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PUBLIC
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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 TUESDAY 6 APRIL, 2021

AT 10.00AM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Yes, Mr Ranken, ready to proceed?

MR RANKEN: Yes, we are, Commissioner. If Mr Megna could be recalled to the stand.

THE COMMISSIONER: Yes, thank you, Mr Megna, I'll have you resworn.

THE COMMISSIONER: Yes, good morning Mr Megna.---Good morning, Commissioner.

On the last occasion, I made a declaration under section 38 of the Independent Commission Against Corruption Act in respect of the evidence of Mr Megna. That declaration continues to apply to the evidence today.

10

MR RANKEN: Thank you, Commissioner. Now, Mr Megna, where we left off with your evidence on Thursday before the Easter break, we were dealing with a chain of emails concerning a proposed meeting or a meeting being proposed by Mr Sidoti between himself and yourself and other councillors, Liberal councillors, at 359 of Exhibit 24. Perhaps if we could bring that email up again. Now, that's the chain of emails that we took you to, that's the first page. If we could go to page 362, which is the original email in the chain from Mr Sidoti, and I think on Thursday you agreed that where Mr Sidoti referred to forming a united stance for the Five Dock Town Centre Urban Study that he was seeking the Liberal councillors to in a sense have a united vote in respect of that study. Correct?---Let me just read it. That's what the email says, yes.

20

And I think you agreed that, from your experience as a longstanding councillor, that councillors are required to act impartially, correct?
---Correct.

And vote only with what is in the public interest in mind. That's the case?
---Correct.

30

And in particular, not to caucus and have united stances on matters regardless of what might be in the public interest, correct?---Well, I mean, councillors do vote and, yeah, in united stances on various subjects, really, on various topics, various items.

But what Mr Sidoti was asking here was for the councillors to form a united stance in respect of the Urban Design Study, correct?---That's what it says, yes.

40

And that seems to be regardless of what the public interest was, correct?

MR NEIL: Well, I object to that (not transcribable)

THE WITNESS: Well, I don't - - -

MR NEIL: I object. That doesn't follow at all from the document that's being referred to. It may follow from something else, but it doesn't follow from the document.

THE COMMISSIONER: Yes, I'd ask you to reformulate the question.

MR RANKEN: Yes, I withdraw the question. I'll come about it a different way. You understood that Mr Sidoti had a particular interest in the Urban Design Study. Correct?---Correct.

10 In that his family had property interests that were directly affected by the Urban Design Study. Correct?---Yes.

And you would agree, would you not, that it would be improper, certainly for you as a member of council with a pecuniary interest in the matter, to play any role or any involvement in discussions regarding the Urban Design Study. Correct?---Correct.

20 And certainly it would not be appropriate for you to be engaged in any caucusing with any other Liberal councillors in respect of what would be the appropriate course in respect of the Urban Design Study. Correct?
---Correct.

And similarly it would not be appropriate, would it, for a local member of parliament with a pecuniary interest in the matter to engage with Liberal councillors in order to have them vote as a bloc in respect of the Urban Design Study. Correct?---Correct.

And that is, is it not, particularly because, firstly, the local member of parliament has a pecuniary interest in the matter. Correct?---Right.

30 So that's one aspect of it. Correct?---Yes.

And secondly, that that pecuniary interest may not be in accordance with what is in the public interest. Correct?---I don't know what was in the public interest because I don't know what Mr Sidoti's - at that stage I had no idea what his - - -

I'm just talking theoretically in the situation.---In theory, if you're talking theoretically, yes.

40 Now, you told us that you were certain that you didn't attend any such meeting.---Correct.

And did you communicate the fact that you would not be able to attend the meeting to Mr Sidoti at any time?---I can't recall.

If we go back to page 359. So we can see firstly there was your response at the bottom of the page which we took you to where you said that you could do Wednesday the 16th at 7.00pm.---Yes.

Correct?---Yes.

And I think you agreed that at least at that stage you were indicating that you could attend the meeting.---Yes.

And then there was further input from Mr Sidoti seeking any more takers followed by Ms Cestar indicating that she was available for the 16th. Do you see that?---Yes.

10 And so we have Mr Sidoti responding to Ms Cestar's email saying that that's yourself, Ms Cestar and himself in so far, "Two to go." Do you see that?---Ah hmm. Yes.

And then further Ms McCaffrey indicating that she was able to attend. Do you see that?---Yes.

And then finally at the top, Mr Sidoti seeking or indicating that they were waiting on Dr Ahmed as to whether or not he could attend and he would seek to cue up the President and the Vice-President of the Chamber of
20 Commerce.---Ah hmm.

Do you see that?---Yes.

And if we could then perhaps go to page 364, you'll see this is effectively another copy of the chain of emails but with some additional emails on the first page. Do you see that?---I do, yes.

And do you see that firstly there is an email from Mr Sidoti saying that the Chamber of Commerce President and Vice-President are booked in as well,
30 and so they were just waiting on Dr Ahmed?---(No Audible Reply)

And there is an email from yourself, "Is it 7.00pm at your office or elsewhere?" So again as at the time of this email you were still apparently going to be attending this meeting.---Yes.

And then Mr Ahmed, or sorry, Dr Ahmed I should say, responds to say that he could do 7.00pm but not earlier because he was coming straight from the airport.---All right.

40 And then you said, "Okay, we're all set." This is at 5.10pm on the 8th of April. "We're all set. Just name the place." And Mr Sidoti has indicated that it would be at his office with both Joe D, which is Joe di Giacomo, correct?---Yeah.

And Glen, being Glen Haron.---Glen Haron, yes.

Also being in, correct?---(No Audible Reply)

But you say that between 8 April, 2014 and 16 April, you pulled out, did you, in some way, of this meeting?---I did.

And how did you communicate that to Mr Sidoti?---I'm not sure. I don't remember now.

Did you do it in a phone call?---I don't know if it was by phone, email, by text. I have no idea. I don't remember.

10 So does it follow that you don't recall giving any reason as to why it was that you pulled out of the meeting?---Well, the reason, I'm assuming, would have been that I would have known I had an interest in it, and thinking on it further, I decided not to turn up.

And that's an assumption on your part, on the assumption that you did not, in fact, attend that meeting.---I know I didn't attend.

20 THE COMMISSIONER: Did you, at any time around this period, between 8 and 16 April, say anything to Mr Sidoti or give him any advice as to the, as to whether such a meeting was or was not prudent?---Well, look, I'm only guessing that I would have, but I can't recall an actual conversation, no.

Right, okay.

MR RANKEN: I want to move ahead a little bit in time to May 2014.---Ah
hmm.

30 Appreciating that you did not participate in that part of the council meeting on 20 May of 2014 at which the Urban Design Study was discussed and decisions were made in respect of it, it is the case, however, is it not, that prior to council meetings, material relating to items that are to be discussed at the upcoming meeting is placed on the website, correct?---Yes.

The council website?---Yes.

And that is usually done the Thursday before, correct?---Thursday, Friday probably at the latest.

40 So if we're talking about a Tuesday, 20 May, 2014 meeting, we're talking about some four or five days prior to that?---Correct.

So about 15 or 16 May, correct?---Would be the date, yes, yes.

And notwithstanding that you have a pecuniary interest in the matter and are unable to participate in discussions or decisions concerning the Urban Design Study, the material was available for you to be able to peruse?---It's a public document, yes.

And did you peruse any of the material relating to the Urban Design Study prior to the meeting on 20 May, 2014?---Not that I can recall, no.

Do you recall that one of the outcomes from the exhibition and a workshop that was conducted with councillors, whether or not you may have heard this or found out in some way, one of the outcomes was that there was a recommendation for the inclusion of a draft clause in the planning proposal that would permit a floor space ratio of 3:1 and a height of 27 metres, or
10 eight storeys, on sites that had an area over 1,500 square metres and a frontage of 20 metres?---I, I, I don't know the technicalities of it, no. It didn't, it didn't register with me.

So you - - -?---I didn't pay attention to it.

I wonder if we could go to page 375. Do you see that that is an email from Mr Sidoti addressed to yourself, Ms Cestar and Ms McCaffrey, but not Dr Ahmed?---All right.

20 And that was sent on Saturday, 17 May, 2015. Correct?---Yes.

THE COMMISSIONER: 2014.

MR RANKEN: Sorry, 2014. And just want to draw your attention to the first paragraph, where Mr Sidoti says, "Dear Councillors, I urge you strongly to take into consideration what we spoke about at our meeting, making 1,500 square metres a requirement in order to achieve 20 metres in the town centre is a pipe dream." Do you see that?---Yes.

30 Now, that would suggest, on the face of that email, that there had been a meeting between Mr Sidoti and the councillors to whom that email was addressed, correct?---Oh, that could be the inference, yes.

And you are one of the councillors who is named in that email.---Correct.

Do you say to the Commission that you did not attend any meeting with Councillors Megna, McCaffrey, and Mr Sidoti prior to the May meeting of the City of Canada Bay Council at which there was some discussion about the Urban Design Study, and particularly the proposed draft clause
40 concerning a requirement of 1,500 square metres and a 20-metre frontage in the town centre in order for a bonus of 3:1 floor space ratio.---Correct. I 100 per cent did not attend that meeting.

Are you able to provide any explanation as to why it was that you were included on this email?---I don't know.

Presumably if there had been a meeting attended by Councillors Cestar, McCaffrey, and Mr Sidoti at which this bonus clause had been discussed,

you may have been invited to that meeting by Mr Sidoti?---If I was in the original email chain, yes.

And if you had been invited, would you have communicated to Mr Sidoti that you couldn't attend by reason of your pecuniary interest in the matter?
---Correct.

10 It would seem a strange thing, would it not, that Mr Sidoti would then include you in an email which recounts the details of what had been discussed at that meeting?---Yes, well, I don't know why he looped me in, into it, to tell you the truth. I know I wasn't there.

But you did have a pre-existing close family relationship with Mr Sidoti, is that correct?---Yes.

And you were also one of the longest-standing members of, councillors among the Liberal councillors, correct?---True.

20 Did you perceive that Mr Sidoti had some particular faith and trust in you as a councillor?---I don't know. He knew I couldn't vote on it, so, you'll have to ask Mr Sidoti that question. I have no idea.

I'm asking if you, did you perceive that he was asking - - -?---Well, I can't guess. I can't guess. I don't know.

Well, did you perceive that he might be asking, sending this to you because he saw you as someone who might be able to organise the other councillors?
---Oh, influence the others, you mean?

30 Yes.---Yes, no.

THE COMMISSIONER: In the email of 17 May, which perhaps could be brought back on the screen, entitled Five Dock Town Centre, does it appear to you that Mr Sidoti at this time in that email is expressing some very strong views in relation to the Five Dock Town Centre in particular in relation to the limitations that would result to develop it as per the first paragraph?---Well, sorry, Commissioner, I haven't read this properly for five or six years, and I haven't - - -

40 Well, just have a read of it. Take your time. Perhaps the second paragraph as well.---The second? Yeah. Right. Sorry, what was the question again?

Do you consider that at that time, from what he's written, that he was expressing some very strong views about that matter?---Yes. Yes.

And had he similarly from time to time, in chats with you, expressed views of that kind, about the Five Dock Town Centre?---Oh, I suppose he had, yes, in, and in some occasions. We didn't talk about it that much.

But when you did talk about it, had he conveyed to you a fairly consistent stance or view that he was taking?---Oh, yes, yes.

And was it consistent with what we see there in those first two paragraphs?
---To tell you the truth I'm not sure what point he would have been – I mean if he's writing this here then that would have been the point of view that he was expressing in the conversation. I can't remember 2.5 or 3:1. As I said, I really wasn't paying that much attention to this whole thing.

10

But the first two paragraphs there certainly seem to convey a view that he's strongly opposed to what the study's proposing.---Exactly.

Was that a stance that you understood him to have taken on other occasions when he had discussed the study with you?---Yes.

So I suppose, what would you call that, a pro-development stance, if you like.---I wouldn't say pro-development.

20 No. All right. Okay.

MR RANKEN: Did you ever respond to this email?---I don't remember. I don't know.

Do you recall reading the email?---I probably would have. I can't recall it, but I mean I'm reading it now and I can't recall having read it at the time. I may have, I might have glanced at it or just glossed over it.

