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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION WITNEY

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 12 APRIL, 2021

AT 10.00AM

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

THE COMMISSIONER: Yes, Mr Ranken.

MR RANKEN: Yes, thank you, Commissioner. Ms McCaffrey has returned to the witness box. If she could be re-sworn.

THE COMMISSIONER: Yes, thank you. Good morning, Ms McCaffrey.

MS McCAFFREY: Good morning.

10 THE COMMISSIONER: Well, I'll have the oath administered again, if you wouldn't mind just standing with the Bible there, take your time.

THE COMMISSIONER: Thank you, Ms McCaffrey. I have made a declaration under section 38 of the Independent Commission Against Corruption Act in respect of the evidence of the witness, Ms McCaffrey. That declaration continues to apply to the evidence to be given today. Yes, Mr Ranken.

10 MR RANKEN: Yes, thank you, Commissioner, and just for your benefit, Ms McCaffrey is today represented by Mr Michael Blair.

THE COMMISSIONER: Sorry?

MR RANKEN: Ms McCaffrey is today represented by Mr Michael Blair. He - - -

THE COMMISSIONER: Have I already given leave to Mr Blair?

20 MR RANKEN: Yes, you have given leave to Mr Blair, but on Friday, Ms McCaffrey was represented by Ms Linda Barnes. I just wanted to draw that to your attention.

THE COMMISSIONER: Yes, I'm aware of that. No, that's quite in order.

MR RANKEN: Now, Ms McCaffrey, I just want to – are you okay? Just want to cover a couple of things from the Five Dock Town Centre study in the recommendations, and then start moving forward a little bit through the chronology. If you need a break at any time, please let me know. I wonder
30 if we could bring up page 287 in Exhibit 24 on the monitors. Now, this page is from the Urban Design Study report that was prepared in October 2013 by Studio GL and the other experts, and it deals with some of the recommendations, this particular part, for future development of the Five Dock Town Centre study. And if you look, there's a couple of subheadings on that page. One is Land Use Zoning and one is Floor Space Ratio. Do you see that?---Yes.

Under the subheading for Land Use Zoning, do you see that in the second paragraph it states this that, "This study recommends protecting for future
40 needs by expanding the width of the centre core and creating additional areas zoned mixed-use along West Street south of Henry Street between Garfield Street and Kings Road and along Waterview Street south of Second Avenue," and then it refers to the adjacent diagram. Do you see that?---Yes.

And you can see the shaded blue areas in that diagram that represented the areas that were not previously mixed-use zoned, but were to be mixed-use zone under the proposal that was being put forward by Studio GL and others. Do you see that?---Yes, yes.

In addition, under the Floor Space Ratio, do you see that it refers to the fact that – this is in the final paragraph – that the study recommends changes to the DCP and height controls to make it more possible to achieve the density of 2.5:1, which was the existing floor space ratio?---Yes.

10 So what was contemplated there was not an increase to the floor space ratio, but rather changes to the DCP and height controls in order to make it more achievable, that is, that floor space ratio of 2.5:1 more achievable. Do you see - - -?---Yes.

And if we could then go to page 289, dealing with some of the development controls to achieve that, there's a subheading of Building Heights.---Yep.

And do you see that under that subheading it refers to the fact that this study recommends that the centre's height limit is altered to 16 metres from 15 metres with a 14-metre street wall height and a requirement for 3.6-high ground floors?---Yes.

20 That's in that first paragraph.---Yes, I see that.

And do you then also see it says, "It is also suggested that on large sites, that is, sites that are greater than 200 square metres, that an additional storey should be considered as the size of the site should enable the architect to provide the additional height of a 19-metre height limit without adversely impacting on bulk and scale, privacy and overshadowing."---Yes.

30 So the study was effectively retaining the same floor space ratio, but allowing for greater heights in the DCP and allowing for an additional height on a larger site. Correct?---Yes.

And in addition there, just to draw your attention to the subheading of Setbacks, do you see it also says that, "Additional storeys above the maximum street wall height of 14 metres should be set back a minimum of six metres from the street and be designed to recede."---Yes, I can see that.

And we can see that represented effectively in the diagram below as well, with the setbacks.---Yes, yes.

40 Now, and then if we could then go to page 318, I'm not sure if it's possible to rotate that page. So that might be more legible or easier to read at least in that rotated form. But just drawing your attention to, firstly, the recommendation which is at UF-01-2 –sorry, I withdraw that – UF-02-1, which is, "To revise the DCP controls to establish a maximum consistent street wall height of four storeys, subject to heritage and overshadowing considerations with any additional storeys setback from the street." So that's reflecting that setback issue, would you agree?---Yes. That's what it says, yes.

And if we could then go to page 329, and again it might be necessary to rotate the image. Sorry, 321, I apologise if I misspoke. And I just want to draw your attention to the recommendation UF-07-3, which refers to, “Using setback and height controls in the LEP and DCP to encourage development that meets the requirements of the Residential Flat Design Code including separation distances and narrow floor plates, which allow natural light and ventilation et cetera.” Do you see that?---(No Audible Reply)

10

And before the matter was to be considered by council in November of 2013, the staff prepared a report that summarised some of these aspects and summarised the report for the assistance of councillors, and I think I might have taken you to some of that on the previous – as in on Friday. But I just want to take you to a couple of aspects of that. If we could go to page 58 and this will be in usual orientation. That’s the first page of the report that was prepared as part of the agenda papers for 26 November, 2013, council meeting. If we could then go to page 63. Now, just drawing your attention to the Urban and Built Form subheading. Do you see that under that

20 subheading there is a reference to, commencing from the second sentence, “The existing controls were drafted on the assumption that a majority of floor space ratio would be utilised for commercial purposes. However, for a mixed-use development, the controls facilitate odd outcomes and resulting building appear squat, with deep floor plates that can have poor residential amenity and limited access to sunlight and ventilation. A new building envelope is recommended, that facilitates better amenity for residents and improved architectural outcomes.” And then if we could go to the next page. Continuing on, “The study recommends that the centre’s height limit is increased to 16 metres or five storeys with a 14 metres street wall height

30 and a requirement for 3.6 metre high ground floors. It is suggested that on larger sites or where amalgamation has occurred, an additional storey should be permitted, allowing six storeys.” And just pausing there, that reflects those aspects of the report that were suggesting that on the larger sites you could have that addition storey, correct?---Yes.

