

WITNEYPUB00465
07/04/2021

WITNEY
pp 00465-00504

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION WITNEY

Reference: Operation E19/1452

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 7 APRIL, 2021

AT 2.00PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Yes, Mr Ranken.

MR RANKEN: Yes, thank you, Commissioner. Ms Cestar, prior to the luncheon adjournment we were dealing with the email that Mr Sidoti sent to you and other councillors on 8 April, 2014, which we see at page 362, and I hadn't actually taken you to the details of the actual councillors who had
10 been or were party to that email. If we could go back to page 361, can you see down the bottom of the page is the top of what is a response from Mr Megna to Mr Sidoti and it's copied to yourself, Ms McCaffrey and Dr Ahmed?---Yes.

And if we go over to the next page again, 362, you can see the substance of the response, which was that Mr Megna was saying that he could do Wednesday the 16th at 7.00pm or earlier if need be.---Okay.

And then moving back to 361, there is above Mr Megna's response, Mr
20 Sidoti has replied to say, "16th so far is good, any more takers? JS." And you've responded to that to indicate, "16th is good." Correct?---Yes.

And above that Mr Sidoti has responded to say, "Michael, Mirjana, Sidoti in so far, two to go. JS." Do you see that?---Yes.

And then Ms McCaffrey has provided her response to say that she is okay, "16th is okay, 7.00pm or earlier." And then – do you agree with that?---Yes.

And then Mr Sidoti has responded to indicate that, "The chamber of
30 commerce president and vice," that's Mr di Giacomo and Mr Haron - - -?
---Yes.

"Booked in as well. Tanveer is the only councillor we are awaiting response. Cheers. JS." And then Mr Megna has responded to that final email to say that he would text him, presumably a reference to Dr Ahmed, to get him to check his email.---Yeah, that looks that way, yes.

So just reading that sequence of emails, do you now recall some meeting being arranged around 8 April concerning the possibility of a meeting with
40 members of the Chamber of Commerce and the other councillors?---I, I don't recall a meeting with the members of the, the members of the Chambers of, Chamber of Commerce and the other councillors. I, yeah, I'm, I'm not sure that this meeting ever took place in the end but - - -

That was the next question I was going to ask. Is there some possibility in your mind as you recall it that whilst there were arrangements being made for this meeting, for some reason or other it may not have actually

proceeded?---Potentially. I, I think that's the case. For it to be a complete blank is, is unusual, yeah.

But subsequent to this date, that is 8 April, 2014, and prior to the matter coming back before the council in May of 2014, did you attend a meeting with Mr Sidoti and, and the other councillors?---In relation to this?

In relation to this, whether or not the Chamber of Commerce representatives were present?---Not a formal meeting. I don't recall a formal meeting.

10

Now, that appeared to be, those emails appeared to be directed towards a meeting for 7.00pm on 16 April, 2014. Now, I've taken you to the calendar entry that suggested that is what was being organised by Mr Sidoti and I think I've also taken you to the fact that there was a meeting – sorry – a councillor workshop that was conducted on 8 April, 2014, in relation to the Urban Design Study.---Okay, yes.

And you told us a little bit about views that were expressed at a councillor workshop concerning how it might be best encouraged for sites to amalgamate.---Yes.

20

I want to take you to a memo that was prepared by Marjorie Ferguson and possibly with the input of Mr Paul Dewar. Did you know those two persons?---I know, I know who Marjorie is. I, I don't recall ever meeting Paul.

But Marjorie Ferguson was someone who was a member of council staff? ---Yes. She would regularly present or be acting director.

30 In relation to land and evidence matters, planning matters?---Yes. Yes, yep.

I wonder if we could bring up page 362 in Exhibit 24. Sorry, not 362, 368. Now, this is an email from Ms Ferguson to Mr Dewar, who you don't recall ever knowing a Mr Paul Dewar?---I, I – he's not someone that I remember a conversation with and, and honestly, I couldn't, if I saw him today, I couldn't remember who he was, yeah.

In your role as a councillor, did you often have direct contact with members of staff or was that not usually the way things were done?---No. The only members of staff that councillors typically had contact with were the directors of each department and either acting directors or, or a manager of some level. I think there was this, seemed to be this policy of not having the staff dealing directly with, with councillors.

40

And did you understand the rationale behind that policy?---It makes complete sense to me, yes.

And in what way does it make complete sense to you?---Well, I think it just kind of separates the political and, and the, you know, the way that the executive is supposed to, you know, operate.

And is that something you understood at the time?---Yes.

Now, you can see from this email between Ms Ferguson and Mr Dewar that she's referring to that there's an attachment, a memo LEP clause for councillors and she, that is Ms Ferguson has indicated that she started it and,
10 "Please feel free to improve." And if we could then turn to the next page, we can see there's an interoffice memo that was addressed to the councillors.---Right.

And from time to time in your role as a councillor, did you receive interoffice memos of this kind that had been prepared by council staff?
---Yes.

And they were addressed to the councillors and members of the executive team.---Yes.
20

This one was prepared in relation to the Five Dock Town Centre Urban Design Study. And I just draw your attention to the first paragraph where it indicates that, "Following the councillor workshop on 8 April, a LEP clause has been written to encourage the consolidation of lots in the Five Dock Town Centre and also to ensure design excellence is achieved." Do you see that?---Yes.

And it then goes on for further explanation of the draft clause and how it's been prepared by the council staff. And if we could then move to page 371,
30 we can see the proposed draft clauses for inclusion in the Canada Bay Local Environmental Plan 2013 to achieve those aims. Do you see that?---Yes, I do.

Do you have a recollection, having now been taken to this memo and the attachment, to receiving something of this nature prior to the council meeting in May of 2014?---Vaguely, but I can't remember the detail, yes.

It would appear that the impetus for the drafting of this clause was not something that arose out of the original study report by Studio GL, but
40 rather arose from the councillor workshop.---Okay.

Does that assist you with your recollection in any way as to the genesis of this particular draft clause?---Okay, no, I hadn't put that together, no.

So if we go to page 371, the particular requirements there are in proposed draft clause 2(f), and 2(f)(a) firstly that despite another subclause, "The maximum floor space ratio for development that has a site area of two and a

half thousand square metres on land identified as area 5 on the floor space ratio map must not exceed 3.0:1.”---Ah hmm.

Now, do you recall that was effectively an increase in floor space ratio from 2.5:1 to 3:1?---Yes, yes.

10 And that the development, 2(f)(a) “The development consent must not be granted to development to which this clause applies unless a competitive design process has been held in accordance with clause 6.8 in relation to the proposed development.”---Okay.

And then 6.8 is the proposed clause to be inserted after clause 6.7 and we see that in the rest of page 371 and over the page on page 372.---Okay.

20 So after there had been public exhibition of the study, there was a councillor, it would appear there was a councillor workshop at which a suggestion for a bonus uplift, if I could call it that, in terms of floor space ratio was being proposed for certain sites that achieved, that had a particular area size. Correct?---Yes.

Now, the matter came back before the council on 20 May, 2014. That was the council meeting at which the matter next came back before the council. ---Okay.

And prior to that meeting, as was ordinarily the case, council staff prepared a report effectively reporting back about the outcomes of the exhibition of the Five Dock Town Centre Urban Design Study in December and January. ---Okay, yes.

30 Does that sound - - -?---That sounds about in terms of timeline, yes.

In addition to that the council staff made reference to the proposed bonus of FSR of 3:1 that would apply to certain properties.---Okay.

So if we could perhaps bring up page 382, and do you see from that page, up the top we can see that this forms part of the papers for the council meeting on 20 May, 2014.---Yes.

40 And it’s a report prepared for item 3, which was described as the outcome of exhibition of Five Dock Town Centre Urban Design Study. The author’s initials being MF.---Marjorie.

I suggest to you that’s Marjorie Ferguson.---Ah hmm.

It refers to the fact that, in the third paragraph, “The Five Dock Town Centre Urban Design Study was placed on public exhibition over December 2013 to January 2014, and in response to the exhibition there were 31 submissions in total that were received from businesses, landowners and

residents living in adjacent and adjacent to the centre.” It then referred to an attachment to that report, which outlined the details or summarised the submissions that were received. Now, is it the case that you would have, even though you may not have an independent recollection now as you sit in the witness box, but is it likely that you would have read this report and the attachment to it in advance of the meeting of 20 May?---I would have read the summary and the recommendations. I, I wouldn't have read the report in detail, no.

10 The rest of this report as opposed to the - - -?---Yes, I would have read, this would be maybe two or three pages. I would have read the two or three pages.

So if we, if I could just draw your attention to the fact that it commences at page 382 and the report itself finishes with its recommendations on page 388.---Okay.

And then there are a number of attachments that are referred to.---Right.

20 Would you have read the whole of that report or - - -?---No. I wouldn't have read the whole thing. I would have read the executive summary and then the recommendations.

Insofar as the recommendations were concerned, do you see, if we could just go to page 388, that what was being recommended was that “The council adopt the Five Dock Town Centre Urban Design Study and endorse the planning proposal for the Five Dock Town Centre, and this planning proposal be submitted to the Department of Planning and Infrastructure for a Gateway Determination.” They're the first of the two particular
30 recommendations that were being made.---Yes.

