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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 THURSDAY 8 APRIL, 2021

AT 10.00AM

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

MR RANKEN: Yes, Commissioner.

THE COMMISSIONER: Mr Ranken, ready to resume??

MR RANKEN: Ms Cestar is – yes, we're ready to proceed.

THE COMMISSIONER: Yes. Then I'll have the oath administered again, thanks. Ms Cestar, if you wouldn't mind standing and take the Bible.

THE COMMISSIONER: Thank you, Ms Cestar. Yes, Mr Ranken.

MR RANKEN: Thank you, Commissioner. Now, Ms Cestar, yesterday afternoon - - -

10 THE COMMISSIONER: Sorry to interrupt before we get started. The declaration I made under section 38 of the Independent Commission Against Corruption Act in respect of the evidence of Ms Cestar continues to apply to the evidence she gives today. Yes, thank you.

MR RANKEN: Thank you, Commissioner. Now, Ms Cestar, yesterday afternoon we dealt with briefly the meeting of the City of Canada Bay Council on 2 June, 2015, and then went through to the meeting on 20 October, 2015 and briefly touched on the meeting and the resolution of the council at the meeting on 3 November, 2015.---Yes.

20 And you may recall that in respect of the meeting of 2 June, 2015, that was a meeting where the council resolved to adopt a number of changes in respect of some of the development controls that formed part of the planning proposal. Correct?---Yes.

In a sense to move back away from a position where the bonus floor space ratio for amalgamated sites and the height uplift would be reduced insofar as the number of sites. Correct?---Yes.

30 And in the course of dealing with that meeting, that is the meeting of the council on 2 June, 2015, I drew your attention to the list of persons who had addressed the council, and specifically the name of Ms H Miller, who was said to be representing Deveme Pty Ltd and Anderlis Pty Ltd.---Yes.

And you told us that at that time, that is at 2 June, 2015, you did not know that the directors and shareholders of those companies were Mr Sidoti's parents and you also told us that you do not now have any recollection of the substance of anything that Ms Miller actually said as part of her presentation.---That's right, yes.

40 Now, I wonder if we could bring up page 640 of Exhibit 24. Now, Ms Cestar, this is not an email to which you were a party or an email that you drafted. You can see that it's an email from Helena Miller to a Mark Thebridge and you can see from the signature block that Helena Miller is from MG Planning.---Right.

And she was the person who had represented Deveme Pty Ltd and Anderlis Pty Ltd at the meeting on 2 June, 2015. I just want to draw your attention first to the first sentence of that email where Ms Miller has referred to the

fact that, "At the council meeting last night, council's Manager of Strategic Planning indicated that council could have a further look at zoning of land on the western side of Waterview north of Second Avenue following my presentation to the council." Now, assuming for present purposes that is an accurate statement, does that assist you to recall whether Ms Miller's presentation to council included a submission that council should have a further look at the zoning of the western side of Waterview Street between Second Avenue and Barnstaple Road?---No, I'm sorry.

- 10 You will see that in that email Ms Miller goes on to say that she had followed up with council that morning, that is the morning of 3 June, 2015, and that the council will be happy to receive a further submission from MG Planning during the upcoming re-exhibition that looks in more detail at how constraints of the heritage item on 39 Waterview Street and strata development at 45-47 Waterview Street could be addressed while providing for the development of the subject land.---Right.

Do you see that?---Yes.

- 20 Now, I think we might assume that the reference to council is a reference to council staff, Ms Miller - - -?---Yes, I would assume so.

- - - having followed up with council staff. And because of course you'll see Ms Miller goes on to say that, "Council's planner, Paul Dewar, referred to the possible preparation of block/massing diagrams, i.e. high-level information that could satisfy council that redevelopment was both suitable and feasible."---Okay.

- 30 So essentially then there was an opportunity for MG Planning on behalf of Deveme Pty Ltd and Anderlis to provide a further submission about the issue of rezoning during the course of the public exhibition which I think you accepted from me yesterday occurred between 30 June, 2015 and 31 July, 2015.---Yes.

Now I just want to take you to a submission that was, in fact that appears to have been made by MG Planning in July 2015, and if we could go then to page 641. That's the first, the cover page as it were, and it indicates that it's being submitted to Canada Bay Council on behalf of Deveme Pty Ltd and Anderlis Pty Ltd. Do you see that?---I can see that, yes.

40

And has a date of July 2015. If we could move then to page 642, which is the next page. You see that there's some background that is provided and there's a reference to the fact that a previous submission had been made on behalf of Deveme Pty Ltd and Anderlis Pty Ltd in November of 2014. Do you see that in that first statement under Background?---Yes, I do.

And it also refers to some aspects of that previous submission, and then if I could draw your attention to a paragraph that commences about halfway

down the page with the words, “This additional submission has been prepared in response to the recommendations contained in the exhibition outcomes report in respect of area B,” at page 22, “that rezoning this block is not proposed due to the location of the heritage item, number 39 Waterview Street, and the existing strata development, number 45-47 Waterview Street.” Do you see that?---I understand, yes.

10 And then commencing towards the bottom of that page and going over the next couple of pages is part of the submission that deals with the heritage issue, concerning 39 Waterview Street.---Yes.

20 And we might just, if we could go over to the next page and then that is a summary in dot points of aspects of a heritage report that had been obtained by MG Planning. And if you go over to the next page, 644, can you see there it refers at the top to, “Relevant to the current matter, the proposed,” – sorry. Wrong page for me. After the quoted portion which is a quoting from the conclusion of the heritage listing report that had been obtained. It says, “Accordingly, having regard to the heritage assessment provided, it is considered that local heritage item at 39 Waterview Street, which is within the study area, is not of such significance or integrity that it should preclude the logical expansion of the Five Dock Town Centre.” So that was the nub of the submission that was being made on behalf of MG Planning’s clients in respect of the heritage listing. And then below that, you can see that there is a subheading for the strata developments and that’s the part of the report, it would appear, where MG Planning deal with the issue posed by this existing strata development at 45-47 of Waterview Street.---Yes.

30 And do you see that the second paragraph underneath that subheading refers that, “To address this issue,” sorry, I withdraw that. Firstly, the initial paragraph deals with the fact that strata development schemes present a difficulty for redevelopment because of the needs effectively to get support of a hundred per cent of the - - -?---The owners, ah hmm.

- - - the owners. And there is a reference in the second paragraph to the fact that, “To address this issue, and in a major overhaul of strata laws, the government has recently released the draft Strata Schemes Development Bill 2015 and Strata Schemes Management Bill 2015 for public consultation with exhibition closing on 12 August, 2015.” Do you see that?---Yes.

40 And thereafter, if we go over to the next page, there is a summary of what the relevant effect of those changes that are being proposed by the government would be, and the penultimate paragraph on that page commences, “In the light of the government reforms, it is considered that the presence of strata development within the block on the Western side of Waterview Street, between Barnstaple Road and Second Avenue, is not an impediment to future development. Further, it should not be used as a reason to preclude the logical expansion of the Five Dock Town Centre. If

the subject land is rezoned, the market will determine if and when it becomes viable for redevelopment.”---Yes.

So the submission essentially that was being advance by MG Planning in respect of that issues was predicated upon what was still then only in the draft phase as far as a bill that may come before parliament and then was not yet law?---Yes.

10 THE COMMISSIONER: Could we just go back to the first page, so I think it might be 640 or 641, just before we get any further, perhaps the next page, or 642. Perhaps the next page? Sorry, go back again. You’ll see in that third paragraph down commencing, “This additional submission has been prepared in response to the recommendations contained in the exhibition outcomes report in respect of area B that rezoning this block is not proposed due to the location of the heritage item,” et cetera, et cetera, I won’t read it all. Then it’s followed by this statement, “It is understood that this statement encapsulates the two main reasons why the subject land is not being considered for rezoning.” Based on your knowledge and recollection of the town centre plan, was that a correct or an incorrect statement as to the  
20 reasons as to why the subject land had not been considered for rezoning?---I think it’s part of the reason.

Part of it? Yes.---Yeah.

But it was not the whole.---Not the whole, yes.

What was the main reason apart from the question of strata plan and heritage?---Oh, well, my understanding is that there, there just wasn’t enough land to warrant an up-zone there.

30 We’ve heard that according to the Studio GL analysis, or perhaps I should say analyses, because there was more than one, the recommendation then by that consultancy was against incorporating the land for rezoning B4, because it did not consider it met the criteria necessary to justify an expansion of the town centre that far north.---Mmm.

Do you recall that?---Vaguely, yes, yeah.

40 Well, it wouldn’t be correct, would it, to say the only reasons as to why the council, and by its external consultants, concluded that this land should not be rezoned B4 was due to heritage and strata alone, but one of the most fundamental matters emphasised and reemphasised was that the town centre should not be extended any further than that which was proposed, because it would be too far from the town centre, et cetera, and – do you recall that? ---I do. I do. I do recall that. It, it’s interesting because the town centre, when you’re coming into Five Dock, essentially starts at the intersection, in my mind, has always started at the intersection of Lyons Road West and Great North Road and there is actually a monument there and as an entrance

to the, to the town centre. So although it might not be the core, it could also be viewed as part of the, the strip, the, the Great North Road strip.

What could be?---That section of, of, of land.

Which section, sorry, are you - - -?---Oh, the land that, the section that we're talking about, the, on Great North Road.

10 But you know the Studio GL consultancy expressly considered the matter.  
---Mmm, yes, I understand.

And were against rezoning.---I understand. Yeah.

Yes, thank you.

MR RANKEN: I've taken you to those aspects of the report that dealt with the particular issues that this additional report sought to address.---Mmm.

20 And then if we could just proceed then to page 646, you can see from there,  
there's a subheading of Inconsistency with Proposed DCP.---Mmm.

30 And under there, under that heading there are a number of subheadings like Split Zoning, Traffic Management and other considerations, which I would suggest to you reflect effectively the content in a more summary form of what was in the initial report that they prepared in November 2014. So just in addition to that there are the additional reasons that had previously been advanced. Now, and just to conclude in respect of this submission, if we could go to page 649. In summary form we can see effectively that there were seven points that were being made in respect of why the rezoning should be done, and one of the things I wanted just to note there is that this submission is only concerned with that part of land which is between Second Avenue and Barnstaple Road on the western side of Waterview Street. Correct? There's no other property owners that MG Planning are purporting to represent. Correct?---Okay.

And not any other areas of land or blocks of land that are the subject of this submission.---Okay.

40 Is that - - -?---Okay, yes.

And to the best of your recollection, Deveme Pty – sorry, not Deveme Pty Ltd, but MG Planning never purported to represent any landholders outside of this block between - - -?---That's right.

- - - Barnstaple, Second Avenue and Barnstaple Road.---Yes.

Now, so just if I could ask you just to read to yourself those seven points, I'll take you to some other documents in a moment, just to keep them in mind.

THE COMMISSIONER: Would you agree that of those seven dot points, the body of the report which Counsel Assisting has taken you through just a moment ago, the body of the report addresses the sixth and seventh dot point, that is the last two dot points, the first, that is the Strata Title Development.---Yes.