30 I just draw your attention to paragraph beginning, I think it's the second paragraph. What it says is, "What we spoke about was increasing the glass contents, not the size of the glass. The FSR is proposed to increase from 2.5 to 3.0 to only 1, on large," - - -

THE COMMISSIONER: To 1 only.

MR RANKEN: Sorry, "To 1, only on large sites which will unlikely be amalgamated." Do you see that?---Yes.

40 And then he goes on to say, "All the shopkeepers I have spoken to at worst want the current proposal but with no minimum width requirement and no minimum lot size." Did he ever, that is Mr Sidoti, did he ever identify to you the shopkeepers to whom he had spoken and who had expressed the view that they wanted, "The current proposal but with no minimum width requirement and no minimum lot size?"---No.

And is that because you didn't discuss this at all with him?---Yeah, well, I'd say so, yes, I wouldn't have discussed it.

And then he's gone on to express later on, "Please deliver," this is the second-last substantive paragraph, "Please deliver the vision of the shopkeepers in the interests of the community and not the mayor's distorted views." Did you ever get an understanding from Mr Sidoti as to what he considered to be "the mayor's distorted views"?---No. I'm assuming whatever was being put up to the council meeting.

10 But you yourself understood that what was being put up to the council meeting was not something that reflected the mayor's views.---Correct.

It was something that reflected the views of the independent experts coupled with the expert professional views of council staff. Correct?---Correct.

THE COMMISSIONER: At this time the mayor would have been Mr Tsirekas.---At that stage, yes.

Would that be right? I'm not sure.---He was still, yes, he was still there.

20 May 2014.---Oh, there's a point.

Anyway, if you don't know, don't worry.---No, I'm just working backwards. Yes, he was still there until 2015 from memory.

And he of course was a member of the Labor Party.---He is, yes.

He was and is.---He still is, yes.

30 MR RANKEN: Now, I just want to draw your attention again to the final substantive paragraph in that email where Mr Sidoti has said, "I can assure you there have already been a number of shopkeepers lining up to run for council next election if the proposal goes ahead in its current form and quiet," – I think that's a typographical error, "Quiet frankly I understand where they are coming from." Do you recall reading that paragraph in that email?---No, not really, not originally, no.

40 Well, what do you understand Mr Sidoti to be referring to about, "Shopkeepers lining up to run for council next election?"---Well, by the looks of it, it looks like shopkeepers or property owners are lining up to run for council next election.

See, what would be the relevance of including that information in an email of this kind addressed to the councillors?---I don't know.

Well, did you not perceive that to be a threat to the councillors, that if they did not deliver the vision of the shopkeepers, that there might be challenges to their preselection?

MR NEIL: Well, no, I object to that. See, it's not capable, in my submission, of being a threat if the democratic process is undertaken by people who are shopkeepers or others who wish to put their hat in the ring because they don't agree with a council-engaged study. That's not, of itself, in any way susceptible of the suggestion that my learned friend is putting the question, in my submission.

10 THE COMMISSIONER: Well, I think it depends on context. This is a message being sent through to the existing councillors, and he's giving them an assurance which is set out in that paragraph. Whether it's capable or not capable of being a threat I think depends on context, in particular in relation to the context of the Five Dock Town Centre and the role, if any, that they were asked to participate in or undertake.

MR NEIL: Well, Commissioner, it is an important point. It may depend on context. I certainly understand what you're putting to me. I won't take similar objections in the future, but I'd just like to reserve our position to argue in due course.

20 THE COMMISSIONER: Certainly, certainly. Yes.

MR NEIL: Thank you.

THE COMMISSIONER: No, it's quite appropriate, yes.

30 MR RANKEN: Commissioner, perhaps I'll put it a slightly different way as well. At the very least, do you see that as a warning to the councillors that there may be shopkeepers who may run for council next election if the councillors were not to deliver the vision of the shopkeepers that Mr Sidoti has referred to?---I don't know if it's a warning. I think he's making a statement.

And that is a statement in relation to an outcome that would also favour Mr Sidoti's family's property interests, correct?---It would. As well as the benefit of some shopkeepers or property owners.

40 Now, I just want to take you to some more emails around this time. Could we go to page 377. Now, you can see here, Mr Megna, that at page 377 we have the same email from Mr Sidoti, correct?---Yes, it looks like it's the same. It's the same letter, yes.

Yes, it's the same email but forming part of a larger chain of emails. And if we could go to the previous page, page 376, and we could – if I could draw your attention to the bottom of the page, the email from Councillor Cestar addressed to yourself and Ms McCaffrey.---Right.

And do you see that Councillor Cestar has asked, "What exactly was the purpose of this email? Why wasn't Tanveer," that's a reference to Dr

Ahmed, “emailed? Does it matter if shopkeepers want to run? Is John saying he would support them? Is it a threat? What is the point here?” Do you see that?---Sorry, where is that? I can’t see that. Oh, yes, right at the bottom, yes.

And then if we go over the page, we can see she’s just got her signature block, effectively. Do you see that?---Oh, I see. Okay. I actually thought that was an email sent to Mirjana. Okay, I understand.

10 So this is Ms Cestar, in response to receiving that email from Mr Sidoti, raising her concern with you and Councillor McCaffrey that Mr Sidoti was threatening to support other shopkeepers in the elections, council elections, correct?

MR NEIL: Well, Commissioner, I would assert that at some stage these questions are too remote for this witness.

THE COMMISSIONER: Sorry, Mr - - -

20 MR NEIL: I submit that this is too remote for this witness to be speculating about. It may well have to be put in due course to Ms Cestar, but it’s just very remote in terms of this witness.

THE COMMISSIONER: Well, this is an email addressed both to the witness, Mr Megna, and to Ms McCaffrey. And Mr Megna, although he had declared an interest and didn’t participate in meetings and so on, is certainly alive and aware about the town centre and some of the dynamics that were running, including views and positions or stances your client was taking. I don’t think it’s so remote as not to be probative, Mr Neil. It may
30 or may not be, at the end of the day, as you correctly say, you may be making submissions that it doesn’t add up to anything. Well, that’s a matter I’ll just assess, once we’ve got the evidence.

MR NEIL: Thank you, Commissioner.

THE COMMISSIONER: Could I just ask you this, this email as I just mentioned was addressed to you and Ms Helen McCaffrey, came from Mirjana Cestar - - -?---Yes.

40 - - - you had worked with Mirjana Cestar as fellow councillor over some years, I suppose it was, was it?---Yeah, two terms, I think.

And did you regard her as an able and conscientious councillor?---Yes.

And she would from time to time work with you on council matters and you got to know about her abilities and capacities through that means?---Oh, well, yes, she was on my team, so we were, the four or, four of us worked

closely together, yes. As we did with other councillors. Party politics aside, we worked all well, we all of us worked well together.

MR RANKEN: But it is plain from the email that you received from Ms Cestar that she certainly was concerned that Mr Sidoti was threatening to support shopkeepers who might run against them in the council elections.

10 THE COMMISSIONER: Well, Mr Ranken, I'm not sure if you can have it to that extent, but I think what can be put to Mr Megna is that she was obviously exhibiting concern, would you accept that?---Yes, by what she has written there on the bottom, yes. She said, "What is the point here? Is it a threat?" Yes.

MR RANKEN: And if we go to the email above, that's an email from yourself responding to Ms Cestar's email, and forwarding – and that email went to both Ms Cestar and Ms McCaffrey.---Correct.

20 And you make the point that you were emailed and you couldn't even vote. ---Exactly.

And you've gone on to say that without going into the pros and cons of his viewpoint, as opposed to council's recommendation, and you make the point that you were reticent to give any guidance, and then you set out what the numbers are, as to your understanding in terms of how things might fall in, if there was a contested vote. Correct?---Correct.

30 Your reticence to give any guidance was because of your acute awareness, wasn't it, of the fact that you had a pecuniary interest and so could not provide such guidance to the Liberal councillors, correct?---Correct, and if you read the second paragraph, I wasn't on top of the whole FSR situation to give advice and, even if I wanted to.

Are you referring to the reference in parentheses that says "Which doesn't give an FSR at all, or did I miss something?"---Exactly. "Or did I miss something?" Yeah, I, I just wasn't on, on the same page understanding what it was all about to, to be able to discuss it.

40 And you've also made the point, when you set out what the numbers are, that "If there is a tied vote for any reason, the mayor's casting vote would break the tie, so basically whichever way he wants it to go, that will be the decision. That's assuming you're not all on the same page to begin with." Correct?---Yeah.

And that reference to, "That's assuming you're not all on the same page to begin with," is assuming that each of the Liberal councillors don't already agree with what's being recommended by council.---Yeah. If, if they're not on the same page as far as a council recommendation is concerned.

Then I just want to draw your attention to the final paragraph in your email, where you say that “The Chamber of Commerce has given amendments to what it would prefer, and I understand that Glen Haron will speak on its behalf. It mentions the 3.5:1 FSR.” Do you see that?---Yes.

Now, that’s something that you are aware of, and so there must be some basis of your knowledge of that.---I must have known it at the time, yes.

10 Is that something that you actually – does that suggest that in fact you may have read the reports that had been prepared for the council meeting?

---Well, as I mentioned in previous occasions, I used to read the recommendation. I didn’t read the report, the reports could have been 100 pages. The recommendation would have been a few paragraphs.

But the recommendation doesn’t necessarily speak of the Chamber of Commerce’s recommendation, does it?---Um - - -

20 What you’re referring to there is, “The Chamber of Commerce has given amendments to what it would prefer, and I understand that Glen Haron will speak on its behalf. It mentions 3.5:1 FSR.”---Yep.

And that would suggest that, firstly, you had an awareness that Mr Haron was going to be addressing the council at the meeting. Correct?---Yes.

And from where did you get that understanding?---Probably from Glen Haron himself.

30 So you would have had some - - -?---He had a business in Five Dock, I saw him a couple of times a week, a couple of times a month, depending.

And you also go on to say, “I understood the council officers’ recommendation is 3:1. However, I couldn’t see that on the report.” Do you see that? So that suggests that you actually had read the report. Correct?---Yeah. Oh, well, the recommendation. All of that information will be in the recommendation.

40 Now, I won’t go to the detail of all of the council meetings at which it was discussed with you, Mr Megna, because plainly you weren’t in the room, as it were, when the item was discussed and decided upon, but are you aware that at the meeting of the council on 20 May, 2014, the matter was deferred for further consideration in the June meeting of the council, specifically the meeting on 24 June, 2014, and that on that occasion all six councillors who were present at the meeting and were able to vote – which included Dr Ahmed and Ms Cestar but not Ms McCaffrey who was not present – voted to endorse the amendments to the Town Centre Local Environment Plan that had been recommended by council staff and refer the proposed changes to the Department of Planning for a Gateway Determination. So just giving the timeline.---Yeah, I’m, yeah.

Do you recall that in about June 2014 it was referred off to the Department to get a Gateway Determination?---That, that's probably correct. I don't remember the dates or the process, it did go backwards and forwards a few times.

10 And then in September of 2014, the delegate of the minister at the Department of Planning and Environment made the Gateway Determination which required a further period of public consultation and exhibition, and the matter then didn't come back before the council until November – sorry, did not come back before the council until May of two thousand and – I withdraw that – sorry, June of 2015, on which occasion there was a vote in accordance with the recommendations contained in a report prepared by council staff to publicly exhibit the proposed LEP, which occurred in June and July of 2015. Does that accord with the basic timeline or you just don't have a recollection?---No, no, I wasn't following it, no. I may not have even been in Australia in June of 2015, to tell you the truth, I may have been overseas from memory.

20 There was a period, was there, in 2015 when you were overseas?---I think so, round about that time.

For how long were you overseas?---Three or four weeks probably. Would have been June, if I was away it would have been June.

Now, after the public exhibition of the plans in July, June/July of 2015, the matter came back before the council in late October of 2015.

30 THE COMMISSIONER: It was 20 October, wasn't it, 2015?

MR RANKEN: 20 October, 2015, that's so, Commissioner. And on that occasion there was a motion put forward by Councillors Ahmed and McCaffrey to defer the item, pending the preparation of an addendum report that set out in tabular format the advantages and disadvantages of alternative max options that had been presented in a report that had been earlier prepared by Studio GL, which motion was carried and the matter was deferred and then came back before the council again in November of 2015, on 3 November of 2015. Does that generally accord with your recollection, or again you don't - - -?---I wasn't there. I don't know.

