

WITNEYPUB00553
08/04/2021

WITNEY
pp 00553-00591

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION WITNEY

Reference: Operation E19/1452

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 8 APRIL, 2021

AT 2.00PM

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

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

Sensitive: Legal

THE COMMISSIONER: Yes, Mr Ranken.

MR RANKEN: Yes. Thank you, Commissioner. Now, Ms Cestar, we dealt with the Bay Run incident just prior to the luncheon adjournment and that was on 3 December, 2016, and then that was a few days prior to the meeting of the council on 6 December, 2016. Before we actually come to that meeting, can I just take you to an email chain commencing at 1313. Now, can you see that this is an email, firstly, from James Matthews of Pacific Planning to Mr Dewar that was also sent to a Yolanna Boyle and copied to Helen McCaffrey as well as Councillor Megna and Mr Daniel? ---Yes.

Now, Helen McCaffrey at that stage, of course, was the Mayor of the City of Canada Bay.---Yes.

And this email was sent on 5 December, 2016, so the day prior to the meeting that was to take place. And can you see that in that email, in the first of the emails, Mr Matthews indicates that he is representing the views of 2 Second Avenue and 37, 39, 41 and 43 Waterview Street? Can you see that?---Yes.

Now, at that stage, 2 Second Avenue was owned by Anderlis Pty Ltd, correct?---I didn't know that at, yeah, I, I didn't know that until you just told me, I'm sorry. Yeah.

But we've seen when MG Planning were involved that they acted on behalf of Deveme Pty Ltd and Anderlis Pty Ltd?---Yes, yes.

And in their submissions they referred to the fact that they were the owners of 120 Great North Road in the case of Deveme and 2 Second Avenue in the case of Anderlis Pty Ltd.---Yes, okay.

But that's something that you weren't – even if you were aware of it, you weren't particularly cognisant of it, is that correct?---No, that's right.

And the email goes on to say that, “These lots form more than half of the block the subject of the planning proposal,” that is the planning proposal obviously that's to come before council on 6 December. “And I therefore respectfully request the matter be deferred due to a number of concerns with the content and level of analysis of the recommended controls, particularly with regard to feasibility and lot amalgamation.” Do you see that?---Yes.

Now, are you aware as to whether or not there had been any report or submission provided to that point by Pacific Planning to the council that

Sensitive: Legal

might have its own analysis as to feasibility of development?---I honestly can't remember. I don't know. I don't think I've seen one.

But certainly as far as this issue is concerned, by this stage, this is late 2016, the original Urban Design Study report came out in October of 2013, so we're at least three years down the track, and this particular issue concerning zoning has still not been resolved. Correct?---Mmm, looks that way, yeah, yeah.

10 And it goes on to request that it be deferred, "To allow Pacific Planning to meet with Studio GL to understand the level of analysis undertaken to inform recommendations that will have a significant impact on the type and level of development that may occur across the block in the future." Do you see that?---Yes.

And then it further states that, it states a little bit further down the page, this is at the bottom of that page, "The designated development controls to this part of the town centre are inequitable in comparison to other very similar sites and the rationale and justification is in many ways flawed." Do you see that? That's right at the bottom of the page.---(No Audible Reply)

20

Starting about three lines from the bottom of 1313.---Yes, okay, yeah.

Now, if we go to 1315, this is an email from Mr Dewar to Mr McNamara attaching a memo in both Word and PDF format. Can we then go to the next page, and do you see this is a memo that apparently Mr Dewar or Mr McNamara or the two of them had been working on in respect of the exhibition outcomes to be provided to the councillors and executive team. Do you see that?---Yes.

30 Do you recall receiving an interoffice memo of this kind?---Yes, I, they were common. I can't remember the detail of this one, but yes, yeah.

Can we then go to 1320. So this is another chain of emails, and again you can see at the bottom of that page that we see what is effectively the email that Mr Matthews had sent Mr Dewar that I referred you to a short while ago.---Yes.

40 And there is an email at the top from Mr McNamara, who you knew to be the Executive of the Environment and Planning Department. Correct?---Yes, yes.

And it's addressed to all councillors, so that would have included yourself. Correct?---Yes, yes.

And it's also addressed or copied to a number of other persons who do you recognise their names as being members of the executive team at council?---Yes, I do.

Sensitive: Legal

So in that email do you see that Mr McNamara has expressed a view about the request for a deferral of the consideration of the planning proposal?

---Yes.

And do you see that he says, the basis for the request, about halfway through the paragraph, "The basis for the request appears to be what James considers flawed and inequitable planning outcomes?"---Yes.

10 "May I respectfully suggest that the basis for all recommendations has been well and truly canvassed in the various reports, despite not suiting all landowners." Just pausing there, would you agree that that was a fairly accurate statement about the matter up to that point?---Yeah, largely. We had seen this a fair bit, yes, yeah.

But particularly in relation to this block?---Yes, that's fair.

20 And then it goes on to say, "Rather than deferring this item, may I suggest the item be adopted as per the recommendation and Mr Matthews be advised to submit a planning proposal, setting out his client's preferred position for future development with appropriate planning justification."
---Yes.

Reading that email now, do you recall receiving it?---Yes.

Do you recall reading it?---Yes.

30 And did you agree with the content of it and the sentiment that it was conveying?---I had a lot of respect for Tony McNamara, yes.

But that's one thing, but as far as the content of this particular email - - -?
---Yes.

- - - are you saying that you agreed with what he was suggesting as far as an appropriate course?---Yes, on the face of it, I had no reason to disagree with him, that's right.

40 And because one of the aspects of it was, in particular, in terms of the final sentence that I've just drawn your attention to, is that finally determining the matter at the meeting on 6 December, 2016 would not preclude Mr Matthews' client, who you understood to be Mr Sidoti, at least one of his clients - - -?---Yes.

- - - from submitting their own separate development application, correct, for the land?---Yes. Yes. Yes.

Sensitive: Legal

In order to do so, though, you would expect that they would need to submit a lot of formal reports and the like in support of any such application, correct?---Yes. A DA, yes, yep.

And they wouldn't get the benefit of, in a sense, the work that had been done was being done by council in respect of these matters. Well, because council had been, engaged the experts of Studio GL to do its reports, correct?---Right. Yep.

10 And that was at the cost of council, wasn't it?---Yes, it was.

Now, so that was, that email was sent at 2.27 on the 5 December, 2016, being the day before the council meeting on the 6th. Can I now take you to some messages between yourself and Councillor McCaffrey just shortly after this email? And that's at page 1108. Now, starting here, just starting at message number 20, which is the last full message you can see, it's a message from yourself to Ms McCaffrey, saying, "Helen, can we chat later? The emails I received regarding Great North Road are disturbing. M." Now, do you think that – or are you able to say which emails you're referring to in that message?---I'm going, I want to say, and in my memory I'm thinking that it was emails with alternative wording and recommendations for the item coming up at council.

And from whom were those emails received?---In my memory I've got from James Matthews, but, yeah.

So emails that you received from James Matthews with - - -?---Yeah, that's my memory of it.

30 - - - with alternative wording for what was going to happen at the council meeting?---Yes.

Now, do you see I took you to the email from Mr Matthews to Paul Dewar and obviously the response to all the councillors from Mr McNamara. ---Yes.

But in his email, he was actually just seeking a deferral of the matter at that time.---Okay.

40 Does that assist you as to whether or not there was emails about alternative wording that you received from Mr Matthews in relation to this meeting of 6 December?---Oh, look, I, I think, the deferral, was there a basis for a deferral, I think, potentially?

Sorry, what are you saying?---From, from James Matthews. An email with a basis for deferring the item.

Sensitive: Legal

Sorry, exploring that with you a little bit further, are you saying that you may have received an email in which Mr Matthews provided additional information or reasons why a deferral was appropriate?---Yes. Yes.

And do you recall whether that email was sent to yourself singularly or was it sent to you and a number of other councillors and, if so, which other councillors?---I couldn't, couldn't tell you.

10 And the next message, if we go over the page, is Ms McCaffrey's response which says, "Yes, yes, yes, please. Time/place?" And your response at message number 22 is, "In five minutes." And if you would just read through, to yourself perhaps, from message number 23 to 30, can you see that – if you're able to read through to them. Perhaps you could let me know once you've finished reading message 26.---Message 26, yes, yep. That's fine.

And then if you go over the page.---Okay. I'm just trying to get in touch with Helen.

20 Yes. So there seems to be some miscommunications about you weren't actually able to make connection until then eventually at message number 30, Ms McCaffrey has suggested that you ring on her mobile.---Yep.

And that message was sent at twenty past 3.00 on 5 December, 2016. ---Okay, yep.

And do you recall then having a conversation with Ms McCaffrey about these emails?---I don't, I don't, I'm sorry. No, I don't. I'm sorry.