10

And the – sorry, I should have said the third-last firstly, the local heritage item, and the next dot point, the existence of strata title development. They were the two issues which the body of the report addresses.---Yes.

As to the other dot points, there does not appear to be any analysis in the body of the report to support the remaining five dot points, and if that's the case those five dot points in effect it would seem constitute assertions rather than conclusions based on the body of the report.---Okay.

20

Do you agree?---I, I haven't analysed it, but I will say yes, okay.

MR RANKEN: Commissioner, if I might just, in respect of that though, in fairness, Ms Cestar, if one was to go back to page 642, which is the background where MG Planning has sought to effectively summarise the submissions that had been made in November 2014, you can see there that a number of the points that are listed there were in fact, appear to have been the subject of an earlier submission. So whilst not perhaps dealt with in great detail in this report, they were dealt with on a previous occasion. ---Okay.

30

And you are aware though that those points had been considered by Studio GL and the council following that earlier report and ultimately had not been supported by Studio GL.---Yes, that's right.

So they were reiterated here, even though they had already previously been considered and not supported by Studio GL.---Okay.

Does that clarify that matter for you, Commissioner?

40

THE COMMISSIONER: Yes, it does.

MR RANKEN: So, with those seven points in mind, I want to take you now to the exhibitions outcome report that was prepared by Studio GL in respect of the exhibition of the planning proposals and the submissions that had been received, including this submission from MG Planning, in advance of the meeting of the council on 20 October, 2015, which was the next occasion the matter came before council. And you may recall on the last occasion, that is yesterday, we went to the minutes of that and on that



occasion it was actually deferred for an addendum report to be prepared that set out various things in a tabular format.---Yes.

If we could just deal with the outcomes report, and in that regard if we could go to page 788. That's the first page of what's an outcomes report that had been prepared, this was prepared by council staff it would appear.---Okay, yep.

10 This particular report. If we go to page 790, you see an executive summary, and what I wanted to draw your attention to is that you see that it refers to the fact that this report summarises the matters raised in submissions, provides responses to the predominant issues raised and make recommendations but it goes on to say that the report comprises two parts. The first part is the Five Dock Town Centre Exhibition Outcomes Report and provides responses to issues raised in relation to car parking, traffic and public transport, limited to those issues. But insofar as urban design responses, they're dealt with in part 2 by the independent expert, Studio GL.---Ah hmm.

20 And that part of the report specifically addresses urban design matters, such as building height, rezoning and building envelopes. So if we could then go to page 793. Here you see there's a summary of the consultation process that had been undertaken in relation to the Five Dock Town Centre Study and the planning proposals going as far back to the beginning of the whole engagement.---Yes.

30 And that continues over to page 794. And then at page 795, there's the subheading that says Issues Raised in Submission and the issues raised most frequently in submissions were building height, for some reason it's not properly typed there but I think the second point is zoning.---Yes.

Parking, traffic, site specific matters and other miscellaneous matters. And you can see that, "Consideration of the issues in relation to building height, zoning and site specific matters," is included in part 2 of the exhibition outcomes reports, which was the Studio GL report.---Yes.

40 Could we then go to page 805? That's the cover page for the final report of the exhibition outcomes for the Five Dock Town Centre planning proposal that was prepared by Studio GL and it's dated 9 October, 2015. Moving specifically to page 812. Just wanting to focus on this issue that was dealt with by MG Planning and was the subject of submissions in relation to what I could refer to as the Waterview Street block or site.---Okay.

You can see there's the subheading Rezoning?---Yes.

And it says, "A few submissions argued that the area for the B4 mixed-use zone should be increased to include the western side of Waterview Street between Barnstaple Road and Second Avenue. Even though this is not

currently proposed, there was also one submission that was not in support of including this area. This area is considered in detail in chapter 3. Now, before we go to chapter 3, I just want to draw your attention to the fact that the only area that was the subject of any submissions at this stage concerning rezoning was that area of Waterview Street between Barnstaple Road and Second Avenue.---Yes.

10 If we could then go to chapter 3, specifically page 820, that's the cover page, and then moving to 821, there's a plan that shows an outline of what is the study area and also includes areas that are outlined in blue that were the subject of site-specific submissions.---Yes.

And one of those was area D, which is 39-41 Waterview Street, 120 Great North Road and 2 Second Avenue.---Yes.

20 And obviously 120 Great North Road and 2 Second Avenue were the two properties that were represented by MG Planning, and the other two properties are properties within that block between Second Avenue and Barnstaple Road on the western side of Waterview Street. Then just so we can then deal with how that area D was addressed, we can move to page 826. And this is the part of Studio GL's report where they deal with the submissions, and you can see that the submissions also include a submission that was made by Carmelo Cassisi of [REDACTED] and MG Planning on behalf of Deveme Pty Ltd and Anderlis Pty Ltd, owners of 120 Great North Road and 2 Second Avenue. And the key issue being raised is that "The proposed height of adjoining development along Great North Road will create adverse amenity for blocks along Waterview Street." The submissions argued that these sites should also be rezoned to allow the entire block to be redeveloped. Now, if we could go to – sorry, you see at  
30 the bottom of that page there is a table format, in table format where issues raised on the left-hand side and the response of Studio GL is on the right-hand side. Do you see that?---Yes.

If we could go to page 827, do you see the first issue on that page that's raised is the heritage item, the listing of the heritage item?---Yes.

And which would equate with effectively what was point 5 in the conclusions of the MG Planning report that I took you to before.---Yes.

40 So Studio GL have referred to that and have provided a response to that. Do you see that?---Yes.

And they've said that the, they've referred to the fact that a report that had been provided by Futurepast Heritage Consulting states that, "The existing modifications to 39 Waterview Street are substantial and lessen the heritage values significance of this local listed item. Council's heritage advice states that the modifications to the house and the changes to the original setting of the house do not provide sufficient justification for a change in zoning to

B4.” So there has been some consideration of that issue as it was raised but not supported by Studio GL having regard to council’s heritage advice.  
---Yes.

Then dealing with the next list of issues, I suggest to you that you can see it refers specifically to the MG Planning, MG Planning consultation with Group GSA architects and Futurepast Heritage Consultants provided a detailed submission, so this is dealing directly with that submission.---Yes.

10 And you can see that the four points listed there are all concerned with those four points that had been the subject of the earlier report in November of 2014, but reiterated in the July 2015 MG Planning submission. Correct?  
---Yes.

And they have then been addressed in the corresponding cell on the right-hand side. And one of the things you see there is that the reason that the Waterview Street south of Second Avenue has been proposed for rezoning was that part of this street block was already B4 mixed-use, “It would be a catalyst for significant public benefit, including the development of a new town square, mid-block pedestrian connections and delivery of a laneway identified in the existing DCP, furthermore it reinforced and widened the town centre around its central core.” So again, that was a reference, was it not, back to the original aims and objectives of the whole project about enhancing the core of the town centre?---Yes.

And “the submission proposes a substantial expansion of the B4 land however, this part of Waterview Street between Second Avenue and Barnstaple Road is further away from the core.”---Mmm.

30 So that was a key reason.---Yes.

“Is a smaller block, so a rear lane has not been previously proposed, and there are no proposed midblock pedestrian connections or other significant public benefits such as a new town square.”---Mmm.

So there are reasons all associated with the original objective of enhancing and further developing the core of the town centre. Would you agree with that?---Yes. Yes.

40 And then in the next paragraph, it refers to the considerations concerning the heritage of 39 Waterview Street, given the response that had already been given above to that issue.---Yes.

And also the fact that 45 to 47 Waterview Street is a strata development which makes redevelopment less likely to occur.---Mmm.

And obviously at this stage, we’re in October 2015, we’re still in a situation where there’s no law, new law regarding strata developments and strata

management of the kind that was certainly in contemplation, at least, and had been the subject of the draft bill that was for public consultation. Would you agree?---Understand, yep.

And reading that aspect of this report, would you accept that it was a reasonable and a rational response to each of the issues that had been raised by MG Planning?---Yes, it seems quite logical, yes.

10 So those issues raised in respect of that block had been considered by the independent experts engaged by the council, and then in advance of the 20 October, 2015 meeting. And if we could go to the agenda report that was prepared for that meeting, and I took you to it yesterday, but if we would just go specifically to page 938.---Mmm.

This was the part of the report that I took you to, and specifically that part of this page which is commenced at about a third of the way down the page, where it says, "Land between Second Avenue and Barnstaple Road."---Yes.

20 And it says that, "Two submissions proposed a substantial expansion to the B4 mixed-use zone to include land on the western side of Waterview Street between Barnstaple Road and Second Avenue. This area was not identified for rezoning in the Five Dock Town Centre Urban Design Study or the exhibited planning proposal. Part of the western side of Waterview Street between First and Second Avenue is proposed to be rezoned to facilitate a significant public benefit, including a new town square, midblock pedestrian connections, and the delivery of a new laneway. Furthermore, the rezoning of land on Waterview Street between First and Second Avenue reinforces and widens the town centre around its central core."---Mmm.

30 And that reflects effectively the views of the experts as you've seen in the Studio GL report. Would you agree?---Yes. Yes.

It then goes on to say, "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."---Mmm.

40 So that was the clear view of the council staff and the experts that had been engaged by them to consider the issues being raised by the submissions including that of MG Planning.---Yep.

But neither council staff nor the experts supported what was being advanced, correct?---Yes.

And you told us yesterday that you did recall reading that part of the report. ---Yes. Yep.

And I also yesterday took you to some email correspondence between Mr Sidoti and you and Councillors McCaffrey and Ahmed in October 2015 in which Mr Sidoti appeared to be seeking to arrange a meeting with the three of you as a group before the council meeting. Do you recall me asking some questions about that?---I do.

I'll just take you to some of those quickly. If we could go to page 740. That was, I think, the first of the emails that I took you to which is where Mr Sidoti sent an email to yourself and the other two Liberal councillors who were able to vote on this issue saying, "Love to meet before next council meeting as a group any night that suits." So clearly seeking to meet with you as a group, correct?---Ah hmm.

And if we could then go to page 761 and this is the part of an email chain that I took you to. I think I took you to this email chain.---Yes.

And if we go to page 762, the first in time is a slightly different email than the one I just took you to but it appears to be Mr Sidoti because it's signed off, "John Sidoti MP." "Hi Councillors. Know you're busy. Have to meet before Tuesday as a group. Any time, any place. Please respond." And then there are responses that follow from that, firstly from Dr Ahmed saying, "Sunday evening or Monday evening for me," which would be just on the cusp of the meeting, correct?---Yes.

That was sent on 15 October and then Mr Sidoti said, "Either good for me. How's Monday for the girls?" And then if we go back to page 761, there is some back and forth, including a response from Ms McCaffrey, a further response from Dr Ahmed and a response from you in which you refer to doing The Bloody Long Walk. And then ultimately in that email we see that, at 7.42pm, Mr Sidoti said, "Monday is good, day or night. I will see you all separate. Cheers, JS." Do you see that?---Ah hmm.