And could I take us back to page 385, which is within the body of the report. Do you see that a little over halfway down the page there is an italicised subheading of Planning Controls?---Yes.

Now, I think your evidence is that it's unlikely that you actually read this part of the report.---It is unlikely, mmm.

40 If I draw your attention to the fact that the first paragraph refers to the fact that “Existing controls for development in Five Dock Town Centre permit three storeys with potential for an attic within the central part of a site. The study recommends that the centre's height limit be increased to five storeys.” Do you see that?---Yes, I do.

So essentially saying that that's where the, what the study was recommending was an increase to five storeys. And then there's a reference to some of the submissions that were received about investigating increasing floor space ratio and height standards further. And then “Following a

review of submissions, the recommendations of the Five Dock Town Centre Strategy have been incorporated into draft Development Control Plan for the majority of the sites. The draft DCP includes provisions to guide development in Five Dock so that new buildings appropriately respond to urban design and public domain objectives.” It then goes on to say that “In addition to the recommendations of the study, there is considered to be scope to provide flexibility for large sites where a site-specific response is likely to generate a better outcome, and a draft clause has been prepared for inclusion in the planning proposal that would permit a floor space ratio of 3:1 and a height of 27 metres, or eight storeys, on sites with an area over 1,500 square metres and a frontage of 20 metres.” Now, what I took you to earlier was a draft clause that had been prepared following the councillor workshop that had somewhat different prerequisites in order to obtain the bonus in that it needed to be 2,500 square metres, correct?
---Okay.

And there didn’t appear to be a requirement for there to a frontage of 20 metres. Do you have any recollection as to how it came about that what was ultimately being recommended was somewhat different to that?---No, I’m sorry. No.

Did you have any conversations with any of the other councillors and/or Mr Sidoti regarding this bonus clause that was being proposed?---I don’t remember, no.

You don’t have an independent recollection now?---I don’t.

Is it possible that you did?---Potentially. I, I just, I would probably need to see more but based on this I just, it doesn’t trigger any memory to me.

Could we bring up page 275 then, of Exhibit 24. Now, can you read that email, Ms Cestar? That’s an email from Mr Sidoti, it says from John Sidoti but the email address is sandrasidoti@[REDACTED].---Okay, yes.

Were there occasions when you would receive emails apparently from John Sidoti but from that email address, sandrasidoti@[REDACTED]?
---Potentially. I, I wouldn’t have paid that much attention, yeah.

Did you know a Sandra Sidoti?---Oh, I know who Sandra is, yes.

And that’s Mr Sidoti’s wife?---Yes, that’s right.

This email though appears to be, or at least purports to be sent by a Mr Sidoti because it’s his name at the bottom of the email, correct?---Yes.

And it’s dated 17 May, 2014. If I draw your attention to the first paragraph where having said, “Dear councillors,” he writes, “I urge you strongly to

take into consideration what we spoke about at our meeting.” Do you see that?---Yes.

Now that suggests that there had been a meeting involving Mr Sidoti, yourself and the other councillors to whom this email was addressed.---Yes.

Are you able to assist us as to when that meeting occurred?---It, it could have – we, you know, we’d had informal meetings about a lot of, yeah, I, I can’t, I can’t pinpoint a, a date for that.

10

This would appear to suggest that it wasn’t so much an informal meeting but it was some meeting specifically to talk about the Five Dock Town Centre? ---Looking at the dates, it looks as though a meeting did take place. Yes, I think the other date was the 16th that was in the email.

That was the date that was suggested that the President and Vice-President of the Chamber of Commerce might be able to attend.---And yet they’re not on the email trail. Okay, yeah.

20

Do you now recall a discussion that you were party to involving Mr Sidoti in which there was discussion concerning a 1,500-square-metre requirement in order to achieve 20 metres in the town centre?---I’m, I’m, sorry, I, I, I, yeah.

Do you see the second sentence is, “Making 1,500 square metres a requirement in order to achieve 20 metres in the town centre is a pipedream”?---Ah hmm.

30

Does that not prompt your recollection in any way as to the substance of that discussion?---I’m sorry, I, I, I, just do not recall this discussion, a discussion around this. Sorry. And, and, potentially I, you know, switched off if there was a, a, you know, any discussion of it, I think. I, I, I don’t know, I just can’t, I’m sorry, I can’t remember.

What do you mean by potentially you just switched off of there was any discussion about it?---Oh, well, I mean in the sense that it’s a, it was a, consistent barrage of pursuing an agenda that, that, potentially an eye-rolling exercise on my part unfortunately.

40

This was relatively early on in the piece in the sense that we’re talking about May 2014.---Ah hmm.

The report had been before the council in November 2013 but had not come back before the council for consideration, albeit was due to be back before the council on 20 May.---Mmm.

Now, do you see the date of this email is 17 May, which is the Saturday. Correct?---Yes.

That would be the day after the papers had been made available - - -?---For the following meeting.

For the following meeting, the meeting on the 20th. Correct?---Yes.

And those papers would have included the report that I just took you to a short while ago and the recommendations in that report. Correct?---Yes.

10 Which referred to the 1,500 square metres and the 20-metre frontage requirement for the 3:1 floor space ratio. Correct?---Yes.

And here in this email Mr Sidoti appears to be raising that very issue with you and the other councillors.---Yes, I can see that.

And so given that sequence and where this email sits in the sequence of events, it was quite early on.---Yes.

20 Had you already got to the point of rolling your eyes whenever Mr Sidoti raised it?---Oh, potentially, potentially. I, I'm, I'm, I'm just drawing a blank on this I'm sorry, way back then, sorry.

THE COMMISSIONER: This email's dated 17 May, which is a Saturday. ---Mmm.

30 The third-last paragraph is in effect a plea or a request of some kind, however that's described, it says, "Please deliver the vision of the shopkeepers in the interest of the community, not the mayor's distorted views." It goes on, the last paragraph, the second-last paragraph, "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 quite frankly I understand where they are coming from. Good luck in your deliberations." It suggests to appeal to those whom this email is addressed to deliver and refers to, "Good luck in your deliberations," and so on, it suggests that something is coming.---Yes.

40 I'm told that the next council meeting was due on 10 May, 2014. Does any of that – well, firstly, how did you, you probably don't recall, but are you able to say whether you construed and reacted to the second-last paragraph in that email or do you simply have a blank recollection?---Yeah, well, my, my recollection was that at this time when this was going on that, you know, there was the acrimonious relationship with, with, with the mayor and that had already probably dominated a bit of the background conversations that was going on, so I was probably becoming a little bit defensive I suspect at that point.

Defensive did you say?---Yeah, in, in the sense that, on, here, you know, here's some more conspiracy stuff coming, you know, yeah, and this line

about shopkeepers lining up to run for council, I mean that's, that just, that would have just gone over like a lead balloon, reading that.

Why, why would it have gone over like a lead balloon?---Well - - -

So far as you are concerned I mean?---Yes. Well, you know, it's basically, it's, to me it's, it's a, it's a, it's a threat, you know, there's someone else that's going to take your place if, if this isn't delivered.

10 All right. Well, let's find out what happened on 20 May. Are you going there now, Mr - - -

MR RANKEN: In a moment.

THE COMMISSIONER: In a moment, yes.

MR RANKEN: I have a few things I need to cover first if I may, Commissioner.

20 THE COMMISSIONER: That's all right. There's no rush.

MR RANKEN: Earlier in your evidence you told us of one of the occasions when you had perceived there to be a threat was an email that suggested that there were shopkeepers who might be prepared to run for council?---Mmm, yeah, that was sliding around in my mind.

Was this the email that you had in mind when you gave that evidence earlier today?---It probably is. There could have been others, but that, yeah.

30 And did you, looking at this email now, do you have a recollection as to whether or not you perceived this email – and specifically that second-last paragraph commencing “I can assure you” – as being a threat to your position as a councillor?---Yes. Reading it now, it's pretty clear, it's a pretty clear threat.

And did you perceive it to be linked to the deliberations that you were required to undertake in respect of the Five Dock Town Centre?---Yes, I mean, that, that just is a passive-aggressive approach, I think, that, that whole delivery of that email.

40

And at the time did you understand or was it your understanding that the vision of the shopkeepers that he was referring to was one that would benefit his family's property interests in the area?---Well, I mean, there's no, I don't know who those shopkeepers are. The only, the only people that were, seemed to be vaguely interested was the Chamber of Commerce representatives. I don't know who shopkeepers refers to, so - - -

He never, to your recollection, he never identified any particular shopkeepers other than the Chamber of Commerce, is that - - -?---No, there was no names ever given to me of who, who had said that they wanted to run, or no one had approached me to, to say, look, I'm interested in running for, for council.

10 Could we then go to page 377. Here we see the same email from Mr Sidoti, but at the bottom of a chain of emails, if I can suggest that to you. And immediately above we see what appears to be your signature block possibly at the end of an email. Do you see that?---Yes.

And if we go back to page 376, we can see the top of your email but effectively replying, but only to Mr Megna and Ms McCaffrey.---Mmm.

And you've asked, "What exactly was the purpose of this email? Why wasn't Tanveer 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?"---Yes.