40 Now, prior to the – one of the issues that had been considered by Studio GL was a proposal that had been advanced on behalf of Deveme Pty Ltd and Anderlis Pty Ltd, two companies associated with the Sidoti family, which owned 120 Great North Road and 2 Second Avenue in Five Dock. Were you aware of those - - -?---No.

You were aware of 120 Great North Road, though?---Being the reception hall?

That was the reception hall.---Yeah.

But do you say you weren't aware of the fact that the Sidoti family or interests associated with the Sidoti family had purchased the property at 2 Second Avenue in Five Dock?---No. All I know is that they owned or John owned the house in Waterview Street, directly behind the reception hall. I don't know of any other property that he owned.

10 Was that the property at 39 Waterview Street?---I don't know the number. The one he lived in before he moved to Drummoyne.

And was that a property that you understood had a heritage listing over it?
---I found that out later on, yes.

But is it your understanding that, at the time of these events, Mr Sidoti may still have owned that property?---He, I'm not sure what, I'm not sure when he moved. I don't know. I don't know when he, if he sold it or if he kept it. I have no idea.

20

Is it fair to say that you knew that at some stage he'd owned that property. As to when he bought it and when he sold it, you can't say.---I don't know. I don't know.

Now, did you become aware, though, that there was this proposal that part of Waterview Street on the western side of Waterview Street, between Second Avenue and Barnstaple Road, might be rezoned B4 mixed-use rather than its current R3 medium-density residential zoning?---No.

30 You were never aware of that?---Well, no, no.

THE COMMISSIONER: Mr Sidoti up to this time – I think we're talking now about mid-2014, are we?

MR RANKEN: We are now late 2015.

40 THE COMMISSIONER: As of late 2015, it was suggested that there was a deferral of the matter by Councillors Ahmed and McCaffrey pending the preparation of an addendum report. At about that time, had you by then spoken to Mr Sidoti or he spoke to you about his views on rezoning in the area that's now under discussion, which is that part of Waterview Street, the western side as it's described?---No, I mean, I, I was, as I said, I wasn't aware of the Waterview Street part of it, so I – no, we, we hadn't discussed it.

Without going into the detail as to what properties might be affected, did you have, from time to time, have a discussion in which he referred to rezoning to B4?---No.

Not at all?---No. Not, not that – no. Not that I can recall, no. And the specifics of which I, I don't, I don't recall it, so I would have thought I would remember it.

10 MR RANKEN: He never mentioned to you that he felt that the whole of that block between Second Avenue and Barnstaple Road ought to be zoned B4?---No, not that I can recall. I, I knew he wasn't happy with the council recommendation, and that was a blanket he wasn't happy with it. Specifics, locations, I'm not aware of.

THE COMMISSIONER: When you say unhappy with it, are you talking about zoning now?---Well, whatever the council, whatever was in the council recommendation, he had an alternate view.

20 MR RANKEN: How do you know that he was unhappy with that? How did he express that to you?---Well, well, yeah, you can see by some of the emails and, and verbally. He, he wasn't happy with it. He thought there should have been additions or amendments to it.

But so is this in conversations with you?---Probably, yes.

And you say that he never actually mentioned the specifics - - -?---No.

- - - that he felt that the whole block should have been rezoned B4?---No, no, no.

Not once?---No.

30 Did you become aware prior to the meeting of the council in November of 2015, that there was a proposed resolution to seek a separate report to investigate the zoning and development controls for three additional sites over that which had been considered in the Urban Design Study, specifically that part of Waterview Street on the western side between Barnstaple Road and Second Avenue, together with some R2 low-density residential land bound by East Street, West Street and Henry Street and a B1 neighbourhood centre land at Ramsay Road?---I wasn't aware of it at the time then, though.

40 Did you become aware of it at some other time?---Only last week when I was overhearing the evidence of Mr Dewar.

So prior to that you didn't - - -?---No.

- - - have any understanding that there was any consideration to the possibility of council obtaining a further report in relation to – let's just stay with the one property, one area, that is the Waterview Street area between Barnstaple Road and Second Avenue?---No, it didn't, I can't recall it, can't recall any conversation on that.

I wonder if we could go to page 969 in Exhibit 24. Now, I just want to draw your attention to the email at the bottom of that page. That's an email that has been sent from Ms Cestar on 1 November to Dr Ahmed, yourself and an address which I would suggest to you is an email address associated with Ms McCaffrey.---That's correct, yeah.

Her work email address I think it is.---Yes.

- 10 And do you see that it refers to, it says, "Page 10 of report. 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 arising from its rezoning. The expansion of the B4 mixed-use zone to land between Barnstaple Road and Second Avenue is not supported." Do you see that?---Yes.

Now, it's plain from that, that you were included on this email and so this issue was brought to your attention.---Yes.

- 20 And do you say that you had no recollection of this ever being brought to your attention on any occasion?---No. Not that I can recall, no. Obviously I'm in that email but it meant nothing to me.

And so do we take it you didn't respond in any way to that email?---Not that I can remember, no.

THE COMMISSIONER: Would you not have responded to Ms Cestar and say, look, sorry, I just got this email from you, what's the point, what are you, what is this about?---Well, well, I didn't, no.

- 30 MR RANKEN: Weren't you curious to understand what it was, why she was including you on this email?---I can't recall a conversation with Mirjana, if I spoke to her and said, "What's it all about?" I doubt that I did because there would have been some email backwards and forwards and there isn't by what I can see.

- 40 Are you aware that at the meeting of 3 November, 2015, the matter was in fact deferred so that there could be a further report obtained in respect of those three sites, including the site between Barnstaple Road and Second Avenue on the western side of Waterview Street?---I know the report was deferred a few times, I'm not sure how many times now, but the reason why it was deferred, whether it was for more information or public consultation or whatever, I don't know.

Now, at some stage did you become aware that a gentleman by the name of Sean Durkin was the owner of [REDACTED]?---I knew he owned a property either in Waterview or Second Avenue. I wasn't aware of the, the house number.

And how did you become aware of Mr Durkin's interest in the Waterview -
- -?---He phoned me I think before a meeting and he wanted me to support, I
don't even know what he wanted me to support. I don't think he wanted me
to support the council recommendation. And I said, "Before you go," he
looked like he was about to go into a spiel, I said, "Before you carry on," I
said, "I don't, I can't vote on it. You know, I, I won't be in the room." But
he, he kept on talking anyway. He went through the specifics of what he
wanted, which I didn't really pay a lot of attention to.

10

Did you have any contact with Mr Sidoti regarding Mr Durkin?---Not that I
can remember.

Could we go to page 1004. Now, this is a chain of emails, and that's the
first page. If I could draw your attention then to page 1005. You can see
there's an email from Sean Durkin at the bottom of the page.---Right.

20

To Marjorie Ferguson and Tony McNamara, two persons who were in the
Planning and Environment Department, Environment and Planning
Department at the council.---Yes.

Marjorie Ferguson has then responded to Mr Durkin, and Mr Durkin has – if
we go back to page 1004 – Mr Durkin has responded to Ms Ferguson, and
we see that it's then been forwarded ultimately by Sean Durkin to Sandra
Sidoti. Do you see that, on 5 February?---5 February. No, I can't see – oh,
yes, yes, yes. I can see that.

30

And then from the Sandra Sidoti email address, it's an email from Sandra
Sidoti's email address, addressed to yourself and also Mr Sidoti's
parliamentary email account. Do you see that?---Yes.

And it says, "Please see below. Can you show the others? Cheers, JS." Do
you see that?---Yes.

So Mr Sidoti was forwarding you this chain of emails between Mr Durkin
and council staff, and asking you to do something with it, namely to show it
to the others. Do you see that?---Yes.

40

MR NEIL: Well, Your Honour, Commissioner, I think my friend is
referring to Sandra, not Mr Sidoti.

THE COMMISSIONER: Sorry, I can't hear you, Mr Neil.

MR NEIL: I'm sorry, Commissioner. My friend, putting the question that
this was from Mr Sidoti. But it's not. It's from Sandra Sidoti.

THE COMMISSIONER: It's a bit ambiguous, isn't it, because it's signed
off "Cheers, JS."

MR RANKEN: JS.

THE COMMISSIONER: But maybe she was acting on his behalf. I think if you just point that out to Mr Megna, that it's unclear as to whether it's coming from Sandra Sidoti or Mr Sidoti.

MR NEIL: Except, Commissioner, it would be a bit unusual for Sandra Sidoti to include John Sidoti as a recipient if it wasn't from her.

10

THE COMMISSIONER: Yes, good point.

MR RANKEN: Well, Commissioner, I don't accept the premise of that objection. It's often the case that persons who have multiple, might use multiple email addresses, might copy their other email addresses in on correspondence.

THE COMMISSIONER: Well, that might be so, but we won't know at the moment until perhaps we ask whoever sent the email.

20

MR RANKEN: But perhaps if I might ask Mr Megna this question. When you received this email and you read that it said, "Cheers, JS," who did you understand JS to be?---John Sidoti.

Had you previously received emails from John Sidoti that had been sent to you from the email address sandrasidoti@[REDACTED]?---I may have. I, I, I probably don't look at the email address headers that, that much. I just see who signs it, most probably. I could have.

30

So you would have paid more attention to the JS rather than the email address?---Yes. Yeah.

Now, could we perhaps then go to page 1007, you see this is the same email chain, but with the additional email from yourself back to Sandra Sidoti, copied to John Sidoti at his parliamentary email address. Do you see that? ---Yep, yes.

And indicating that you "will do", correct?---Yes.

40

So indicating that you would do as – were you intending to indicate that you would do as instructed, that is, to show this email chain between Mr Durkin and council staff to other councillors?---Yes.

Now, the other councillors, the reference to "the others" in the email that you'd received from the Sandra Sidoti email address signed off by JS, did you understand that to be a reference to the other Liberal councillors?---Yes.

As opposed to other councillors generally.---Yes.

Did you forward this information onto the other councillors?---I can't recall, I can't, actually I can't recall receiving that, and I don't know if I sent it off.

There was no reason why Mr Sidoti could not have just sent this to those other councillors himself.---There is no reason, unless he didn't have their email addresses on whatever email chain he was working off and he sent it to me to send off.

10 THE COMMISSIONER: But - - -?---But that, I'm just guessing.

That would be curious, though, wouldn't it?---I'm sorry?

It'd be curious, when it would be quite straightforward for him to simply send the emails through himself to the other councillors, rather than ask somebody else, namely you, to do it on his behalf.---Yes, he could, yes, he could have done. Mmm. Yeah.

20 Can you think of a reason why he might have wanted to as it were reroute the emails via you, rather than send them direct?---I don't know, as I said, maybe he didn't have their emails on his phone or on his computer, and he, from that Sandra Sidoti email address, and he sent them to me, I don't know. I've had emails that I've tried to send from my phone, if they're on there, I send them to another email address where you type up the name and it appears. So I, I have no idea.

Yes, Mr Ranken.

30 MR RANKEN: It would appear from the face of this email, wouldn't it, that Mr Sidoti was effectively asking you to coordinate the other councillors?---I wouldn't say 'coordinate'. 'Coordinate' is a, a stronger word. I think just pass this email on. It was basically from council staff.

THE COMMISSIONER: Well, did you in fact query, "Look, why are you involving me in this? You know my position"?---Not directly to him, no. In one of the previous emails, you saw where I directed it to Councillor Cestar and said, "Look, you know, I'm not, I can't even vote and I'm getting these emails," so - - -

40 But it would be an obvious question for you to ask him, wouldn't it, "Hang on, why are you involving me in this? You know where I stand in relation to this issue, this subject, the town plan study."---Yeah, yeah, yep, yes, yep.

But you don't know whether you did try and find out from him why he was trying to do it this way.---I could have – no, not that I can remember. I could have probably verbally mentioned it to him, and he knew that, but – he knew I couldn't vote on it.

MR RANKEN: Now, in June of 2016, Councillor Tsirekas resigned from the position as mayor. Do you recall that?---Correct, yes.