20

30

But a maximum of six storeys, effectively. And then the next dot point is the B4 mixed-use zone that, “The study recommends expanding the width of the centre core by creating additional mixed-use areas along West Street, south of Henry Street between Garfield and Kings Road and along

40 Waterview Street, south of Second Avenue. This will allow the centre to grow over time and provide additional pedestrian connections.” Do you see that?---Yes, yes.

40

So that again also reflects the idea of the expansion of the core of the town centre by expanding those, including within the B4 mixed-use zone those areas that I had taken you to in that diagram on the relevant page of the report. Correct?---Yes.

Then just at the bottom of that page, do you see there's a reference to the economic analysis?---Yes.

So, "To strengthen the commercial rigor of the study, HillPDA was engaged to test the financial viability across three sites within the centre. The outcomes of the testing demonstrated that the proposed building envelopes combined with the existing floor space ratio," and just pausing there, that's the floor space ratio of 2.5:1, "will attract investment and redevelopment." Correct?---Yes.

10

So the two things that are clear out of that little review of both relevant parts of the study report and the staff agenda report that was prepared for the meeting on 26 November, 2013, is that firstly, the study did not recommend an increase in floor space ratio beyond the existing 2.5:1. Correct?---Yes.

And that was so even on larger sites.---Yes.

20

And secondly, the study did not recommend a rezoning of the area north of Second Avenue on either side of Great North Road.---From what I've read here, yes.

So following the public exhibition in December 2013 and January 2014, there was a council workshop that was held on 8 April, 2014. Do you have a recollection of attending a council workshop in early 2014?---I don't recall.

30

No. Is it likely that you would have attended a councillor workshop in relation to something as significant as the Five Dock Town Centre Study? ---It would be likely.

Do you ever recall attending or do you have any recollection of any workshops you attended in relation to the Five Dock Town Centre Study? ---In detail, no.

40

We'll just try to deal with it in a general term, do you ever recall there being a council, councillors workshop at which the Five Dock Town Centre Study was discussed where there were some views being expressed by a number of councillors, including Councillor Kenzler, about the need to encourage amalgamation of sites by providing for bonus incentives?---Oh, I have some recollection of that.

But in terms of some recollection, what is the extent of that recollection? ---It was discussed.

Was it something that was raised by the councillors with the council staff who were in attendance?---That would have been the protocol.

And do you recall whether or not you were one of the councillors who was in favour of such a course, that is, some bonus being offered to encourage the incentive, the amalgamation of sites?---Probably.

And was it suggested to council staff that they should consider a possible resolution that would enable for there to be a bonus provision allowing for greater floor space ratio and perhaps greater heights for sites that might be amalgamated?---Possibly.

10 Of course, that would be, was not something that had been recommended in the study, correct?---I don't recall that.

So it would be something that would have come from the councillors as a suggestion to the staff in the course of the councillor workshop?---It, it probably did.

20 So if I could just take you to a memorandum that was prepared following the council workshop, this is at page 368 of Exhibit 24. Firstly, this is an email from Ms Ferguson to Mr Dewar. Did you know each of Ms Ferguson and Mr Dewar?---I did.

And she's forwarding a memo to Mr Dewar for further work concerning an LEP clause for councillors. If we could go to the next page. Do you see that this is an interoffice memo that was being drafted for the purposes of circulating to the councillors, and at the outset it says, "Following the councillor workshop on 8 April, an LEP clause has been written to encourage the consolidation of lots in Five Dock Town Centre and also to ensure design excellence is achieved." Do you see that?---I do.

30 So would you agree this appears to be the position, that notwithstanding what had been recommended in the study, at a councillors' workshop, most probably the councillors' workshop on 8 April, 2014, following a discussion amongst the councillors and with council staff, it was suggested to council staff that they develop a proposal as far as a bonus clause that could incentivise amalgamation of sites.---It would seem that way.

40 And if we go to the next page, and then the following page, sorry, 371, we see this is the attached proposed draft clause that was being suggested by council staff. Do you see that?---Yes, I do.

And do you see that as far as 2(f) is proposed, clause 2(f) is concerned, it refers to a maximum floor space ratio for development that has a site area of 2,500 square metres, on land as identified as area 5 on the floor space ratio map, must not exceed 3:1. Do you see that?---I do.

So on this draft clause, it was contemplated that the bonus would only apply to those sites that had an area of more than 2,500 square metres?---Yes.

And then there was a further draft clause that was directed towards how one might be able to ensure design excellence. Now, in this time – that is, in early 2014 – did you have any discussions whether, in the course of a face-to-face meeting or otherwise, with Mr Sidoti in which he expressed his views about the Town Centre Study?---I don't recall that.

Is it quite possible that you did?---It may have been.

10 And is it quite possible that you actually attended meetings with him in which it was discussed?---I really have no recollection.