And then you responded, "Okay, Monday after work I can drop by your office on my way home. M." Do you see that?---Yes.

Now, you told us yesterday you don't actually recall doing that, that is dropping by Mr Sidoti's office?---That's right.

And you don't recall actually having had a meeting with him?---That's right.

Looking at these emails, given what was coming up to be considered at the council meeting, was the issue about the planning proposals for the Five Dock Town Centre. Did you understand that the meeting that he was seeking to arrange was one that would relate to that issue?---I would have assumed so. That's right.

Because I think you told us yesterday that the only issue really that came up before council, at least as far as planning issues were concerned, that he had shown any interest in terms of discussing it with you was this matter, correct?---Yes. Largely, yes.

So, did you have an appreciation then that it was likely that it be a meeting to discuss issues affecting the particular block in which you knew he had an interest?---Yes.

10 Being that Waterview Street site, correct?---Yes.

And given what I've taken you to in terms of the reports, including the report of Studio GL and the council staff report that was prepared for the meeting on 20 October, 2015, you would have already had in your mind, would you not, that what he had been seeking or was seeking was not something that was being supported by either the experts or the council staff?---Well, he, he, I, at the time I probably wouldn't had read the report in so much detail but, yes, I would have assumed it would have been to make some sort of commentary or representations for an alternate view.

20

And, I mean, in the course of these emails, it appears that you and your fellow councillors are looking at making various arrangements to accommodate the possibility of being able to meet with Mr Sidoti, correct? ---Yes, yes. That's what the emails look like, yeah.

And in relation to a matter that you understood, at least you understood, was a matter concerning his particular interest in the planning proposal?---Yes.

30 And a private interest in that planning proposal?---Yes.

Would you ever, for other constituents, have made these kinds of arrangements or tried to accommodate a meeting with them to discuss their particular interests?---I have, I didn't in the time that I was, no, I hadn't in the time that I was on council, no.

40

Are you able to provide this Commission with an explanation as to why you were prepared to do so, or at least to attempt to make arrangements to accommodate Mr Sidoti and meet with him in respect of this matter?---Mr Sidoti was our, is our state member of parliament. Out of courtesy to and respect to his position, I would have entertained, listened to his, his views and his, his position, yep.

Was any part of that the fact that he was not only the state member of parliament but he was also the Liberal state member of parliament?---Yes. I suspect if, I suspect if it was a Labor member of parliament it wouldn't have got to that. We wouldn't have been requested to have these meetings.

Because, of course, the meetings that have been sought to be arranged were, appear to have only been, or these emails at least were only addressed to the Liberal councillors.---Yes, that's all I can see on there.

And indeed these particular emails are only addressed to those Liberal councillors who are in a position to vote or have any participation in the discussion about the Five Dock Town Centre Study, correct?---Yes, that's what I could see.

10 Now, accepting that you don't recall actually having any meeting with Mr Sidoti or the other councillors prior to the 20 October, 2015 meeting, can I take you to another email. This is at page 766. Now, this is an email with a heading or a subject of "Fwd: Five Docks Town Centre LEP" and it's sent by Mr Sidoti from his parliamentary email account to each of yourself, Ms McCaffrey and Dr Ahmed. Do you see that?---Yes.

And it was sent, it would appear, at 3.26pm on the 19<sup>th</sup> of October, 2015. That is, the day immediately prior to the meeting on the 20<sup>th</sup> of October, 2015.---Right. Yep.

20

Now, if we could go to the – you can see that, sorry, I withdraw that. Do you see that the subject, not the subject, the content of the email says, "One-pager from JS that may help."---Yes.

"Cheers." Now, could we go then to the next page, which is page 767. And if we go over to the next page as well, so in effect there was a two-pager that was attached to that email, and it, do you see that, if we could go back to page 767, that there is a heading in the top-right corner that says MG Planning?---Yes.

30

And there's a footer that appears to say "MG Planning" as well, "Urban Planning Consultants".---Yes.

And the document appears to have a date at the bottom saying 19 October, 2015.---Mmm.

So this would appear to have been – or would appear at least on the face of the document that it was a document that had been prepared by MG Planning, correct?---Yes.

40

Who you would understand or understood or at least you understand now to have been acting for Deveme Pty Ltd and Anderlis Pty Ltd, correct? ---Mmm, yes.

And only in relation to that strip of land between Barnstaple Road and Second Avenue. What we see here is, at the top of it, it says, "Request amendments to draft LEP controls to include," and there are two points, "Land on western side of Waterview Street in block between Second

Avenue and Barnstaple Road,” which is the subject land that I’ve been referring to as the Waterview Street site. And then there’s some additional land on the western side of West Street, to the south of Henry Street. Now, that land, to your knowledge, had not previously been the subject of any submission for rezoning.---Not that I can recall, no.

10 Now you see this document and you’ve seen the email to which it was attached, does it assist you in your recollection about whether or not you recall receiving this document or a document of this kind?---Yeah, I, I, I, I don’t recall receiving and, and reading this, I don’t, I’m sorry.

THE COMMISSIONER: Sorry, you don’t recall?---Receiving this, reading this attachment. I obviously received it, but I don’t recall reading it.

MR RANKEN: Because this is a document that’s been provided to you by Mr Sidoti - - -?---Yeah.

20 - - - the day before a meeting at which the issue about the town centre was to be discussed and decided upon by council, correct?---Yeah.

And at the top of the document, we see that it’s requesting an amendment to the draft LEP controls to include those two areas of land into the B4 mixed-use town centre. Do you see that?---I do.

And then if we go to the bottom of that page, we see some key reasons. The first one is a fairly broad submission that “One chance to get this right, need to plan for expansion of the town centre into the future.”---Mmm.

30 But then the second, third, fourth, and if one goes over the page, fifth, sixth, and seventh points, if you were to read them to yourself.---Yeah. Yep.

Now, would you agree that effectively they don’t reflect any new information, but for one aspect, over the matters or points that had been raised by MG Planning in its submission in July 2015, and considered by Studio GL and not supported, correct?---Yes.

40 And the one key difference perhaps, or one difference, is that the reference to the fact that the government strata law reforms had actually passed the Lower House at that stage, correct?---Ah hmm, passed through, yes.

And then the recommendation, “It is recommended that council amend the proposed LEP to include the subject land within the B4 zone.” Do you see that?---Yes.

Now, just looking at that email, was this not an example of Mr Sidoti effectively instructing you and your other Liberal councillors as to what you were to do at the upcoming council meeting in respect of the Urban Design



Study?---Yes, he's clearly seeking an amendment to the recommendations, yes.

And yesterday afternoon, you told us that there, you would often receive emails immediately prior to or shortly prior to upcoming meetings where the issue was being discussed, correct?---Yes.

And I think you described that as part of the pressure that was applied to you in your role as a councillor.---Mmm, yes. Yes.

10

Was this an example of that kind of pressure that you described yesterday? ---Yes. It, it is, and, and the reason, in my, well, the reason it hasn't stuck in my mind is because I've, I've looked at it and it, if it's inconsistent with the recommendation, I would have just put it to the side. But yes.

20

So are you suggesting that when Mr Sidoti applied this pressure, as you perceived it, you would simply effectively receive the information, not necessarily tell Mr Sidoti that you weren't going to adopt it, but just put it to one side when it came to your deliberations?---Yes. Yes. Yes, that, that was my, the strategy I took. When I'd receive information or something that was expected to be amended for council or some wording, I would just look at it and, you know, without – I wouldn't retaliate or anything. I wouldn't comment generally. I just don't recall ever responding to any of these emails.

30

And was there a reason why you wouldn't respond, for example, to say, "Well, John, I don't think it's appropriate for you to be making these sorts of representations to me in advance of a matter coming before council"? ---Mmm, look, I, I didn't, because I just didn't really want to rock the boat. I didn't think it was worth rocking the boat, in, in my mind - - -

What do you mean by rocking the boat?---Well, create, create even further, just create, oh, I don't, oh, how do I explain, I don't know, it's just a saying. Rock the boat, like create some sort of unrest between John and, and myself.

THE COMMISSIONER: Sorry, create what between you and - - -? ---Unrest of some sort, or bad blood, I guess, yeah.

40

MR RANKEN: All right. And I don't wish to put words in your mouth at all, but was that in some way because of the fact that you were both members of the Liberal Party?---Oh, yes. Yes.

Did it have anything to do with your perception as to the position that you held as a councillor and whether or not your preselection for the next council elections might be jeopardised if you, as you said, rocked the boat? ---Yeah, absolutely, absolutely it was a concern.

Now, as we covered yesterday, at the meeting on 20 October, 2015, the matter was ultimately adjourned or deferred for a further report, effectively with some additional information provided in a tabulated format. And when I took you to the agenda for the meeting on 3 November, 2015, and specifically the report that had been prepared for that meeting, I think you agreed that it was in substance the same report - - -?---Yes.

10 - - - as had been prepared for the meeting on 20 October, and we might just go to that agenda report. If we could go to page 980 of that agenda report. So this is part of the report, and you'll see at the top of it, it says, there's a header which says City of Canada Bay Council Meeting Agenda, 03 November, 2010, and it says page 10. Do you see that?---Yes.

And then towards, about two-thirds of the way down the page we see the italicised words, "Land between Second Avenue and Barnstaple Road." ---Yes.

20 And effectively from there to the end of the page is verbatim what was in the report prepared for the 20 October, 2015. Could we then go to page 992, and you see that page 992, and I took you to this yesterday, there's the part B to this resolution that has that a separate report be prepared to investigate the zoning, heritage and development controls for three sites. ---Yes.

30 So going back to the outcomes report that had been prepared by Studio GL where the question of rezoning was only raised in relation to the Waterview Street site, we then saw the one-pager that had been apparently forwarded to each of yourself and Councillor McCaffrey and Councillor Cestar prior to the 20 October, 2015 meeting, which included an additional area, and now we see in part B of the resolution that was ultimately passed, although you voted against it, a third area that was the subject of the recommendation. We'll bring that page up again. Which I would suggest is the B1 neighbourhood centre land at Ramsay Road in Five Dock.---Yes.

40 And when I asked you questions about this yesterday afternoon, you didn't have a recollection as to how it was that this resolution came or this part of the resolution came to be included. Having taken you through some of the history of the matter, and various correspondence, are you able to assist with how this part of the resolution came to be?---Well, it would seem that it's a result of that email that was sent.

You didn't have any involvement or were you not privy to any discussions about the possibility of drafting a resolution of this kind?---This wording? No.

I'm just going to go back in time a little bit. If you could go to page 965. This is an email chain on Sunday, 1 November, 2015, so this is the Sunday before the 3 November, 2015 meeting, and looking at the first in time of

those emails, you'll see there's an email from Dr Ahmed saying, "Can we just have a clear plan for Tuesday re. Five Dock. I am firmly in support of eight storeys." And then you've responded to say, "Can I call you, Tanveer?" And Helen McCaffrey has responded to say, "Do we have an option to meet beforehand. I have another motion which may solve some problems."---Right. Okay.