And it was the case, was it not, that Helen McCaffrey became the acting mayor until a subsequent council meeting at which there would be an election amongst the remaining councillors to see who would become the mayor, is that right?---Correct.

10 THE COMMISSIONER: And again, you worked with Ms McCaffrey for quite some time?---Oh, quite, yeah, quite a few years, since 2004, I think. And I'd known her before that.

Before 2004?---Yeah, she was on Concord Council for a couple of terms, I think, in the 1990s.

Did you find her also to be a conscientious and able councillor?---Yes.

And acting mayor, in her role as acting mayor as well?---Yes.

20 MR RANKEN: Now, the resignation of Mr Tsirekas meant that the number of councillors was reduced to eight. Correct?---Yes, from nine to eight, yes.

And of those councillors, four of them were Liberal councillors. Correct?---Correct.

The remaining, there were three remaining Labor councillors. Is that correct?---Three remaining Labor and one Green.

30 One Green councillor.---Mmm.

And it was the case, was it not, that by reason of being the acting mayor, Ms McCaffrey would then be the presiding councillor at the meeting of the council on 21 June at which the election for mayor would take place. Is that correct?---Correct.

40 And that meant, did it not, that her vote would effectively be a casting vote in the event that there was an equal split between the four Liberal councillors on the one hand and the remaining councillors, the three Labor and the one Green on the other. Correct?---If the numbers went that way, yes.

Yes.---But she was elected unopposed.

She was elected unopposed, was she?---Yes.

And was that because, well, effectively it was a given, the fact that she had the casting vote, that was almost a done deal anyway, wasn't it?---I suppose,

yes, I suppose so. Yeah, if it went a vote she would have elected herself, true.

And did that mean then that from that point on, that is from 21 June onwards, there would be, until the election for the local council in 2017, September 2017, there would remain only eight councillors. Correct?
---Correct.

10 Four of which were Liberal councillors.---Correct.

And one of whom was the mayor.---Yes.

And so had the casting vote.---Yes.

So is it true to say that for the first time in a long time, the City of Canada Bay Council effectively had a Liberal council, Liberal-dominated council?
---On a, on a casting vote, yes.

20 Now, in about August of 2016, the matter came before the council again, that is the matter of the Urban Design Study and the associated planning proposals, and the matter was, what was being considered were options that had been the subject of a report by Studio GL and some feasibility analysis by Hill PDA. You don't have any recollection of this because of course you didn't participate.---No.

Is that the case?---I don't recall.

30 Did you become aware that the council, that one of the options before council was an option that would involve the removal of the heritage listing on number 39 Waterview Street?---No, I wasn't aware at the time, no, I wasn't, no.

When did you become aware that that was a proposal that was before the council?---Either in recent times or much later there was even a heritage order on the house. I didn't think it was a heritage house, to tell you the truth, I didn't know.

40 And in due course did you become aware, though, that the Five Dock Town Centre LEP as amended to adopt the option that would have the removal of the heritage listing for 39 Waterview Street had been publicly exhibited and that it would be gazetted in August of 2016?---I don't recall any of that, no.

It may have been something that you were aware of at the time but not something that you had any direct involvement in. Is that the case?
---Well, I certainly had no direct involvement in and I may or may not have known that that was the next step along the line. I, I, I can't, I can't tell you.

It was the situation, though, to your knowledge, that the matter had come back and forth between council and been publicly exhibited on a number of occasions, correct?---Yes, yep.

And on each of those occasions there was an opportunity for members of the public to make submissions to council about the proposals that had been exhibited, correct?---Correct.

10 And were you aware that submissions were made on behalf of interests associated with Mr Sidoti's family?---Well, I wasn't aware, no.

He never spoke to you about the fact that his family or interests associated with his family were proposing to make submissions to the council about the proposals?---Not that I can recall him doing so.

20 Did you have any discussions with the other councillors – that is, Councillor Cestar, Councillor McCaffrey and/or Dr Ahmed – about their interactions with Mr Sidoti concerning his interest in the Five Dock Town Centre, the Urban Design Study and the associated planning proposals?---What do you mean his interest? I mean, he obviously had an interest in it.

Yes, but did they ever speak - - -?---Oh, sorry, did we discuss it as a group or discuss it one on one or whatever?

Did they ever speak to you about the interactions that they had with him about the Urban Design Study?---Look, they may have.

THE COMMISSIONER: Did they?---I'm sorry?

30 Did they?---Oh, look, they probably did. They may have. I just can't recall a specific example of, of a discussion or an issue or a point of view.

MR RANKEN: Do you have a general recollection as to what they had expressed to you about their interactions with Mr Sidoti about the issue? ---No.

40 Because you have no independent recollection now of any particular instance when they raised the issue with you or spoke to you about it?---Not that I, no, I can't recall any, no.

They never raised any concerns with you about the interactions they'd had with Mr Sidoti about the Urban Design Study and the associated planning proposals?---No. I just, I just can't think of any. I know that they, I know they discussed the matter with him, I know that, but - - -

How do you know that?---Well, I think they would have brought it up in conversation.

What did they say to you about that conversation?---That they either met with John or they discussed it. I don't know. I don't, it's nothing that stuck in my head that it made an impression that I should think any further about it. I left that to them.

10 And you maintain that you weren't aware that there were submissions being made on behalf of Mr Sidoti's family or their interests in that Waterview Street block concerning the planning proposals and seeking changes to those planning proposals?---Well, I'd be surprised if they didn't make submissions, but I'm not aware of any or, or the content therein.

So turning back to 2016, after the draft planning controls for the land on Waterview Street were publicly exhibited in August and September of 2016, the matter came back before the council in December of 2016, and specifically was to come back before the council on 6 December of 2016. ---If they're the dates. I'm not, I'm not aware of the dates.

20 You just accept that from me. I want to ask you about some text messages between yourself and Councillor Cestar, and I wonder if we could bring up page 1846. Might be a separate – now do you see this is a Cellebrite extraction report from an Apple iPhone? And it's – this is specifically an instant message conversation between yourself and Mirjana Cestar.---Yep.

30 And it's dated 3 December, 2016, which is some three days prior to the meeting of the council on 6 December, 2016. And Ms Cestar has said, "Bumped into John Sidoti on Bay Run just now. He is exploding, making threats, et cetera, et cetera. Can I call you later after 9.00?" And you have responded at 8.32 on that same day, saying, "After 9.30. I had two calls from him last night!!" And Ms Cestar has said, "Okay." Now, can you recall, firstly, the substance of and content of the conversations that you had with Mr Sidoti on the evening of 2 December of 2016?---With Mr Sidoti?

Yes.---Oh, from the calls? No, no, to tell you the truth, I can't. Was that before the council meeting or after?

This is before the council meeting.---Yeah, I can't, the, no, I'd be only guessing what it would have been about.

40 THE COMMISSIONER: Well, you do recall receiving the email from - - - ?---I recall that, the text.

No, just a minute.---Yes.

You do recall receiving the email on the screen from Ms Cestar.---I do.

Talking about the Bay Run episode.---Yes. Yes.

I daresay when you read that you – caused some alarm.---Well - - -

Well, did it or not? Perhaps it didn't.---Well, it would if he said he's exploding, making threats, et cetera. She wanted to talk about it.

Yeah. Well, you remember receiving this email.---Yes, I do, yeah.

And do you remember also being somewhat alarmed by what you read, what she was saying.---Yes, yes.

- 10 And then on 7.25, on 3 December, 7.39 you were replying to her, and that you say, "After 9.30. I had two calls from him last night!!" with two exclamation marks. Do you see that there?---Yes.

And what was the essence of what Mr Sidoti said in those two calls last night, as you put it?---I can't remember the conversation, what the context would have been about. I'm assuming it had to do either with a meeting that had just been held at council or you're saying it's an upcoming meeting. But exactly what the discussion was about, I don't remember.

- 20 Well, why did you respond to her message, which caused you some alarm, that you simply responded in the way you did, instead of responding about the message she was conveying?---Well, I'm being asked what was the conversation that I had with Mr Sidoti in the two phone calls. I cannot remember the gist of that conversation.

Well, just looking at it, when you put, you said, "I had two calls from his last night!!" Two exclamation marks. Why were you making exclamation marks?---Well, she - - -

- 30 What does that convey?---Well, she said that she bumped into him and he was exploding.

Well, we know what she said.---Yeah, and I said, "Well, I had two calls from him last night," which means - - -

And did he have a go at you as well?---I don't know if he had a go at me. I can't recall being taken aback by what he was saying. If it's before the council meeting, it would have been something to do with what was going to be happening at the council meeting.

- 40 Yes, well, don't speculate if you don't know.---I'm just guessing. I'm speculating.

Why do you think you put two exclamation marks at the end of your reply to her email, causing you alarm? What would you imagine you were trying to convey by putting it there with two exclamation marks? In effect, "I've had two calls from him!!" exclamation mark. What do you imagine you were trying to convey to her?---That I'm getting calls about something that I

can't vote on and I didn't really want to be involved in it. It was more frustration.

Calls from John Sidoti?---Yes. More frustration that I'm at the end of an email trail or a texting trail.

MR RANKEN: So we take it, then, that what you can say is that the calls that you did receive from him last night related to the Five Dock Town Centre Urban Design Study and the associated planning proposals?---Well, 10 it could have been about that. I can't imagine it being about anything else.

And you specifically linked it to what Ms Cestar had expressed, in that her text message had prompted you to refer to the fact of the calls last night. Correct?---Right.

So is it fair to say that you believe that the calls that you had were somehow related to what he had exploded at Ms Cestar about?---Oh, yeah, yes. Yes, I think I've said that, yes.

20 And did you subsequently speak with Ms Cestar?---Well, I probably would have. I can't recall what we discussed, but I, I spoke with Mirjana all the time, so I'm assuming we did speak.

Well, do you recall what she told you about the detail in terms of what he said to her when he exploded, making threats, et cetera?---No. Exactly what it was about, no.

You don't have any recollection as to – you didn't ask her, “What did he say to you?” or - - -?--- Well, I probably would have. Well, you've asked me 30 what I can remember of the conversation. I can't remember the conversation. If you want words backwards and forwards, I can't tell you that. If it was to do with the town centre and a discussion what was happening at the meeting, that may be what she spoke to me about. You'd have to ask her that question. I can't recall now.

Well, given that your evidence has been that you believe that it related to the town centre study – because that's what you believe your calls were related to, correct?---Yes. Yes, yes.

40 Was it not a matter of some concern to you that the local member of parliament was making threats to another councillor that were possibly concerning a matter in which he had a financial interest, given his family's property interests in the area?

MR NEIL: I object. Commissioner, I submit that's far too remote from this.

THE COMMISSIONER: No, it's not. I allow it.

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

MR RANKEN: Yes, well, given that your evidence that you believe this related to the Town Centre Urban Design Study and associated planning proposals, was it not a matter of some concern to you that the local member of parliament had been making threats to another fellow councillor in respect of a matter in which he had a, or a financial interest by reason of his family's financial interest in the properties in the area?---Yes, it would be concerning.

But you don't recall what Ms Cestar subsequently told you about those threats?---No, so the specifics, no.

And did you not do anything in response to the information that Ms Cestar had provided you?---I can't, well, I can't recall what information she provided me, so I don't know what I would have done with that information if I had received it. I just cannot recall either – Mirjana was venting about the discussion she had with John. I don't remember the, the specifics of the conversation.

THE COMMISSIONER: If she or another councillor had said to you that Mr Sidoti, in relation to her performance of her official functions, had made a threat to her, would that, as a fellow councillor, have caused you concern? ---Yes, it would. It would cause anyone concern, but - - -

Why?---Well, you're inferring that she was probably, she was threatened. But Mirjana's a very capable person and she can look after herself. She always has and she always will.

Yes, she may have been very capable, but if she had been threatened in relation to a matter concerning the performance of her official functions as a councillor, would that have caused you concern?---Yes, it would.

And would you have reported it?---No.

Would you have spoken to him about it?---Oh, would I have spoken to - - -

Would you have spoken to him about it?---No. I don't think I would have, no.

Why would you just have sat there and done nothing if you were told that Mr Sidoti had threatened her in the performance, well, possible performance of her official duties? Why would you do nothing?---Well, firstly, as I said - -

No, just answer my question.---Yes, okay, well, Mirjana's a very capable person, and she knows what she's doing.