20 Now seeing that email, does that assist you or refresh your recollection as to how you perceived Mr Sidoti's earlier email?---Well, I mean, yes, I, clearly at the time I, I, I was questioning whether, excuse me, it was a threat. Yes. I looked at it as a threat, and when I'm reading this I'm thinking, yeah, that was the first thing that came to mind, that - - -

And the fact you were raising that with your fellow Liberal councillors, correct?---Yes. Yes. Yes.

30 Mr Megna has then responded to your email, and Ms McCaffrey has also, has then responded to Mr Megna's email.---Yes.

40 Now, if we could go then, firstly could I just draw your attention, though, at page 376, to Ms McCaffrey's response, and do you see that in her response she has said, amongst other things, "I will listen and decided. I am too a bit worried about his comments re shopkeepers. Everyone is entitled to run for council." Have you or did you have any conversations with Ms McCaffrey about her worries concerning Mr Sidoti's comments about shopkeepers at that time?---At that time did we discuss this? Probably beyond these emails, no, I don't, I don't recall a discussion at that time. Doesn't mean it didn't happen, but I just don't recall it. I think a lot of this, looks like a lot of it was done on email.

Now, if we go to, could we go to, then, the minutes of the meeting for the council on 20 May, 2014, which commence at page 405 of Exhibit 24. There you see there's the first page of the minutes and it identifies the persons who were present as far as council's concerned and you can see that I think you weren't present.---Oh, okay. That's why it's - all right. Yeah.

On that occasion, is that right?---I must have been away for work.

So you wouldn't know, you can't speak to what actually occurred at that meeting as far as the particular decisions made in respect of the Five Dock Town Centre Study and associated planning controls but can I just draw your attention perhaps to what was resolved, which is at page 408. Can you see that – firstly you can see that Councillors Fasanella and Megna declared their pecuniary interests and left?---Yes.

10 And it then records that the matter was deferred to consider issues of height, setbacks, overshadowing, mix of development and the amenity of the surrounding residents, and that was passed unanimously.---Okay.

Now, the matter then was to come back before the council on 24 June of 2014 and in advance of that meeting of the council, the council staff prepared another agenda report, as was their usual course.---Yes.

20 And if we could bring up that report, that's at page 416. Again, that report was prepared by Ms Ferguson and was it the case that this report, is it likely that you only read the executive summary and recommendations in respect of this?---It's likely that I, if – depending on how many pages it was, I would have read two or three pages and definitely the recommendation and the executive summary.

If I suggest to you it was approximately 10 pages in length?---I wouldn't have read all 10 pages.

30 Unlikely that you would have read the whole report?---It's a lot. Well, yeah, I wouldn't have read all 10 pages, no.

Now, could we go to page 417? On page 417, do you see that there is a subheading in bold, Extension of B4 Mixed-Use Zone?---Yes.

And there is a reference to the fact that the study proposed to extend the B4 mixed-use zone around the central core of the centre.---Yes.

And it identifies the three areas. Do you see that?---Yes, I do.

40 And in particular, insofar as the third of those areas are concerned, it was land between First and Second Avenue on Waterview Street. Do you see that?---Yes.

And does this accord with your recollection, that it was not proposed by the urban study that the B4 mixed-use should extend further north on Waterview Street past Second Avenue?---Yes.

And significantly that would mean that it would stop short of that block of Waterview Street, on the western side of Waterview Street, between Second Avenue and Barnstaple Road, correct?---Yes, yep.

And do you recall that that part of Waterview Street backed onto properties that fronted onto Great North Road?---Yes.

And one of those properties on Great North Road was the function centre at 120 Great North Road?---Yes.

10

Which at this time you understood to be associated with Mr Sidoti's family?---Yes.

And you can see after those three areas where the study had recommended there be an extension of the B4 mixed-use zone, it refers to the fact that it was suggested that council should consider extending the area of land being rezoned to the northern end of Waterview Street. "The northern end of Waterview between Second Avenue and Barnstaple Road was not identified for rezoning as it firstly is located outside the central core of the centre, contains a few constrained sites, including a heritage item, and existing strata development and would necessitate the extension of the propose Waterview Lane to facilitate improved access."---I understand.

20

"Rezoning land outside the central core would provide fewer benefits and is therefore not recommended."---I understand, yeah.

And do you recall reading this part of the report or is it unlikely that you did?---I recall this only because there was so much attention around it at a later date. But, yes.

30

So this issue you recall as an issue?---Yes, I do, yes.

But as to whether or not it was in the context of this report or as a result of - - -?---That's right.

- - - developments subsequent to this - - -?---Since.

- - - you can't actually recall?---No.

40 No. And why is it that that aspect of it sticks out in your mind as something that you recall?---It was an aspect, it, it sticks out because it was an area that we, that I received a lot of representations and, and lobbying for to, it was, it was an area that, you know, we, we just, I did receive a lot of representations from planners, people that were employed by Sidoti interests, to extend that core, that centre of, of, to include those properties as the centre of, it was the core centre of Five Dock Town Centre. And, you know, the heritage item, et cetera. So this, these were all matters that were

raised as issues and as part of, you know, a proposal to extend or further develop the Sidoti properties.

You mentioned in that answer that you received lobbying from planners who had been engaged on behalf of Mr Sidoti's interests.---Yes.

10 Did you receive any representations from Mr Sidoti himself – that is, directly – in respect of the extension of this B4 mixed-use?---Other than the email that you've just shown me, I, I, I'm just, I can't remember off the top of my head, potentially. I'd be surprised if, if there wasn't something, yeah.

Why do you say you'd be surprised if there wasn't something?---Well, I mean, while Helen was mayor, there was a lot of activity around this and there was a lot of pressure to, you know, to make changes to that recommendation.

When you say changes to that recommendation, do you mean to revisit the effect the refusal to rezone it - - -?---Yes. Yes.

20 - - - so that it could actually be rezoned?---That's correct, yes.

And you say that there was a lot of activity around that once Helen McCaffrey was mayor.---Yes.

That would, again, be in the latter part of 2016?---Yes.

We're just dealing with 2014 at the moment.---I understand.

30 You don't have a recollection of the issue looming large in your mind as at that time?---Not really, other than the noise around the edges about the conspiracy theory, et cetera, but it wasn't, the pressure wasn't there, I don't think, at that point, as much as it was later on.

Now, if I could then take you to the recommendations in that report, which I think they're at page 426, if I'm correct. And what is recommended there is that "The council adopt the Five Dock Town Centre Urban Design Study, endorse the planning proposal for the Five Dock Town Centre, and that the planning proposal be submitted to the Department of Planning and Infrastructure for a Gateway Determination." Do you see that?---Yes.

40 They're the two key recommendations, would you agree?---Yes.

And you understood what it meant for a matter to be referred to a Gateway Determination?---Yes. Yes.

And it follows, does it not, that then the planning proposals that were being put forward would not involve an extension of the B4 mixed-use to include

the land between Second Avenue and Barnstaple Road on Waterview Street.---Yes. Understood, yes.

And that was, ultimately, if we go to the minutes of the meeting, which commence at page 427, you can see that you were present for this.---Yes.

But Ms McCaffrey was not present for this particular meeting. Do you see that?---Yes.

10 And then if we could go through to page, I think it's page 429. We see down the bottom the item being dealt with by council.---Yes.

And you can see at page 429 to 430 that the council unanimously voted in favour of what was effectively recommended by council staff in their report.---Yes.

So at that point the matter was sent off to the Department for a Gateway Determination. Correct?---Yes.

20 And it's often the case in your experience, is it not, that once the Department has considered the matter and given a Gateway Determination, that usually the matter has to come back for some further public exhibition? ---Yes.

And the purpose of that further public exhibition is for what, to your understanding?---To see if there's any other feedback, any submissions, objections et cetera.

30 So that provides members of the community, business interests, developers or persons who have interest in the properties or local residents to make further submissions?---Yes.

And did you receive any representations at that time on behalf of Mr Sidoti or by planners on his behalf?---Gosh, I can't remember. Potentially. I can't recall.

40 And were these representations that you have referred to, were they representations made directly to you or were they representations made to council that then came to your attention through the usual processes of council?---I, I, I want to say both actually, but I just can't think of any examples where I received – I can't give you a date or anything.

So that's the meeting on 24 June, 2014, and if you would accept from me that the Gateway Determination was made on or about 25 September, 2014, and that as was usually the case, there was a requirement that there be further community consultation and a public exhibition of the planning proposals following which the council was required to refer the proposed LEP back to the Department for finalisation.---Yes.

And that was pretty standard. Correct?---Yes.

Now, if I could suggest to you that the council publicly exhibited the draft planning proposal in accordance with that Gateway Determination between 21 October, 2014 and 17 November, 2014. Would that sound about right in terms of the timeline?---Timeline, yes.

10 And then the matter was to come back before the council and there was to be a further report prepared about any submissions that were received in respect of the matter.---Yes.

And so the council could then consider whether to adopt the LEP and forward it back to the Department to be finalised.---Yes.

Is that the general - - -?---The process.

20 How you would have anticipated the matter ought to proceed. Now, that – sorry, just one moment, I’ve lost my place. And if I could suggest to you that the next time the council in fact came to consider the matter was in June of 2015 – I appreciate that’s a fair way down the track from November of 2014, but as far as your general recollection of the matter, does that accord with it?---I think that would be about the right timeline.