10 Now seeing that email, do you recall whether or not Helen McCaffrey may have had a motion that could solve some problems?---Well, it, it seems that someone who supported the motion would have helped with the wording potentially.

Just reading that email, are you able to assist us with, or the assist the Commission I should say, with what problems Ms McCaffrey might have been seeking to solve?---Yeah. I'm, I'm only speculating based on the information that we've just gone through. You know, potentially the, the zoning, heritage, height.

20 Did it concern you that Ms McCaffrey may have an alternative motion, to another motion I should say, that might be directed to this issue of zoning which you understood was contrary to the recommendations of council staff and its independent experts?---It would only be a concern if it hadn't come from the staff. I, I mean, just in reading that, I, I have no way of knowing who would have drafted that, that motion. If it would have come from council staff, it wouldn't concern me at all.

30 Would it concern you if council staff had been asked to prepare a motion by a councillor, "Can you draft a particular motion for me?"---Well, I, I think that's part of their role, isn't it, to draft motions and to help policy be implemented?

So, if an individual councillor can approach, I think you told us yesterday, it would have to be an approach to the director?---The director, yep.

And can request them to draft a motion that they're seeking, correct?---Yes. I, I would think that was a, a, an appropriate request, assuming it didn't cross any boundaries, yes.

40 What about if the councillor was making that request because of a representation that had been made by a private constituent?---Oh, it's hypothetical. I, I mean, I, I, I don't, I don't have an answer for that, I don't know.

Now, at the top of that email chain, there is your response of 7.15pm on that Sunday evening, "Please take me off the council emails and use iCloud as above. Council ones are public documents. Also, do we know if Neil has a motion to support eight storeys with amalgamating sites to 1,500 square metres? Nothing else on email. Please call me." Now, there's a few things

I wanted to ask about that email. Why was it that you were asking them to take you off council emails and only use your iCloud?---Why? I mean, well, just looking at that saying that it's, I didn't, you know, these, these, my assumption was that the council emails were all public documents and it, there's no point having that on, on an email trail.

Why not? If these were matters that were relating to your duties as a councillor, what would be the difficulty in having the detail of your correspondence with the other councillors about council matters on a public document?---It's, it just seems that it's inconsistent based on what we've gone through. It's inconsistent with what is being recommended by council.

THE COMMISSIONER: But the subject that is the motion, you I think had inferred it was related in some way to the issues such as zoning of the town centre. So, these emails did touch on or concern the official functions of the councillors to whom it was addressed. Is that right?---Yes.

So, it couldn't be other than on the official website of the council because it related to what I might call official business or functions. Isn't that the proper construction?---Yes, I, I think just thinking about that, I mean, looking at that, I, I would have, in my mind, because it was different to what the recommendation was, I was probably more comfortable not having it on council email.

Ma'am, this is not intended to be any criticism of you at all.---I understand, ah hmm.

You having sort of got down, by 1 November, 2015, to yet another matter concerning the town centre plan, I'm putting in effect now, if you look at it objectively, there is no other option really available, was there at the time, because it did concern official functions, that it should be on the council website rather than it being, as it were, dealt with under cover of a private communication stream. Would you not agree?---Yes. But also a lot of work does go through private emails regardless. So I know, I understand what you're saying but it's not uncommon for - - -

But the difference here seems to be that this was not part of the common occurrences within council, that is to say, that this concerned matters that a member of parliament had been addressing with the Liberal councillors. ---Yes.

I'm putting that the only appropriate course would be for it to be dealt with above board, that is to say - - -?---Yes, I understand.

- - - on the council website, particularly because you seem to have had some concerns or reservations about what was going on.---Yes, yes.

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

MR RANKEN: Thank you, Commissioner. Now, could I then go to page 966? Can you see, this is effectively a chain of emails that includes part of the chain that I've just taken you to but not your final email in that chain?  
---Right.

Do you see that?---Yes.

10 And the final email in this chain is from Dr Ahmed to Ms McCaffrey and copied to yourself but also including Michael Megna. And in this email, Dr Ahmed has said, "Think it will have to be email. Just email through a motion, Helen. Thanks." So he seems to be suggesting to Helen McCaffrey that she email through whatever the other motion that she had in mind, correct?---Yeah, yeah.

Now, do you have any recollection as to whether or not such an email was forthcoming?---Look, no. I, with what, with a motion on it?

20 With a proposed motion.---No. I, I don't remember one. Doesn't, doesn't mean it doesn't exist but I don't remember one.

Is it possible that in fact what we saw at part B in the resolution that was passed, albeit over your opposition, that that reflected the words of a motion that Ms McCaffrey perhaps did circulate to you and your fellow Liberal councillors by email?---I mean, she could have, yeah.

30 Could we then go to page 969? This is another chain of emails but this time over the course of Monday evening. It starts on 1 November with your email at 6.00pm and then ends on Monday evening, 2 November.---Yes.

And do you see in your email the subject is, "Page 10 of report"?---Yes.

And you've sent it to each of Dr Ahmed, Michael Megna and an address which I would suggest to you is Ms McCaffrey's work email address.---Yes, yes.

40 And what you have done in that email is effectively extract one of the paragraphs from page 10 of the report that council staff had included in the papers for the 3 November, 2015 meeting. Correct?---Yes.

And in fact I took you to that very page a short while ago and directed your attention to, amongst other things, this paragraph. Correct?---Yes.

And what was the purpose of you extracting this paragraph in an email that you were circulating to your fellow Liberal councillors?---Just conscious of the fact that it wasn't, it wasn't, the amendments or changes to that area weren't supported, just conscious of that.

So this would suggest, though, would it not, that you had some understanding that whatever was being discussed or the problems perhaps that Ms McCaffrey's alternative or additional resolution sought to address was this very issue about the zoning of Waterview Street?---Yes, yeah.

And were you in this email indicating, effectively trying to reinforce to your fellow Liberal councillors that this is actually not supported by the council staff or the experts?---Yes.

10 And Ms McCaffrey's response to you was that, "We need to make it supported. I'll talk to you about when is the best time and number to ring you on." Do you see that?---Yes.

Now, did you in fact speak with Ms McCaffrey either after this email or around this time about this issue and in particular why it was that Ms McCaffrey had sought to say that, "We need to support this?"---I likely did speak to her but I couldn't honestly tell you the content of it. I, I, I suspect I would have just reiterated my position of where, how, you know, where's the public benefit, how, how can, how could it be supported, we can't find a way to support it.  
20

But did she ever, that is Ms McCaffrey, did she ever tell you why it was that she felt that the three of you needed to make it supported?---Not in so many words but I knew that - - -

In what words?---She didn't, no, she didn't.

Did she ever tell you that she was feeling some pressure to make it supported from someone or some source?---Yes, I believe she was under pressure, yes.  
30

And why do you believe she was under pressure?---Well, because she was in the same email trail as I was with the alternate wording and alternate recommendations, so she would have, she was clearly under the same pressure I was.

Did she, that is Ms McCaffrey, ever tell you about other communications she may have had with Mr Sidoti about this issue?---About this particular issue, I can't recall anything specific, no.  
40

Well, about the issue about the town centre study?---About, I thought we were referring to pressure?

Yes.---She didn't specifically say to me that she was under pressure about this.

So Ms McCaffrey never expressed to you that she was feeling that she was being pressured in any way by Mr Sidoti.---She did want to get John off her

back, I remember her saying that, so it would have, my assumption was, based on that, that she was feeling under pressure.

But as to the detail of what that pressure might have been - - -?---No, I don't know how that, I don't know how that was.

- - - she never, she never let you in on that.---No.

10 They were conclusions and assumptions that you made on the basis of the little that she did tell you about it.---What she did tell you and what I was experiencing as well, yes.

With the benefit of these emails and the resolutions I've been taking you to, are you able to recall any other communications you may have had with Mr Sidoti around the time of this decision by council?---I, I can't at the moment, no.

20 Now, and just to finish off with that email chain, you did I think make a reference to it that, we see that your response to Ms McCaffrey was, "We need to argue significant public benefit. What is the significant public benefit for any of it?"---Mmm. Mmm.

Do you see that?---Yes.

And when you were referring to, "What is the significant public benefit for any of it," are you referring to for any of the rezoning that was being proposed by Mr Sidoti?---Yes, yeah. Yes.

30 And is it fair to say that that was somewhat of a rhetorical question, in that from what you had read and what you had considered in the reports prepared by Studio GL and the council staff, that you could not see that there was any public benefit in what Mr Sidoti was seeking to achieve with the rezoning of that part of Waterview Street?---That's right. That's right.

Now then going back to the resolution of the council on 3 November, 2015, at page 992, and that voting split, having taken you through all of that history in the detail - - -?---Mmm. Yes.

40 - - - does that assist you now with the reason why you did not support the resolution before council?---Well, there was, I couldn't see any new merit, and I couldn't see any merit in this part B. So I couldn't, couldn't exclude part B from the motion, so it was either support it or, or, or not support it.

And that's the reason why you didn't support it.---That's right.

Thank you, Councillor, sorry, Ms Cestar.---Mmm.

Now following that resolution of course, there was a requirement because of part B that there be a separate report prepared to investigate the zoning of those three areas, correct?---Yes.

That necessarily would have required council to again engage independent experts.---Yes.

At some expense to the council, you would expect, correct?---Yes.

- 10 To be able to properly investigate the zoning and development controls for those sites.---Yes.

And that would no doubt have delayed also the progress of the proposed planning controls, correct?--- Yes.

- 20 Although, by reason of the rest of that resolution, which did pass, and perhaps if we could just go back to it briefly, page 990, insofar as part A was concerned, you can see that there were the changes, and then going over to the next page, at recommendation 4, that, “Subject to the above amendments, council approved the planning proposal for Five Dock Town Centre shown at attachment 3, to be made as a Local Environment Plan under section 59 of the Environmental Planning and Assessment Act 1979, and approve the DCP, and also approve of a Development Contributions Plan.” And if we go over to the next page, and “That there be authority for the general manager to make any minor changes to the planning proposal (not transcribable), and then that submitters be notified of council’s resolution.” So effectively, that was to push off that part of the plan towards finalisation, as it were.---Yes. Yes.

- 30 Whilst a separate process was being undertaken to look at these, the rezoning of those three areas of land.---Mmm. Yes.

And in due course, it was the case, was it not, that you recall, that Studio GL were again engaged by council to prepare a report concerning the investigation of those sites?---Yes.

And in addition there was also some feasibility analysis that was conducted by HillPDA Consulting. Do you remember HillPDA Consulting as being involved?---I remember the name, yeah.

- 40 They had done the original economic analysis, I think, that was part of and had led to the Urban Design Study being done in the first place.---Yeah.

But what they, HillPDA Consulting, were engaged to do was to look at the feasibility of development actually occurring in the additional sites that were being considered, correct?---Mmm, yep.



And firstly, so firstly there was a report that was prepared by Studio GL in about March of 2016, and then it was on the basis of that report that HillPDA prepared their feasibility analysis, which was concluded in about May of 2016. So we're now getting towards - - -?---Yes.