30 Can I then take you further and continue on this thread of messages between you and Ms McCaffrey. They appear to pick up again at a bit after quarter past 6.00 that evening with message number 31, which is a message from you saying, "Helen, do you think it's a good idea to ask Tony Mac or Gary or both to brief us tomorrow before the meeting." Does that assist you with recollection that you had a sense that you wanted to speak with either Tony McNamara or Gary Sawyer, who was the general manager, or both of them prior to the meeting?---Yes. I think it would have been just to get some advice from them, further clarification as to how to, how to proceed.

40 What were you unclear about that you needed advice from each of them? ---Well, what, what course of action, what, what the options for the course of action I think is my memory of that.

And then if you look at Ms McCaffrey's response to you, at 32. It's, "Did you ring Tony? The question is, is everyone on the strip getting seven storeys? If not, why not? I am so confused. I don't know what's happening." Is that assisting you with your recollection about the issues that were preying on your mind and possibly on Ms McCaffrey's mind at the

Sensitive: Legal

time as far as you could perceive from your interactions with her?---Yeah. I think there was – yeah. Just needing a little bit more information, just to get a better understanding. I mean, either Helen or I are planners, so just to get our head around what was, you know, the implications of what was being discussed at the meeting, I think, the deferral.

10 And then if we could go to message number 33. Do you see that you've got a message that you sent there which says, "Jesus, Helen. I just finished reading the item." Just pausing there. Is that likely to be the item concerning the proposed additional sites?---Yes, yes, it is.

"The conclusion on the paper is quite good. Despite all the reasons for not increasing height, it really does seem odd to have line right down the middle on the block."---"Of the block."

20 Oh, sorry, "Of the block and not include the Waterview Street side. Weird. I am going to message Tony now to meet with him tomorrow to explain to me in English why they broke the block in two for heights." I think it should say, "Why they broke the block in two for heights."---"Why they," yeah, yeah. Yep.

Now, just pausing there, the position was that this particular block had had this split in zoning since before the Urban Design Study. Correct?---Yes.

And you were aware from the study that was done that there were reasons given for why it was not proposed to extend the B4 mixed zone further north than 2 Second Avenue. Correct?---Yes.

30 Sorry, than Second Avenue, I should say. So, but is it fair to say that at this point at least you were beginning to have some doubts - - -?---Yes.

- - - about whether or not there was an equitable outcome as far as the planning controls and the rezoning?---Yes, yes.

40 Because that is somewhat different to the position that you had up to that point. Are you able to explain why it was that you suddenly had these particular doubts?---Well, probably, yeah, it seems like I had a closer reading of, of that, it wasn't just the executive summary by the sounds of it, and getting some additional information probably, just a deeper understanding of, of what was going on there.

And was that the additional information that you received possibly from Mr Matthews in these emails you've referred to?---Yeah, yeah, because there was a number of, a number of sites on Waterview Street that in my memory weren't, weren't just Sidoti sites, there were other people, but I didn't know at the time, I just thought there was just that one property there so I assumed that there was quite a few owners that were questioning the current outcome.

Sensitive: Legal

Can I ask you then, we might go back a little bit in time, and if we could go to page 1308. This is a chain of emails from 3 and 4 December, and right down the bottom of the page you can see the top of what is an email from Mr Sean Durkin to Gary Sawyer and copied to Helen McCaffrey. Do you see that?---Yes.

10 I'll come to that in a moment, but do you see that immediately above that, Mr Durkin seems to, appears to have forwarded that email on to an address which is drummoyne@parliament.nsw.gov.au?---Yes.

And did you understand that to be the email address associated with Mr Sidoti?---Yes, the electorate office, yes.

There is a response – sorry. Mr Sidoti appears to have forwarded that on to Mr Megna because there appears to be a response from Mr Megna - - -?
---Mmm yes.

20 - - - commenting on his views about the quality of the letter.---Yes.

And then it says, “Will I forward it on to the others?” Do you see that?
---Yes.

And then there is another response from Mr Sidoti and above that there's a further response from Mr Megna in which he says, “I meant should I forward it to the other three councillors.”---Mmm.

30 Now, can we then go to page 1309, and I might just ask you to perhaps read that email to yourself, and if you could let me know when you get to the end of 1309. You've read that?---Yes.

Yes, thank you, if you could just briefly go over to 1310. And that's the end of that email. So now going back to 1309. Having read that email to yourself, are you able to say whether or not you in fact did receive a copy of this email?---I can't remember receiving it, but it does ring a bell. This position does ring a bell with me but I can't remember receiving this email.

40 And do you understand, from reading the email, that Mr Durkin was the owner of [REDACTED]?---Yes.

And in that email, amongst other things, he refers to there being a long history of animosity between Mr John Sidoti and, it says, yourself. That would be Mr Gary Sawyer?---Sawyer, yep.

The previous mayor, that's Mayor Tsirekas, Angelo Tsirekas, and Councillor Kenzler.---Mmm.

Now, you had worked with Mr Sawyer for some time.---Yes.

Sensitive: Legal

Had he ever expressed to you any animosity towards Mr Sidoti?---No.

Were you aware of any animosity between, from Mr Sawyer's part towards Mr Sidoti?---No.

None whatsoever?---Well, no. He'd, he'd never said anything to me.

10 You were aware of some animosity between the former mayor, Angelo Tsirekas, and - - -?---Yes, yeah, it was quite a, yes, yes.

- - - and Mr Sidoti, correct?---Mmm.

They had, in fact, I think, run against each other in some election at some point.---State. State election, I think, when – yeah, yeah, it was the state election. I think it was the first, first term of Mr Sidoti's office.

20 And what about Councillor Kenzler? Were you aware of any animosity between Councillor Kenzler and Mr Sidoti?---No, not as overtly as I was with Angelo Tsirekas with the former mayor. But that's not surprising, really.

When you say that's not surprising, that you didn't know or that there may be?---That there was animosity. I mean, I, I - - -

Do you mean along party lines?---Yeah. I'm, I'm, oh, just knowing the personality of Mr Kenzler, I mean, I, you know, he's a very prickly character, so not surprised.

30 And there's a reference to some article from The Sydney Morning Herald and some other disputes regarding trips to the United States.---Mmm.

40 But then there is this suggestion that he is incredibly concerned about "that the political/personal animosity between councillors, council staff and Mr Sidoti is influencing the whole process". Were you aware of any animosity between council staff and Mr Sidoti?---Well, I mean, no, I wouldn't, council staff would have said nothing to me, other than – the only staff at council I really had contact with were the directors of each of the departments and managers, and, and none of them raised anything with me.

And certainly insofar as planning matters were concerned, that director was Tony McNamara, correct.---Yes, yes.

And you've already told us that you had a high level of respect for him. ---Yes.

And his professionalism, correct?---Yes.

Sensitive: Legal

And you would not imagine that he could possibly have any or have approached issues concerning planning with any animosity towards Mr Sidoti or any other person, interested party or otherwise.---I would, Tony's very professional. I couldn't imagine that he would take that approach. Like, he would, he would just do his job, in my view.

10 So as you read that statement about Mr Durkin's concerns, that the political/personal animosity between councillors, council staff and Mr Sidoti was influencing the whole process, would you agree that that would appear, from your knowledge of the matter and the processes, to be without any substance?---Yeah, I, I, I don't think there would be any truth to that. Knowing the people at the time, I'm talking about the council staff, they always presented as professional and knowledgeable people, and I never heard them say a bad word about anybody.

20 So, again, was this one of the emails that you had in mind when you were messaging with Helen McCaffrey on 5 December and referring to the emails that you had received being disturbing?---I, I can't remember. Potentially. Sorry.

But it does ring a bell you having actually seen an email of this kind?---Yes.

So it is quite possible, is it, that Mr Megna did forward this email to you? ---Yes, it's possible, yeah.

30 If we could go then back to page 1811 to finish off with the particular messages and just drawing your attention to message number 34 which is a further message from yourself to Ms McCaffrey. This message was sent at 2.31pm. "In studying the maps again, the justification for not allowing more height is actually very weak." Do you see that?---Ah hmm. That's just my view, yes.

That was the view that you sort of came to, having a look at the maps?---Ah hmm.

40 Then you said that, in the earlier email you said that you were going – sorry. I withdraw that. In the earlier text message immediately before that you said you were going to contact Tony. Could we go to page 1795? Or perhaps if we go to page 1820. Now, I just want to draw your attention to message number 73 and do you see that this was sent at 7.26pm – sorry, I have the wrong message there. No, that is the correct message. If you look at the message, it was actually sent at 7.43 on 5 December of 2016. Do you see that?---Yes.

And it reads, "Hi Tony, it's Mirjana. Sorry so late. I have just read the Great North Road item and to be honest am still not sure why there is a line through that block preventing further uplift on the Waterview Steer site." I think it's supposed to say, "Street site."---Yeah.

Sensitive: Legal

“Do you have half hour tomorrow afternoon to talk me through the problems, perhaps after 4.30pm?” Do you see that?---Yes.