30 And do you recall or do you have a recollection as to – sorry, I withdraw that. Ordinarily when there is a public exhibition of a planning proposal, is it usually the case that the council staff simply prepare a report about what the outcome of the public exhibition is?---Yes, that’s my memory of how the process worked.

And is that so because usually there are not a huge amount of submissions that are received by the public?---Yeah, that’s right. It’s very rare that there would be a lot of submissions.

On occasions when there are a large amount of submissions, it would necessarily take a little bit longer for council staff to be able to address all of the matters that are raised in the submissions. Correct?---Yes, yes.

40 And they might engage external experts to assist them with preparing the report for council?---Oh, I suspect so. I don’t – yeah.

In this case, that is the case of the Urban Design Study for Five Dock Town Centre, Studio GL had already done the initial design study, correct? ---Yeah, yeah.

And do you recall that in fact that Studio GL provided services in respect of producing a final report in relation to the exhibition outcomes for the planning proposal?---Yes. I know that name, yes.

Studio GL?---Yes.

And you know that Studio GL was one of the experts that had been engaged, independent experts that had been engaged by the council?---Yes.

10 And can we perhaps bring up page 568 in Exhibit 24? Now, do you see that this is a report by Studio GL dated 21 May, 2015, and its titled Final Report Exhibition Outcomes for the Five Dock Town Centre Planning Proposal?
---Yes.

And if I could draw your attention to page 600. Do you see that there's a reference at the top of that page to reducing the amount of area 1 sites?
---Yes.

20 And, "If council is not able to reduce the height to five storeys across the entire centre, it is recommended that the number of sites that have access to the area 1 development bonus in the town centre are reduced. Currently sites identified as area 1 – see figure 14, planning proposals exhibited – within the town centre, are able to develop up to eight storeys high and with an FSR of 3:1." Do you see that?---3:1, yes.

That was a reference to the bonus clause that had been introduced following the councillor workshop to encourage amalgamation. Do you see that?
---Yes.

30 Now, it refers then – so this was a reference to the prospect of reducing the number of sites that might qualify for the bonus provision, correct?---Yes, yes.

And that was so the bonus provision would not have applicability across the entirety of the Five Dock Town Centre.---Yes, I understand.

And did you understand that that was a matter that was looked at following the public exhibition because of submissions that had been received from the public that were concerned principally about building height issues?---I, yeah, I'll your, I'll take it as your word. I, I, I can't remember, yeah.

40 And in particular, do you see at Key Sites, it says, "The key sites that should be changed are," and it says, "1) The block on the eastern side of Waterview Street between Barnstaple and Second Avenue. This is not considered a good location to encourage amalgamation and increased height," there's a typographical error there, "and FSR as the interface between these tall buildings and the residential uses and the heritage item on Waterview Street is likely to be poor. This change also ensures future development more closely reflects the planning controls in this area on the opposite side of Great North Road."---Okay, yep.

Do you see that?---I do.

So effectively what that was saying is, despite a number of properties that fronted onto Great North Road being within the B4 mixed-use zone, they would not ever be able to qualify for the bonus incentive of 3:1, correct?

---Yes.

And the eight storeys uplift?---I understand, yep.

10 And that's something you understood at the time?---Yes.

Now, council prepared a report based on Studio GL's recommendations in advance of the meeting on 2 June, 2015, and if we could bring up that report, which is at page 525 of Exhibit 24. And accepting that you – is it most likely that you read at least the executive summary?---Yes.

And do you see that it refers to the fact that, "Following the exhibition period there were 124 submissions"?---124. And a petition.

20 And a petition with 420 signatures that had been received. Is it likely that you read that part of this report?---Yes.

And that "The primary issue raised in submissions relates to the proposed eight-storey height limit and the impact of this height limit on the private and public domain."---Yes.

And then it referred to the fact that "The exhibitions outcomes report had been prepared and concluded that the number of sites that are permitted to develop up to eight storeys should be reduced."---Yes.

30

And I just took you to that part of the report that in fact dealt with that. ---Yep.

So it then goes on to say that "This recommendation seeks to strike an appropriate balance between improving opportunities for investment and achieving acceptable amenity and environmental impacts. Other recommendations are made to respond to individual submissions," et cetera, et cetera.---Yes.

40 But the key aspect of this is that there had been an attempt to strike the appropriate balance between improving those investment opportunities - - - ?---Understand.

- - - and what was considered to be - - -?---Viable, I think.

But also to achieve acceptable amenity and environmental impacts for the community, correct?---Yeah. Yep.

And is it fair to say that you would have accepted this aspect of the report as being a reasonable suggestion?---Yes, I, I do recall thinking that was an extraordinary number of submissions.

10 THE COMMISSIONER: Sorry, extraordinary number of - - -?
---Submissions for, for this type of proposal. Typically, you know, there potentially would be 20 at most. I just don't, I, I remember when I, now that I'm looking at this, I remember thinking, gosh, that's a lot of submissions, and I was quite surprised by it, actually. But, yeah, no, I, I, I do recall reading this.

No, but I think the question was, accepting what you say, that's what the executive summary says about submissions in the petition. But what is being referred to there is where a solution that seeks to achieve a balance, having had the public exhibition, et cetera, and whether you, having read it, accepted that what was being now proposed by council represented a reasonable solution. That was the question you were asked. Did you?---I would have (not transcribable) accepted the advice.

20 Sorry?---I would have accepted the advice, the recommendation.

The advice that the council is putting forward?---Yes, yes.

MR RANKEN: And, Ms Cestar, just in respect of your immediate reaction to the number of submissions that there were, you may recall when I took you to the outcome from the original exhibition of the Urban Design Study that there were some 31 submissions.---Yes.

30 And of course at that stage, in December and January 2014, it wasn't contemplated that there would be a bonus uplift provision of 3:1, correct?
---Yes.

And up to eight storeys.---Yes.

And what we see here is that following the inclusion of that draft clause that there is actually an increase in the number of submissions received by the public, do you see that?---Yes.

40 And specifically a particular concern appears to have been that which has arisen as a result of the inclusion of the bonus height and floor space ratio clause, correct?---Yes.

And indeed, if we could perhaps go to page 529 of Exhibit 24, which is within that report, can I ask you this, in respect of this report, given the reaction you had to the number of submissions that had in fact been made or had been received, did you read more of this report than you would ordinarily have read or you don't have a recollection of it?---I would have likely have read more, more into it, yes, based on that, yeah.

So can you - - -?---I think when I, my memories when reading that, I thought it was actually a little bit suspicious to get so many submissions, actually.

You thought it was suspicious?---Yes, I did.

10 For what reason?---It's just unusual for people, for that many people to be so alert to one particular issue to, you know, that, that level of, for that change. I was just surprised.

THE COMMISSIONER: But were you aware before May 2015 as to whether there was a commonly held view amongst the residents as to whether they wanted high-rise or whether they didn't want high-rise in their town centre area?---Typically I would say no resident wants high-rise as a starting point. I think it's a given. In my experience any, any change or any uplift is usually dealt with, you know, people usually resist it and sometimes unpopular decisions are made but I, I, in, in a way public interest isn't always what the public wants, if that makes sense. So even though the
20 public may not have wanted the extra height, unfortunately sometimes it has to happen to activate things. Rhodes is a prime example of that and this would have been a very similar situation where, yeah, that addition, I mean I'm, I'm, reading it now I'm thinking gosh, that, that was suspicious at the time, there were so many submissions, but in itself the additional height I think was probably not a bad thing, like, I would have supported without the amendment, the eight storeys, 3:1.

30 Right through the whole area without exception or would you have to - - -?
---No, it would be specific, not, not just a blanket let it free-for-all, no.

Well, would you have been guided by independent consultants?---Yes, yes, yes.

MR RANKEN: Now, just going back to page 525 – sorry to do this to those who are controlling monitors. Again just in that second paragraph, “There were 124 submissions and a petition with 421 signatures.”---Yes.

40 If I could then go to page 527, and you can see there's a subheading, Public Exhibition, and we see some further detail, that there were 115 individual submissions and six submission from government agencies and utility providers, and in fact there were three petitions with a total of 421 signatures objecting to the proposed increase in building height.---Yes.

Now, but if we then go to Exhibition Outcome and specifically the subheading Building Height, which is in italics ?---Yes.

“Building height was the predominant issue with over 100 submissions and three petitions with 421 signatures raising this issue as the primary

concern.” It then goes on to refer to the fact that, “The existing built form in the Five Dock Town Centre is generally two to three storeys high, however some new development at the northern end of the centre is five to six storeys and the tallest building is the Pendium Apartment building on Garfield Street that is seven storeys.” Do you see that?---Yes.

And Garfield Street is down towards the southern end of the centre, correct?
---Yes.

10 It then says, “The Five Dock Town Centre Urban Design Study recommended a four-storey street wall height with a fifth and occasional sixth floor set back from the street.”---Yes.

“The new street wall height was within one to two storeys of the existing two and three-storey buildings and was designed to be in proportion to the width of the Great North Road and surrounding streets.”---Yes.

So that was what had initially been suggested by the design study. Correct?
---Yes.