- - - we're in the 2016 time frame. And if I could just take you briefly to the Studio GL report. If we could go to - - -

10 THE COMMISSIONER: Just go back to the part B again, just before you do continue.

MR RANKEN: So that's at page 992.

20 THE COMMISSIONER: Yes, thank you. In terms of paragraph 8, which says that "A separate report to be prepared to investigate the zoning, heritage and development controls for," and then there's three properties set out there, including Second Avenue and Barnstaple, et cetera. When it came to a vote on that issue concerning, which involved part B, was there any information before council at that meeting which provided an explanation, perhaps a justification, for such an investigation? Do you recall there's any affirmative case advanced as to why this should be done or as proposed?---I, I, I couldn't remember, I, I'm, yeah.

30 No, no. Would there need to, in a situation like this, to have been some sort of case made out for a further investigation, for example, in relation to zoning concerning the first of those properties, that's the ones between Second Avenue and Barnstaple Road? Or can a motion like that get up just for the asking?---I've never put up a motion like that, so I can't, I can't, I don't know the process.

You've never seen a motion – sorry?---I can't talk to the process of how that occurred, yes.

No, okay.---So, I'm not sure who put the – it would have gone through the directors, I would have assumed, through the general manager's office at some point, but, or it could have been, there, there had been occasions where motions were added to the agenda at a meeting and typed up at the meeting. So it could, that could, that could have occurred then and there.

40 But the circumstances operating as at the date of this proposed resolution was that, at least in respect of property 8A, that's again the land between Second Avenue and Barnstaple on the western side (not transcribable) Waterview Street, that had already been investigated more than once by Studio GL and others that Counsel Assisting has just referred to you.---Yes.

Do you recall if there's any basis as to why there should be yet another investigation to justify the resolution in terms of 8A?---Well, potentially new considerations or new information that was presented at the time.

But you don't now - - -?---I can't, I - - -

You're not in a position to say whether any information was before council.  
---I, I can't remember.

No, all right.---Yeah.

Okay, thank you.

10

MR RANKEN: Well, just in respect of that part B, as we've already identified, prior to this particular meeting of council, there was no consideration of the areas identified by B and C at all. They'd never been a matter that had been the subject of submissions. Correct?---I, I really, I, I don't know if "never" is the right word. I don't know.

But having taken you through the chronology of it, they certainly weren't raised in response to the public exhibition of the planning proposals following the June 2015 meeting?---Based on what we've gone through, no.

20

And you saw that one of those areas was first put onto that one sheet, or that one-pager that Mr Sidoti had provided to you.---Yes.

And then we see in this resolution there was a third area that was placed on it as well. Did you not, given your knowledge of the history of this particular issue concerning zoning, was it not of concern to you, or did you consider that perhaps those other two areas had just been included to hide the fact that the real issue was trying to look at and reagitate the rezoning of the Waterview Street site?---I'd just be speculating, yeah.

30

You don't have a recollection as to ever having that inkling that this was all, they're just ruses and that the real issue is the Waterview Street site?---Not, not really. I, I understand why, why you're going there but I, I wouldn't have, no, I don't think that.

You don't think you had that view at the time?---No, no.

THE COMMISSIONER: You did say, in relation to the voting split, which you were one of the dissentients, you were asked as to the reason why you did not support the resolution, and you said something to the effect that you could not see any benefit in part B.---Mmm.

40

Were there any other reasons that were operating on you at that time related to what I might generally refer to as integrity issues that also troubled you at that time, as to whether you should or should not be party to supporting that, that resolution?---I, yeah, it's, I'm just trying to think back to that time. I think in my mind the part B wasn't, I didn't think it had any merit. That was, that was really my first thought around that. The fact that it was on a

council paper would give it some credibility, and it was supported. That, that it came through council, I don't know, I didn't, in my mind integrity wasn't the first thing that popped up, but I, I can understand why you'd think that.

Well, do you dismiss it as being an operative factor at the time?---No, I don't dismiss it.

All right. I see it's time. Is that convenient?

10

MR RANKEN: Yes, Commissioner. That's a convenient time.

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

### **SHORT ADJOURNMENT**

**[11.32am]**

20 THE COMMISSIONER: Yes.

MR RANKEN: Yes. Thank you, Commissioner. Now, Ms Cestar, I'm going to now move onto issues relating to the further report that was prepared by Studio GL in March of 2016 in response to part B of the resolution of the council on 3 November, 2015, as well as the feasibility analysis that was conducted by HillPDA Consulting in respect of that. Now, firstly, if we could just deal with the Studio GL report itself. If we go to page 1010, that's the cover page for the final report that was prepared for the proposed development controls and just going to page 1012, you can see that there are three sites, but in respect of one of the sites there are two options that were considered by Studio GL. Do you see that?---Oh right, yeah.

30

You can see that in the contents?---Yes.

And if we can just focus on – sorry. If we go to the next page, and the next page. This is on page 1014, this is the plan overview of the Five Dock Town Centre and you can see in either orange or red, depending on how one sees the colour, there is the outline of what was included in the original study area, correct?---Yes.

40

And then the additional sites are the shaded areas in blue and they're site A, site B and site C, and site B is the particular site of interest to this inquiry insofar as it is the western side of Waterview Street between Second Avenue and Barnstaple Road and that's the site that had the two options. ---Yes.

And then going to page 1021 you can see that this is where the report deals with site B, and you can see from the description of option 1, particularly in the second paragraph, it proposes to retain the heritage status of number 39 Waterview Street and protect its setting.---Yes, yes.

And then building heights and intensity are set so that development transitions to that one storey building are done in a sensitive manner. And then if we go to 1022, the next page, we can see that the proposed built form controls are set out there in a tabular format?---Yes.

10

And I just want to draw your attention in particular to the land-use zoning controls and do you see that it says that, “It is recommended that the zoning remain R3 medium-density”?---Yes.

And, “The B4 mixed-use is not recommended as it is not seen as desirable to increase commercial development away from Great North Road and the town centre core, or locate businesses along this section of Waterview Street.”---Yes.

20

So there’s a number of aspects to that but one of the key aspects is about, again, not developing properties too far away from the central core of the town centre?---Yes.

And then if we could then go to option 2, which is at 1027, we can see that in the second paragraph option 2 proposes the removal of the local heritage listing and that that would open up increased development potential on the block and enable the creation of a laneway to provide access to lots, particularly those addressing Great North Road.---Mmm.

30

Do you see that? And if we go to the development controls that were proposed in respect of that option, which is at page 1028, can you see that there’s the, again in a tabular format there are the various controls proposed, and as far as land use zoning is concerned, again it is recommended that the zoning, that current zoning remain as R3 medium-density and that the B4 mixed-use is not recommended for the very same reasons that we saw in respect of option 1.---Yes.

Correct?---Yes.

40

So even following a reconsideration of the zoning and planning controls in respect of site B, or the Waterview Street site that was undertaken following the resolution on 3 November, 2015, it still remained the view of the independent experts that it should not be changed to a B4 mixed-use, correct, and they’ve provided their reasons in what, do you agree, are rational reasons?---Yeah, seem rational, yeah.

And on the back of that report then there was also the HillPDA Consulting feasibility analysis of the additional sites, which was completed in May of

2016, and I'll take you to that which commences at page 1058. That's the first page, and this is expressed as the draft report that was prepared. If we go to the next page you can see the date of it is 11 May, 2016. And if we go to page 1071, again we see another map of the area identifying the three sites, and site B is the site that we are interested in for present purposes. But before I just take you to site B in the conclusion in respect of that site, each of the other sites ultimately do you recall were considered, it was considered that there should be no change to the zoning and there should be no changes to the development controls. Do you recall that?---Yes, yes, vaguely, but  
10 yes, I do. I don't think anything happened with those sites, yeah.

And following this report process ultimately when the matter was dealt with insofar as these additional sites were concerned, they effectively fell away.  
---Yes, looks that way, yeah, yeah.

And the only thing that remained really a matter of contention was this area between Barnstaple Road and Second Avenue on the western side of Waterview Street. So we'll just focus on that site for that reason.---Sure.

20 And if we could go then to – sorry, I apologise – so if we could go to page 1091. This was effectively the conclusion of the HillPDA feasibility study.  
---Mmm.

And you could see that the conclusion was that, “HillPDA have tested the three additional sites with a total of 11 development options. Of the total 11 options, our modelling revealed that site B1,” which is the option that retained the heritage listing, “was the only option to achieve a marginably feasible scheme at an FSR of 1.28:1, and the option demonstrated a project IRR,” that's return, “of 16.38 per cent per annum and development margin  
30 of 15.99 per cent per annum.”---Yep.

“The remaining 10 options were not feasible to redevelop at FSRs of 0.88:1 to 1.5:1. This means that the existing current as-is values are higher than the redevelopment values. Therefore an increase in the FSRs would be required to achieve a feasible scheme.” Do you see that?---Yes.

So effectively saying that, of the options, really remaining with the retention of the heritage listing was the most feasible economically as well, correct?  
---Yes.  
40

Now, those reports were then considered by council staff in advance of the meeting that was to take place on 2 August of 2016, and there was some developments or a development in particular between May 2016 and August 2016, in that Mayor Tsirekas resigned from the position as mayor sometime in June of 2016, does that accord with your recollection?---Yes, yes, that, that, that's about right, for the federal election, yes.

And as a result of Mayor Tsirekas resigning, Ms McCaffrey ultimately became the acting mayor and then the actual mayor.---Yes. Yes.

Do you have a recollection about how that came about?---Well, Helen was the deputy mayor – Angelo was mayor, Helen was deputy mayor, and then when Angelo resigned, Helen automatically kind of became the acting mayor, and then I think there was a, a vote to endorse her mayoralty as part of a meeting.

10 So one of the aspects of Mayor Tsirekas resigning was that the number of councillors on the City of Canada Bay Council was reduced from nine councillors to eight councillors, correct?---Yeah.

And four of those councillors were Liberal councillors.---Yes.

And the other councillors, there were three Labor and one Green councillor, is that correct?---Yes.

20 And that meant that in a possible election for mayor, it was likely that there would be a split four-four?---Yes, yeah.

That's on the assumption that the Green councillor, Councillor Tyrrell, voted in favour of a Labor person or even nominated herself.---Yes, yes. Yes, yep.

30 But there was some significance, was there not, in the fact of Ms McCaffrey having been the deputy mayor then being the acting mayor, in that she would be the presiding councillor at any meeting at which there was a vote by the councillors for the mayoral position, correct?---Yes. That's right.

And so in effect, did that mean that it was likely to be a done deal, insofar as Ms McCaffrey would have the casting vote as to who would be mayor? ---That's right.

Do you have a recollection that that's the way it played out, or was it the case that there was a recognition of the inevitable and so she was elected unopposed?---I can't remember what the numbers were. I, I would assume she was elected unopposed, but I honestly can't remember.

40 You can't remember it now, okay.---No.

In any event, following Ms McCaffrey's elevation to the position as the mayor sometime in June of 2016, the Liberals for the first time in some time held the balance of power, correct?---That's right, yes.

