sorry, you didn't - - -?---I thought an outside group was doing the report so it wouldn't have been the staff writing the report.

30

MR RANKEN: Does that mean that you, when you read this email you didn't put any stock in what Mr Sidoti was actually saying in this email by reference to the very misleading statements by council staff?---I know that John had his, his, his view on it and that was his fixed view and it was strong language, certainly, being sold a pup, yeah, that's strong language and, and - - -

More than strong language, it's - - -?---And council staff in an attempt to sell - sorry, yeah, to sell, to sell the community a pup, yeah.

40

It's more than strong language though, it's a very serious allegation about misconduct on the part of council staff.---Well, yes.

But staff of the council of which you are a councillor.---Yes.

And regardless of whether you had a pecuniary interest, that must have been of some concern that the member, the local member was expressing a view

or suggesting, making an allegation that council staff had been engaged in such misconduct.---I took it as John just venting really.

But you would need to – in order to take it that way, would you not need to have an understanding as to what it was he was referring to by the phrase, “very misleading statements by council staff”?---Well, I don’t know what the statements were because I wasn’t involved in it. So I don’t know what was in the reports, I don’t know what, exactly what statements he’d have been referring to.

10

But plainly what he was referring to in that email was wanting to discuss the Five Dock Urban Study.---Yes.

That’s plain from the terms of the email?---Ah hmm.

And that was a matter in which you had a pecuniary interest and so could have no involvement in the decision making, correct?---At council level, that’s right, yeah.

20

And would you agree that then it would also not be appropriate for you to discuss the topic with other councillors?---Oh, yeah. I don’t think we, we actually, we didn’t caucus on it or decide that there was a view that we should be taking on it, no. We didn’t do that.

I’m not asking if you – but I’m asking whether or not you appreciated that you ought not to do that, not to discuss it at all with them?---Oh, yeah, no, yeah. Well, I didn’t, I, I, I, yes, I didn’t and I, and I – because I didn’t know enough about it to discuss it. I couldn’t add anything to it even if I did want to participate.

30

So if we go to your email immediately above Mr Sidoti’s email, responding to him, you mention the fact of the workshop that’s going to be that night, that is on the 8<sup>th</sup>, and then you say, “The earliest we can do is Saturday afternoon. MC, are you back then?” MC is Mirjana Cestar?---Yeah, I think she was going away.

“Or Sunday sometime. Monday is no good for Helen and Tuesday it all happens,” being Tuesday is when - - -?---The council meeting.

40

The council meeting. Now, would you agree that the clear suggestion from that email is that you would be attending this meeting with Mr Sidoti and the other councillors?---Yeah. Well, yeah, I, I may have even at the time thought – I, I remember getting legal advice whether I could vote on it or not because there was some debate whether it’s, the entire plan was something that I could to couldn’t vote on. I thought I couldn’t. I asked the governance officer at council, or the corporate services director and they obtained advice for me and said that I couldn’t. So from then on I just kept away.

And might that have been – or that would have been before you declared your pecuniary interest and left any council meetings, wouldn't it?---Well, yeah, yeah. I would say so because I, I wasn't present at any – sorry. I wasn't present at any of the workshops or council meetings, so whatever the timing is.

10 But the legal advice that you obtained in relation to this question as to whether or not you could or could not vote on it - - -?---To vote on it.

That was legal advice you took prior to the matter ever coming before council for a vote?---Yep, yep.

20 And would you accept from me that the first time the matter came before council for a vote was after the completion of the Urban Study Report which was in October, 2013. It then came before the council in November of 2013, at which point you first declared – well, you certainly declared, and so did Councillor Fasanella, pecuniary interest and absented yourself from the chamber when the matter was discussed?---I'll take those dates as being the dates.

If you accept those dates from me, it was likely that any advice you'd received was sometime before?---Had to have been, yeah.

So that would make it well before this email exchange on the 7<sup>th</sup> and 8<sup>th</sup> of April of 2014.---Yeah, whatever date, yeah, whatever the date would have been, yes.

30 Now, do you know whether or not you did in fact attend this meeting with Mr Sidoti and the other councillors and, as he had suggested, the President and Vice-President of the Chamber of Commerce?---No, I didn't.