Absolutely no recollection?

THE COMMISSIONER: Did you have discussions with Mr Sidoti about the town centre plan from time to time or over a period of time?---Most likely.

10 MR RANKEN: Do you ever recall him expressing a view about the floor space ratio insofar as the recommendation in the Town Centre Study?---I don't recall the floor space ratio, no. Well, I don't think I remember that.

What about, at least in early 2014, whether or not he expressed any views to you about the extent of the proposed rezoning in order to enlarge the core centre of the town centre?---I believe he did.

And what views did he express to you at that time?---My recollection is that the height of the buildings weren't – it wasn't high enough.

30 And insofar as the zoning to change the zoning to B4 mixed-use, how was that linked in your mind, or in your discussions with Mr Sidoti, to the issue of building heights?---Could you ask me that again, please?

40 Yes. Because my question was, was directed to – sorry, I withdraw that. My initial question was directed to any discussions you had with Mr Sidoti about the proposed rezoning of areas in order to increase the centre town, the core of the town centre. And your response was he'd mentioned something about the building heights weren't high enough. I was just wanting to explore that with you, Ms McCaffrey, to understand how was that linked by yourself or Mr Sidoti to the issue about expanding the mixed-use rezoning.---I honestly don't recall.

You don't recall.---I don't recall.

Well, can I then take you to an email on page 356 of Exhibit 24? This is actually a chain of emails, you'll see, but I just want to draw your attention to the email in the centre of the page of 7 April, 2014, from Mr Sidoti, from his parliamentary email address. Do you see that, commencing, "Dear councillors"?---Yes.

And do you see it says, “I would like to organise a meeting, day or night, over the next week at a time convenient to all, in the presence of the Five Dock Chamber of Commerce President and Vice-President, to discuss the Five Dock Urban Town Study and the very misleading statements by council staff in an attempt to sell the business community of Five Dock a pup.” Do you see that?---I can see that.

10 And, “Please be well informed on this subject and challenge the thoughts of the staff. The survival of the centre is at play. Await your reply. John Sidoti MP.” Correct?---Yes.

Now, do you have a recollection of receiving this email?---I’m obviously in the trail, so I must have received it.

So you accept that you received it but you don’t actually independently recall receiving it. Is that the position?---When is it, 2014?

20 Yes.---No.

Now, just drawing your attention to it, that it makes some fairly startling claims in it, would you agree?---It does.

Firstly, there is a suggestion that council staff have been making very misleading statements about the Five Dock Urban Design Study, correct? ---Yes.

30 And do you know whether Mr Sidoti ever outlined to you what the very misleading statements were?---I don’t recall what those statements were, no.

Upon seeing this, I mean, is it likely that you would have been concerned to know that the state member was raising issues about misleading statements by council staff?---Yes, I would have been. I would have been concerned.

Did you not then think to raise it with Mr Sidoti to say, “What is this about misleading statements”?---I may have raised it with him. I don’t recall.

40 Because this process was in fact the subject of reports prepared by independent experts, correct?---That is correct.

And the council staff recommendations, leaving aside the recommendation that was put forward and supported and being recommended by the councillors for the bonus provision, the report and the statements that council staff had made were consistent with what had been recommended by the independent experts, correct?---Yes.

So it would have been immediately apparent to you, would it not, that the suggestion that council staff had been making very misleading statements was without any substance?---It would, it would seem so, yes.

But not only that, the suggestion in this email was that it wasn't just a matter of them making very misleading statements but that it was done with a particular purpose in mind, that is an attempt to sell the business community of Five Dock a pup, correct?---Yes, yes.

10 And that would be extremely concerning if the council staff were pushing such an agenda and making misleading statements for that, correct?---Yes, it would be. I can't – yes.

And from your experience of working with the council staff who had particular responsibility for this project, that is the Five Dock Town Centre Urban Design Study and associated planning proposals, would that have been completely at odds of your experience as their professionalism and the manner about which they went about their jobs?---It certainly, it certainly was.

20

Did you think to – sorry.

THE COMMISSIONER: If – sorry. If the council staff had been making very misleading statements as stated in this email, would you expect that that's a matter that should be brought to the attention of all councillors, not just Liberal councillors?---Yes.

30 And would that be for the purposes of having an investigation done to see if there's any substance behind these statements? Or allegations, I should say.---It, it would seem so, yes.

MR RANKEN: Do we take it, then, though, that you did not actually refer this email, or the suggestion that there had been misleading statements made by council staff in the manner being suggested in this email, to the other councillors? That is, the non-Liberal councillors.---I, I don't recall that.

40 Are you able to - - -?---It may have come up in a workshop discussion of to make sure that everything was, you know, I use the word "correct" but that's not the word I want. I can't think of the word that I want at the moment.

And are you saying that you do have some recollection of, of raising concerns about the possibly that staff - - -?---No.

- - - might have been making misleading statements or - - -?---I don't, I don't recall that. I don't recall raising it, but I would assume that I may have brought it up in, in discussion at a workshop stage.

Can I ask you this. Given your knowledge of Mr Sidoti up to that point and your knowledge of his interest in the area, in the sense that his family had the function centre at 120 Great North Road, did you, upon receiving an email such as this, did it trigger with you a particular understanding as to what he was referring to without actually having to ask him?---It would have, yes.

10 And what was that understanding that it triggered in you?---That he wasn't happy about the outcomes and recommendations in the reports.

But not happy in what respect or why?---I recall that he wanted the area expanded to include property further down the strip.

And so is it likely that, upon receiving this email, you may not have forwarded it on to the other councillors because you had an immediate understanding as to what it was in fact he was referring to?---Yes.