Provided that all councillors were in attendance at a meeting, and could vote on a particular issue, if there was some division between the views of the

councillors that was broadly along party political lines, it would likely be resolved by the casting vote of Ms McCaffrey.---Yes, yes. That's right.

And in the particular case of the Urban Design Study and associated planning proposals, each of Councillor Megna and Councillor Fasanella had declared their pecuniary interests, correct?---That's right.

10 And so they effectively, being one Labor and one Liberal – I have got that around the wrong way, one Liberal, one Labor – cancelled out that division?---That's right.

So, the same balance of power continued in relation to the particular issue of the Five Dock Town Centre and the associated planning proposals.---Yes.

Again, provided that on each occasion the matter was before the council, all of those eligible councillors who could vote were present, correct?---Yes.

20 Is it fair to say that then there was some importance, at least from that time on, on councillors being present and attending council meetings whenever this issue was raised?---Yes. There was some importance placed on that.

And was that something that was communicated to you personally?---Likely it was, I just can't remember how, in what format it was communicated.

30 Well, you say, "Likely it was," does that mean you have some recollection of the importance of councillors attending all meetings where this issue of the Urban Design Study and associated planning proposals were discussed and decided?---Yeah. I, I, I have in my memory that, you know, we, we do need, we did need to all be present at meetings to, to have, to drive an agenda, I guess, yeah.

But did somebody communicate that to you?---No. Oh look, I, I can't remember honestly, yeah.

Did you have any discussions with Mr Sidoti about the importance of attending meetings where this issue was being discussed?---No, I, I can't remember that I did.

40 And I'm talking particularly in this period following Ms McCaffrey becoming the mayor and the Liberals holding the balance of power effectively in the council?---I, I just can't remember, you know, receiving that message from, from John.

So, in advance of the meeting of the council on 2 August, 2016, council staff prepared a report on the outcome of the review that had been conducted by Studio GL and HillPDA. If we could go to page 1154. That's the first page of the report and do you see the author's initials are PLD? I want to suggest to you that that's Paul Dewar.---Right.

I think yesterday you told us that you didn't have a recollection as to who Paul Dewar was?---If he was sitting in the room, I wouldn't know who he is, yeah.

Yes. But you can see from the executive summary that it concerned the investigation and the zoning and development controls that applied to those three sites following the resolution of the council in November of 2015, and the recommendation, as expressed in the executive summary, is that it is  
10 recommended that council consider the outcome of the urban design and the feasibility reports and resolve how it wishes to proceed. Do you see that?  
---Yes.

Going to 1156, now here this is dealing with the particular area which we are interested in, the Waterview Street site, and it sets out firstly towards the bottom of that page, option 1, and then over page 2, option – sorry. Over to page 1157, we can see there's option 2 as well is set out there. Do you see that?---Yes.

20 Now, if we then go to page 1160. In terms of the assessment that was done, do you see that underneath the three dot points it says, "It is strongly recommended that controls should not be increased further than recommended by urban design advice in order to facilitate viable outcomes. This would create new impacts on surrounding properties and be contrary to the broad-ranging consultation undertaken and the principles of the Urban Design Study adopted by the council." Correct?---Yes.

And that was consistent with the substance of the advice that Studio GL had provided in respect of all of the options and coupled with the analysis that  
30 had been conducted by HillPDA. Correct?---Yes.

And if we go to 1163, it does say that, just immediately above the actual formal recommendation, that, "Should council resolve to proceed with the rezoning it should be on the understanding that extensive amalgamation and redevelopment is unlikely to occur in the short term."---Mmm.

But of course as far as rezoning was concerned, the recommendation from Studio GL was that there should be no rezoning.---That's right.

40 Correct?---Yes.

In this particular instance there was no specified resolution that was recommended in the report prepared for the council by council staff. Do you see that?---Yes.

And was that because there were options to be considered by the council, option 1 or option 2?---Mmm.



Is that right?---Yes, yeah, the two options there, yeah.

And the central difference between the two of them was really just the removal of the heritage item.---Yes.

The heritage listing of number 39 Waterview Street.---Yes.

10 But – sorry, I withdraw that. If we could then go to page – I want to take you to some messages. If we go to page 1786 in Exhibit 24. I want to draw your attention to the message that’s at the top of that page, which is message 8, it’s got a number, message 8. And these are iMessages that have been extracted from a mobile telephone.---Mmm.

And this message appears to have been sent or delivered about 12.59pm, just before 1.00pm, on 30 July, 2016. Correct? That would be three days prior to the meeting on 2 August, 2016. And it’s a message from yourself - - -?---Mmm.

20 - - - to Helen Mac. That his Helen McCaffrey, correct?---Yep, yes, yes.

And you said, “Hey there. Did you speak to John Sidoti re Five Dock?” Do you see that?---Yes.

Can we then go to the previous page, 1785, and if I could draw your attention to messages 2, 3, 4 and 5. Firstly 2, which was sent from Ms McCaffrey to you at about 1.00pm, although it says it was delivered at 1.07pm, on that same day, 30 July.---Yes.

30 And her response seems to be, “Only that I managed to get it on the papers. Has he spoken to you?”---Mmm.

So that suggests that Ms McCaffrey had had some communication with Mr Sidoti to inform him that the Five Dock issue was on the council papers for 2 August, 2016. And then your response at 1.07 but delivered at 1.08 on that same day is, “Just called me but, called me but I can’t pick up, pick as am at hairdresser. Will call him later.” So was this the situation, you happened to be at the hairdresser and you received a call from Mr Sidoti? ---Mmm.

40 Given you were aware that on 2 August, 2016 there would be consideration at the council meeting of the Five Dock issue - - -?---Yes.

- - - do I take it it wasn’t a great surprise for you to be receiving a call from Mr Sidoti?---No surprise whatsoever.

And so it would seem to be that the sequence was that you’d received a call but you weren’t able to answer it and then you sent a text message to Ms

McCaffrey just to see whether or not she had some communication with Mr Sidoti. Correct?---Yes.

Now, why did you engage in that communication?---Why?

Ah hmm.---Well, I, I would assume because I had had contact, well, that she would have had, had contact as well.

10 So did you want to find out what the state of play was far as any contact Ms McCaffrey might have had with Mr Sidoti prior to you actually speaking with him?---Yes, yeah.

Was that to ready yourself or prepare yourself for what interaction you might have with him?---Well, yeah, just to, yeah, just – yeah. Just to get a lay of the land, yeah. Yep.

But specifically in relation to Five Dock?---Yes, yes. It was coming up on the papers, so yes.

20 Because even though you had the missed call, you assumed it was in relation to Five Dock?---Yes.

And then if we go to the next message, which is message number 4, Ms McCaffrey has said, “If you have the papers, have a look at option B. He has just called me.” So evidently, having tried to reach you and not reaching you he has called Ms McCaffrey?---That’s right.

It would appear on the face of these messages?---Yes, yes.

30 And your response at message number 5, “Okay. Will check it tonight.” Do you see that?---Ah hmm, yes.

And that’s on 30 July of 2016. Do you, you may not have an independent recollection of engaging in that message exchange with Ms McCaffrey - - - ?---Yeah, I don’t

- - - but is it likely then though that that night, that is the night of 30 July of 2016, you would have gone and taken the time to go and look at option B as it was at least in the report that was prepared by council staff?---It seems  
40 that that was a Saturday night, so it was unlikely that I would have been doing council work on a Saturday night.

But sometime between 30 July and 2 August you would have looked at it, is that right?---Yes, yes.

Can I now take you to – well, perhaps before I go to that. Did you have some communication with Mr Sidoti over the telephone after this exchange?

Do you recall any telephone conversation with him?---Look, I don't. I'm sorry, I don't.

And just trying to turn your mind back to the time period itself, this was effectively within a month of Ms McCaffrey taking up the position as the mayor, correct?---Ah hmm.

10 And you told us yesterday that your recollection was that the kind of pressure increased again, or the issue rose its head again after Ms McCaffrey had become mayor, correct?---Yes.

So, with that in mind, if you could search your recollection, did you have any communications prior to this first meeting of the council at which the Five Dock Study was studied after Helen McCaffrey had become mayor? ---I, I cannot remember a particular conversation or communication with John before that meeting, although it seems that there was some but I just can't remember what it was.

20 So the nature of any such communication you wouldn't know the substance of what actually transpired in any communication?---I, I just don't have anything in my memory about that, about that, I'm sorry.

I took you to the one-pager that Mr Sidoti had provided to you and the other councillors just prior to the October meeting, which essentially, you accepted, appeared to be a direction to propose a recommendation for the rezoning for those two areas of land, correct?---Yes, yes.

30 And leaving aside that occasion, was there any other occasion on which Mr Sidoti may have issued or communicated some direction to you or your other councillors, to your knowledge, as to any particular resolution that should be passed or the form of any resolution?---In terms of option 1 or option 2?

Well, in terms of any resolution in relation to the Five Dock study and associated planning proposals.---This particular meeting, you're talking about?

40 Yes. Was there - - -?---I, I, I can't, I'm sorry, I just can't remember that there was anything.

That's okay. Perhaps if we could then go to page 1138. Can you see this is an email chain, "Fwd: Five Dock Town Centre Additional Sites", and it's actually, what we see here is an email where Mr Sidoti has forwarded to Dr Ahmed on 2 August, that is, the afternoon of the actual meeting.---Yes.

And what he has forwarded is an email that had been sent to him by a Mr James Matthews of a Pacific Planning, which you can see from the email address. Do you see that?---Yes.

And that email was copied to Mr Sidoti, was sent to Mr Sidoti and also a Matthew Daniel from Pacific Planning. Do you see that?---Yes, I do.

Do you know James Matthews and Matthew Daniel?---I know James Matthews. I don't know Matthew Daniel.

10 And how do you know James Matthews?---He, he was a member of the Drummoyne branch, and also through the planning process through council.

Did he from time to time represent interested parties in relation to planning matters?---No, the first time - - -

Or just in relation to this?---Just in relation to this, that was the first time that, yeah, spoken to James, yeah.

20 So your first interactions with Mr Matthews or knowledge of Mr Matthews outside of the party, the Drummoyne branch, was in relation to this matter? ---Yes. That's right.

And in terms of your understanding as to his role in this matter, did you understand him to be representing the interests of Mr Sidoti or someone else?---Yes, I did. Yes.

Now, appreciating that this particular chain is not an email to which you're a party to, but do you see that what is being forwarded on is effectively the wording of a proposed recommendation for some resolution?---Mmm.

30 Do you see that?---Yes.

With the three dot points?---Yes.

That number 39 Waterview Street, Five Dock be removed as an item of heritage significance from council's heritage schedule. Do you see that? ---Yes.

Now, that would be consistent with an adoption of option 2?---Yes.

40 And then that site B, being the land between Second Avenue and Barnstaple Road on the western side of Waterview Street, be rezoned to B4 mixed-use with a maximum building height of 17 metres and a maximum FSR of 2.5:1, consistent with the controls adopted but not yet gazetted for the land immediately to the south. Correct?---Yes.

And that was not something that was supported by any of the independent experts or the council staff, correct?---No, that's right.