20

So the design study already had contemplated that there would be an increase in terms of building heights up to six, potential of six storeys.
---Yes.

That’s without any bonus clause for amalgamation of sites. Correct?---Yes.

30 And then it goes on on the next page, 538, to refer to the fact that, “The exhibited planning proposal permitted buildings up to eight storeys on sites over 1,500 square metres in size following discussion by council in workshop sessions.” That’s clearly a reference to the bonus provision that had come out of that councillor workshop.---Yes.

“That represented, this height limit represented a departure to the adopted Urban Design Study and was included to encourage the amalgamation of land.” And then it goes on to say that, “Concerns were raised in submissions that an eight-storey height limit would change the look and feel of the centre and destroy the character of Five Dock.” Do you see that?
---Yes.

40 “Submissions also objected to overshadowing caused by tall buildings and the likelihood of the loss of sunlight to nearby residential dwellings along streets and in public open spaces. Concerns were also raised about the impacts of the new height limit of eight storeys on the loss of views.” If I could just skip over the next briefly to the next paragraph, which says, “It is important to note” - - -

THE COMMISSIONER: Perhaps – yes, I’m sorry, I was about to go to that, yes.

MR RANKEN: "It is important to note that most submissions did not raise concern in relation to the increase from four to six storeys but specifically objected to the additional increase to eight storeys." Do you see that?
---Mmm, yes.

10 So effectively the overwhelming tenor of the submissions that were being, that were received was that what was being proposed as far as increasing height limits, there wasn't any opposition to that as a concept or any - - -?
---Yes.

- - - any huge opposition to that as a concept.---Mmm.

And that even applying across the centre, correct?---Yes.

The concern was about the extent to which the bonus provision might be taken advantage and how that might affect the feel and character of the Five Dock Town Centre, correct?---Yeah, understood.

20 And is it likely that you read this part of the report?---I, this is, I understand all of this because I remember the meeting where this was discussed, and just the submissions, et cetera. Yes, I do recall this.

So it would appear, though, that what was being expressed was not a kind of NIMBY-ist "We don't want any development in our backyard" type of view from the community, but rather something a little bit more nuanced that took into account the kind of feel of the centre that they wanted to see, correct?---Yeah.

30 Without standing in the way of appropriate development. Would you agree with that?---Yeah, I would. I, I, I would still think that that number of submissions I think is suspicious, and that it's targeted the eight storeys. Anyway, yes, I, I, I know what you're saying.

THE COMMISSIONER: It is what it is at the moment. I don't think, unless - - -?---Anyway.

- - - unless there's some evidence to - - -?---I understand.

40 - - - identify some flaw in the submissions, I think we'll just have to live with that number.---Yeah, we'll have to live with it.

MR RANKEN: And in fact council, it then goes on to refer to the fact that council engaged Studio GL to undertake a review of the submissions and provide some advice in relation to the urban design implications of the planning proposal, particularly if they related to building height. And that, they then refer to where that can be seen in the outcomes report. So what council has appeared, the council staff appear to have done, would you

agree, was rather than simply say, okay, well, the community have spoken, let's just scrap the bonus provision, they've gone back to the external experts, the independent experts, correct?---Yep.

And sought advice from them as to appropriate design outcomes that might be able to strike the balance, correct?---Understand, yes.

10 And then based on the submissions received and in consideration of urban design advice, which was taken on from Studio GL, it is considered that the number of sites that are permitted to develop to eight storeys be reduced, and then they put some criteria as to how that reduction was determined. Do you see that?---Yes.

So would you agree, then, that what is being sought to be achieved by council staff, with the use of external experts in urban design, was a way to be able to retain the bonus height provision in respect of appropriate sites where that could be achieved.---Yes. Yes.

20 Whilst also seeking to strike a balance with the strong community view that too much height across too much of the centre would actually destroy the feel and character of the centre.---Yes, understand.

And would you, I mean, in terms of your own views, your own personal views, some of which you've expressed in your evidence today concerning views about development heights and the like, would that appear to you to be a reasonable approach to getting the balance right?---Yes, I think, you know, the community's spoken. You have to act in some way, yes.

30 But not in a way where you necessarily reject the idea of development and the bonus height provision entirely, correct?---That's right. That's right.

But you seek to achieve an appropriate balance.---Yes.

And in terms of the four criteria that are specified here in the report, firstly one is "Land with an interface with low-rise residential development." And in respect of – and then the fourth one is "Land that if developed to eight storeys would have detrimental impact upon adjacent or adjoining heritage items." Do you see that?---Mmm. Yes.

40 Now, of the four criteria, those first and last circumstances apply to the block between Second Avenue and Barnstaple Road, would you agree? ---Okay, yes.

You're familiar with the area, I take it?---Yes, yep.

And would you agree that firstly the western side of Waterview Street between Second Avenue and Barnstaple Road comprised of low-level residential?---Yes, yes.

And also there was at least one, or there was one heritage listed item?---Yes.
Yes.

So it was clear then, one can clearly see, the criteria that would have applied to excuse that block from being able to - - -?---Yes.

Or sites on that block from being able to achieve the bonus uplift?---Uplift, yes.

10

Even though it might apply to other areas of the centre, correct?---Yes.

And that, did you appreciate when you read this report, would have a direct impact on Mr Sidoti's family's property interests?---I understood it, it would but that wasn't the main consideration but I understood it would, yes.

20

No, but given the nature of your interactions with Mr Sidoti to that point about the Urban Design Study, did you have any concerns about how he might react to what was being recommended by council in this - - -?---Oh, I suspect he wouldn't have liked it. Yeah.

But were you concerned about what he might ask you or your fellow councillors to do in respect of it?---Do I recall at the time, I don't recall feeling concerned at the time, no.

THE COMMISSIONER: Sorry, you don't recall?---Feeling concerned at the time about any reaction. It didn't, I mean, in my mind it wouldn't have mattered really what the reaction was, so it wouldn't have concerned me.

30

When you talk about the reaction, you're talking about the reaction of who? ---Oh, well, of the Sidoti family interests.

MR RANKEN: Now, I want to take you to another part of the report before we go to the meeting itself. If we can go to page 529. Now, this part of the report we see a subheading in italics, Rezoning, and it refers to the fact that, "Submissions were received in relation to the following three sites that are proposed." Do you see that?---Yes.

40

THE COMMISSIONER: Just on the three sites, you will see there identified in the dot points that follow, do you have any recollection as to how and why Studio GL embarked upon an examination of the three sites in or about 2015?

MR RANKEN: Sorry, this is - - -

THE COMMISSIONER: How they came into the picture?---From what I understand it's because the area, because the state member had an interest in the area and I think that – this is just my understanding of it – that the

general manager didn't want staff to be involved in any kind of assessment of this proposal. That's my understanding of it.

And what's that understanding built on?---That there's an independent transparent kind of process around - - -

Yes, but where did you get your understanding about that from? From what facts or matters? Do you recall?---No, I don't. It would, it would have been potentially from the general manager himself. I'm not sure.

10

What, that's something he said about that subject to you, is that what you're referring to now on this question of - - -?---Oh, no, in terms of the, sorry, in terms of the process around when either a member of parliament or a councillor or someone has an issue that council needs to deliberate on, that it goes to an independent assessment rather than being assessed in-house.

Yes, I understand that.---I think is that what you're asking around Studio GL?

20

MR RANKEN: So just dealing with this part of the report, it refers to the fact that submissions were received in relation to the following three sites that were proposed to be rezoned. If I could draw your attention to the second dot point, which refers to land between Barnstaple Road and Second Avenue on Waterview Street, and it refers to the fact that two submissions requested that this land be rezoned to B4 mixed-use. So out of the 124 submissions that were received, only two submissions were advancing or proposing that there should be a rezoning of that site to be B4 mixed-use, correct?---Mmm.

30

And to identify there that the existence of a heritage-listed house and a strata-titled residential flat building result in limited opportunity for change should the area be rezoned. And did you understand what was meant by that?---Yes.

And what was your understanding?---That, well, basically there, changing it to B4 mixed-use, that there wasn't enough opportunity for that to actually happen based on the fact that there was units there and that heritage item, that there wouldn't be an opportunity to consolidate and actually take advantage of a B4 mixed-use.

40

And it also refers to the fact that future development would impact these properties and would be unlikely to resolve vehicular access issues for properties fronting both Great North Road and Waterview Street. And so it was recommended that that land retain an R3 medium-density residential zone, correct?---Yes.

And would you agree that so long as it remained low residential or medium residential even, and so long as there was the, in particular, the heritage

listing for that particular site in Waterview Street, that there was never any chance that that block could ever be able to be a block where you could get the uplift.---It seemed to me that it was the combination of the two, not just the heritage listing but the fact that there was strata units there, that was the two that was the issue.

10 And then if we could then go to the meeting of the council itself on 2 June of 2015, those minutes commence at page 634 of Exhibit 24. We can see from that first page that you were present, as was Councillor McCaffrey, but Councillor Ahmed was not present.---Mmm.

Councillor Megna was present, but as was usually the case, he absented or declared his pecuniary interest and absented himself from the chamber when the matter was discussed. If we could move to page, sorry, 637. This is where the item is recorded in the minutes as being discussed. And can you see that it lists a number of persons who addressed council?---Yes.