20 And so do we take it, then, that you dismissed immediately, in your mind, that there were any misleading statements made by council staff?---Back in, it's going back to 2014. I don't recall what was in my mind, but I, I would assume that that's what I would have done.

Well, is it fair to say this, though, insofar as your recollection is concerned, you've never had an occasion to verily believe that any council staff member, particularly those involved with this project, have ever been engaged in making misleading statements to you or other councillors?---Oh, no, definitely not.

30 So notwithstanding that you don't have an independent recollection of receiving this email, but is it likely that even upon receiving this email, your view of the councillors was not – sorry, the council staff was not changed? ---It was not.

But you had an understanding as to what Mr Sidoti was really on about.---I did.

And what was he really on about?---He wanted more floor, he wanted – whether it was floor space or height, my distinct memory was height.

40 And floor space or height for whom?---Well, for the properties, that I assume were his properties, in that area between Waterview Street and First and Second Avenue and Great North Road.

And the basis of that understanding that that's what he wanted was from what? From your discussions with Mr Sidoti or some other basis?---I don't recall having discussions, but from this email, I would think that that was, that was what was happening.

You can see from the balance of the trail that we see on page 356, that's the email trail, that there are responses from Mr Megna and also a response from Ms Cestar, both indicating their availability?---I do.

And if I can, I'll take you also then to page 364, this is another version of the chain as it were, with a bit more detail. If we could go to page 365, you can see at the bottom of that page, there's the original email.--- Yes.

10 Oh sorry, no, that's a different email. I apologise. I'll come to that email in a moment. So I want to go to the possibility that you may have attended a meeting with Mr Sidoti at his electoral office in Five Dock.---There is a possibility.

Have you from time to time met with Mr Sidoti at his electoral office?---I had, particularly as I recall when I was mayor and he was a state member, yes, over council issues.

20 Council issues related or unrelated to the Five Dock Town Centre study?---I don't recall. It could have been trees and rubbish and footpaths, traffic.

So there may have been some strictly council-related matters, but is it possible that there were meetings also in that period between yourself and Mr Sidoti at his electoral office in Five Dock that related to the Five Dock Town Centre study?---It, it is possible.

And that's the period from June 2016 through to September 2017.---Oh.

That's when you were the mayor.---That was when I was mayor, yes.

30 But just dealing with the earlier period, do you recall attending Mr Sidoti's electorate office?---In, I don't recall.

But it's quite possible that you may have?---It is possible. I don't recall.

So if we could go to page 373, you would see this would appear to be a calendar note in relation to a meeting that had been arranged by Mr Sidoti at his office for Wednesday, 16 April at 7.00pm.---Yes.

40 And the heading is Urban Plan with Councillors.---Yes.

Is it fair to say that insofar as you may have discussed any urban plans with Mr Sidoti, this is the only urban plan you would have discussed, that is, the Five Dock Town Centre, at least in 2014?---Yeah, yes, unless, issues relating to Rhodes, R-h-o-d-e-s, which was very much on the, on the agenda – not agenda. It was there, it was happening, because there was a lot of development going on there.

Then perhaps if we could go back to page 365, which was the email I was about to take you to before, and you can see towards the bottom of that page there is an email that Mr Sidoti sent on 8 April, saying, "Dear Councillors, can we meet over the next seven days to form a united stance for the Five Dock Town Centre Urban Design Study that will be voted on the 6 May council meeting, any evening at your convenience," and then there are some suggested dates, one of which is Wednesday 16.---Yes, I can see that.

10 That being Wednesday, 16 April, obviously.---Oh, yeah (not transcribable)
Over the next seven days, and this is 8 April.---Yes, it would – yes.

And we can see and work out which councillors that email was forwarded to insofar as Mr Megna has replied and the reply has gone to Mr Sidoti as well as each of yourself, Ms Cestar, and Dr Ahmed. So this was Mr Sidoti suggesting a meeting between the Liberal councillors, including apparently Mr Megna, to form a united stance for the Five Dock Town Centre Urban Design Study. Do you see that?---I can see that.

20 And did you have a view about the appropriateness of the state member gathering together the Liberal councillors in order for them to come to some united stance on the development proposals and the Urban Design Study that was coming before council, rather than you each exercising your own independent views?---Whilst I was on council, I was always prepared to listen to all views and then formulate my own independent view.

30 But this was not a view that was being expressed to all councillors, this was a view that Mr Sidoti was wishing to only express and make known, apparently, to the Liberal councillors, correct?---It appears that way.

And is it likely, given the circumstances in the email I have already taken to you previously, that you had a sense of what it was exactly that Mr Sidoti wanted to raise with you?---I did have a sense.

So you had a sense then that what Mr Sidoti wished to raise with you in relation to the Town Centre Urban Design Study was his own family's property interests in the area, correct?---I believed so.

40 And he wanted to raise that with you, and your fellow Liberal councillors, is that the case?---It would seem so, yes, from that email.

And did you not consider that – or did you consider that what Mr Sidoti was doing was using his access to the Liberal councillors by reason of his position as the state member of parliament for the Drummoyne electorate to be able to pursue his own family's private property interests?---Well, from that email, that's what I would assume.

And did you have a view – sorry, I withdraw that. You and your fellow Liberal councillors, I take it, did not make a habit of meeting with individual constituents as a group to hear about their personal property interests in a particular matter, correct?---We received emails from various - - -

I'm not asking about emails.---Sorry.

About meeting as a group - - -?---No.

10 - - - with a particular private property interest?---Not that I can recall.