10 And then the message below is message number 74. We may need to go over to the next page. Mr McNamara has responded to say, “Hi Mirjana. No problem. I will call you around 4.30. Tony.” And your response is at message 75, “Thanks Tony.” Now, do you recall having a conversation with Mr McNamara prior to the meeting on 5 December, 2016?---I actually don’t but it looks as though I did speak to him but I don’t recall that conversation.

And this is the meeting that’s only three days after you’ve had your run-in with Mr Sidoti on the Bay Run. There’s been some further emails apparently that you’ve seen that have caused you some concern, correct? ---Ah hmm.

20 And you had some questions about what was proceeding before the council, correct?---Yes.

And you wanted clarification about those before you voted on them, correct?---Yes,

And do you have any recollection now as to where your mind was at concerning this item by the time you got into the council chamber that night, that is the night of 6 December of 2016?---Where was my mind at the time?

30 Yes, on the item, having had these concerns raised, having had your interaction with Mr Sidoti and your reaction to that, and possibly having had a conversation with Mr McNamara?---Probably a bit conflicted. Yeah. But conflicted in, in terms of how, how to proceed.

THE COMMISSIONER: Sorry, when you said conflicted, did you mean confused or what did you mean?---Oh, yeah, probably more, more confused based on all the options that seemed to be presenting themselves and, and what I was reading.

40 But do you now know or recollect whether having thought about these issues, raised them in particular with Mr McNamara, that Mr McNamara ultimately was of some assistance in at least satisfying you by way of explanation as to the issues and the way they had been played out?---Yeah, I accept that, I accept Tony’s advice, yeah.

MR RANKEN: Now, if we could now go to the meeting of the council on 6 December, 2016, at page 1364 of Exhibit 24. This is the resolution from the minutes of the council meeting, you can see that from the footer on the bottom, of the 6 December, 2016, and item 5 was the exhibition outcome for the changes to planning controls for land on Waterview Street, Five Dock.

Sensitive: Legal

And do you see that the matter was, consistently with the request of Mr Matthews, deferred for consideration at a councillor workshop, the first councillor workshop in 2017?---Yeah.

And do you see that the two persons who actually moved and seconded the resolution were in fact Councillor Kenzler and Councillor Parnaby?---Yes, mmm.

They were both Labor councillors, correct?---Yes, yes.

10

Do you recall the circumstances in which it happened that that resolution was made and passed?---No, I don't. It does seem unusual, but I, I just can't remember why. Potentially, you know, the other councillors felt the same way I did in that, well, there seems to be a lot of new considerations, is it worthwhile just deferring and getting some more clarity. Perhaps even, I don't know whether Tony had further, other councillors call him and ask for advice, I'm not sure.

20 The actual matter was resolved unanimously as far as those who were present and able to vote on the matter. Correct?---Yes.

And do you see that that did not include Councillor Ahmed?---Oh, yes, he was, he wasn't there.

He does not appear to have attended that meeting.---Mmm.

30 Now, did you attend a councillor workshop in early 2017 regarding the proposed changes to the planning proposal?---I probably did. I attended I would think most of those workshops, yes.

Given that the matter came back before the council on 7 February of 2017, is it likely that there would have been such a workshop prior to that meeting?---Yes, likely.

And would it likely have been held what, one or two weeks before the meeting, would you usually do that?---The, the workshops and meetings schedule was alternating. So one week it would be a workshop, the following week would be a meeting.

40 Now, could we go to page 1366, please. This is an email from Ms McCaffrey to you in which Ms McCaffrey has asked, "Why do the blocks either side of this block have seven storeys? Does it matter if it's classified as unfinancial, if a planning proposal comes in for seven storeys would it be looked at?" Now, do you recall the context in which you received this email from Ms McCaffrey?---Not really. Just looking at the date, potentially it was prior to a workshop or meeting. 24 January.

Sensitive: Legal

24 January.---Yeah, we, we wouldn't, typically we wouldn't have a council meeting before Australia Day, so it's probably a workshop or meeting coming up.

And in either case, after Australia Day.---Yeah.

You wouldn't usually have a councillor workshop in January?---No.

10 So it's likely that this was, this email was sent in advance of there being a workshop which you would have attended.---Likely, yep.

But you don't now have an independent recollection of attending the workshop?---I was likely there but I - - -

But don't have any recollection.---Don't know, yeah.

20 So one of the things that's referred to in that email is, the very final matter, is "If the planning proposal comes in for seven storeys, would it be looked at?"---Mmm.

Now, one reading of that might be taking into account what occurred just prior to the meeting on 6 December, and specifically the suggestion by Mr McNamara that if Mr Matthews' clients are not happy with the outcome, as being recommended by council, then they could always put their own planning proposal in.---Yes.

Do you agree?---Yes.

30 Now, one reading of this sentence might be that it's directed to that circumstance. Circumstance where, if we just approve what council staff and Studio GL have recommended, they can put in a planning proposal, but would we actually look at it if it suggested seven storeys.---Yeah, well.

Does that make sense to you?---Yeah, that makes sense too, yeah, yeah, it does.

40 And does that assist you in terms of whether or not that was the kind of thing that was being considered by yourself, and possibly other councillors, in relation to this issue, about - - -?---Yes.

- - - the idea of, well, let's just approve what's being recommended by council, and the landowners can always put in their own planning proposal. ---Yes.

Now, if we could go to the report that was prepared by Mr Dewar for the council meeting on 7 February, 2017, which is at page – I think starts at 1371, possibly. And you can see that, from the header, that it's part of the agenda papers for 7 February, 2017. Do you see that?---Yes. Yes.

Sensitive: Legal

And it refers to the fact of the planning controls having been exhibited in August/September, and reiterates what was reiterated previously about there having been 18 submissions received, and an exhibition outcomes report having been prepared, and then recommending that “The planning proposal and draft Development Control Plan be prepared to reflect the recommendations of the exhibitions outcomes report, and that the draft planning documents be submitted to the Department of Planning and Environment for a Gateway Determination.”---Gateway. Ah hmm.

10

And if we could go to the end of that report, which is at 1410. Sorry, I think it’s – sorry, 1379. We see that there are five items there that are part of the recommendation.---Yes.

And do you see that one of those is at number 2, is the removal of the heritage item in respect of 39 Waterview Street.---Yes.

And then planning proposal be amended and the like to be able to facilitate that.---Yes.

20

So, and the planning proposal to be submitted to the Department of Planning.---Ah hmm.

Now, that would in effect give finalisation and effect to the option 2 that had been endorsed by council in August 2016?---Yes.

And bring the matter to an end, correct?---Yes.

30

If I could just, so, go to 1380, the next page. You can see that then there’s an attachment which is the outcomes report. So that’s the end of the recommendation.---Yes.

If we could then go to the meeting minutes for 7 February, 2017, which are at 1409. And you can see that there were a number of people who addressed the council on that occasion.---Yes.

Including Mr Matthews and including Mr Durkin. Do you see that?---Yes.

40

And if you look at the, firstly, the two recommendations that appear, or the two paragraphs of the resolution that was moved by yourself and seconded by Dr Ahmed, they reflect the first two paragraphs of what was recommended in the council staff report.---Yes.

And then if we move to the next page, I would suggest to you that 3, 4 and 5 reflect the remaining recommendations?---Yes.

And then there appears to be an additional paragraph that, “Of the owners of property in the area believe there is a better planning outcome to be

Sensitive: Legal

achieved in the recommendation, they lodge a planning proposal in the normal way.” I see you’re smiling. Is there a particular reason why you’re smiling?---No. I just think it’s, it’s, it’s a nice touch.

10 Are you able to assist the Commission as to the circumstances and how it was that this paragraph came to be included in the resolution, firstly. And, secondly, why, in your opinion, it was a nice touch?---I think actually my memory is that it was typed up at the meeting, that it was read out by one of the councillors I think, or maybe – I’m just trying to think – maybe Helen
10 read it out. I think it was just, you know, that there was finality in this, that we weren’t going to, I, I, I think it was read out at the meeting. I can’t remember. I think it was typed up at the meeting and my memory is that Helen had that in front of her, that wording in front of her, and I think it was a sign to say that we’d, we’d exhausted all issues here and if there’s anything else to, any other matters or any other planning considerations that they need to go through the DA process.

20 So do I take it from that that your recollection is that it was in fact Helen McCaffrey who suggested this paragraph.---That’s my recollection, yes.

THE COMMISSIONER: Did you understand whether it was suggested to be added in, in some way, to perhaps ameliorate or give something to the Sidoti family interest group, or was it not giving them some sort of encouragement or consolation? Was - - -?---I’m not reading it – sorry.

You go on.---Oh, I didn’t, at the time I didn’t think that. I’m not reading it like that. I thought it was a message to say that if you do want, anything else that you want to do needs to go through the - - -

30 As another route to follow?---Yes, yeah.

MR RANKEN: And is that why you considered it to be a nice touch, because it was effectively – you perceived it as sending a message to Mr Sidoti in particular that you were done with this issue?---Yes. Yeah, that’s, that’s, that’s exactly what it was in my mind.