And so that was not consistent with any of the options that were really being presented before council, correct?---Yes.

And then, that council prepare a planning proposal to implement the proposed changes to the council, the Canada Bay LEP 2013, and that the planning proposal be forwarded to the Department of Planning and Environment seeking a Gateway Determination and further community consultation.---Mmm, mmm.

10 Now that you've seen that recommend, or that drafted resolution that's being forwarded onto Mr, sorry, Dr Ahmed, does it assist you in recalling whether or not you might have seen this before the 2 August, 2016 meeting?---I do recall some wording being sent to me on the night of a meeting, and I don't know whether it was 2 August or later on in 2017. And the wording is very similar to what is, what is here, so it could have been, it could have been this wording.

So perhaps if we could then go to page 1147, do you see that's an email from Mr Sidoti to you.---Yeah. Okay.

20

Do you see that?---Yes.

And do you see that he's forwarded this to you and there is some text above the three points.---Mmm. Yes.

"Tanveer is moving. Hoping Mirjana you can second. Hope this helps."  
---Yeah.

And it actually says, "I move that." Do you see that?---Yeah.

30

So - - -?---Spoon-feeding, I get it, yeah.

Is that how you perceive this to be?---Yes.

Spoon-feeding.---Spoon-feeding, yeah.

And spoon-feeding who in particular?---Well, me and Tanveer.

40 And then that, that was, sorry, that email, you said your recollection was, it was on the evening, perhaps the evening of the meeting.---Ah hmm.

This appears to have been sent to you at 7 minutes past 4.00pm. So less than two hours prior, just less than two hours prior to the start of the meeting. Correct?---Okay, yeah, yeah.

So does that - - -?---That make, yeah, yeah.

- - - accord with your recollection?---That's right, yeah.

And would you agree that what effectively was happening here is that Mr Sidoti was telling you and your fellow councillors, this is the resolution that you should pass.---Yes.

Correct?---Yes.

And did you consider that there was an expectation that you and your fellow councillors would endorse and in fact move and pass that resolution?---Yes.  
10 That was, I believe that was the expectation, yes.

And given what you know about the consideration that had already been done up to that point about the rezoning of that part of Waterview Street between Second Avenue and Barnstaple Road, did you have a view about the appropriateness of seconding and passing this resolution?---Mmm, yeah, it made me very uncomfortable. It's not what was recommended on the paper so, yeah. I wasn't, I, my memory is I didn't pass any of this, I don't think it did go through.

20 We'll come to that resolution in a moment.---Okay, yeah.

But I'm more interested in what you felt was the expectation on you.  
---Definitely the expectation was to, word-for-word, put this up for council.

Do we take it that you didn't communicate your concerns back to Mr Sidoti about the appropriateness of him forwarding a proposed wording of a resolution to you and your other councillors?---There would be no point, there would be no point.

30 Why do you say there would be no point?---Because I think it seemed to me that it was just for, for John, that was what he wanted and there was no point in starting an argument about it at this late stage, accept that that's come through, that's all fine, doesn't, doesn't mean, you know, by interacting or responding to that it just would have created bad blood and an argument so there was no point. I think it's better to accept it and then just do, use my own judgement regardless.

THE COMMISSIONER: Can you say over this period of time whether your relationship with Mr Sidoti remained as it were on the same level in  
40 terms of interactions, cooperation, or whether it, whether it changed at some point and - - -?---Yeah, the relationship did change. It became a little bit, I felt that it was more master/servant type of relationship, that there was an expectation that well, you know, you're, you're councillors and I'm – it was kind of – there was a change in the whole dynamic. At one point, and I can't pinpoint it, it went from being, you know, we were all working together, to you're just the councillors and you, you basically have got to run things the way I want to run things. It kind of changed along the way

somewhere and I don't know why or how, but all of a sudden there was a direction as to how things were going to be.

And did that influence change your behaviour towards him?---Yes, it made me quite defensive I think and, and just evasive.

MR RANKEN: Thank you, Commissioner. Now, council meetings start at 6.00pm when they're held. Is that correct?---Yes.

10 I want to take you to an exchange of messages, but before I do so, perhaps if we could go to the minutes of the council meeting on 2 August, 2016. And to that end, if we could go to page 1169. Perhaps if we could go just back one page to 1168 so that we can see that item 3, at the bottom of the page, is the Five Dock Town Centre additional sites. And do you see that it's at 6.54pm, Councillors Fasanella and Megna declared a pecuniary interest in this matter and left the meeting. Do you see that?---Yes.

20 So consideration of the issue of the Town Centre Study and additional sites started around about five minutes before 7.00pm at this council meeting.  
---Yes.

That's what we could infer from that, would you agree?---Yes. Yes.

If we go to the next page, you can see that before there was any actual resolution that was moved or passed, there were a number of persons who addressed the council.---Yes.

30 And one of those persons was Mr Matthews, from Pacific Planning, do you see that?---Yes.

And there he is described as representing various landholders, although those landholders are not actually identified, correct?---Mmm.

But as I understand your evidence, you were aware, at least at the time of this meeting, the interests on whose behalf he spoke included those of the Sidoti family?---Yes.

Or Mr Sidoti at least.---Yes, I did, yeah.

40 So is it likely, then, that what Mr Matthews spoke to was the possibility of the rezoning of the Waterview Street site.---Yes, it's likely, yeah.

With that timing, so if we could go to the next page, and I'm not sure if we can go to the next page. Do you see that item 4, which is the next item on, that was discussed at the agenda, which was the traffic committee, that that seemed to have commenced at about 7.50pm?---Yep.

So we see that Councillors Fasanella and Megna had returned to the meeting at that time.---Yep.

So I just want you to bear that in mind. And we could, if we could now then go to pages, page 1828. This is a series of texts or iMessages from mobile phones.---Ah hmm.

And I want to just draw your attention to messages starting at 111, which is the message about a third of the way down the page.---Yep.

10

And that's a message, I think, it's from Ms McCaffrey and it appeared that it actually attached an image.---Yes.

But the image doesn't appear to have been recovered.---Ah hmm.

There's a response from Dr Ahmed, which is at number, message number 112.---Right, yes.

And do you see he says, "WTF"?---Yep.

20

I think we all know what that's an acronym for. "Is this different? I think we just support option 2. Option 2 being the removal of the heritage listing on 39 Waterview Street."---Yes. Yes.

And then your response is "Last ask to defer to examine FSR on basis that it is not consistent with existing recommendation to the south???"---Mmm.

Do you recall what it was that led you to send that message?---No.

30

See, these are a series of messages, aren't they, that are being sent between yourself and Dr Ahmed and Councillor McCaffrey as this item was being actually discussed in council.---Yes.

Was that something that would occur from time to time?---Yeah, regularly.

That there would be messages passing between you - - -?---Yes.

- - - rather than actually being expressed in the open forum of the council meeting?---Well, that's right. Sitting in a meeting like this, rather than passing a note, you'll just send a text message to someone, yeah.

40

So necessarily these aren't things that would turn up in any minutes of any meetings.---I wouldn't have thought, no. These are messages between us, yeah.

And Ms McCaffrey, if we could then go to the next message, it's down the bottom, the details go over the next page. She has responded, "May be deferred as residents didn't get notification."---Ah.



And then your response is, "Yes and examine FSR." And then you've got another response immediately below that, "He can eff off," and then numerous exclamation marks. To what was that referring to? I mean, we all know what "eff off" refers to, but who is the he you were referring to in that message?---Oh, it would have been John, yeah.

10 And why would you be suggesting that?---Because, probably something that, I mean, didn't suit obviously what was, was proposed to us or put to us by John. So there would have been a response to that. So, you know, waiting for the blowback for not, not doing what was expected.

And then Ms McCaffrey has responded to say, "Foreshadow a motion if it is defeated." And your response to Ms McCaffrey was, "Then what?" So, is this the situation, that there was some resolution that Mr Sidoti was trying to have the three of you pass at this meeting that was inconsistent with that which had been recommended by the council, correct?---Yes.

20 You were not prepared to endorse or follow the resolution that Mr Sidoti was presenting?---That's right.

But there seemed to be a suggestion from Ms McCaffrey that it could be deferred, correct?---Ah hmm. And maybe examined. Yes.

And for some further examination to occur?---Yeah, potentially. That's what it looks like, yeah.

30 Even though, up to this point, this issue about rezoning had been considered on numerous occasions by both the council staff and the independent experts, correct?---Ah hmm, yes.

And is it fair to say that, when Ms McCaffrey then expressed the view that a motion could be foreshadowed if it was defeated, that you were questioning, "Well, what would be the purpose of that"?---Yes. What would be the purpose of that, yeah.

40 And then Ms McCaffrey has indicated, "To move the motion I sent through on the photo." So given that reference to a, "Motion I sent through on the photo," is it likely that that's the image that was sent by Ms McCaffrey at the outset of these messages when I was taking you to them?---That's a fair conclusion.

But as to whether or not that motion reflected what was in the email that had been forwarded, well to yourself at least, and Dr Ahmed, are you able to say that it was the same motion?---Potentially, yeah.

And then Ms McCaffrey, if you go over to the next page to 1830, we can see Ms McCaffrey has said, "Option 2." That's a reference to the second

option that was being proposed in the options that had been considered by Studio GL?---Yes.

That is the removal of the listing for 39 Waterview Street?---Yes.

And then you've responded to say, "Yes," and then you've also said, "Tanveer, will you?" And then you've got, "Me?" That a reference to?  
---Potentially move the motion. I'm not sure. I'm not sure.

10 And then we see at the bottom of that page, and perhaps if we go over to the next page, your final response is, "They don't like losing, do they?" To what was that a reference?---I can only, just based on the context of it, I would say it's just, you know, the Sidoti family, I would think.

That's the obvious inference from that, isn't it?---That's, yeah, that's all, that's the only conclusion I can draw.

Now, perhaps if we can go then to the minutes of the meeting that I took you to a moment ago. Back at 1169 where we had, there were some persons  
20 who addressed the council, and you see there was a motion that was moved by Councillors Kenzler and Tyrrell that the outcome of the Urban Design Study and feasibility reports are noted, and especially the following, and there are references to site A option 1 and site A eastern edge option 2. That seems to be – and sorry, if we could then go over to the next page – the conclusion of the HillPDA Consulting. Do you see that?---Yes.

And that particularly at paragraph 2, that, "After careful consideration the existing zoning and controls applicable to the three sites identified in the report, being the western edge, eastern edge and southern edge, remain  
30 unchanged for the following reasons." And then there are the three reasons that, sorry, four reasons that are set out there. Do you see that?---Yes.

And they reflect some of the reasons of Studio GL and council staff. Would you agree?---Yes.

Now, ultimately when you go down to the bottom of that page, you can see that the motion was put and it was lost on the casting vote of the deputy mayor.---I see that.

40 Is that correct?---Yeah.

And are you able to account for the reason why you've voted against that resolution?---No, I just can't think at the moment. I probably didn't see the merit in it.