Sure.---And the more I tried to not get involved in this entire issue, I seemed to be getting involved it. So I wasn't going to voluntarily get into the ring.

So you would see it as ethically permissible for you to turn a blind eye and shut up and say nothing?---I wouldn't put it that way, no.

10 Well, that's exactly what you're saying, isn't it? That you wouldn't have got involved. You wouldn't have seen it as involving any ethical issues sufficient to spirit you into action of some kind. That's what you're saying, isn't it?---Yes, I wasn't getting involved in it.

Even though, if it be true, that threats of that kind were being made, you would say, "Not getting involved," even though it's ethically wrong?---I just left it to Mirjana. It was up to her to - - -

No, is that your position that you took at that time?---That was my position, yes.

20 You were not going to get involved?---I wasn't getting involved in it.

You were not going to report it?---No.

And you wouldn't, and - - -?---Mirjana had the ability to report it.

Sorry?---Mirjana could have reported it if she wanted to.

30 Yes, and you could have too, couldn't you?---I could have. But then I'm getting involved in it.

In the public interest, perhaps.---Well, Mirjana's got a voice and she could have recorded it if she felt that threatened.

Would you accept that you, having been told by Ms Cestar what she wrote in her email, made you subject to an obligation as a councillor to report the matter for investigation by the council?---No.

40 MR RANKEN: What about encouraging Ms Cestar to report it?---I don't know whether I would have – did I encourage her or should I have encouraged her to report it is what you're saying?

Both.---Yeah, no, as I said, she's capable. If she felt strongly about it, she'd have done it herself.

But you didn't think it was necessary for you to say, encourage her to say, "Well, Mirjana, if you feel that he's making threats, then you should report that"?---I could have said that. I could have said that.

Well, isn't that something you would remember having said?---No.

It would be a serious thing to, say, report the fact of someone, a local member of parliament, threatening a councillor in relation to a matter that was before the council. That would be something you would remember if you'd actually said it.---Well, depends on what the, the degree of the threats are. I can't remember what the threats were.

10 Were there threats to withdraw support at preselection for the council elections in 2017?---I don't remember that in the, in the conversation. As I said, I don't remember what the conversation on the Bay Run was between Mirjana and John.

Were you yourself concerned that if you got involved and perhaps told Mr Sidoti that he was not to make threats to Liberal councillors, that he might withdraw support from you in respect of your position on the council?---No, I wasn't worried about that.

20 Now, that was on the morning of 3 December of 2016. I just want to take you to some emails. If we could go to page 1308. This is an email chain. If we could go down to the bottom of that page, you'll see there's an email from Sean Durkin to Gary Sawyer, who's the general manager or then at the time was the general manager of City of Canada Bay Council, and copied to Ms McCaffrey, who by then was the mayor, having been elected by the councillors in June of 2016. If you go over to page 1309. Do you see there's a fairly lengthy email from Mr Durkin specifically to, addressed to Mr Sawyer, and just so we can see the full email, if we could go to 1310, and you see that's the end of the email. Now, if we could go back to page 30 1309, I want to draw your attention to the second paragraph – well, firstly the first paragraph, where Mr Durkin says, "I wish to formally raise my concerns regarding the process by which Waterview Street, western side, between Second Avenue and Barnstable," incorrectly spelt, "Road was initially excluded from the rezoning study and the direction of the additional study, and I understand that the Sidoti family owned the reception centre on Great North Road immediately to the west of 39 Waterview Street, the property on Great North Road to the north of the reception centre, and 2 Second Avenue." Do you see that?---Yes.

40 So that seems to be three properties on that block that were associated with the Sidoti family.---Yes.

"I do not know or care whose name's on the deeds, nor should they be of any interest to anyone else." Then if I could draw your attention a few paragraphs down the page, about halfway down the page where it says, "I am incredibly concerned that the political/personal animosity between councillors, council staff and Mr Sidoti is influencing the whole process." Do you see that?---Yes.

And what I want to suggest to you is, well, firstly, do you recall ever seeing this email?---I must have, I must have read it, yes.

Now, appreciating you didn't have actually any detailed knowledge about the whole process, did you?---No.

But one thing you did know is that insofar as the process had involved the matter coming back and forwards between council, it had also involved the engagement of independent experts. Correct?---Yes.

10

Who had prepared a number of reports and further reports. Correct?
---Right.

And that it had also involved a process at each step of the way of public engagement by way of exhibition of the planning proposals and any amendments to the planning proposals. Correct?---Correct.

So the process was one that, would you agree, was not one that was particularly politically driven?---Oh, from council's side?

20

Yes.---Yes.

So insofar as the suggesting that the political/personal animosity between council, council staff and Mr Sidoti may have been influencing the whole process, to your knowledge would that have been an accurate or an inaccurate description of the matter?---Well, just going back at the point I suppose Councillor - - -

30

THE COMMISSIONER: Just answer the question, please.---Well, there was some political animosity I would, I would say, so yes, there was political animosity involved.

MR RANKEN: Okay. And that political animosity was between whom?
---Councillor Kenzler mostly.

And whom?---Well, against the Sidoti interest.

So you believe that Councillor Kenzler had some personal animosity with Mr Sidoti?---Animosity or political pointscoring probably more so.

40

THE COMMISSIONER: And what's that?---I don't think he hated John Sidoti, I think it was more of a party political thing.

And what is your belief in that respect based on, the animosity you've just spoken of?---Just things in general. Even in debates, nothing to do with this, anything to do with the State Government or John Sidoti, Councillor Kenzler's - he, he had the loudest voice in the room, he was always the one making the pointscoring, the political pointscoring.

And in terms of any animosity Mr Kenzler, vis-à-vis the town centre plan or study, was there any, do you suggest?---I don't know, I wasn't in the room at the time, I don't know what they would have been discussing.

You don't know. Okay.---Who was doing all the talking in the council meeting I have no idea.

10 Mr Ranken, I see the time. Is that a convenient time to take a morning tea -
--

MR RANKEN: Yes.

THE COMMISSIONER: We'll take a morning tea adjournment and we'll resume in about 15 minutes. We'll adjourn.

SHORT ADJOURNMENT

[11.34am]

20

THE COMMISSIONER: Yes.

MR RANKEN: Yes. Thank you, Commissioner. I wonder if we could bring up on the screen again page 1309 of Exhibit 24.

THE COMMISSIONER: Sorry, what page?

30 MR RANKEN: 1309, Commissioner. And this is the email that was sent from Mr Durkin to Mr Sawyer and Ms McCaffrey. And it's a reasonably lengthy email, Mr Megna, and I've taken you to a couple of points, but perhaps I might give you the opportunity to just read that whole email to yourself. If you can just let me know when you've had an opportunity to do so.---Sure. Right.

Now, Mr Megna, plainly this was an email that was concerned with concerns that Mr Durkin was raising about the process by which the Waterview Street site had been excluded from the Urban Design Study. Correct?---Right.

40 And was to be subjected to different planning controls to that which applied to sites that were within the Urban Design Study. Correct?---Correct.

And that Mr Durkin was expressing concerns that he was being caught in the middle, as it were, of what was in fact some political feud involving the Sidoti family's interests being subjected to some campaign against those interests. Correct?---Yes.

And there is a fair bit of detail throughout the email, would you agree, about some of the details as far as the planning controls that that block was missing out on. Correct?---Yes.

And about aspects of the study, the studies that were conducted in respect of the Waterview Street site. Do you agree with that?---Yes.

10 And that obviously was a matter, they were matters that you didn't have a great deal of knowledge about because of your lack of involvement in this matter in terms of the Urban Design Study and the associated planning proposals. Correct?---Correct.

And so that's not really a matter that you would be able to express a view one way or the other as to the merits of what he was saying, other than what you've told us about your understanding that the whole process involved the engagement of independent experts and public consultation and public exhibition and the like. Correct?---Correct.

20 Now, if we could go to page 1308, we can see the top of the message is – at the bottom of the page, we see the heading block for that message, and you can see that immediately above that, Mr Durkin has forwarded it to drummoyn@parliament.nsw.gov.au, do you see that?---Yes.

And you understand that to be an email address associated with Mr Sidoti, because he's the Member of Drummoyne?---Yes.

And Mr Sidoti has then forwarded that on, it would appear, to you.---Yes.

30 Because you've responded to Mr Sidoti on 4 December, saying, "Excellent letter from him, will I forward it on to the others?"---Yes.

Now, firstly, "Excellent letter from him," you're referring to the email from Mr Durkin to Gary Sawyer and Ms McCaffrey, correct?---Yes.

So we take it then that you did read it and considered its content.---Yes, yes.

And you formed a view about the merits of what Mr Durkin was saying. ---Yes, yes.

40 But yet, you would agree that it's contrary to what your understanding was about the process that had been undertaken, correct?---I thought he put his case well, whatever he was putting in, whatever he enclosed in the letter, he put his case well, particularly about the collateral damage.

THE COMMISSIONER: Sorry, would you say that again? I didn't - - -?
---I'm sorry?

Sorry, could you repeat your answer?---I thought that he put his case well, when he was talking about he didn't want to be caught up in the collateral damage of what he obviously was after, what was in his interest.

MR RANKEN: But the case that he was putting, though, presupposes an acceptance of the proposition that there was some political feud that was going on, correct?---Yes, yes.

10 That was affecting the decisions that council was making in respect of the Urban Design Study and the Waterview Street site, correct?---Yes, yes.

And your knowledge, though, such as it were, was that there was no such political aspect to it, because it had been the subject of repeated independent expert reports and public exhibition and consultation.---Yes, but I also mentioned before morning tea that Councillor Kenzler was making some political pointscoring. So I, by what I'm understanding from Mr Durkin's letter, which is off the page now, but I think he actually even mentions Councillor Kenzler.

20 That's so.---Yep. So there was political stouthing going on.

But the recommendations that were being adopted by council were recommendations that had been put forward by independent experts. ---Mmm, yes, true.

And you knew that.---Yes.

So they weren't political, correct?---Well, the recommendations weren't, no.

30 So the idea that this process had been somehow influenced by some political pointscoring, as you've described it, by Councillor Kenzler was just nonsense, wasn't it?---I wouldn't know if it was nonsense. I mean, Kenzler was a, a very strong personality who had opinions. And I don't know how he delivered that in a council forum, because I wasn't in the room.

THE COMMISSIONER: If you look at the arguments put forward in this document, how can you have said it was an excellent letter, given the nature of the allegations being made, both in respect of councillors and council staff?---Well, Mr Durkin put his case quite well, I would have thought.

40 You what?---It, it wasn't just a one-liner. He actually had a, a history of the problem.

Oh, yes, he wrote lots of lines.---Yeah.

But it's a question of what's in the lines, Mr Megna.---Mmm.

And as an experienced man on local government, an accountant, how could you describe that letter as an excellent letter, when it's making allegations against councillors, against the council staff, when you claim not to have really known much about what the whole town centre study was about or the developments in relation to it?---That's true, but he mentions the, the, the heights and the, and the differences in the zonings. By what I read of that, he made his point.

10 Oh, I see. So on the basis of, the strength of that, you can conclude it was an excellent letter?---Yes.

Making very serious allegations, for example, in relation to council staff and councillors.---Yes.

What did you know about the council staff having not been doing their job in relation to - - -?---I didn't know anything of that.

Hey?---I'm not casting an opinion on that.

20 But he is in his letter that you have described as an excellent one.---Yeah, well, not every single point he would have made would have been excellent. I wasn't privy to what was going on. What stood out was the argy-bargy going on between Councillor Kenzler and, and Mr Sidoti.

I'm not talking about Councillor Kenzler. I'll put it a third time. This letter makes serious allegations against the integrity of the council staff, doesn't it?---Yes.

30 Do you think that was an excellent part of this letter?---No.

Do you think it's scurrilous?---No.

Had you ever heard that either Mr McNamara or Mr Sawyer were doing a poor job in relation to this town centre plan?---I hadn't heard if they had, no.

No. You had not heard any criticism of their integrity or capability in respect to the town centre plan.---No.

40 Well, how can you describe this letter as an excellent one when it contains scurrilous allegations?---I, I stand by my original answer, Commissioner.