20 And can I draw your attention to the name of Ms H. Miller, representing Deveme Pty Ltd and Anderlis Pty Ltd?---Yes.

Now, at the time of this meeting, did you know who was behind or associated with Deveme Pty Ltd and Anderlis Pty Ltd?---No.

You didn't know?---No.

Did you have any – so you didn't have any understanding that Deveme Pty Ltd was a company, the directors of which were Mr Sidoti's parents?---No, not at the time, no.

30 Does that mean that you did not know that Anderlis Pty Ltd was also a company of which Mr Sidoti's parents were the directors and shareholders? ---No, at the time I didn't know.

Do you have any recollection of the substance of anything that Ms Miller actually said to council at that meeting?---No.

You were aware, however, that Mr Sidoti's family had at least the property at 120 Great North Road at that time?---Yes. Yes.

40 Did you become aware at any stage, either at this meeting or before this meeting or after this meeting, that the Sidoti family had other property interests in that block between Second Avenue and Barnstaple Road?---Not at that time, no.

No, not at that time?---No.

Have you subsequently become aware of other property interests that the Sidoti family held?---Yes, yes. And I now know who these companies are, yeah.

So you now know that those - - -?---Yes.

Is that as a result of the questions I've just asked you or - - -?---Oh, it's a result of this inquiry, yes.

10 And has it only been in the course of this inquiry that you've become aware of who was behind those properties?---Yes. Well, no, the property that is - - -

Sorry, these companies.---Yes, the companies, sorry, yes.

Thank you. I misspoke. And have you come to an awareness that Anderlis Pty Ltd was the registered proprietor of a property in Second Avenue known as 2 Second Avenue?---Yeah, I know now, yeah.

20 Did you ever become aware if, apart from 120 Great North Road, at any time between 2014 and 2017, when this matter was coming back and forward between council and exhibition and reports and the like, did you ever become aware that the Sidoti family had any other interests in that block other than 120 Great North Road?---No, I didn't. I just, I just knew it was the, in my mind it was the function centre and I think at the time they owned that house at the back that had the heritage on it. That's all I was aware of.

30 That was your understanding at the time.---Yeah, that was my understanding.

That the function centre and, when you say the house with the heritage listing, you're referring to 39 Waterview Street.---Yes, Waterview Street, yes.

40 THE COMMISSIONER: Do you consider that the ownership of these, this group of properties that's been referred to by the Sidoti interests was a matter that you ought to have known about, and if so, do you consider it was a material matter for you to take into account in discharging your duties as a councillor in council meetings, for example, and otherwise?---Is, sorry, is the question should I know who the owners of the properties are?

No, do you consider the fact of the ownership of the properties extended to a number of properties in the, within the Sidoti property holdings was a matter that you ought to have known? And if so, would it have been, would you have considered it a matter that you would, in some way, brought into account in the way you discharge your functions?---No, in, in my mind it, you know, the owner of any property I think, it, it's not about who owns it,

it's about what's happening to it and the, and the application. The owners were hiding behind companies, et cetera. It's not about individuals, really. It's about the process and, and what we can, you know, what, what is, what can be realistically achieved, regardless of who owns them.

Would it have had any bearing, for example, on the discussions or dealings you had with Mr Sidoti?---From my perspective, no.

10 MR RANKEN: And why is that?---In my mind, the whole time I try and think of everything, you know, with this whole situation, in my mind it was, if this wasn't a member of parliament, how would I deal with this? And that was just, I'd always come back to that point, trying to deal with the matter, assuming it's just a regular member of the public.

But as it happens, this was a member of parliament, correct?---Yes, this, yeah, I mean, for, for what I understood the ownership was or the interest was, yes, I, yeah.

20 Now, just turning to the resolution that was passed by council on that occasion, firstly, obviously, there was the noting of the matters that were raised in response to the public exhibition, and then secondly that the planning proposal be amended to and, in particular, "(a) revise the land to which 27 metres, eight storeys and 3:1 floor space ratio applies as shown in attachment 3." And there were some other aspects to it as well. So, effectively there was going to have to be an amendment to the planning proposal, correct?---(No Audible Reply)

You need to – is that yes?---Yes, sorry. Yes.

30 That's okay. And as a result of the propose amendments, and particularly amendment (a), that was what would be considered a substantial amendment to the proposal?---Yes.

And therefore would require some further public exhibition to allow submissions from interested parties and the community more generally, correct?---Yes.

40 Which is why there is, at paragraph 4, this is on page 638, provision for the amended planning proposal and Development Control Plan and Development Contributions Plan to be exhibited for a period of 28 days. ---Yes.

And in respect of that resolution, it was passed unanimously, including by yourself and Helen McCaffrey?---Yes.

And perhaps if I can establish before – I think I did establish it – that Dr Ahmed wasn't present at this meeting.---Okay.

So, again, that meant that there was a requirement for there to be further public exhibition of the proposal?---Yes.

And would you accept from me that that public exhibition took place between 30 June, 2015, and 31 July, 2015? Would you accept that?---Yes, yes.

10 Now, did you, in that period, have any meetings with Councillors McCaffrey and Councillor Ahmed and Mr Sidoti?---Maybe, yes. Probably.

But is this the case, you actually don't have an independent recollection of ever attending a meeting specifically with just those persons, Mr Sidoti and Ms McCaffrey and Dr Ahmed, to discuss the Five Dock Town Centre Plan?---No. It's drawing a blank.

20 Would it concern you if there were such meetings being organised by Mr Sidoti?---Would it concern me? I would be uneasy about it, yeah. There, there, there's a sense that there's something – I mean, for a specific issue where Mr Sidoti had an interest, yes. If, if that was the intent of the meeting, yes, it would concern me.

But not only did Mr Sidoti have an interest, were you aware at least by this stage that the particular interest that Mr Sidoti had was one that was not consistent with that which had been recommended by the independent experts and by council staff? Do you agree with that or not?---That Mr Sidoti had an interest in that and - - -

30 That the interest that he was seeking to advance was contrary to that which had been recommended by council staff and by the independent experts, correct?---Yes, yes.

And at least by this stage, in terms of the independent experts, them having considered responses to the public exhibition of the planning proposals, and attempting to achieve an appropriate balance in respect of the desire or objective of encouraging of appropriate development whilst still being able to meet the community's expectations concerning the feel and look of the Five Dock Town Centre?---Yes.

40 Now, could we go to page 676? This is an email chain. At the top you can see it's, "Re: Meeting." Could we go from there to page 684? Sorry, I might have gone the wrong way about this. So again this is another copy of the email chain, and if I could draw your attention to the email at the bottom of page 684, which is from Helen McCaffrey. That appears to be the first email in this chain, and you'll see that it's of 8 July, 2015.
---Mmm.

And it's an email to Mr Sidoti saying, "Hi, John. I think I missed an email. Did you want to arrange a meeting with us re the town centre?"---Right.

So it would appear from that email that Ms McCaffrey seems to be inquiring of Mr Sidoti whether or not he wanted to arrange a meeting with the councillors regarding the town centre. Would you agree with that?---Yeah, it looks like there was some correspondence that was missed somewhere, yeah.

And the response from Mr Sidoti is, “Yes, great, any time that suits. Cheers. JS.”---Right.

10

And then another response from Ms McCaffrey refers to the fact that you were off till Monday, “Maybe we could do tomorrow. I can’t do Fridays, can’t do Saturday or Sunday, I can do any time after 10.30am tomorrow. Do you want to contact Tanveer and Mirjana?”---Mmm.

And Mr Sidoti has said, “Can do after 6.00pm tomorrow. Is that okay? JS.” And you said, and then, sorry, Ms McCaffrey said, “Okay, will you contact the others? Cheers.” “Helen, Mirjana and Tanveer are good for tonight at 6.30, are you good at my office? Cheers, John.” Do you see that?---Yes.

20

That would suggest from the face of those emails that there had been some contact between you and Mr Sidoti at least on 9 July concerning a prospect of meeting that day at his office. Does that jog your memory in any way as to whether or not you did in fact attend a meeting with each of Tanveer, Ahmed and Helen McCaffrey and Mr Sidoti at his office?---I, I don’t, no, I don’t think that meeting went ahead. A meeting at his office with Tanveer? No. I’m, I’m, it, I just don’t recall there ever being in his electorate office a meeting about this.

30

Just it would see odd though, wouldn’t it, that on the very day that the meeting is being scheduled for, he appears to have contacted you or spoken with you and confirmed that each of you and Dr Ahmed are available and can attend that night.---Yeah.

And then you say that something might have happened that meant that the meeting did not occur.---I, I – sorry, I can’t - - -

You just don’t have any independent recollection at all?---A meeting in the electorate office? No. About this.

40

Well, what about at his parliamentary office?---No.

No. Have you ever attended his parliamentary office ever - - -?---Never.

- - - in any context?---Never.

Have you attended his electoral office?---Yes.

And for what purposes have you attended his electoral office?---A function. It was a Barry O'Farrell function.

Is that the only occasion you have ever attended Mr Sidoti's electoral office?---Yeah, that's the only thing I can remember going through there.

THE COMMISSIONER: Could you have attended his electoral officer over a matter that a constituent has raised?---I wouldn't have gone to his office for a constituent stuff, it would have been done by email.