Rather than that person registering, for example, to present to council at a council meeting and being able to hear their views expressed in the open public forum of a council meeting, correct?---That is, that is correct.

THE COMMISSIONER: Before this time that we're talking about now, had you ever been invited to, as it were, caucus with Liberal councillors only with a view to determining a private-interest as distinct from a public-interest matter before council?---I don't recall that happening.

20

MR RANKEN: Just going back to that page, 365. Mr Megna being included, would that have been of some concern to you, given he had already declared a pecuniary interest that precluded him from engaging in any discussions about the Five Dock Town Centre Study and any decisions regarding it, correct?---It, it would be surprising, yes.

30 Did you either, on your own or in the company of other Liberal councillors, have discussions with Mr Megna about the Five Dock Town Centre Study? ---I, I don't recall that. Mr Megna had property in the area but I don't recall having discussions on it.

I mean, they may have not been discussions about his properties or anything, but did you have any discussions with Mr Megna about Mr Sidoti's interests in the area?---I, I honestly don't recall.

You don't recall.---No.

40 Now, from Mr Megna's email, it would appear that he was at least willing at this point – that is, on 8 April, 2014 – to attend a meeting, or the meeting that was being sought to be arranged by Mr Sidoti, would you agree? ---From that email?

Yes.---Yes.

And would you have a view about the appropriateness of Mr Megna participating in a meeting with someone that you understood wished to raise a private interest in a matter that Mr Megna had a pecuniary interest in and

was so therefore precluded from being involved in discussions or decisions?---Can you repeat that question for me, please.

Sorry, yes, it was (not transcribable). I'll put it in short terms.---Yeah.

Did you have concern about the appropriateness of Mr Megna attending a meeting with Mr Sidoti and your fellow councillors about this issue?---I didn't know why he – I don't know why he would have come to it, no.

10 But did you have a view about whether or not it would be appropriate for him to do so?---I would have been surprised if he had come to that meeting.

And is the reason why you would be surprised because you thought that it would not be appropriate given his pecuniary interests as declared by him? ---Yes.

And do you recall whether or not he did attend a meeting subsequently on the 16th with you?---I don't recall because I don't recall going.

20 You don't recall the meeting yourself, is that - - -?---No. That is correct.

Because if we go above to the top of the page, we can see that Ms Cestar has indicated that she is available.---Yes.

And if we go to page 364, the previous page, we can see at the bottom of the page that you have indicated that you are also available. Do you see that? ---Yes.

30 And the response from Mr Sidoti to your email suggests that he had also arranged for the President and Vice-President of the Chamber of Commerce to be able to attend as well. Do you see that?---Where, where is that?

Chamber of Commerce President and Vice booked in as well.---Yes, I can see that.

Now, do you have a recollection as to whether or not you actually attended a meeting at which both the President and Vice-President of the Chamber of Commerce and Mr Sidoti were present?---I, I don't recall that.

40 Is it likely you would, it's something you would recall if those gentlemen had been there?---Just trying to think who they were.

Well, one was Joe di Giacomo and the other one was Glen Haron.---I, I, I don't, nothing's coming in, no.

Do you know each of those gentlemen?---I know them, yes.

But you don't have a recollection of attending a meeting in, in about, or on or about the 16th of April?---I don't.

Is it possible that you did attend such a meeting?---I, I, I don't recall having a meeting.

So, now, as it happens, the Urban Design Study was not actually considered at the meeting on 6 May, 2014, but did come back before the council on 20 May, 2014. So just for your reference, okay?---Okay, thank you.

10

And as was ordinarily the case, the staff prepared another agenda report in respect of the, or in advance of the meeting on 20 May. And I just want to take you to a couple of aspects of that report briefly, if I may. Can we first go to – if we can go to page 382. That's the first page of the report that was prepared by Marjorie Ferguson.---Yes.

And you can see from the header that it was for the council meeting on 20 May, 2014.---I can.

20

And it talks about, in the executive summary, the fact of the design study and associated planning proposals having been put out to public exhibition and now saying let's adopt the town study and proceed for a Gateway, with some planning proposals for a Gateway Determination. Do you see that?---I can see that.

And if we could go to page 385. Can you see that there's a subheading of Planning Controls?---Yes.

30

And firstly, it refers to the fact that "The existing controls for the development in Five Dock Town Centre permit three-storey buildings with a potential for an attic," and that "The study recommended the centre's height limit be increased to five storeys."---Yes.

40

And then further down, "Following a review of submissions, the recommendations of the Five Dock Town Centre Strategy have been incorporated into the draft control plan for the majority of sites," and that included "Provisions to guide development in Five Dock so that new buildings appropriately respond to the urban design and public domain objectives." And then the final paragraph refers to the fact that "In addition to the recommendations of the study," so that is over and above what has been recommended by the independent experts, "there is considered to be scope to provide flexibility for large sites where a site-specific response is likely to generate a better outcome. A draft clause has been prepared for inclusion in the planning proposal that would permit a floor space ratio of 3:1 and a height of 27 metres," that is, eight storeys.---Yes.

So that's instead of the original proposed additional sixth storey under the study. "On sites with an area over 1,500 square metres and a frontage of 20 metres." Do you see that?---I can see that.

So, and that again was on sites that had less than, in order to qualify for the bonus provision, one didn't need to have the 2,000 square metres as originally recommended in the study for the additional storey, correct?---Ah hmm.

10 And also it's even less than the 2,500 square metres that was originally proposed by council staff, correct?---Yes.

And the bonus was said to be an incentive, effectively, to ensure that there could be amalgamation and development of town blocks, or blocks of land in the town centre. If we go over to page 386, we can see that in the last sentence of the first, the top paragraph.---Yes.