Give me a logical response to my question. How could you describe this letter as an excellent one when it contains scurrilous accusations against council staff?---Well, there are some points that were - - -

You can't justify it, can you?---Not on the staff, no.

No.---This was actually - - -

It's a very serious allegation to have made in this letter by Mr Durkin, wasn't it?---Which was written to the general manager himself. Yes.

It was a scurrilous piece of work, wasn't it, so far as the council staff was concerned, wasn't it?---Yes.

You had heard no criticism against council staff in respect of this town centre.---No.

10

And yet you describe this as an excellent letter. Is that right?---Parts of it, yes.

The whole of it. You said the letter was an excellent letter, didn't you?---I was looking at the floor space and the storeys and that aspect of it.

Do you now concede that you should not have so described the letter?
---Yes.

20

It was not an excellent letter, was it?---Not in that part of it, no.

It was a very poor letter, wasn't it?---Okay. Yes.

No, no, don't let me put words in your mouth.---Well - - -

Do you agree it was a very poor letter because it contained scurrilous allegations against council staff, correct?---Yes.

30

Anything but excellent, would you not agree?---Yes.

MR RANKEN: Mr Megna, why did you not respond to Mr Sidoti to ask him why on earth he was sending you this correspondence in the first place knowing your position was such that you could not have any involvement in relation to the matter?---Well, I think I did. I said, "Do you want me to send this on to the others?"

Well, you didn't say I can't have anything to do with it. You said, "Will I forward it on to the others." Correct?---Yes.

40

So did you understand that that's why he was forwarding it to you so that you could forward it on to the others?---Well, he didn't ask that, no.

No. So what did you understand the reason was for him forwarding it on to you in the first instance?---For my information.

For what reason would it be relevant for you to have any information about this?---I don't know.

Did you apprehend that perhaps he was suggesting that you should take it up by making some formal report about Councillor Kenzler or council staff?
---No. Well, I couldn't have anyway.

And Mr Sidoti responded to you to say that I believe, he got it. "I believe the whole thing should be referred to the ICAC. The allegation involves the GM and senior staff and councillors. If it is referred, I will call for Sawyer and McNamara to stand down till it's investigated." Do you see that?---I do.

10

Did you understand that Mr Sidoti, from that email, was considering having the matter referred to this Commission for investigation?---By what he, by what he said, yes.

And given the nature of the allegations that Mr Durkin had made in his email, did you not think that that was perhaps an appropriate thing if you were to accept those allegations at face value?---Yes.

20

Did you not encourage him to do so?---No.

Do you know whether Mr Sidoti did do so?---I don't know.

If there was any substance to those allegations, you would expect that it would be a matter of significant concern that might be necessary to refer to this Commission, wouldn't it?---Yes. Yes.

And your response to Mr Sidoti was that, "I meant should I forward it to the other three councillors." Do you see?---Yes.

30

Now, by that you meant the other three Liberal councillors. Correct?---Yes.

And did - - -

THE COMMISSIONER: Why not send it to all of the councillors?---I don't know.

No reason not to let them in on the picture either, was there?---No. Well, one of them was Councillor Kenzler who was (not transcribable) who wasn't being - - -

40

No reason why you would say, "Will I forward it to the others," meaning all of the councillors, rather than just the Liberal councillors?---No, there's no reason, no.

MR RANKEN: So wasn't this another example of Mr Sidoti getting you to be the person who effectively organised the other Liberal councillors in respect of advancing his property interests?

MR NEIL: I object to this, and in fact he didn't do it. He didn't refer it on.

THE COMMISSIONER: What do you say, Mr Ranken?

MR RANKEN: Well, it's not about the referral to ICAC, it's about the referral of this information onto the councillors, the Liberal councillors, that's what my question is directed to.

10 MR NEIL: I'll adopt both, but I was actually meaning that this witness didn't refer it to the three councillors.

THE COMMISSIONER: He did not refer it?

MR NEIL: As I understand it. Well, I may be wrong, I may have misunderstood. Maybe that hasn't actually been squarely put to him.

MR RANKEN: I haven't asked that question.

20 THE COMMISSIONER: Mr Ranken.

MR RANKEN: Did you refer it on to the three other Liberal councillors?
---I can't remember if I did.

Is it likely that you would have forwarded it on, given that that's what you were suggesting that you should do?---It depends on if I had a response from him.

30 Well, the response from Mr Sidoti was a reference to believing that the whole matter should be referred to the ICAC.---Right.

So he did not specifically ask you, but then you've suggested that you should forward, you meant forwarding it to the three, the other three councillors.---Right.

You don't recall whether or not you did?---I don't think so. There would be an email trail if there was.

40 And that email trail would be from your email account, would it?---I, well, I'd say so, yes.

Now, that was on 3, sorry, 4 December, 2016, that you engaged in that email correspondence with Mr Sidoti following from Mr Durkin's email of 3 December, 2016. This is in a lead-up to a meeting of the council on 6 December, 2016. Did you become aware at some stage that a firm of planners known as Pacific Planning were acting on behalf of, amongst others, the Sidoti family interests in 2 Second Avenue and 120 Great North Road?---There was someone acting on his behalf, I'm not sure of the name of the company though.

Do you know a person by the name of James Matthews?---I do, yeah.

And do you know a person by the name of Matthew Daniel?---Yes, he's the, he's the main one, yes.

Matthew Daniel is the main one?---Yeah.

10 And who are they?---Well, they act on behalf of Mr Sidoti. Well, they acted on behalf of Mr Sidoti.

And they were the persons who you understood were acting on behalf of Mr Sidoti in 2016?---Yes.

20 And how did you come to understand that they were acting on behalf of Mr Sidoti?---I think Mr Daniel called me, introduced himself or reintroduced himself to me. I'd met him years before. I think he was a councillor on Sutherland Council. And he said he was involved in a development application in Concord Road, Burwood.

And was that somehow related to the Sidoti family, was it?---No, had nothing to do with it, and I think in the conversation he also mentioned he was acting on John's behalf with, in the Great North Road thing.

And did you have any discussion with Mr, this was Mr Daniel, was it, or Mr Matthews?---Yes, no, Mr Daniel, yeah.

30 And did you have any discussion with Mr Daniel at that time about Mr Sidoti's family's interest in the Waterview Street site, if I could call it that? ---Not that I can recall. I think it was mostly to do with Burwood, Burwood Road.

Mostly your discussion was to do with Burwood Road.---If not entirely, yeah. I can't recall the Waterview Street coming up or the Great North Road coming up.

40 Did you become aware of the fact that in response to the public exhibition of the proposed planning or the planning proposals that came out of the meeting of council on 2 August, 2016, that Pacific Planning had made a submission to council about that on behalf of, amongst others, the Sidoti family?---They may have, I don't know.

And did you become aware of a suggestion or a request by Pacific Planning, and specifically Mr Matthews, that the consideration of the matter at the meeting of council on 6 December, 2016, be deferred so that they could make further representations or meet with the independent experts engaged by council to get a better understanding of the basis of the analysis that had informed the recommendations the experts had made to council?---I may

have, I can't recall the specifics of it. I know it went backwards and forwards to council and was deferred and whatever, so I, the timeline I'm not, I'm not sure of.

You don't recall being a party to any emails about that?---Not from memory. I could have been. I seem to be looped into a few emails. I could, I may have been, but I can't recall it though.

10 Perhaps if we could bring up page 1313. This is an email chain of 5 December, 2016, so we're still prior to the meeting on 6 December.
---Right.

And do you see that there's a response, effectively there's a response from Mr Dewar to Mr Matthews that's copied to Mr Matthew Daniel and Mr McNamara?---Yes.

20 And it's responding to an email that had in fact been sent by Mr Matthews earlier that day to Yolanna Boyle, who is a member of staff at the council, correct, or was at least then?---I'm, I'm, I'm not sure. I, I, I haven't heard of Yolanna Boyle. She may have been.

And Mr Dewar, which was copied to yourself and Ms McCaffrey and Mr Daniel. Do you see that?---Yes.

And in that email can you see that he states, this is at about a third of the way down the first paragraph, he says, "I am representing the views of 2 Second Avenue and 37, 39, 41, and 43 Waterview Street?" Do you see that?---Oh, yes, where the cursor is, yes.

30 "These lots form more than half of the block the subject of the planning proposal."---Yes.

"And I therefore respectfully 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 feasibility and lot amalgamation." Do you see that?---Yes.

40 So that was a request that the matter be deferred. Are you able to offer any explanation as to how it was or why you believe that you were copied into this email?---I don't know.

Because it was plainly a matter that you weren't in a position to actually vote on.---Exactly.

Do you say that you had no conversation with Mr Matthews about the request to defer?---No, I can't recall discussing it. I wouldn't have been involved in the, in the deferral anyway. I can't recall speaking to Mr

Matthews about it. I can recall a conversation with Mr Daniel, I can't recall any conversation with Mr Matthews.

And the conversation with Mr Daniel you said was primarily - - -?
---Concord Road.

- - - concerned with Concord Road, Concord.---Yes, Concord Road, Burwood, yes. Concord Road, Burwood.

10 But was there also, but there was some discussion about the Waterview Street site?---With Mr Daniel? Not that I, not that I can remember, no.

If there was, you don't recall anything about it.---No.

But you do recall that it was from that conversation that you became aware that Mr Daniel was acting for the Sidoti family - - -?---Yes, yes, I'm pretty sure.

20 - - - in respect of the Waterview Street site.---I'm sure I made the link then, yes.

So there must be some, has been some discussion about Waterview Street site in that conversation?---It doesn't, doesn't mean that there was, no.

Did you have any discussions with Mr Sidoti about the suggestion of a deferral of the matter by council?---Not that I can remember, no.

30 No. I take it you didn't do anything in respect of receiving this email that you were copied in on from Mr Matthews?---Not that I can remember, no.

Could we go, then, to page 1320. Now, Mr Megna, this is an email from Mr McNamara addressed to all councillors, as well as a number of members of the executive team from council, would you agree with that?---Yes. Yes.

You recognise the email addresses of the persons to whom it was copied as being members of the executive team?---I do note that, yep.

40 And Mr McNamara, who is the author of the top email in this email chain, he was also a member of the executive team, correct?---He was, yes.

And given that it was sent to an all-councillors group, it's likely that you received this email as being a councillor at the time?---I would have, yep.

And do you see that the email effectively responds – although responding only to councillors and members of the executive team – to the email that Mr Matthews had sent on 5 December to Ms Boyle and Mr Dewar that had been copied to yourself and Ms McCaffrey and Mr Daniel. Do you see that?---Right. Yes.

Do you recall reading this email?---Probably would have.

And do you see that in that email Mr McNamara has expressed the view that the basis – this is about halfway through that paragraph – it says, “The basis for the request,” that is the request for the deferral, “appears to be what James considers flawed and inequitable planning outcomes. May I respectfully suggest that the basis for all recommendations has been well and truly canvassed in the various reports despite not suiting all landowners.
10 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 with appropriate planning justification.” Do you see that?---Yes.

And, you know, from your knowledge about the process by which these planning proposals had been back and forth to council and considered by independent experts and the council staff, would you agree that the position that Mr McNamara is suggesting was a reasonable one - - -?---Yes.

20 - - - to be suggesting to the councillors?---Yes.

It of course didn’t preclude Mr Matthews’ clients from putting in their own development proposal, correct?---No, it didn’t preclude them, no.

But one thing it would have done, though, is to have brought the matter to an end as far as the council’s involvement in the planning proposals?
---I’d say so, yes.

30 Now, are you aware that the matter was actually deferred at the meeting on 6 December, 2012?---I’m, look, specifically, no, but I do know that, as I said previously, it was deferred on a number of occasions.

Now, so you don’t have a recollection of, in fact, the matter being deferred on the motion of Councillors Kenzler and Parnaby, both of whom are Labor councillors?---No.

And so that there would be consideration of it at a councillor workshop in 2017.---Well, there could have been, yep. I would have known, obviously, that it went to a workshop afterwards.

40

Now, the matter came back before the council in February of 2017, at the meeting of 7 February, 2017, and on that occasion, the matter was finally determined in the sense that council made a resolution consistent with the recommendations that had been made by council staff in December of 2017, together with an additional recommendation that appears to have come from the councillors themselves, which reflects the final sentence or the final sentiment in Mr McNamara’s email of 5 December, 2016, namely that if the owners of property in the area believe there is a better planning outcome to

be achieved that the recommendation that they lodge a planning proposal in the normal way. Now, were you aware that there was subsequently a move by Councillor Kenzler to have that motion rescinded?---No.