10

MR RANKEN: Given those emails, it would seem odd, would it not, if the meeting had not occurred?---Yeah. It would seem odd.

So do you allow for the possibility that in fact there was such a meeting between yourself and those other councillors and Mr Sidoti to discuss the town centre planning?---I just don't recall a conversation about this matter in his office. I don't.

20 What would you understand to be the purpose of the three councillors – being yourself, Ms McCaffrey and Dr Ahmed – meeting with Mr Sidoti to discuss the town centre planning?---I - - -

Well, notably, someone who wasn't to be included in this meeting was Mr Megna, correct?---Mmm. Mmm.

And he was a person who was precluded from, or had precluded himself, from being able to have any involvement in discussions or voting and decision-making in relation to the town centre planning, correct?---Yep.

30 And that being so, is it not likely that what was to be discussed was Mr Sidoti's views as to what should occur and how the three of you should exercise your votes in respect to the matter when it was to next come before council?---That, I mean, we wouldn't have needed a formal meeting for that conversation. I mean, that, that was an open conversation, an informal, I mean, informally we were, we were lobbied for this.

40 So when you say informally you were lobbied, are you talking about conversations or direct conversations with Mr Sidoti that didn't necessarily involve other councillors being present but perhaps with him just contacting you individually to discuss it?---No, I think my, my memory is when, with these, with this particular issue is that there was always other people around, but not within the, the context of a, of an office, that these conversations just, you know, this is the, you know, the conspiracy theory, it was all around, there was always other people around, I just, there was no formality. I just can't recall a formality around it.

And yet I've taken you to a number of instances - - -?---I know.

- - - where there are references to or steps being taken to arrange for there to be meetings involving just the Liberal councillors and Mr Sidoti and possibly, on one occasion, the President and Vice-President of the Chamber of Commerce.---I understand that. But I, I'm saying in my memory I don't have a recollection of us in John's office, talking about this matter. My recollections are all in open space and, and as, when we'd met at an event or out and about, not a formal meeting around it. I understand what you're saying, but it's just not in, in my, I don't recall it, I'm sorry.

10 But do you allow for the possibility that the meetings took place?

MR NEIL: Commissioner, could I submit, this question's been asked and answered a number of times, more than sufficient for the witness's position to be clear.

THE COMMISSIONER: Just could we go back to that last, 689. Perhaps 676. Mr Ranken, what's the email from Mr Sidoti that says – it's about the meeting and it says, "Spoken to Ahmed (not transcribable) and Mirjana and they're good to go," or words to that effect. I just lost the page number.

20

MR RANKEN: Oh, sorry, that was - - -

THE COMMISSIONER: I think it was an email from Mr Sidoti to Helen McCaffrey.

MR RANKEN: That's at page 684. Page 684.

THE COMMISSIONER: That's the one. Yes, that's it, thank you. So there's an email again, you'll see 9 July, 8.34, from Mr Sidoti to Helen McCaffrey. "Helen, Mirjana and Tanveer are good for tonight at 6.30," and then he poses a question. "Are you good at my office? Cheers, John." Now, do we know Mr Ranken, whether there was an email reply to answer that question or not?

30

MR RANKEN: I have not been able to see one.

THE COMMISSIONER: No. Well, it suggests that the meeting was proposed by Mr Sidoti to have been at his office but he said, "Are you good at my office?" She might have replied and said, "No, I don't want to go to your office." We just don't know, is that the position?

40

MR RANKEN: No. Can I then move on then, just to note perhaps at page 734, that this is an interoffice memo regarding a councillors workshop agenda dated 25 September 2015, but concerning a proposed councillor workshop on 29 September, 2015, concerning the outcome of the public exhibition and discussion on options available in going forward regarding the Five Dock Town Centre Study.---Yes.

And that because there had been the public exhibition following the changes to the proposed – sorry, I withdraw that – following the changes to the planning proposal as a result of the Studio GL report that was prepared following the earlier public exhibition?---Yes.

And then the matter, because the matter was then to come back before the council in November of – sorry – in October of 2015.---Okay.

10 Do you recall that or does that sit with your general recollection?---Oh, that fits within the timelines, yes.

Now, in advance of that meeting, again the council staff, specifically Ms Ferguson, prepared an agenda report for the councillors and that if we go to page 929, so that's the first page of the agenda meeting. If we could go over to the next page, I think, and next – sorry. Keep on going, and again. There we have the first page of the report, page 933. And do you see here it refers to the fact that, "The revised planning controls for the Five Dock Town Centre were publicly exhibited in June and July of 2015 and following the exhibition period 389 submissions were received. The primary issues raised in submissions related to the propose eight storey height limit and the impact of this height on the public and private domain."---Yes.

So, in fact, following the last time the matter was before the council and the public exhibition that followed that, there had been a further increase in the public engagement with the proposals that had been publicly exhibited? ---Yes.

The 398 up from 124.---Well, okay.

30 No doubt your suspicions were aroused by that number?---Absolutely.

And what precisely were your suspicions?---That there was a, that someone was behind a campaign to, you know, to keep the heights down or, or whatever but it's just highly unusual to receive those levels of submissions.

Given your suspicions, what steps did you take to find out whether there was any substance to those suspicions?---No, I, I didn't, I didn't take any steps. I just accepted that those were the submissions. I thought it was very unusual but the submissions in themselves don't determine an outcome of a decision. So, I accepted that they were there.

40 THE COMMISSIONER: This project was not an ordinary DA application, was it? This was a major project, as we've discussed, with a long-term vision associated with it. It was unique, correct?---Yes.

Correct?---Yes, yes.

So that the number of submissions that might be generated by such a, perhaps, far-reaching proposal or program might be different from a DA approval on one or two blocks, for example.---I think I'm comparing it to other large projects, in Rhodes, et cetera, where there just wasn't that level of submission.

In any event, we're not going to spend - - -?---And in any - - -

10 Yes, okay, you have stated your position.---Okay. Okay.

I understand. Let's move on.

MR RANKEN: And if we, just on page 933 there, you can see that the majority of the submissions were concerned with the height that was being suggested, the eight-storey.---Yes.

That is effectively the bonus provision.---Yes, understand.

20 And that a maximum height of five storeys should be imposed with the ability to construct six storeys on certain large sites over 1,000 square metres.---Yes.

So effectively coming back to what was the original recommendation of the Urban Design Study by Studio GL, correct?---Yes. Yes.

30 That's what was being coming through in the submissions. And if we could go to page 938. Do you see that there is the reference to the land between Second Avenue and Barnstaple Road, and that there were submissions received in relation to the zoning and development controls proposed for that land, and that there were two submissions proposed, a substantial expansion to the B4 mixed-use.---Mmm.

And again, that was not supported because it was further away from the core of the centre and there are no significant public benefits arising from its rezoning. That was one of the reasons.---Yes.

Do you see that?---I do.

40 And you had no reason to doubt the accuracy of that statement?---No, I understood it was a view put forward and advice, yes.

But this was a view that had been put forward by Studio GL on more than one occasion.---Yes. Yes.

In fact, repeatedly, every time this matter had been raised.---Yes, understood.

And did you have any discussions with Mr Sidoti about the fact that this suggestion of a rezoning of the Waterview Street site was continually being rejected by the independent experts?---Not on that matter, I can't recall a, like, a direct conversation about that, no.

Now, that report was prepared for the meeting of 20 October of 2015. And do you recall that on that occasion the matter was actually deferred so that there could be the preparation of an addendum report that's set out in tabular format, the advantages and disadvantages of the alternative maximum height options that had been presented in Studio GL's report.---Yes.

Does that - - -?---Yes.

You actually now remember that?---Yes.

And so the matter was then to come back before council in November of 2015.---Yes.

And specifically 3 November of 2015.---Okay, yes.

Now, the meeting of 3 November of 2015, there was a report that was prepared, which effectively reflected the substance of the report that I've just taken you to because of the matter of just simply being deferred, but it also included some information in a tabular format. So I just want to take you to that briefly. If we could go to page 1010. Sorry, sorry, no, I've taken you to the wrong page. I apologise. Page 971. And if we can move forward three pages. Thank you. So 975. There's the summary, sorry, there's the first page of the report, and you can see at the top it refers to the fact of the deferral of the matter pending the preparation of the addendum report.---Yes.

And then effectively what I want to suggest to you is that the balance of the report is essentially identical to that which had been put before the council for the October meeting.---Yes. Yes.

Together with some information in a tabular format that had been requested by the councillors and is referred to as an addendum to that report.---Yes.

Now, if we could go to the recommendations in that report, which is at, commences at page 981 and goes over to page 982. If you just read those recommendations to yourself, perhaps if we go back to 981.---Yes, can we, yeah. Okay.

Now, those recommendations were essentially the same as that which had been recommended to council in October of 2015, but when we come to the meeting on 3 November, 2014, and if we could now go to the minutes of that meeting which are particularly at page 990, you see here that there are a number of persons who addressed the meeting, including Mr Haron and

including a Mr M Thebridge, Mr Mark Thebridge, representing Deveme Pty Ltd and Anderlis Pty Ltd.---I see that, yeah.