20 So that's what was being recommended by council staff in advance of the meeting of the council on 20 May, 2014. You agree?---(No Audible Reply)

Now, this report would have been available to councillors on the Thursday or Friday prior to the meeting?---Yes.

So that would mean that it would have been available either on the council website and would have been provided to councillors by 15 or 16 of May of 2014. Working back from Tuesday, the 20th.---Yes, the Thursday or Friday, yes.

30 Now, if we could bring up page 375. This is an email from Mr Sidoti addressed to yourself, Ms Cestar and Mr Megna. Do you see that?---Yes.

One person who is not included on this email is Dr Ahmed. Correct?---Yes.

And this was sent on the Saturday, sorry, the morning of Saturday, 17 May, 2014, correct?---Yes.

So after the council agenda papers would have been available for public consumption and to the councillors themselves, correct?---Yes.

40 But before the meeting on 20 May itself.---Yes.

And do you see that in that email that is, the salutation is "Dear Councillors, I urge you strongly to take into consideration what we spoke about at our meeting." Do you see that?---I do.

Now, it doesn't specify when the meeting was, but would you agree that the clear inference from that appears to be that there was some meeting

involving yourself, Mr Sidoti, Ms Cestar and Mr Megna at least?---It, yeah, it would appear so, yes.

And it goes on to say, “Making 1,500 square metres a requirement in order to achieve 20 metres in the town centre is a pipedream.”---Yes.

Now, what did you understand that to be referring to?---Well, he didn’t agree with the recommendation.

10 That’s the recommended bonus provisions, is that - - -?---It, it would appear so, yes.

And then he goes on to say again “History has shown this, it may on some sites allow this where you are encouraging very large or very small buildings to occur in an ad hoc fashion.” And then he goes on to say this, “What we spoke about was increasing the glass contents, not the size of the glass. The FSR is proposed to increase from 2.5 to 3:1, 3.0:1, only on large sites which will unlikely be amalgamated.” Do you see that?---I, I can.

20 So what did you understand him to be referring to when he described it as increasing the glass contents, not the size of the glass?---I’ve got no idea.

Well, did you consider that what he was referring to was increasing the amount of space ratio within a particular site without actually having to meet some requirement as to the size?---It would appear so.

And that seems to be clear from the reference to the fact of the different floor space ratios he’s referring to in the very next paragraph. Correct? ---Yep. So the shopkeepers, are you referring to?

30 No, so the very next sentence, I meant, I apologise.---Sorry. Yeah. Yes.

Reinforced by the very next paragraph where he states, “All the shopkeepers I have spoken to at worst want the current proposal but with no minimum width requirement and no minimum lot size.” Do you see that?---I can.

40 So that would suggest that what he is agitating for in this email, and at a meeting that had occurred between yourselves, that’s you and your fellow Liberal councillors, possibly not including Dr Ahmed, and Mr Sidoti, was an increase in the floor space ratio without any requirement to meet those lot size and frontage dimensions, correct?---Yes. It, yes.

Did he ever express to you or tell you who the shopkeepers were that he had spoken to?---No.

Did you have an understanding when you received this email as to who it was?---I assumed it was the shopkeepers in Great North Road, I don’t know which ones, who he would have spoken to.

I mean, it's quite clear from this email that he seems to identify that he had spoken to a number of shopkeepers.---Yes.

But to your knowledge, he never identified who those particular shopkeepers were?---Oh, to my memory, no.

10 He goes on towards the bottom of that page, this is the third last paragraph where he says, "Please deliver the vision of the shopkeepers in the interests of the community not the mayor's distorted views." Now, I've just noticed you appeared to roll your eyes when I read out that sentence. Was there a particular reason you were rolling your eyes?---I think Mr Sidoti often thought the mayor had distorted views.

THE COMMISSIONER: I'm sorry, I couldn't hear you.---I said that periodically, or I recall Mr Sidoti at times did think the mayor had distorted – well, that's the word he used – views.

20 MR RANKEN: But the views that were being expressed in the council staff's agenda report, and indeed in this Studio GL report, they did not reflect the mayor's views at all, did they, from your understanding?---I, I don't know whether they reflected his views or not, but I assume that he would read the reports.

So what you're saying is it may well be that the mayor agreed with what was expressed in the Studio GL reports and the staff reports, but that was not something you were aware of, correct?---I certainly wasn't.

30 But one thing you did know, though, was that the views that were expressed by the independent experts and council staff reflected their own independent views.---Yes.

And you had no reason to doubt the independence of their views, correct? ---Absolutely not.

40 So this suggestion – or did you have a view about the suggestion from Mr Sidoti in this email, in this particular sentence, that the vision of the shopkeepers was in the interests of the communities and the mayor's distorted views were something else?---Oh, I, I don't, I don't recall. They were a, you know, they'd been through an election previously where they'd stood against each other. I think there was a certain amount of animosity.

So can I ask you this? When you read that reference to the mayor's distorted views, was this a situation where you didn't put much stock in what Mr Sidoti had to say about the mayor's distorted views, or about the mayor's views generally?---No.

You're agreeing with me then, that you didn't put any stock in it?---I didn't put a great deal, no.

So you didn't agree with Mr Sidoti about his views about the mayor and the mayor's views on things, correct?---I didn't engage in any of that. I don't know what they felt.

10 But as far as exercising your own independent judgement as to what you considered of the mayor, he wasn't the kind of man who was engaging in these distorted views in relation to the Town Centre Study, correct?---Well, I had no evidence of that.