No?---No.

You never became aware of that?---No.

10 You weren't aware of the fact that Councillor Kenzler proposed that there be a rescission of the resolution of 7 February, 2017 to be considered at the meeting of the council on 21 February, 2017?---No, not that I can recall, no. We rarely had rescission motions, and I can't recall that one.

So, given the rareness of rescission motions, it's something that you would – it would have stuck out in your mind if there had been?---Probably, yes.

20 Now, I wonder if we could bring up – just one moment, will you excuse me for one moment, Commissioner – I wonder if we could bring up page 1792. Now, if you'd accept from me, Mr Megna, this is a series of messages from mobile phone text messages and the like, and I just want to draw your attention to three particular messages from 16 February, 2017. The messages have numbers down the left-hand column. The messages I want to draw your attention to are at 56, 57, and 58.---Right.

Now, do you see - - -?---Yes.

So 16 February, and there is a message from Ms Cestar to you that was sent at 6.25pm.---Right.

30 And it says, "JS called in a panic over next meeting, bloody hell." Now, given the date, and the next meeting was going to be 21 February, 2017, we can assume that the next meeting that Ms Cestar was referring to was likely to be the meeting on 21 February of 2017. Would you agree?---Yes.

And JS, would you agree that that was likely, or did you understand that to be a reference to Mr Sidoti?---Yes.

40 And did you have an understanding as to why it was that Mr Sidoti might have been in a panic over the next meeting?---Well, it would be, was to, to, it would be to do with the, with the council report.

Was it possibly to do with the prospect of the rescission motion?---Oh, I don't know, I don't know if it was a rescission or not, if it was the final report, I can't remember.

Well, if we look at the next message, message number 57, that's a message from yourself replying to Ms Cestar at 6.27pm, saying, "He called Helen and me," with a number of exclamation marks.--- Yes.

That would suggest that you had a conversation with Mr Sidoti. Correct?
---Yes.

Do you recall now what the conversation was?---It'd be to do with the report going to council judging by the timeline.

What did he say to you?---I don't, I don't know. The specifics of it I don't know.

10

Well, it seems that there were a number of occasions when you had conversations with Mr Sidoti in which he raised issues to do with his concerns possibly - - -?---Yes.

- - - or some view he had about the Urban Design Study and planning proposals. Correct?---Yes.

20

And you don't have any independent recollection now of any of these conversations?---Of the specific point, no. It would be to do with that as a, as an issue but specifically, no.

How did you know that he'd also called Helen McCaffrey?---Well, Helen must have called me I would think.

What do you recall - - -?---Helen must have rung me and told me.

- - - of the conversation that Helen had with you?---That she had a phone call from John.

30

What did she say about the phone call?---I don't remember. I really don't remember.

If we go to the next message. This is number 58.---Yes.

Ms Cestar has responded to you at 6.27. So within a minute of your message she's responded to you saying, "OMG", which I think we can all understand. "When will it end."---Mmm.

40

What did you understand her to be referring to when she said, "When will it end"?---Oh, when will this issue end I suppose. Come to some sort of finality.

THE COMMISSIONER: I suppose you were thinking along the same lines at this stage.---Oh, yes, indeed.

Indeed you had been long before this.---Yeah.

MR RANKEN: And why is that?---Well, it had been going on for some years I think from memory. It was backwards and forwards. I was getting looped in when I didn't want to be by, either by councillors or by Mr Sidoti or by the council itself. I'd be circulated in with the emails. I just wanted to be out of it.

10 THE COMMISSIONER: Who did you understand had been responsible for this prolongation of the whole episode concerning the town centre plan following the initial report of Studio GL?---Well, I'm not sure, to tell you the truth. I knew it would go to a council meeting and then there'd be discussion and I don't know who would call for a deferment. I mean you've mentioned that Councillor Kenzler and, and Parnaby called for either a deferment or there was a change in the vote. I don't know. I knew that between them they were deferring it.

It did become apparent to you over time as to who the principal driver of the, if you like, challenges or questioning of the council town centre planning was.---Yes.

20 Who was that?---Oh, Mr Sidoti. He had his point of view.

Were you concerned about the time this was all taking to resolve the town centre plan given that it was, as one of the witnesses described it, a major project?---Well, a lot of major projects like that do take time. They go backwards and forwards, more information, more public consultation. A decision isn't made almost immediately. It does go backwards and forwards. It gets fine-tuned. It wasn't, it wasn't unusual for something like this to go backwards and forwards.

30 MR RANKEN: Now, you understood throughout this process that Mr Sidoti's family had a financial or pecuniary interest in the Waterview Street site. Correct?---They had a financial interest. They, they'd only have a pecuniary interest if one of them would be voting at a council meeting which none of them were. So they had a financial interest in it.

They had a financial interest.---Yes.

40 And you knew that Mr Sidoti was seeking changes to what was being proposed in respect of the Urban Design Study and the planning proposals that would advance his family's financial interests in that site. Correct?---Yes.

And did you consider that in those circumstances that Mr Sidoti had a conflict of interest insofar as his approaches to individual councillors on the City of Canada Bay Council?---Not really. He's still an applicant or a resident who has a point of view. We get that from either builders or neighbours or applicants all the time. They want their point of view or their interest brought to council.

But you understood that he was the local member for the Drummoyne electorate, correct?---Yes. Yes, yes.

That electorate is entirely subsumed by the City of Canada Bay local government area, correct?---Yes, yeah, boundaries, yes.

10 And the question of what was in the public interest as far as the development of the Five Dock Town Centre had been the subject of an extensive public consultation and the engagement of independent experts, correct?---Yes, yes.

And you were aware that the changes that Mr Sidoti had been pursuing were not supported by those independent experts, correct?---Correct, yes.

And they were not supported by council staff, correct?---Yes.

20 And they were not supported by the vast majority of submissions that were made to council on each occasion that the matter was put out for public exhibition.---I didn't read the submissions, so I don't know what the ratio of fors and againsts were.

And so the position that Mr Sidoti was advancing was one that was contrary to the interests of his own constituents, correct?---Well, not knowing what the submissions were, I can't say yes or no to that question.

Well - - ?---Certainly contrary to what he wanted.

30 Well, you understood that part of the public consultation process that had been engaged in by the independent experts and council meant that there was a direct input into the planning proposals by the constituents of the City of Canada Bay local government area, correct?---Yes, yes.

So it reflected what the constituents wanted.---In, yes, well, I'd say so, yes.

Having been synthesised through expert analysis and feasibility analysis and design studies and public consultation through exhibition of proposals, correct?---Correct.

40 And what Mr Sidoti was advancing in respect of the Waterview Street site was not supported by the experts who had an awareness and had synthesised the public interest as expressed by the constituents.

MR NEIL: I object to that.

THE COMMISSIONER: What's the objection?

MR NEIL: There's a fundamental difficulty in this approach, and that is that albeit if one accepts that there were Studio GL report or reports, and if one accepts that there was a level of support for that position, it doesn't follow that if a councillor or a member of parliament is asked by a constituent who has a different view, that there is some wrongdoing on the part of that councillor or member of parliament in making representations or picking up on that view, otherwise it would be an intolerable position. The person would have to refuse his constituents' requests and refuse their rights to seek assistance from a councillor or a member of parliament.

10

THE COMMISSIONER: Mr Neil, I think you've got to have regard, have you not, to the fact that the person making representations might or does have personal interests, be it a family interest in terms of property interests, and the capacity in which the representations are being made by that person, who may be wearing different hats, hats as a member of parliament, hat as the representative of family connections that have properties, whose interests he seeks to serve. I mean, that's the difference. It's not just a question of taking a hypothetical councillor simpliciter who makes representations. I think does not that make a difference?

20

MR NEIL: Well, look, I understand what you're putting, Commissioner, but I'd submit it's an additional reason to support the point I'm putting, namely that if a person is representing say his own family who are constituents, who come to him or others who have a different viewpoint from the majority, his position is not to be governed by whether or not there's a majority that have a different view, his position is to be governed by the relationship he has with the persons that he's making representation on behalf of, and it can be taken into account that he has family members that he's making representations for. But some survey or set of objections that has been produced during an assessment process by an independent planner, to then argue that simply because or either because of or simply because of or in combination with other factors, the fact that there were more objectors than persons who supported a position that Mr Sidoti had taken should be taken into account on whether he acted properly, in my submission, that point is irrelevant.

30

40

THE COMMISSIONER: But if the constituency is overlapping, that is the person we're talking about, being a councillor who happens to be a member of parliament in the constituency of the council, being all of the residents within basically the same area as the constituency of the local member, their views are sought repeatedly and they speak not with an even majority but an overwhelming majority, and every time it's put out on public exhibition there's some evidence which suggests that it gets stronger and stronger, that is to say that the constituents are strongly opposed, a vast majority it might be described as, do not want this, and the independent experts are required to ascertain the views of the community for council and they do ascertain it through public exhibition and the like and they receive the outcome of that exhibition in terms of an overwhelming majority are opposed to it, isn't it

relevant then in judging whether a councillor whose constituency is the same is making representations that are opposed to the vast majority in the interests of a specific family group? Isn't that a legitimate way of the question being put, to bring those factors into account?

MR NEIL: Well, put it this way, Commissioner. I would, I would submit not. It may be that we're in territory that is due for, in due course, substantial submissions and consideration.

10 THE COMMISSIONER: Well, indeed, I - - -

MR NEIL: There may be some different views on it. Could I just mention, I'm not suggesting that Mr Sidoti was a councillor, I don't think he was, he was only ever a member of parliament.

THE COMMISSIONER: No.

MR NEIL: But he's in, clearly his position in the middle of a number of different competing positions, needs in due course to be considered. But the
20 point I make is simply because even if there may have been some opposition in the public to his view, that is not a matter that can be taken into account on the question of whether or not in supporting some constituents who had a different view he's acted contrary to the public interest. His interests, his duties, in my submission, according to the public interest, are to represent such persons as seek his assistance.

THE COMMISSIONER: All right. Mr Ranken, do you want to be heard on this?

30 MR RANKEN: Well, one matter I'll raise in this regard - - -

THE COMMISSIONER: Sorry?

MR RANKEN: - - - Commissioner, is this, is that my question was directed to the appropriateness of Mr Sidoti as a member of parliament having direct contact with individual councillors in relation to the matter in circumstances where he had a financial interest by reason of his family's property interests in the area. Now, it's one thing to have engaged, for Mr Sidoti or his family to have engaged planners to put in submissions on their behalf, where it is
40 quite clear that they are acting in the interests of a private interest. It's quite another thing for a member of parliament in his role as the member of parliament to represent both his interests and other, potentially other landowners in circumstances where he has a financial interest. That is the conflict. The conflict is between the fact of his private interests, having an actual conflict in this case, it would be submitted, but even having the risk of a conflict of interest with what is in the public interest as has been determined through such an extensive process of public consultation and the

engagement of independent experts. That is the difficulty with the position that Mr Sidoti - - -

THE COMMISSIONER: But I think your question was put not only on the basis of a conflict of interest but that it was course of conduct, that is, conduct which included dealing with councillors to achieve an objective, in which I think you were putting, if this was working against the public interest. Is that not the way you were putting it?

10 MR RANKEN: That is, that was the way I put it.

THE COMMISSIONER: Yes. I'll allow the question. I should say though, I think as Mr Neil has observed, that some of these issues will need to be obviously dealt with by way of submissions once all the evidence is in.

MR RANKEN: Thank you, Commissioner. So Mr Megna, do you want me to repeat the question or the effect of the question?---Yes, please, yeah. I, it was a long time ago, yeah.

20 Now, I was suggesting to you that it, did you not consider over this extent of this, or the course of this process that had gone back and forth between council and studies and the like, and there was, firstly, multiple occasions on which Mr Sidoti sought to engage directly with the individual Liberal councillors about the matter, correct?---Correct.

And including, at times, yourself.---Yes.

Although you declined to become involved, effectively. Correct?---Correct.