This was the final way that Ms McCaffrey was going to get him off her back?---Well, yes.

40 THE COMMISSIONER: This had been a very long tortuous process. Was there any discussion amongst the councillors about that very fact, that it had taken so many twists, turns, so many reports from Studio GL and other consultants, so many meetings, workshop meetings, council meetings, amendments, resolutions, change resolutions? Did that stimulate any discussion about how did this possibly all come about?---Not, not really, not about the genesis of it. We didn’t discuss it. We just dealt with matters as they, as they came along, yeah.

Sensitive: Legal

Battle fatigue might have set in by this time, you think, in 2017?
---Definitely.

MR RANKEN: Now, Ms Cestar, you can see that that resolution was passed on the casting vote of the mayor and that the voting split was broadly along party lines?---Ah hmm. Yes.

10 If you consider the Green to be voting with the Labor. But even so, the minutes go on to record that during the discussion on that item, there was foreshadowed an motion that was moved by Council Kenzler.---Yes.

And then that was recorded in the minutes. Is that - - -?---Ah hmm. Like I said, I - - -

And was likely to have been at the request of Council Kenzler?---Yes. He would have written that.

20 Now, if you could just read, you can see that – or what I suggest to you is that what is set out there, and then continuing over, well, set out there at paragraph 1 and 2, and if we go over to page 1411. If we go to 1411 and then continue, 2, 3, 4 and 5, that that effectively would, that resolution or motion that was foreshadowed, would effectively revert back to the motion that was defeated on the casting vote of the mayor back in 2 August of 2016.---Yep.

And so that effectively put to an end this whole issue as far as you were concerned, at least as at 7 February, 2017.---Yes. Yes.

30 Now, was it subsequently the case that there was a rescission motion that was foreshadowed in respect of it?---Yes.

And how did you become aware of the rescission motion?---My, my recollection is that rescission motions need to be submitted within a certain time frame after the council meeting, and there was a rescission motion I think put through by Councillor Kenzler at the time, and we were just kind of a bit stunned because we, I just don't think there had been one in the time that I was on council. So there was a bit of activity around that, but, yeah, just messages.

40 And what – sorry.---Yeah, no, that's all right. Just messages, et cetera. You know, through the grapevine, I guess.

And what is the time frame generally for rescission motions?---Oh, I can't remember. I think back then it was within two weeks of the meeting, within 14 days, something to that effect.

Could we then go to 1792. I want to draw your attention to some messages between yourself and Mr Megna. Message number 56 is a message that you

Sensitive: Legal

08/04/2021
E19/1452

M. CESTAR
(RANKEN)

568T

sent to Mr Megna at 6.25pm on the 16th of February, 2017. So that is some nine days after the meeting of the 7th.---Yes.

And you've said there, "JS called in a panic over meeting. Bloody hell." Sorry, "over next meeting. Bloody hell."---Yes.

See that?---Yes.

10 And, now, meetings of the council took place every two weeks, is that correct?---Yes.

So after 7 February, 2017, the next meeting would have been 21 February. ---Yes.

So that's a reference to Mr Sidoti being in a panic over the meeting on 27th, 21 February, correct?---Correct, yes.

20 Do you have a recollection about what your conversation with Mr Sidoti was and what kind of a panic he was in?---Oh, the panic would have been about it being the last – well, obviously, that, what had been passed, that, that it actually, that the rescission motion is successful and that we, you know, that he wouldn't have the opportunity or that, that motion would be amended in some way. I don't, I mean, I'm just - - -

30 So was the concern, then, that, effectively, that the removal of the heritage listing of Waterview Street would be rescinded and would go back to the option 1? So all the such gains as had been made would be lost?---Well, yes, I think, I think that would be right. I think concern about, you know, the outcome of the last meeting being, being changed, yes.

And then Mr Megna responded to you to say, "He called Helen and me." ---Yeah.

So it would appear that Mr Megna was certainly contacted but also he was aware that Mr Sidoti had spoken to Helen McCaffrey.---Helen, yeah, she must have called Michael, then.

40 And your response at message 58 is "OMG." I think we all know what that stands for. "When will it end?"---Mmm.

And what were you referring to by the "it" in "When will it end?"---Oh, "When will it end?" I mean, all the, the, the property, you know, the dealings with the Sidoti properties.

So then could we go to page 1412 of Exhibit 24. This is an email that Ms McCaffrey sent to each of you and Dr Ahmed on 16 February, at 9.25pm, so after this message exchange between yourself and Mr Megna, identifying that "The rescission is on this Tuesday. Will you both be there?"

Sensitive: Legal

Hopefully.” Do you recall receiving that email?---Now that I’m seeing it, yes.

And prior to the meeting on 21 February, 2017, do you recall receiving some correspondence from Mr Matthews regarding the rescission motion and possibly some alternative wording to that?---Oh, that would fit, yes, I think there, there was a couple of occasion where we received something from James Matthews, yes, yeah.

10 Now, if we could go to page 1428, and do you see that this is an email from Mr Matthews addressed to yourself and Helen McCaffrey and copied to Dr Ahmed and also to michael@[REDACTED].---Yes.

Which I understand is Mr Megna’s - - -?---Yes, work, work email.

- - - work email.---Mmm.

And the subject is Waterview Street Five Dock. Do you see that?---Yes.

20 Now, it refers to the fact that Mr Matthews understands that there’s, “A notice of motion of rescission that has been received and will be considered at tonight’s council meeting.” So this is sent at 3.14pm on the day of the council meeting.---The day of, mmm.

So right on the cusp of the meeting. And he refers to the fact that he’s acting on behalf of the landowners and spoke at the previous meeting on 7 February.---Mmm.

30 He’s reviewed the motion tabled by Councillor Kenzler, Parnaby and Tyrrell, “And it is my strong planning opinion that the proposal has sufficient merit to proceed to the Department of Planning and Environment for consideration by the Gateway and the motion presented does not provide justification or evidence on planning grounds to rescind the previous resolution.” Do you see that?---Yes.

40 And then there’s a part of it in bold. He says, “It is my strong planning opinion that the rescission motion is not supported. I encourage you to consider moving the motion in the attached document. I have addressed the reasons below.” I won’t go into the various reasons that are then provided, but if we could go to the attached document which is at 1430. This would appear to be the wording of an alternative resolution to be proposed.---Yes.

Firstly that council does not support the rescission motion, and then secondly, that council add the following two points to the decision of 7 February, 2016. Do you see that?---Yes, I do.

And one of those the first of those points, is to apply the bonus height provision to land that fronts Great North Road bound by Second Avenue

Sensitive: Legal

and Barnstaple Road to permit a maximum building height of 24 metres and a maximum floor space ratio of 2.7:1 where land has a site area of 1,000 square metres and a street frontage of at least 20 metres. Do you see that?
---Yes.

Now, that's not - - -

THE COMMISSIONER: What was your – sorry, go on.

10 MR RANKEN: I was just going to suggest that that wasn't something that was part of the option that council had approved previously. Correct?
---That's right.

THE COMMISSIONER: What was your reaction when you saw this one come in?---I just thought it was just really rich to actually push the envelope to this extent, to expect - - -

Well - - -?--- - - - expect this additional wording, not only, you know, not support the rescission motion, that's fine, that was going to happen, but then
20 to then put this into it as well was just - - -

Yes. So you're saying, you're in effect criticising the fact that Mr Matthews took it upon himself to formulate for council this motion. Is that what you're saying?---Formulate the motion, but the content of the motion. I mean the issue had really been given a decent workout.

Well, that's right.---To now expect this as well I think was just really beyond the pale actually.

30 That's why I asked you what your reaction was.---Yeah.

I think you've now - - -?---And reading it now I just remember feeling infuriated by it actually.

MR RANKEN: And do we take it then that there was no way you were going to support those additional paragraphs?---No.

40 Did you have any conversations with either Ms McCaffrey or Dr Ahmed or for that matter Mr Megna, concerning this email and the proposed suggested further wording?---I probably did but I wouldn't be able to remember what, what the conversation was about. It was probably along the lines of some level of frustration, yeah.

As in you expressing some level of frustration?---Yeah, potentially, yeah.

Do you have any recollection as to knowing their attitude, that is particularly Council McCaffrey or Councillor Ahmed, towards this proposal prior to going into the meeting?---I, I can't recall.

Sensitive: Legal

THE COMMISSIONER: Mr Ranken, this document by Mr Matthews is addressed to, "Dear Mayor and Councillors." Do we know which councillors were sent this email?

MR RANKEN: Well, if we could go back to page 1428, the only recipients on this email are yourself and Ms McCaffrey. Now, Ms McCaffrey was the mayor at the time?---Yes.