Yes, thank you. And more to the point, Mr Sidoti never provided you with any evidence of that, did he?---Not that I recall.

20 THE COMMISSIONER: That second-last paragraph, or third-last paragraph, there is an invitation, in effect, "Please deliver the vision of the shopkeepers." How did you construe that request?---That it was different to the reports that were coming up before council on whatever date it was, the 20th.

MR RANKEN: But did you consider it to be a request by Mr Sidoti to in fact push for a change in what was being proposed so that a 3.0:1 floor space ratio could be applied to all lots?---I, I, I believed so.

And that was request he was making of you and your fellow Liberal councillors?---He was certainly not happy with the report and reading that I feel it would, would reflect that.

30 And immediately after that request it goes on to say, "I can assure you there have already been a number of shopkeepers lining up to run for council next election if the proposal goes ahead in its current form and quiet," that's a typographical error, "quite frankly I understand where they are coming from." Then finally, "Good luck in your deliberations." Now, what did you understand him to be saying or conveying to you by that paragraph that I just read out to you commencing, "I can assure you"?---Well, he's, I think he's inferring – well, not only inferring – he's writing that there were other people that were going to look at running for the, at the next council election.

40 But did you link that statement about those other persons who might be running in the next council election to what he had asked you in the previous paragraph?---Yes.

So how did you perceive it in relation to your position as a member of council?---Obviously – not obviously. I read it with some, some concern.

And what were your concerns?---Well, that there may have been other people lining up to run at the, against myself at the next council election.

THE COMMISSIONER: And how did you take this paragraph – sorry – second-last paragraph that’s just been read to you? How did you see it?

---Well, it was some sort of indication that he wasn’t happy.

10 No, I’m sorry. What I’m addressing is where he’s talking about the shopkeepers lining up, that statement in the paragraph, how did you see that statement?---Well, if we didn’t – that if we didn’t, you know, vote as he indicated, that there were other people that were going to, to run for council.

MR RANKEN: Well, was the – well, can I ask you this. Did you have some concern that Mr Sidoti might withdraw his support for you at a future council election as a result of this email if you did not do what was suggested in the previous paragraph?---It certainly, I don’t recall what I felt at this point in time, in 2014, but reading it now, I feel that I would have felt that.

20 Did you perceive it in any way as a threat to your position as a councillor?
---I would have certainly been concerned.

Well, concerned is one – were you concerned that it was a threat to your position as a councillor? Deliver the vision of the shopkeepers or I will withdraw my support for you at the next election. Is that how you perceived it?---Well, reading it now, that’s how I would have perceived it. I can’t tell you what I was feeling in 2014, I’m sorry.

30 But was it not of some concern to you that the local member of parliament was expressing those sorts of views in relation to a decision that you were going to have to make at a council meeting in three days’ time?---Yes.

Did you consider that it was something that impeded or potentially impeded your ability to act independently?---No, because I’ve always acted independently and would not have – I would have read it with concern. It wouldn’t have influenced my decision.

40 But did you perceive it as something that was directed to influencing your decision?---It’s certainly directed at influencing.

Now, and was it also a concern, or were you also concerned that Mr Megna had been included on this email, given his position and his pecuniary interest?---Look, I don’t know what I would have thought at that stage, why he was on it. I don’t, I have no idea.

Mr Megna was someone who had been a councillor for a long time, correct?---That is correct.

And in fact I think he'd been on the – he'd been on the local council of the City of Canada Bay for at least as long as you.---Yes, we were both elected at the same time to Canada Bay.

In 2004.---That is correct.

And he had previously also been on the Drummoyne Council prior to the amalgamation of Drummoyne and Concord, correct?---That is correct.

10 Now, so the two of you had about the same amount of experience as councillors or - - -?---He had more experience than I.

He had more experience. Now, he was also someone who you knew had a personal relationship with Mr Sidoti, is that correct?---I believe he had a personal relationship with him, yes.

That had gone back some years, I think, in terms of their families.---That's, I believe that that was the case.

20 And what I'm referring to is a relationship that was independent of the membership of the Liberal Party.---That's what I recall.

Whereas your relationship with Mr Sidoti, as I understand it, was solely through - - -?---Solely through the Liberal Party.

The Liberal Party.---That is correct.

And to your knowledge, that was also the case as far as Mirjana Cestar?
---Yes.

30 So can I then take you to some further emails. If we could go to page 376. And this is a chain of emails that actually includes, if we go to page 377, we can see at the bottom of that, or we can see in the main part of that page the original email from Mr Sidoti that I just took you to.---Yes.

And if you go back to page 376, at the bottom you can see Ms Cestar's response but only sent to each of yourself and Mr Megna. Do you see - - -?
---Oh, yeah, yeah, yep, yep, yep.

40 And she sent that on a Monday.---Yes.

And she said that "What exactly was the purpose of this email? Why wasn't Tanveer emailed? Does it matter if shopkeepers want to run? Is John saying he would support them? Is it a threat? What is the point here?" And reading that email, does that jog your memory about your response and how you felt about receiving the email from Mr Sidoti?---It certainly would be my response.

Mr Megna has responded to Ms Cestar's email and, amongst other things, has indicated that he is reticent to give you any guidance. Do you see that? ---Is that the middle one?

It's the second paragraph.---Yes.

And then he's gone onto put the breakdown of the numbers. Do you see that?---Yes, yes.