And then there was, what was resolved was firstly part A, which reflects I would suggest broadly the matters in the recommendation, if we go over to the page, if we see at part B there's an additional paragraph 8, that a separate report be prepared to investigate the zoning heritage and development controls for the RD medium-density residential land between Second Avenue and Barnstaple Road on the western side of Waterview Street, Five Dock, is one of them.---I see that.

And then there were two other sites also identified.---Yes.

Do you have any knowledge or recollection as to how it was that that part B came to be included?---I'm sorry, I don't, I don't. I don't recall how that, how – I can't even recall who put that motion up.

THE COMMISSIONER: I'd like you to reflect on this a bit further. You'll see that there's for - - -?---I can see I didn't support it, yeah.

20

- - - set out and then there's against, yourself and Tyrrell.---Yes.

That seems to be an unusual combination, once we've been through all the minutes as we have, to find you and – is it Mr Tyrrell or Ms Tyrrell or - - -? ---Ms Tyrrell.

Ms Tyrrell on the same page as on this occasion, that being an usual circumstance I'm sure would bring back to you what lies behind this, and I ask you what is the story?---Oh, look, I'm just trying to think back to that time and why I didn't support it.

30

Yes, that's what I'm asking you to do.---Yeah.

What's the story?---Um, just looking at it I, I probably felt that we'd canvassed this issue enough and the recommendation was fine as it was and that it didn't need further investigating. That's just - - -

Well, that would seem to be an obvious fact by now.---Yeah.

40 But how do you explain the split in the Liberal vote?---Um, look, everybody's a free thinker, I mean - - -

Yes, I know that, madam, but we know that there was a meeting, it seems, sometime around 9 July but we don't know enough yet about that to draw any conclusions. But there was said to have been a meeting set up by Mr Sidoti and we've discussed that and that, I note, was a meeting said to have been held in the middle of the public exhibition period of 30 June and 31 July, '15, and now moving on beyond that, 13 November, 2015, we've got a

part B now. That in itself seems to be an unusual format for these resolutions, is it not, to have part A and part B?---Oh, it's not common, no.

And what else is not common, so far as the Five Dock Urban Town Plan is concerned, is that you and Ms McCaffrey are on the opposite sides of the fence when it comes to voting on this occasion, please explain how that came about. You are here to assist the Commission, you understand that, don't you?---I, I do understand that. I - - -

10 Yes, all right. Well, I just ask you to reflect upon it and try and, if you would, give the explanation as best you can.---Look, just thinking about that time, I, I couldn't see what added value that there would be in, in canvassing this.

Well, there was no added value obviously.---Well, I, I, and that's - - -

How then do you believe Ms McCaffrey arrived at a different point and voted for part B?---I, I am not sure. You would have to, have to check with Helen. I, I - - -

20 Yes, we might but I'm just - - -?---I can't speak on her behalf but - - -

Just, no, you don't have to speak on her behalf. I'm asking you directly whether, you having spoken frequently to her as a fellow Liberal councillor, whether she explained to you where the difference lay between the two of you on this occasion. Did she?---I don't recall a conversation with Helen about this particular resolution, no.

30 Well, do you have knowledge of any circumstances that would explain why she went the way she did on this occasion, I mean, the voting for the resolution?---Well, she may have felt that there was more merit in it than I did.

Are there any other circumstances that occur to you that might explain it?---At this point I can't think of anything.

Yes, Mr Ranken.

40 MR RANKEN: Yes. Perhaps if I can go a little bit back in time. Now, back to 12 October, 2015, regardless of whether or not there was a meeting as was sought to be arranged between Ms McCaffrey and Mr Sidoti. If we could go to page 740, we have here on 12 October, an email from Mr Sidoti to yourself, Dr Ahmed and Ms McCaffrey in which Mr Sidoti is indicating that he would love to meet with you as a group any night before the next council meeting. Now, that's before the meeting on 20 October, 2015. And do you recall whether or not such a meeting in fact took place?---(No Audible Reply)

No?---I'm sorry. I - - -

If we then go to page 742, Ms McCaffrey certainly had responded to say that she was in Fiji and wouldn't be back until the weekend and suggested that she couldn't do Monday so her window was the Sunday morning. That's the Sunday morning before the meeting, correct?---Yes, yes.

10 And you have no recollection, again, of meeting in that window, possibly Sunday morning before the meeting on the 20th?---I, I just, formal meetings, I just, they're – no, sorry.

Can I then go to page 750? This is an email from Mr Sidoti on 15 October. Just looking at the bottom of the page, 15 October at 2.09pm saying, "Hi councillors. Know you're busy. Have to meet before Tuesday as a group. Any time any place. Please respond. Cheers John Sidoti MP." And Dr Ahmed has responded, "Sunday evening or Monday evening for me." Do you see that?---Yes.

20 Mr Sidoti has responded, "Either good for me. How's Monday for the girls?" Do I take it that you would have understood that as to be a reference to yourself and Ms McCaffrey?---Yes, I would assume so, yes.

And Dr Ahmed said, "John, it actually looks like I'll be out of town next Tuesday now. We'll miss the meeting. Unfortunately might be left to Helen and Mirjana. Apologies, TA." And he's responded, "Mate, without you I'm fucked. We won't have the numbers." Do you see that?---Right. Yes, I do.

30 Now, can I just go to page 752. There is a similar email chain except for that last bit of exchange between Dr Ahmed and Mr Sidoti. But you can see that in response to Mr Sidoti's email asking whether "How's Monday for the girls?" Ms McCaffrey has responded that she will have to meet some time during the day on the Monday because she's MC at Rotary on Monday evening. "I can do Sunday morning or early afternoon. I have a small function at my place starting at 4.00pm. I'm using a Gmail address as I am OS," meaning overseas.---Overseas, yeah.

40 Do you know whether or not you responded to this email, these emails?---I, I, I can't remember whether I did or not, no.

So if we could go, then, to page 757. We can see the same email chain but with that last one I took you to from Ms McCaffrey's in about the middle of the page.---Mmm.

And do you see above that Dr Ahmed has responded, "Let's do Sunday morning. I could probably work that a little bit later in the morning." And you've actually responded, "Hello there. I am doing The Bloody Long Walk on Sunday, starts at 6.00am and finishes Monday. It's 35 kilometres

from Palm Beach to Manly. Monday is my only chance or Saturday.”
---Mmm.

So it seems that there was some difficulty arranging that, correct?---Yes.

That meeting.---That looks, yeah, I just can't see how anything would have -
- -

10 THE COMMISSIONER: Did you complete the walk?---Yes.

And that was to finish on the Sunday. So you're indicating Monday or Saturday might be a chance. All right.

MR RANKEN: And perhaps if I can, well, try and short-circuit things, given the time, Commissioner. If we go to page 761, we see another copy of the email chain.---Mmm.

20 And you've got the, there's a response to your email in which you refer to The Bloody Walk, The Bloody Long Walk, sorry, where Mr Sidoti has suggested that Monday is "Good day or night. I'll see you all separate. Cheers, JS."---Mmm.

Do you understand from that that in fact what was, given the difficulties in terms of getting you all together, Mr Sidoti was suggesting that he would speak to you each individually?---Mmm, it seems that way, yep, yep.

And you've actually responded to that by saying, "Okay, Monday after work I can drop by your office on my way home, M."---Yeah.

30 Do you recall whether or not on the Monday prior to the meeting on 20 October, 2015, you did in fact drop by Mr Sidoti's office and have a chat with him about the upcoming meeting and what was to be decided?---Look, I don't remember ever being alone in a room with John. I, I don't think that that went ahead.

It's another meeting that was being arranged but didn't go ahead?---I just, I just don't, I just don't recall that, alone in a meeting with John, no.

40 What about possibly in the presence of some other councillor?---Again, not, not in an office environment, I'm sorry.

THE COMMISSIONER: Leaving the office environment to one side for a moment, did you meet, did you drop in on him somewhere and have a meeting on 15 October? Sorry, on 16 October.---I, no, I don't, I, I don't recall that there was a meeting on 16 October.

Is it the situation that there could have been a meeting and it's just gone from your recollection?---Well, if it was in the office I'd remember it, I'm sure I would.

Yes. Let's leave the office out of it for a moment. Is it possible you had a meeting with Mr Sidoti on that day, 16 October, and you simply have forgotten or your recollection has failed you?---We potentially had a discussion but I couldn't even recall that.

10 Right.---We would have had a number of discussions in this time, to try and pinpoint when each one occurred is just too hard.

Yes, it is difficult after a long period of time, but it does seem that you were certainly willing to talk to him in this email of 16 October. Is that right?---Yes.

And I assume that you would have assumed that it had something to do with the Five Dock Town Centre.---Yes.

20 But you don't know now what it was.---The detail of any, yeah, detail of those conversations, no.

Yes, Mr Ranken, how are we going?

MR RANKEN: Yes, I do note the time. I have a fair bit to still cover with Ms Cestar.

30 THE COMMISSIONER: Yes. I have another commitment, so I think we'd better draw stumps and resume tomorrow morning. Ms Cestar, we'll resume the hearing tomorrow at 10 o'clock, if you could be here then. ---Thank you.

Thank you. I'll adjourn.

THE WITNESS STOOD DOWN [4.11pm]

40 **AT 4.11PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.11pm]**