Could we then go to page 373. Do you see there's a – that's effectively a meeting or calendar entry for an urban plan with councillors meeting to occur on Wednesday, April 16 at 7.00pm. Do you see that?---Ah hmm.

40 Now, could we then go to page 359. So can I take you to, firstly to – at the bottom of page 359. Can you see there's an email from you to John Sidoti and copied to Tanveer Ahmed, Helen McCaffrey and Mirjana Cestar?  
---Yes. Yep.

But the first email in time actually is right at the bottom of that page, at 8 April, 1.01pm.---Ah hmm.

It's from Mr Sidoti. And it's – if we go to page 360, it says, "Dear Councillors, can we meet over the next seven days to form a united stance for the Five Dock Town Centre Urban Study that will be voted on on the 6 May council meeting? Any evening at your convenience. How is Monday

the 14<sup>th</sup>, Tuesday the 15<sup>th</sup> or Wednesday the 16<sup>th</sup> at my office at, say, 7.00pm? Await your reply. Thanks.” Do you see that?---Yes.

Now, it’s quite clear from that email, I would suggest to you, or would you agree, that Mr Sidoti was seeking to get the Liberal councillors, yourself included, to form a united stance – actually, that is, to have a united vote in respect of the Five Dock Town Centre Study, Urban Study, correct?---Yes.

10 Now, as a long-standing councillor with some experience, you appreciate, do you not, that councillors are required to act impartially, correct?---Yes.

And to vote only with what is in the public interest in mind, correct?  
---Right.

And not to necessarily caucus and have united stances on matters regardless of what might be in the public interest, correct?---Yes.

20 If we could go – and quite clearly, he is wishing to form that united stance in respect of the Five Dock Town Centre Urban Study, correct?---Yes.

And that was a matter that you had already declared a pecuniary interest and so would not be able to participate at all, correct?---Right, right.

If we go to page 359, your response at 1.26pm on 8 April, 2014 is that, “I can do Wednesday 16<sup>th</sup> at 7.00pm or early if need be.” Correct?---Mmm.

30 Is there any reason why you didn’t say, “Well, I can’t actually attend because I’ve got a pecuniary interest”?---Yeah, I don’t know why I would have said that, because I wouldn’t have been able to vote on it, unless it was a, a briefing on the town centre, because I was still confused about it, I still didn’t know what it was all about.

But you told us earlier, Mr Megna, that you didn’t have an interest in finding out what it was about, because you were at that time coming to the pointy end of your defamation proceedings involving another councillor or a former councillor from your time as a member of the Drummoyne Council.  
---Correct.

40 And that you hadn’t actually read the design.---No.

There’s nothing about – would you agree there’s nothing about Mr Sidoti’s email to you and your fellow councillors that suggest that it is to discuss and work through what the actual meaning of the urban study is, correct?  
---Mmm, right.

It’s actually to form a united stance. So, for what reason were you prepared to actually indicate a time at which you could actually attend a meeting with Mr Sidoti and the other councillors?---I can’t say, but I know I, I didn’t go.

You're quite certain that you didn't attend at all?---100 per cent. Because I'd, I'd know, I'd recall discussions that were being made or if plans were being looked at or whatever. I didn't go.

THE COMMISSIONER: It does seem at this early stage Mr Sidoti was saying things, well, not just to you but to the other councillors in this email which suggested he was seeking to form an alliance as it were amongst the Liberal councillors on this town planning issue.---Mmm.

10

It does appear that way, doesn't it?---That's, that's, that's the inference of the email, yes.

Mr Ranken, I notice the time. Is this a convenient time to stop?

MR RANKEN: Yes, that's a convenient time.

THE COMMISSIONER: Mr Megna, we'll be adjourning for the Easter break, and resuming on Tuesday next.---Ah hmm.

20

Afraid we'll have to get you back at 10 o'clock on Tuesday.---Sure, no, that's okay. 10 o'clock. Thank you.

Very good. Nothing else? Then I'll adjourn.

**THE WITNESS STOOD DOWN**

**[4.06pm]**

30 **AT 4.06PM THE MATTER WAS ADJOURNED ACCORDINGLY**

**[4.06pm]**