10 And then Dr Ahmed and Mr Megna, correct?---Yes.

So to your knowledge, this was not sent to any of the other councillors?
---No, no. Well, no, according to this, no, I don't believe anybody else received it. And I would be surprised if they did.

THE COMMISSIONER: Just on a point of process. Is there any irregularity that you see in a planner taking it upon himself, acting in the interests of his clients, to actually formulate a substantive recommendation and then make a request in passing it on to councillors, or at least the
20 Liberal councillors, to put this forward for council endorsement? In other words you've got, in effect, it seems, either on Mr Matthews' own initiative or on the initiative of those instructing him, is in effect telling council, "This is what you should do as part of your functions." Is there any irregularity in that?---No, not really.

No?---That a, a planner or a planner engaged by a developer would put together some guidance or some wording for a desired outcome.

I appreciate that. There's two aspects. One is framing a resolution or
30 recommendation that is put forward for consideration by council, as against what appears to be here, not putting forward this recommendation, having formulated it for consideration, but simply telling them, "This is the recommendation that you should pass as we set out in this document." Is that regular, proper practice?---Well, the first time it, it had happened to me in this kind of direct format, oh, I don't know in terms of other, you know, I can't speak to the broader, broader community but in, in my, for me, as in my term as a councillor, it was the first time that I had had a planner send such specific wording and guidance. And the planner's doing his job, I, I respect that, so they're, they're more than welcome to, to send, I, I don't
40 have a problem with it. I didn't have a problem with receiving it. Happy to receive any correspondence and, and suggestions but - - -

Just go to the end of this document, if you could, 1429. You'll see on page 1429 there, this is not just being put forward as a submission for consideration and asking that it be considered. The paragraph says that, "The motion of 7 February, '17, be carried and the following amendment be included." Is that consistent with proper, normal practice, that in effect the town planner takes it upon himself to direct council as to what they should

Sensitive: Legal

do?---Look, it's, it's the first time that I had a representative, a, a planner, an employed planner, send that type of wording to me or suggested wording. I looked at it as a suggestion. I didn't see it as a directive, but understand, yeah.

MR RANKEN: That's the first time in, by this stage, almost nine years as a member of council, correct?---Yes. I mean, I, you know, to receive suggested wording, you know, spoon-feeding, I guess, as it was, was – it had never happened to me before, no.

10

And you continued to be on the council until the elections in September of 2017.---Yes, that's right.

Did you ever receive another suggested wording from a planner in relation to a planning matter between - - -?---I, I can't, I can't remember. Yeah, I don't believe I did but, you know, no, there was no real other big matters before council, other than the Rhodes area.

20

THE COMMISSIONER: What's your comment upon the fact that this – call it a request or perhaps direction or instruction – is being not addressed to and sent to councillors generally, but to a select group of councillors of one political persuasion? Do you see that as inconsistent with proper practice or not?---Oh, considering the circumstances, it was a rescission motion that was put forward by the Labor Party, so it would have been a surprise if they would have got - - -

I'm not talking about the rescission motion.---Yep.

30

I'm talking about the substantive amendments that are being put forward here, either requesting or instructing – depends on matters of interpretation, which we can consider later – that the council make a decision. But all potential decision-makers, or all councillors, are not in on what's going on, but only a select group. Do you see that as proper practice? And writing directly to that select group of councillors and making that request.---I, I understand, yeah, it would be fair for everybody to receive the same correspondence, but I would suggest that it's common in most councils that, depending on where the numbers sit and where the power sits in that council, that they would be the ones getting most of the correspondence or all of it when you're just - - -

40

Depends what the correspondence is about, doesn't it?---Generally. I mean, for example, at Canada Bay Council, while I was there, there was a practice that all representations had to go through the mayor's office. Which is fine, because, I mean, he could do that. He was the mayor and the Labor Party had the numbers. And I think most, most things, for most things, when the Labor Party had the numbers, the Liberals were kept in the dark. And I think once the power shifted or the, the control of the council shifted, so did the, the representations, and the way that people react or interacted with

Sensitive: Legal

councillors changed. I'm not saying it's right or wrong, I just, it's just the way it is. It would be ideal that there was a, it was upfront and that everybody, that all the councillors received all the correspondence, but with political parties being the way they are, I just, I don't know how that can be remedied.

MR RANKEN: You were aware, were you not, of the existence of the code of conduct that had been adopted by the City of Canada Bay Council in 2013?---I'm aware of it, yes.

10

And perhaps if we could bring up that code of conduct, which is in Exhibit 25, at page 103. That was the, that's the cover page of it, and you can see the date of adoption is 19 February, 2013. And the effective date is also 19 February, 2013. And that was a code of conduct that was adopted pursuant to section 440 of the Local Government Act.---Okay.

You were aware of that, were you, or - - -?---No.

20

And if we could go to page 107. And do you see that there is some general conduct obligations? And there is a subheading for Development Decisions, that says, "You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development and assessment process. And in determining development applications," this is at 3.8, "you must ensure that no action, statement or communication between yourself and applicants or objectors conveys any suggestion of willingness to provide improper concessions or preferential treatment." Do you see that? And then Binding Caucus Votes is the next subheading. It says, "You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting." Do you see that?---Yes.

30

And that would extend to matters of a planning nature that are before council, correct?---Yes.

40

And do you not see that a planner suggesting particular wording for an amendment to a resolution, or a resolution of the kind that was being suggested by Mr Matthews, essentially providing that to the members of one political party only, who are councillors, risks or puts in jeopardy the prospect of councillors abiding by this requirement in the code of conduct of not participating in binding caucus votes?---I can see that.

Because it's essentially seeking to have the Liberal councillors commit to a particular vote along the party line, correct?---Party lines. Understand.

THE COMMISSIONER: One problem is if you have a council meeting and you have, say, eight councillors, four of whom are Liberal Party members, and they were being requested, unknown to the other four who are other

Sensitive: Legal

political persuasions, what information is being fed to the four Liberal councillors, with a request for them to put it before council and get it through council, then when it comes before council, what you've got is four people who are informed as to what their request or instruction is. The other four are totally in the dark. The council goes ahead, makes a decision, and if it's carried on the Liberal vote, in that situation it'd have to be a complete denial of procedural fairness, wouldn't it, because the other members of council don't even know what's going on. They're not in the loop. Would you endorse that situation?---No.

10

Clearly, it would be corrupting the process of decision-making by council, wouldn't it?---Yep.

Well, you've seen Mr Matthews' letter. In light of that, how do you see it? ---Well, it is improper.

Well, that's what I asked you originally. Yes, all right.

MR RANKEN: Now, just turning to the actual meeting itself, on 21
20 February, 2017. If we could go to those minutes and particularly at, go to 1421. That's the first page. You can see the persons who attended. And it appears that everybody attended who was able to attend. Well, sorry, everybody attended as far as yourself and Councillor Ahmed and Councillor McCaffrey. Do you see that?---Yes, I do.

And then if we could go to 1426, we see the rescission motion that was put forward by Councillor Kenzler and seconded by Councillor Parnaby. And it states that the rescission motion was put and lost on the casting vote of the mayor. Do you see that?---Mmm. Yes.

30

And the voting was essentially along the party lines again. Correct?---Yes.

But importantly there was no motion or addition to the previous decision of 7 February, 2017, along the lines that Mr Matthews had suggested in his email to you and the other councillors. Correct?---Yes.

But do you recall whether or not anybody even raised it at the meeting? ---I can't remember.

40 If we go back to page 1425, do you see there are a number of persons who presented to the meeting, including Mr Matthews? Do you see that?---I can see that, yes.

Do you have a recollection as to whether or not in his presentation to council he raised these two points?---I can't remember.

You just can't remember.---Can't remember.

Sensitive: Legal

Is it the case that it would only be if a councillor sought to move such a resolution or resolution in those terms as suggested in Mr Matthews' email, that it would be recorded in the minutes?---Yes, it would be recorded in the minutes.

So we can at least take it from the minutes of the meeting that whatever Mr Matthews may have said at the meeting, no councillor sought to actually move any resolution that reflected those two suggestions by Mr Matthews in his email.---That's correct.

10

And does that accord with your recollection, that there was absolutely no support from you or the other Liberal councillors for it?---No.

Now, given that you were aware that Mr Matthews represented the interests of, amongst others, Mr Sidoti, were you concerned about the fact that there may be some sort of blowback following this meeting on 21 February, 2017, because there had been no support for that additional wording?---Well, yes, there was always potential for blowback because I mean the only, the, the zoning hadn't changed, the rescission motion, there was no amendments to the rescission motion, there was a lot of things that didn't get through.

20

Now, could we go to page 1851. This is a series of messages between yourself and Mr Megna, commencing on 22 February, 2017, so the next day after the meeting on the 21st, and starting at 11.48 in the morning. And your message is the first in time and it says, "Any blowback from last night?" And you've also added, "I spoke to John last night. He was actually happy." Do you recall having a conversation with Mr Sidoti following the rescission motion?---Not, not, not in any detail, yeah.