Now, effectively that resolution was one which would have endorsed option 1 as far as the Waterview Street site is concerned.---Yeah.

Would you agree?---Yes.

Because there would be no removal of the heritage listing of 39 Waterview Street. Correct?---Yes.

10 If we then go to the next page, 1171, there was a further resolution that was moved by yourself and supported by Dr Ahmed, which was that option 2 in the additional sites report for that land between Second Avenue and Barnstaple Road be endorsed and that there be no change in relation to the other two areas that were the subject of the report of Studio GL. Correct? ---Yes.

And then the remaining aspects to the resolution were about making the necessary changes to the LEP to give effect to that and having it publicly exhibited. Correct?---Yes.

20 So it would appear that contrary to the email that was sent to you and your fellow councillors by Mr Sidoti with the suggested wording to include, which involved including the Waterview Street site for rezoning, you did not actually ultimately move or pass that resolution.---No.

And that resolution was ultimately passed on the casting vote of the deputy mayor. So at this point there was effectively a split between the council broadly along party lines, and what it turned on was the view about the heritage listing of number 39 Waterview Street.---Yeah.

Correct?---Yes.

30 But where there was agreement though was that there ought to be no rezoning of that area of Waterview Street between Second Avenue and Barnstaple Road.---Mmm.

Now, would you accept from me that following the meeting in August 2016 that the draft planning controls for that land on Waterview Street were publicly exhibited throughout August and September of 2016?---Yes.

That would accord with your basic recollection?---Yeah.

40 And that in advance of the next meeting at which the matter was to be considered, there was a report that was prepared by council staff considering the submissions that had been received. Now, the matter was to next come before the council on 6 December, 2016.---Yeah.

So we're now right towards the end of 2016. And insofar as the report that was prepared by the council staff is concerned, if we could bring up page 1327, can you see that this is – Mr Dewar, the initials are PLD, this is Mr Dewar's report to council for the agenda on 6 December of 2016.---Yes.

And it refers to the fact that the draft planning controls for the land on Waterview Street in the Five Dock Town Centre are being exhibited in August and September 2016, and that there were 18 submissions that were received. The primary issues raised in the submissions related to the height facilitated by the proposed building controls, and the impact of the additional development on the established community.---Mmm.

10 And the exhibition outcomes report has been prepared and recommends that the planning proposal should proceed subject to the maximum height development on Waterview Street being limited to three to four storeys, and the building height for land with a frontage to Great North Road remaining five storeys.---Yep.

Now, this recommendation seeks to strike an appropriate balance between facilitating development, whilst reducing impacts on the amenity of existing and future residents. Now, when you read that, did that seem to be a reasonable view that was being expressed by council?---Yes. Yes.

20 Is it likely that you read at least the executive summary of this report?  
---Yes.

30 And if we could then go to the recommendations that are at I think 1335, the recommendation is “That a planning proposal and associated Development Control Plan be prepared to implement the recommendations of the exhibition outcomes report prepared by Studio GL on 26 November, 2016.” So there had been a further report prepared by Studio GL following the public exhibition. “And that the planning proposal be submitted to the Department of Planning and Environment for a Gateway Determination.”  
---Mmm.

So they’re the two key recommendations. And that would then see, effectively, the removal of the heritage listing for number 39 Waterview Street and appropriate planning controls around that, correct?---The removal from here?

Yes, because this was option 2. It was the - - -?---Oh, right.

- - - the option that had been passed on 2 August, correct?---Yes. Yes. Yes.

40 And then there was some consideration about planning controls in terms of the heights, correct?---Yes.

And that’s what was discussed here.---Yes.

So yesterday in your evidence you told us about remembering a particular interaction that you had with Mr Sidoti. And I think you told us that it was towards the end of the process.---Yes.

And it was shortly prior to a meeting at which the Five Dock Study, Town Centre Study issue was being discussed, and it involved you bumping into him on the Bay Run.---Yes.

Now, I want to take you to – sorry, I withdraw that. I think you told us also that you reported the interaction to Mr Megna.---Yes.

And now can I take you to some messages at page 1846. Now, if you read those messages to yourself.---Yes.

10

Are these the messages between yourself and Mr Megna following?---Yes.

And the message that you sent to Mr Megna was sent at 7.25 in the morning on 3 December, 2016.---Yes.

Now, given that the meeting took place – that is, the council meeting – was to take place on 6 December of 2016 - - -?---Mmm.

20 - - - that would make it the Saturday before, would it?---Yes. Saturday or Sunday morning, it would have been.

Saturday or Sunday morning. And what you've said is that you "Bumped into John Sidoti on the Bay Run just now. He is exploding, making threats, et cetera."---Mmm.

And when you said he was exploding, what were you referring to?---He came across as frustrated and emotional about the issue coming up to council, and that getting that property amended to the way he, he wanted it.

30 And as far as the threats were concerned, you told us yesterday that he threats we something along the lines of, "If you're not going to do it, I'll need to get someone who will do it." Is that the effect of what was said to you?---Yes. It was, it was – the context of it was that I felt that my position on council was being used as leverage to get an outcome for, for that property or for him or the family interest.

But do you recall whether in that interaction with Mr Sidoti he specified what the particular outcome was that he wanted?---No. He didn't go into that detail.

40

But were you under no misapprehension that what he was referring to when he was speaking to you was the Five Dock Town Centre and in particular that block of Waterview Street?---Yes. That's right. There was, the, the zoning and just that whole parcel.

And Mr Megna's response to you was to suggest that you could call him after 9.30 but he then said, "I had two calls from him last night."---Yes.

And you then said, "Okay." Now, do you remember whether or not you actually did speak with Mr Megna after this incident?---Yeah, I do. I did actually talk to him and we spoke – I'm just trying to think how, how the conversation went. I think Michael, Michael, my memory of it is that Michael was just like, "Oh, you know John, he gets carried away and, you know, that's just how he is." But I, I don't think, I can't remember him telling me what John said to him.

10 But your recollection is that one of the things that he said to you was essentially a way to reassure you and to try to placate you in terms - - -?  
---Yes. It was just like, you know, just, that's, that's who John is and he gets excited and, you know, he, he goes off on a tangent. So, it was kind of like playing it down, yeah.

20 But the concern that you've expressed to this Commission though is that your position as a councillor, both in terms of your actual being able to hold the position in the future, but also your particular role was being compromised by the threats that Mr Sidoti was making to you.---Yes, that's right. I felt that, yes.

So notwithstanding what Mr Megna had to say about whether or not it was just John and that's how he is, did you still have concerns about the appropriateness of what Mr Sidoti had suggested to you?---Yes, I did and I, I contemplated reporting it to, to this Commission and I, I decided in the end that I wouldn't, I would try and hold my own, that I wouldn't report it but also philosophically I thought that the type of behaviour that John was exhibiting would ultimately be his own downfall, that he had enough rope to hang himself anyway, so I didn't really need to contribute to it.

30 And is that a position that you came to after you had your conversation with Mr Megna following the incident?---I probably would have come to that conclusion anyway, but if you're asking did Michael encourage me to report it or anything, no, he didn't.

Did you indicate to Mr Megna that you were considering reporting it to this Commission?---No, I didn't.

40 That was something that you kept to yourself but was something that you were considering, is that right?---Yes, yep.

THE COMMISSIONER: But from what you've said about Mr Sidoti and in particular to the Bay Run incident, on your account he was behaving in a way which amounted to coercion of you as a councillor in relation to the subject matter concerning the town planning, Five Dock Town Plan and the Sidoti interests?---Yes.

So, what your evidence goes to is, in effect, that he was coercing you in relation to that matter?---I felt that I was being compromised.

All right, well, if you don't embrace the word "coercion", what you're saying is that his behaviour was applying pressure.---Yes.

And the result of that was, in effect, compromising your position as an independent councillor.---Yes. Yes.

10 That's fairly serious, if it be such. And why would you not then report such a serious matter to someone other than Mr Megna?---Mmm, well, I, I did - -  
-

I mean – sorry, you go ahead.---I was going to say, I, I, I did ask myself that question a number of times over the following days.

Well, there must have been something operating which led to you not reporting it. Can you identify what that something was?---In my mind I thought, well, this will pass. I'll do what is right, regardless. This will pass and it will all blow over. That, that was the approach I took, yeah.

20 MR RANKEN: But given the nature of the threats that you say that Mr Sidoti was making, particularly in respect of your position as a Liberal councillor on the City of Canada Bay Council, how was it that you could be satisfied in your own mind that this would all blow over? Because as I understand your evidence concerning the nature of the threats, it was that you might lose endorsement for preselection to be a councillor at the next elections.---Yes. I understand that. I mean, I, I, I just didn't, how can I – the thinking at the time, my thinking at the time was that was it worth going through all this. And with respect to this Commission, this is quite taxing. I, I, I just didn't want to put myself through it and really didn't want to  
30 initiate any, any additional bad blood, I think, through, through the, through the Liberal Party in the area.

Now, this is obviously a particular interaction that you had with Mr Sidoti. Had you ever had any previous experience, or experience following this, in which Mr Sidoti had acted in the particular way, this particular way in terms of being explosive and making threats in that way?---I found John's behaviour to, I mean, commonly to behave like that, like very big statements without, you know, considerations to who's listening and what's being said. I, I, I found that quite, quite often, without much regard as to the impact of,  
40 of those statements.

Statements such as referring to the very misleading statements being made by council staff, for example?---Exactly. Things like that. Like, you know, these bold statements that really I think most rational people would look at it and go there's, there's no basis for this. And, and I think, yes, so, I mean, my, my sense is that most people would listen to this and just go, oh, well, it's John going off again. You know, I, I don't know that anybody really took those bold statements seriously. It's kind of, in my mind it's like the

boy that cries wolf. It's, it's a constant theme and it, it, and so you just think, oh, well, that's just John, that's, that's his behaviour.

And would you agree, though, that that would assume that anybody who was subjected to that kind of behaviour had the kind of fortitude and resolution within themselves to not be, not succumb to it and to nevertheless act in accordance with their oath of office and the like?---Sorry, I'm, I'm not sure what you're getting at.

10 Well, you were concerned about the position that you found yourself in, correct?---Mmm, yes.

But you ultimately determined not to do anything about it, correct?---Mmm.

You need to answer yes.---Yes. Yes.

20 And one of the reasons you've told us that you did so was because you knew that within yourself, notwithstanding whatever he said, you were going to still do what you believed to be the right thing to do as far as the decisions that you needed to make in council, correct?---That's right.

Now, that depended – so your assumption that other persons would do the same depends on them also having the similar fortitude - - -?---Understand.

- - - that you saw within yourself, correct?---Yes, I understand.

To be able to withstand that kind of behaviour, correct?---Yes.

30 And would you agree, though, that not all persons may have such fortitude? ---It seems that way, yes.

And that they might be vulnerable to such behaviour.---Yes.

Commissioner, I note the time. Might that be a convenient point?

THE COMMISSIONER: Yes, very well. We'll take the luncheon adjournment. We'll adjourn and resume at 2 o'clock.

40 **LUNCHEON ADJOURNMENT**

**[1.00pm]**