30 Now, and that was in circumstances where you were aware that Mr Sidoti had a direct – well, through his family's property interests, had a financial interest in the Waterview Street site. Correct?---Yes.

And you also knew that the position that was being advanced or sought to be advanced by Mr Sidoti, including by way of his direct contact with the Liberal councillors, was one which was not supported by the independent experts, correct, and not supported by the council staff, correct?---Correct.

40 And also not supported by the overwhelming majority of the constituents of the City of Canada Bay local government area.---I can't answer that last part. I don't know what the submissions were and what the ratio of fors or againsts were. If you say that they were, "the overwhelming", because you've read them or you've seen the ratio, I'll take your word for it. But I can't say yes or no.

If you were to accept from me, for the purposes of the question - - -?---I'll accept you if you're saying so. Yes.

- - - that the overwhelming majority of the constituents of the City of Canada Bay did not support the kinds of changes that were being advanced, sought to be advanced by Mr Sidoti, that he had a clear conflict of interest in seeking to engage with those Liberal councillors individually.---Oh, look, I still wouldn't say he had a conflict of interest. As I said before, we have applicants who directly engage with councillors, either the entire councillors or certain sections of councillors, to promote their point of view.

10 THE COMMISSIONER: Yes, but we're dealing with a specific situation as put in the last question.---Right.

That is, Mr Sidoti, his family, properties held, the nature of the changes he was seeking, and I think it's being put to you, having regard to those if you like individual or idiosyncratic features, that he was placing himself in a conflict of interest in dealing with the councillors, the Liberal councillors, to gain support for his position.---Look, I still can't see how that's different from any other person who's trying to push their point of view onto councillors for their own financial or beneficial interest.

20 MR RANKEN: What of the interests of the constituents, the vast majority of constituents of the City of Canada Bay, in not having the changes that Mr Sidoti was advancing? What about their interests?

MR NEIL: Could I object on this basis, and I don't want to say anything in front of the witness other than to draw your attention and Counsel Assisting's attention to page 1393, because I want to challenge my learned friend's characterisation. That's all I say. The numbers are there under the overview.

30 THE COMMISSIONER: Sorry, what's the page reference?

MR NEIL: 1393.

THE COMMISSIONER: So what flows from that, Mr Neil? It says 66 per cent of the submissions, et cetera.

MR NEIL: Yes, well, "overwhelming" I object to, Your Honour.

40 THE COMMISSIONER: I see. There was I think a later, was there not, survey done at a later public exhibition, in which the numbers I think were different.

MR NEIL: I'll see if I can find that.

THE COMMISSIONER: That's my recollection. Mr Ranken, are you able to help us on that?

MR RANKEN: Yes, this is in respect of, only in respect of the final changes that were being proposed in advance of the meeting of 7 February, 2017.

THE COMMISSIONER: Right, okay.

MR RANKEN: Which you may recall, Commissioner, from the evidence of Mr Dewar, in particular, that by this stage there had been a bifurcation.

10 THE COMMISSIONER: Yes, that's right.

MR RANKEN: So the main LEP, Local Environmental Plan, relating to the Urban Design Study had already gone off to be formalised and gazetted.

THE COMMISSIONER: Right, okay.

MR RANKEN: And what remained was this further consideration of this additional site and the options in respect of that. So this is confined to only the options that were exhibited in the final phase following 2 August, 2016.

20

THE COMMISSIONER: I see.

MR NEIL: Well, you're right, Commissioner. Whatever may be other surveys, the point I want to make is that, as we understand it, 1393 is the one that deals with Waterview Street, although there's obviously a typo. It should mean the western side of Waterview Street. And that's what is the relevant place for this question.

THE COMMISSIONER: Well, even if that be so, it's a fairly high number, isn't it?

30

MR NEIL: But not to the extent of what my learned friend's put in his question to the witness.

MR RANKEN: Well, I withdraw the question.

THE COMMISSIONER: All right. Mr Ranken, perhaps you could take on board what's been said by Mr Neil.

40 MR RANKEN: Mr Megna, what of the interests of the 66 per cent of Canada Bay constituents who were opposed to the proposals that were being advanced by Mr Sidoti?

MR NEIL: There again, Commissioner, with respect to my friend, this page 1393 makes plain that it's not all of the Canada Bay people. The numbers are there. I say no more. As it's relating to Waterview Street.

THE COMMISSIONER: Mr Ranken?

MR RANKEN: Okay, I'll rephrase it again. What of the - - -

THE COMMISSIONER: It may be, you know, this line of questioning, something upon which other evidence will determine the true position, rather than getting the opinion of Mr Megna. I'm not stopping you.

10 MR RANKEN: Well, I'll ask the question, though. What of the 66 per cent of persons who put in submissions in respect of the final exhibition of the proposals? What of their interests? They were conflicted. They conflicted with Mr Sidoti's interests, correct?---Yes.

And that was a majority of the submissions that were received in respect of that.---The majority. Were they residents in Waterview Street? I don't know what the catchment area of those 66 per cent were.

They were submissions made by persons - - -?---Generally.

20 - - - who are interested - - -?---Okay.

- - - from the City of Canada Bay local government area.---Okay.

Correct?---Ah hmm. Yes.

And Mr Sidoti's interests were in conflict with their interests, weren't they? ---Yes.

30 And he was, as the member of parliament, the local member of parliament, their representative as well. Correct?---Yes.

So his position was such that he was in conflict with his duty to represent their interests. Correct?

MR NEIL: I object to that. I object to that.

THE COMMISSIONER: I'll allow it, Mr Neil.

40 MR RANKEN: Correct?---I can't answer that question. I mean I don't know if he was wearing a parliamentary hat or a resident's hat or an owner's hat.

Well, doesn't he always wear a parliamentary hat when he's - - -?---I don't know.

- - - when he's the member of parliament, the local member for Drummoyne? Isn't he always supposed to represent the best interests of his electorate?---We all are.

And mustn't he always be mindful of any potential conflicts of interest between his personal financial interests and those of his constituents. Correct?---Yes.

And wasn't this an occasion or wasn't this a situation where his interests were plainly inconsistent with 66 per cent of those who made submissions to council regarding this proposal?

10 MR NEIL: I object to that, and I take up at this stage, Commissioner, the fact that this area is of considerable importance to the Commission and this witness I would submit is not the person who can best help the Commission on this.

THE COMMISSIONER: I think I'll ask Mr Ranken if this line of questioning can be postponed and let's move on and we'll come back to it at a later stage.

20 MR RANKEN: Yes. Thank you, Commissioner. Now, so I was dealing with a situation just prior to the meeting of the council on 21 February of 2017, and specifically in relation to your exchange of messages with Councillor Cestar on 16 February, and I want to move on then in terms of 21 February of 2017, do you recall receiving an email from Mr Matthews that was sent to Ms Cestar and Ms McCaffrey but copied to yourself and Dr Ahmed, encouraging them not to support the rescission motion that had been put forward?---I can't recall it. I can't recall the content, no.

30 Could we bring up page 1428, Exhibit 24. Now, do you see that there there is an email from Mr Matthews to Ms Cestar and Ms McCaffrey, Ms McCaffrey being mayor at the time.---Right.

But also copied to yourself and Dr Ahmed.---Yes.

That's your work address that we - - -?---Yes.

Email address we see there. Is that correct?---Correct.

And this was sent on 21 February. It's difficult to see the time but I'd suggest to you that in fact that it was at 3.14pm.---3.14, yeah

40 In the afternoon. Now, do you see it's addressed to "Dear Mayor and Councillors". Correct?---Yes.

And each of the persons referred to there is either the mayor or the councillor in that email address or a councillor?---Yes.

And so would you agree that it appears to be sent to you in your capacity as a councillor?---Yes.

And do you recall, now that you can see this email do you recall receiving this?---No, I don't.

Okay.---I obviously received it but I can't recall the content of it.

And you might need to go over to the next page, 1429, as well to see something that Mr Matthews was proposing. Do you see that? It says, "That the motion of 7 February, 2017 be carried and the following amendment be included." Do you see that?---Yes.

10

So what Mr Matthews was suggesting to the Liberal councillors was that they actually put forward a proposed amendment to the original resolution of 7 February of 2017 to apply the bonus height provision to land that fronts Great North Road bound by Second Avenue and Barnstaple Road to permit a maximum building height of 24 metres and a maximum floor space ratio of 2.7:1. Do you see that?---Yes.

Where land has a site area of 1,000 square metres and a street frontage of at least 20 metres. Do you see that?---Yes.

20

And that was in effect going back and trying to get some further changes to that which had already been publicly exhibited and approved by the council. Correct?---Yes.

And secondly, that the planning proposal be amended accordingly and submitted to the Department of Planning and Environment for a Gateway Determination. Now, do you recall – you don't recall receiving this email or reading that at all?---No. If I received it, I probably would have read it.

30

Now, would it not be of some concern to you – understanding as you did that Mr Matthews represented, amongst others, the interests of the Sidoti family – that there was an attempt to get a further change to that which had already been approved by the council through this direct contact with the Liberal councillors only?---Not particularly, no. Oh, as I said, people send in amendments, ask for a, a change to recommendations all the time, quite often.

40

THE COMMISSIONER: But by this time, such an increase in the bonus height as sought here had been well and truly refuted, rejected by Studio GL more than once. Is that right?---Well, by what I understand now, yes. Yep.

So that's the context in which this further attempt to have the bonus height provision to land that fronts Great North Road bound by Second Avenue and Barnstaple Road, et cetera, to permit a maximum building height of 24 metres, and it goes on. The analysis of the council's independent consultants, Studio GL, was firmly and had been more than once firmly against such a provision, wasn't it?---Yes.

So it would, to say the least, be surprising, would it not, given that background, that context that a proposal of this kind would be being put up, as it were, at the last stage of the whole process?---Not necessarily.

No?---These things happens from time to time. People put in applications or put amendments or put a further consideration.

10 But I'm not talking about in the general, I'm talking about in the specific, the specific in this case being that this major project had been the subject of much independent analysis as has already been put to you, not only Studio GL but others, council staff had examined it, they were all on the same page. In that context, which I've referred as the specific context for the purpose of the question, it would be surprising indeed, would it not, that as Mr Matthews was seeking here in this document 1429, that there would be a change in the bonus height provisions relating to what I'll call the Sidoti properties?---I wouldn't say it was surprising, no.

Okay.

20 MR RANKEN: Not surprising that it was forwarded only to the Liberal councillors?---I didn't pay much attention to who it was sent, to tell you the truth.

THE COMMISSIONER: You're asked, your attention is being now drawn to it so that you can consider it.---Yeah.

This, as Counsel has observed, is a proposal being put to the Liberal councillors' consideration.---Right, yes.

30 Not any of the others.---To the others, yeah.

What do you say about that?---It's not, it's not surprising because I don't get looped into things that go to the Labor Party.

No, but again you go into the general, I'm trying to tie you back to the specifics. Do you want me to repeat it again?---No, I understand.

You know what I'm talking about.---I know what you're saying.

40 Okay. Having regard to the specifics, what do you say?---I still stand by my, my answer that I didn't find it surprising because each item that is brought up with other people is specific in its own way.

So your view is it would be fully justified to take a stance that would again require Studio GL and all the other experts to redo, for the perhaps third time, the analysis they had already done twice before.---Well, I don't know if that - - -

No. Is that your position?---No, well, I don't know if that is what they asked of Studio GL or of the council.

MR RANKEN: That was going to be - - -?---Sorry, I thought it was just going to the council meeting to be discussed.

THE COMMISSIONER: Mr Megna, are you trying to play the advocate - - -?---No.

10 - - - instead of the witness?---No, no.

You're not?---No.

You know the whole history of this now, don't you, in outline?---I do now, yes.

It went on for years, didn't it?---Oh, a few years, a couple of years.

20 And even you are saying, you know, when will this end, and things, weren't you?---Yes.

Because it had been going on and on and public exhibitions, experts coming in, restating what they'd found earlier.---Yes.

In that context are you serious that the proposal Mr Matthews is bringing up on page 1428 was open to be made in those specific circumstances?---Now, looking at it, no.

30 Well, now we might take the luncheon adjournment. We'll take a break and I'll resume about 5 past 2.00.

LUNCHEON ADJOURNMENT

[1.06pm]