30

If you did have a conversation with Mr Sidoti the night after the, or following the rescission motion, is it likely that that would have been some contact that was initiated by yourself or by Mr Sidoti?---Can't recall. Don't know.

And Mr Megna's response is, "Must have taken his happy pills."---Mmm.

And then if we go over to the next page, your response is, "LOL." We all know what that means. "He seems to be impressed by our loyalty, which I thought was interesting as it had nothing to do with loyalty, he was actually right, he was being screwed." Now, did you, what were you referring to by, "He was being screwed"?---I think there was probably some room to move with some of that development, I think there might be potential to do, to do more with that lot, but I think there was just a really conservative approach.

40

But given the circumstances in which you were engaging in with this exchange of messages with Mr Megna, which is following the rescission motion, are you able to say whether or not what you were referring to was in fact the fact of the, the very fact of the rescission motion, that that was

Sensitive: Legal

something that you perceived to be something that was directed to Mr Sidoti?---Oh, look, that was a political, yeah, that was a political move for sure, yeah.

And then Mr Megna has attached what appears to be an image file, looking at the file name and format, and said, “He sent me this today. I didn’t know if he was being sarcastic. Was trying to work it out but if you said he is happy then maybe he is genuine.” Do you now have a recollection as to what the image file was?---No. No idea.

10

And then your response was, “Yeah, he was. Apparently his sister in gallery and others were texting him while we were on the item. He was happy with all of our performances. I think it’s genuine.” Now, given what you’ve said there, does that assist you in recalling some of what might have been discussed between you and Mr Sidoti? For example, did he tell you that his sister was present in the gallery and that others were texting him while it was being discussed?---No, I don’t, I don’t know.

20

Mr Megna goes on to say, “I was texting him as it was going from the side corridor.” Now, just reading that, did you understand that to mean that Mr Megna was saying that, whilst he was out of the room and the matter was being discussed, he was engaging in some text messaging with Mr Sidoti? ---Yeah, it looks that way.

30

So, “That was his sister, I didn’t see her. Gary said there was a blonde female writing furiously. He wasn’t sure who she was. We thought she may be media.” And your response was, “The blonde must have been media. His sister was in back row. I glanced and thought it was her. John just confirmed it.” So that suggests that that information did come from John.---Yeah.

Have you met Mr Sidoti’s sister prior to this meeting on 21 February?---I, I’ve met her at, oh, a couple of events.

And were they Liberal Party events that you met her?---Yes.

Now, I want to move now onto a different topic because 2017 was the year of the elections for local council, correct?---Yes.

40

And nominations for preselection, I think as far as the Liberal Party were concerned, closed sometime in early July of 2017.---That would be right, yeah.

And you put yourself forward for preselection, is that correct?---Yes.

Now, when you - - -?---I nominated, sorry. It wasn’t, it wasn’t a preselection at the time. I nominated.

Sensitive: Legal

What do you mean by that?---I nominated to be a candidate but a nomination doesn't mean there's going to be a preselection.

And is that because, in your experience, it has been rare for there ever to be a preselection in relation local council elections?---Well, in the, yeah, in the Drummoyne conference, we, the time that I've been a member, there wasn't a preselection. It was a, a ticket we all, we worked it out amongst ourselves, we put in our nomination forms and, and the process or the, the ticket was endorsed by the state executive.

10

And was that because, as I understand it, generally there are five places on a ticket?---Yes.

And there may not be five winnable positions but for a party to submit a ticket they need to put five people on, is that correct?---I think that's right, yeah.

But the critical issue is really the order of the ticket, in terms of where people are on the order, is that so?---Yes. Yes, that's right.

20

And that's because there are unlikely to be five winnable spots, given that there are only nine members of council?---That's right.

But there may be anything between three and four winnable spots, perceived by the party?---Potentially, yeah.

So, the higher up in the order, the greater one's chances of being successfully elected to council, correct?---That's right. Yes.

30

And separately, there is the candidacy for mayor, that's a separate nomination process, is that right?---Yes. Nomination process, no, the nomination process is the same. You nominate as mayor and as a councillor following that.

But one has to actually nominate oneself for mayor before - - -?---Yes, that's right.

40

And is this the position, that in your experience prior to 2017, there had never been an instance where there were more than five people who were wanting to put themselves forward for council?---No, the - - -

In the Drummoyne - - -?---Yeah.

In the Canada Bay local government area.---The, the time that I was there, we had to look for people to run, really. If – so initially when I was elected in 2008, only Michael and Helen were only the two Liberal councillors. And then I, I was elected as, as the third, Michael ran for mayor, and then the following election, we got the fourth up, we got Tanveer up. But it was

Sensitive: Legal

also done without a preselection, it was a nomination process, and it was endorsed, the people were endorsed by the state executive.

And on that occasion, do you recall who was the fifth person on the ticket?
---I can't remember who it was.

Was it Mr Yap?---Could have been.

10 But there weren't more than five people who were putting their names forward.---No.

So 2017 was the first occasion which, to your knowledge, or at least since you've been a member of the Liberal Party, that there'd been more than five people who were putting their names forward, is that correct?--- Yes.

And so that necessarily required there to be a preselection?---Yes.

20 So does that mean that prior to putting your nomination in, you would have had some discussion with Mr Megna, Ms McCaffrey, and Dr Ahmed at least about the preselection? Well, not the preselection.---The - - -

About the nomination and the ticket?---Yes, I, I knew who was nominating. We knew that we were all going to run again for council, and Tanveer had originally I think wanted to run for the federal seat, but he – the party selected Craig Laundry, I think, and then so Tanveer was looking to get his feet wet, I think, politically, and so he came to council. I think he approached Michael to, to be on the ticket, yeah.

30 You're talking about 2013?---Yes, yes.

So I'm moving forward to 2017.---Sorry, yeah, 2017, yep.

40 So 2017, is this the situation, when it came to nominating for the election, you had anticipated that it would be as before, in that there would be no preselection process, it would be simply a matter of the four of you working out the order between you, and perhaps finding a fifth person to fill up the final position on the ticket, and that could then be endorsed by the state council?---Yeah. Well, I wasn't aware that anybody else wanted to run. It, there was no – you know. So in, in my mind, it was the same business as usual as the previous two elections.

So does that mean though then that you had a discussion with – this is prior to putting in your nomination – each of, or perhaps together as a group with Councillor Megna, Councillor McCaffrey, and Councillor Ahmed?---Yes.

And you had worked out between the four of you the order that you were going to be?---Yes.

Sensitive: Legal

And had you also worked out who would be the fifth person on the ticket?
---I can't remember. I don't, I don't think we did. I think we were going to look for someone or – I don't know that – Michael had someone approach him.

Was there any discussion between the four of you as to whether or not Mr Yap might be an appropriate person to fill up the fifth spot?---No. I was quite surprised to learn that Nick was running, actually.

10 You knew Nick Yap, is that correct?---Yes, I've known him for a long time.

And what branch of the Liberal Party was he a member of?---Drummoyne.

At that stage you were still a member of the Drummoyne branch?---Yes.

As was Councillor Megna, is that right?---Yes.

And Councillor McCaffrey was at Concord West, I think.---That's right.

20 And what branch was Dr Ahmed at?---Drummoyne.

He was at Drummoyne as well?---Yes.

So it was a very Drummoyne-heavy council ticket.---Mmm. Yes.

So when you nominated for council, did you put in a nomination, that you were nominating for a particular position on the ticket? Or did you just put in for all the tickets, all the - - -?---I think I put in for number 2 or 3, one of the two. I think it was, I think it was the same as last time, it was number 3.

30 So Helen, as she was mayor, was going to stay at number, at, for the mayor, and I think she was going to forgo the number 1 position for Michael, and then run at number 2, and then I was going to run at number 3.

And what about Dr Ahmed?---I think he, yeah, he was going to run at number 4.

And that was a discussion that you definitely had with Mr, with those other councillors.---Yes.

40 Prior to putting in your nomination.---That was my understanding of what was going to happen.

And then it came about, though, didn't it, that in fact there would have to be a preselection because there were more persons who had nominated than there were positions on the ticket. Correct?---That's right.

In fact there were more than five.---Yes.

Sensitive: Legal

And the other two persons who had nominated in addition to the four existing councillors were Stephanie Di Pasqua - - -?---Yes.

- - - and Nick Yap.---Yes.

And you knew Nick Yap.---Yes.

Did you know Stephanie Di Pasqua?---No.

10 So she wasn't a member of the Drummoyne branch?---She wasn't a member of the conference. I'd never seen her before.

You'd never seen her before.---No.

Did you subsequently find out that she was someone who worked in the office of Mr Sidoti?---I was told she was a member of Ashfield Young Libs. I didn't realise that she worked in John's office. I knew her mother did, but I didn't realise that Stephanie was there as well.

20 And did you find that out at a later point or - - -?---Yes, I found that out later.

And was that before the actual preselection event that occurred or - - -? ---Yes, before the preselection.

30 And did you become aware or develop an understanding that there had been some alternative ticket that had been developed or worked out?---Yes, because state executive had, or sorry, state, the state director had sent an email to all of the parties who had nominated for council, which is what they do as part of the process, to say that there were more candidates than there were positions and therefore we'd need to go through for a preselection. That was the first time I really, I realised that we were going to go to a preselection.

40 So if we could perhaps bring up page 1491. This is a message, or sorry, an email chain that involves Dr Ahmed. If we could go through though to the next page, which is 1492. Do you see there there's an email from Simon McInnes and it seems to be perhaps possibly a generic email that may have been sent to all candidates?---Yeah.

Saying, "Dear candidate. The final list of nominations received."---Yes.

And then it lists them all.---Yes.

And we see the number of people nominating for a number of the different positions. Correct?---Yes.

Sensitive: Legal

And your name appears in respect of each of positions number 2 and 3.
---Mmm. Yes.

But otherwise doesn't appear.---That's right.

Ms Di Pasqua at least had nominated for all positions on the ticket,
including the mayor.---Yes.

And so had Ms McCaffrey.---Yes.

10

And Mr Megna had only put himself forward for the number 1 position.
---Yes.

Correct?---Yes.

And Nick Yap, Tanveer Ahmed had also nominated for each of 1, 2, 3 and
4.---Yes.

20

So is this the email where you first became aware that in fact there was
going to have to be a preselection process?---Yes, yes.

Now, my original question though was directed to whether or not you came
to an understanding that there had been an alternative ticket that had been
worked out, and what I was referring to was, you had, when you put in your
nomination, had an understanding that there was an arrangement as between
the existing councillors. Correct?---Yes.

As to the order in which you would appear on the ballot.---Yes.

30

But did you become aware of some other arrangement that had been worked
out involving other candidates in terms of the order, in terms of orders?---I
assumed there must have been.

Why do you say you assumed there must have been?---Because why would
I think a young girl who's got no history in the area nominate for mayor in
a, in a area that, or in a conference which I don't believe that the regulars or
the local branch members didn't, didn't know her and I thought, well, there
must be a ticket. Then when I saw Nick, Nick's name I thought, oh, well,
there's an alternate ticket that's been put into play.

40

But that was an assumption that you made, was it?---Yes, it was an
assumption.

Did you have any understanding as to who it was who may have put
together that alternative ticket?---Well, based on when I found out that
Stephanie was working at John's office I just put two and two together and
assumed it was John and he was carrying out his threat of replacing
councillors he didn't want on the ticket.

Sensitive: Legal

That all seems, from what you're saying, to be based on assumptions that you were making, based purely on the fact that firstly there were more than the available places on the ticket?---Yes.

And secondly that one of those persons was someone who you came to learn worked in Mr Sidoti's office?---Yes.

10 And thirdly the history of your more recent dealings with Mr Sidoti in respect of particularly the Waterview Street site and the Five Dock Town Centre, correct?---Yes. Yes.

Is that the – have I encapsulated that accurately?---Yes.

Now, I just want to show you another email. This is a chain of emails that refers to the Party Futures Convention and can you see that the top email is from yourself to a Nathaniel Smith?---Yeah.

20 Who is Nathaniel Smith?---He's a member of parliament.

A member of State Parliament?---Parliament, yes.

A Liberal member of State Parliament?---Yes.

And can you see that your email is in response to an email that Mr Nathaniel Smith appears to have written to you saying, "Dear state delegate," and then there's reference to the Party Futures Convention on 22 and 23 July?---Yep.

30 Now, that email was sent on 13 July from Mr Nathaniel Smith. So that is, what, nine days after the email regarding the nominations for the council? ---Yes.

And your response says, "Thanks Nat. I won't be able to be there as I am overseas on leave. I am back on 6 August. On another note, Sidoti/Tannous running candidates against all positions on Canada Bay Council." Do you see that?---Yes.

Now, that firstly, is Sidoti a reference to John Sidoti?---Yes.

40 And who is Tannous, T-a-n-n-o-u-s?---That's Joe Tannous.

Who is Joe Tannous?---He is the, he is a member of the party but over on the Burwood/Strathfield end of the electorate.

So he is not part of the - - -

THE COMMISSIONER: Sorry, he's a member of the party and what?
---He's a member of the party over on the other side of the electorate, not

Sensitive: Legal

part of the Drummoyne conference, he's part of the Strathfield/Burwood conference.

MR RANKEN: So he is not a member of any of the branches within the Canada Bay local government area?---No. He isn't, no.

THE COMMISSIONER: Did you know him?---Yes.

In what context?---Through the party.

10

Through?---Through, through the Liberal Party.

And more specifically, in what respects?---I met Joe Tannous when he ran for the state seat of Strathfield many, many years ago. It was when I was first a member of the party. So I've known him ever since then.

Does he occupy any official or unofficial position within the party?---Yes. He, from what I understand, he is currently the President of the Strathfield Electorate Conference.

20

All right.

MR RANKEN: Was he the President of the Strathfield Electorate Conference in 2017?---Could have been. I'm not sure.

Is Mr Tannous believed to be, or considered to be a powerbroker within the Liberal Party?---Yes. I would, yes, I would think so. Yes.

30

And what's your basis of saying that?---People that want to generally run for positions call him to get his support.

Even if their positions that aren't within his electorate conference?
---Sometimes, yes. I have known people to do that.

Does that mean that he's someone who has some influence with persons who might be involved in the decision making regarding such things as people who might be considered for preselection?---Yes. He would be someone of influence. I would say he is someone of influence.

40

With delegates, for example, within a conference?---Yes.

And perhaps beyond the delegates within the conference, because I understand that delegates also are appointed by the state executive, is that right?---Delegates are appointed by the branches, and each branch gets a quota for delegates depending on how many people and members the branch has.

Sensitive: Legal

But were there also delegates in terms of preselection processes that came from outside because they were from the same executive?---Yes. Yes, that's right. There was, the preselection for council you're talking about?

Yes.---Yes. There were preselectors from out of area, people that I didn't know from state executive, and some delegates out of area that I didn't know as well.

10 And are those kinds of people the people in respect of whom Mr Tannous might be expected to have some influence?---Yes.

So going back to this email, you sought to bring it to Mr Smith's attention that Sidoti and Joe Tannous, that John Sidoti and Joe Tannous, are running candidates against all positions on Canada Bay Council.---Yes.

Now, is there some basis upon which you were able to express that view?
---I wasn't convinced that – I just, I wasn't convinced that, you know, there would be any other, I mean, the, I, I, yeah, why did I form that view is because there was no, there'd never been a preselection before. We'd never
20 had this type of, well, in the time that I was on council or the time that I've been a member of the party where we had the need for a preselection. And I, I know that Sidoti and Tannous formed a, an alignment of some sort when John was still at Burwood Council, so I, I knew that there was a connection there.

So is there any other basis, I mean, we appreciate, I appreciate the basis on which you came to a conclusion that Mr Sidoti might be running candidates and might have been involved in developing an alternative ticket. But Mr Tannous was not someone who was involved generally in the affairs of the
30 Drummoyne electoral.---Look, no, not on the surface, no.

And so what I'm asking about is how it is you were able to suggest to Mr Smith that Mr Sidoti had worked with, essentially worked with Mr Tannous – that's what you're suggesting here – to run candidates against all positions on the Canada Bay Council. Was it based solely on the fact of your knowledge that they had a previous connection going back, by this stage, some eight or nine years to when Mr Sidoti was on the Burwood Council? Or was there some other information that you were aware of that caused you to be able to express this view here?---No, only that I'd seen them together
40 and I knew that there was a, a friendship and an alliance there.

So you'd seen them together. Are you referring to seeing them together in reasonable proximity, as far as time is concerned, to 13 July when you're sending this email?---No. I can't remember seeing them together around that time. It was just a known alliance in the party.

So was there an assumption on your part that if Mr Sidoti was putting together a ticket, an alternative ticket, that most likely he would be enlisting

Sensitive: Legal

the support of Mr Tannous who you knew to be a powerbroker, correct?
---Yes.

And a person who you knew Mr Sidoti to have a close working relationship with.---Yes.

And did you understand them to also be personal friends?---It looked like that on the surface, but I don't know if they visited each other.

10 And did you make any inquiries, following this email, to see whether or not there was more substance to the suggestion that you've made in this email?
---No.

Did anybody give you any additional information that might, after this, that might suggest that Mr Sidoti and Mr Tannous were coming up with some alternative ticket?---No.

20 Did you raise this with either Helen McCaffrey or Michael Megna?---I can't remember that I did.

When it comes to preselection, when it came to the preselection process, appreciating that this was the first time you'd ever had to engage in it.
---Yes.

You were obviously going to be away overseas for a period from 13 July until 6 August. Correct?---Yes.

30 And was the preselection event itself shortly after your return on 6 August or did you - - -?---Yes, I think it was - - -

- - - come back earlier?---I think, no, I think it was on the following day. I, I asked the state director if they'd consider, because they hadn't set a date of the preselection so I emailed them and asked them if they would consider making it a date where I could be physically present, knowing that if I couldn't be physically present it would be very difficult to lobby preselectors and put my case forward.

40 And what did you do to lobby preselectors and put your case forward?
---Unfortunately the best I could do from overseas was email them.

And when you say email, did you email all of the delegates?---Yes, I emailed the delegate list that was given to me.

And did you – sorry, withdraw that. Is it quite common to your knowledge that to seek some support from other party members by having them write letters of a reference nature?---Yes, yeah, it is quite common.

Sensitive: Legal

And would they include possibly the local member, be either the state member or the federal member?---Yes.

Did you approach either of Mr Sidoti or Mr Laundry in terms of seeking some sort of letter of support?---Gosh, I can't remember. I don't think I did.

10 Is there any particular reason why you did not?---Probably because I was trying to run the campaign from, from Croatia, from overseas, so I think, I just can't remember that I did. I think it was very, very quick turnaround for this, yeah.

Now, in the event you weren't successful in getting onto the ticket at all. Is that the position?---That's right, yeah.

Because you'd nominated only for the second and the third positions. ---That's right.

And I think they went to each of Ms Di Pasqua and Mr Yap.---That's right.

20 And then I think you've told us already that you didn't have any conversations with either Mr Megna or Ms McCaffrey or for that matter Dr Ahmed about alternative tickets that were being run.---Yeah, I wasn't aware there was an alternative ticket.

30 Did you have any conversations after the preselection event and the process with any of them about that whole process and what had happened?---Yes, I did, I did raise it with Helen and with Michael that I believed – well, I raised it before the preselection that we were only going, we were only in this situation as retribution for not delivering the outcome for, for the Sidoti properties in Five Dock.

So did you raise that in those terms with each of them or was it done together or - - -?---Yes, yes, individually I raised it with them before and after.

Let's deal with Mr Megna first.---Mmm.

40 Did he respond to that suggestion on your part?---No, he, he didn't have a view on that.

What did he say, if anything?---I can't remember what he said actually. Actually I don't remember speaking to him, to him for some time after that, I mean for some time, probably about a month, but I, yeah, no, I don't recall him ever, don't recall a conversation where he was interacting or had a view on it.

Sensitive: Legal

What about with Ms McCaffrey?---Yeah, Helen and I discussed it before and after and I think she was, we both agreed that we felt that it was retribution.

So she agreed with the point of view that you've expressed?---Yes.

10 Because Ms McCaffrey wasn't successful either, although she remained on the ticket as the mayoral candidate. Is that correct?---Yes, it was interesting because the, Stephanie pulled out of that position on the day of the preselection if memory serves, which was really unusual and I thought to myself, well, potentially the only reason she's pulling out is because they don't think that the mayoralty is a winnable position or winnable at all. I, I, I just can't imagine, I think that, that would be the only reason she's pull out.

Did Ms Di Pasqua also pull out of the number 1 position?---Yes, I think she did.

20 And did Mr Yap also pull out of the number 1 position?---Yes, I think he did. Yep.

And of course that meant that the number 1 position was down to only Mr Megna, Ms McCaffrey, and Dr Ahmed.---In the end, I don't think there was anybody – I, I'm just trying to think back to that preselection. I don't, I don't think that – I think Michael was just endorsed. I don't know that anybody, there was a, another candidate with, running against Michael on the day.

30 Because each of Ms Di Pasqua and Mr Yap had pulled out, correct?---Yeah, I think that's right, yeah.

And you yourself were only nominated for 2 and 3.---That's right.

So you'd never nominated for that number 1 position.---No.

Do you say that Dr Ahmed also pulled out of the number 1?---I think he did, yeah.

40 Do you recall if that was done on the day or at some other time?---I can't remember. Oh, potentially shortly before nominations closed, because once, once we realised that there was a preselection, it kind of changed things a bit. Yeah. I, I, I can't remember whether he pulled out on the day.

And did you also learn whether or not, that Mr Yap pulled out of the race for number 2 as it were?---No, he didn't pull out of the race for number 2.

He didn't?---No, I don't think he did.

Sensitive: Legal

So that meant the race for number 2 was between yourself - - -?---Yes.

- - - Ms Di Pasqua, Mr Yap, and was Helen McCaffrey still in number 2?
---Yes. I think that's right.

And ultimately – and what about Dr Ahmed?---I think he was at number 4.
I, I, or he didn't, or he didn't get through that round.
Bit sketchy, sorry.

10 In fact it was Ms Di Pasqua who secured the number 2 position, correct?
---Yes.

In respect of the number 3 position, you were still in the running for that,
correct?---Yes.

And Ms McCaffrey was also in the running for that?---Yes.

And Mr Yap?---Yes.

20 And was Dr Ahmed as well?---I think he could have been, yeah.

But for that position, Mr Yap was the successful candidate.---Yes. Yep.

And that left the positions of 4 and 5, is that right?---Yes.

And the fourth position was won by Helen McCaffrey, is that correct?
---Yes, that's right.

30 Do you know who ultimately filled the fifth position?---Could have been
Tanveer, actually. I just can't – yeah.

And then you - - -?---Oh, was there a fifth position? I don't – yeah.

Sorry, I - - -?---I don't, I don't think there was a fifth position, actually. I
think it finished at four.

Oh, that's in terms of the preselection process, is it?---Yeah.

40 But when it came to the actual ticket that's submitted, is it not the case that
you need to have a minimum, you need to have five persons on the ticket?
---Yeah. I think that's right. I can't remember the rules, yeah.

But whoever was the fifth person wasn't you, is that - - -?---Wasn't me, no.

And ultimately, Ms McCaffrey was not elected, she was not successful in
her mayoral candidacy?---No.

That was won by Councillor, sorry, won by Angelo Tsirekas?---That's right.

Sensitive: Legal

And she was number 4 on the ticket, but there were only three Liberal councillors elected that year, is that correct?---Yes. Yes.

So she ceased being a member of council as well.---Yep. That's right.

And Dr Ahmed ceased being a councillor as well.---Yes.

10 So as of September 2017 each of the three Liberal councillors who had been able to vote in respect of the Urban Design Study and associated planning proposals relating to the Five Dock Town Centre ceased to be councillors with the City of Canada Bay Council?---That's right. That's right.

Thank you. They're the only questions that I have of Ms Cestar. Oh, sorry, just one moment. Oh, I ought to tender - - -

THE COMMISSIONER: Mr Ranken, the email of 13 July.

20 MR RANKEN: Yes. I ought to tender that email.

THE COMMISSIONER: All right, what's the number?

MR RANKEN: Exhibit 27.

THE COMMISSIONER: The email from Ms Cestar to - - -

MR RANKEN: To Nathaniel Smith.

30 THE COMMISSIONER: - - - and Nathaniel Smith becomes Exhibit 27, the email of 13 July, '17.

#EXH-027 – EMAIL FROM MS CESTAR TO MR SMITH DATED 13 JULY 2017

THE COMMISSIONER: Yes.

40 MR RANKEN: Yes, thank you, they're my only questions of Ms Cestar.

THE COMMISSIONER: Mr Neil, do you want to make application to cross-examine Ms Cestar?

MR NEIL: Yes, I do, Commissioner. But in the time remaining, it might be simpler if I start in the morning.

THE COMMISSIONER: I appreciate that. And just to give me some sort of an estimate as to how long you think you might be.

Sensitive: Legal

MR NEIL: I think I'd probably go to the morning tea.

THE COMMISSIONER: All right, thank you.

MR NEIL: Might fall a bit short, but an hour to an hour and a half.

10 THE COMMISSIONER: All right, thank you. Ms Cestar, we'll need you to return tomorrow at 10 o'clock. So far as the rest of the day is concerned, you should be finished certainly before lunch tomorrow.---Thank you.

All right. You may step down.

THE WITNESS STOOD DOWN [4.00pm]

20 THE COMMISSIONER: Mr Ranken, tomorrow we're only going through to lunchtime.

MR RANKEN: That's so.

THE COMMISSIONER: And just take a seat anywhere there that you can find a seat. Or you may leave, if you wish.

MS CESTAR: Thank you.

30 THE COMMISSIONER: Yes. So, yes, all right, then. So it will be a short day, in other words. Go through till about 1 o'clock.

MR RANKEN: Yes. Yes, Commissioner.

THE COMMISSIONER: Yes, okay. Very good. Nothing else you want to raise?

MR RANKEN: Not for my part, Commissioner.

40 THE COMMISSIONER: Then I'll adjourn. 10 o'clock tomorrow.

AT 4.01PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.01pm]

Sensitive: Legal