10 And do you see that he said, "The Chamber of Commerce has given amendments to what it would prefer and I understand that Glen Haron will speak on its behalf. It mentions 3.5:1 FSR. I understood the council officer's recommendation is 3:1. However, I couldn't see that on the report." And then he says, "Good luck." And now, it may be that – well you can't speak for what was in Mr Megna's mind but we see that your response is above and you say, "Are you back, Mirjana? No idea what Tanveer wasn't included. Is he away? I will listen and decided." I think that's a typographical error, you mean, "Listen and decide," is that right? ---Yeah, that is correct,

20

And what were you intending to convey by that?---Well, that I would listen, what – that I would listen to all who spoke at the, the meeting, I would assume.

And is that a reference principally to the fact that Mr Megna had referred to Mr Haron going to present at the meeting for the Chamber of Commerce? ---Yes. It, it would have referred to that but also, I assume, I can't remember, that there would have been a number of registered speakers who were going to speak that night. That's how it usually happened.

30

So that was more generally directed to anyone who was registered to speak, you would listen and then you would decide the issue?---I would listen and then I will decide.

It goes on to say, "I, I too am a bit worried about his comments re shopkeepers. Everyone is entitled to run for council. I have heard so far there is a group at Rhodes, another at Breakfast Point, now Five Dock and it's only 2014." Could you tell us a little about that? What were you referring to when you talked about a group at Rhodes and another group at Breakfast Point and now a group at Five Dock?---Well, rumours circulate in, you know, council and local government and the community - - -

40

But were they – sorry.---And I assume that it, it, I, I had heard, no doubt, that there was a group at Rhodes that were interested in running for council because there was a lot of issues that had been raised at Rhodes that were concerning the residents there. There had been, and I don't recall what the one at, Breakfast Point one, but a similar thing and now, and now there's, there's Five Dock.

Now, when you refer to those groups in this email, are you talking about groups who were organising themselves within the Liberal Party to stand for preselection or were you referring to persons who were considering just running for election generally, not necessarily associated with any particular party?---I would have thought that I, I was referring to, you know, community groups, general groups, yes.

10 Just so that we're clear, you weren't saying that – you're not suggesting that at the time you were aware of a particular group of persons at Rhodes who were looking to run for preselection in the Liberal Party?---I, I don't think that's what I would have been referring to.

Or anyone at Breakfast Point?---I don't think that's what I would have been referring to.

20 And do we take it then that you weren't, as far as Five Dock in concerned, was that also directed to persons who may or may not be members of the Liberal Party?---That's what I recall.

Now, and you say, "I too am a bit worried about his comments." And just to be clear, what were you referring to about being worried?---I assume, oh God, I don't know what I was worried about but I assume – oh well, I was worried about his comments about the shopkeepers that, and I think I have explained it, everybody is entitled to run for council.

Were you worried that he was going to withdraw his support from you in your future preselection?---I may have been, I may have been.

30 You may have been but you don't recall anything like that?---I do not recall.

So, just dealing then with – continuing on then, sorry. You can see in that email of Mr Megna's, I drew your attention to the fact that Glen Haron would speak on its behalf, that is, on behalf of the chamber of commerce, and the fact that it mentioned The 3.5:1 FSR, do you see that?---Yes, I can.

40 And I'll take you an email, this is at page 403 of Exhibit 24, you can see there's an email, it's sent to Tony McNamara, we can see that at the top of the page.---Yes.

It would appear to have been sent to him possibly from Marjorie Ferguson. If you could go over to the next page perhaps, sorry, the previous page, 402. So it's from Paul Dewar. Paul Dewar forwarded to Mr McNamara, if we go back, an email that had in fact come from yourself to Marjorie Ferguson and that had been copied to Tony McNamara. Do you see that? Down, the bottom email.---Yeah, yes, I'm, I'm, I'm reading it, yes. Yes.

So do you see what you're saying in that email to Ms Ferguson that was copied to Mr McNamara was your seeking to explore whether or not a 3.5:1 can be achieved without actually there having to be any minimum requirement, correct?---Can, with a height of – yes. Yeah.

“What would be the result if you had the current proposal but with no minimum width requirement and no minimum lot size?” Do you see that? ---Yes.

- 10 So effectively, that would be in a sense delivering the vision of the shopkeepers as suggested by Mr Sidoti, correct?---It would appear that I'm asking those questions, yes.

So having taken you to Mr Sidoti's email to you, I want to suggest this to you, that you were then exploring with council staff whether or not there was any prospect of actually achieving that.---Well, because it had been raised and, and therefore it, you know, I think it was necessary to, I assume I thought it was necessary to just find out.

- 20 To explore that with the – yes.---Yeah, so it was sorted out in my own mind.

Yes, and you can see the email above is the response from Mr Dewar but to Mr McNamara, providing some reasons why it wouldn't work, what was being suggested. Do you see that?---Yep, yes, yes.

Having read that to yourself, do you agree that the reasons that Mr Dewar was putting forward, backed as they were by the opinions expressed in the original report by Studio GL, were reasonable?---Well, I assume I did.

- 30 And why do you assume you did?---Oh, well, it seems a, a reasonable explanation. I, I, I've just read it, I can't really take it all in at the moment, but I assume I did.

Perhaps if we could go to page 402, the previous page, in about a third of the way or a little over a third of the way down the page, you can see Mr McNamara's email to you, effectively providing six points to you in response to why they were reluctant to support 3:1 across the board and the reasons therefore. Do you see that?---I can see that.

- 40 And particularly noting that “3:1 will give some very big developments if people actually build them, so that's already a concern. Going to 3.5:1 may overvalue small blocks, making them different to develop. The only ones who have done any real testing of the economics are HillPDA working for council and we are following their advice.” Do you see that?---Yes, I can see that.

That's an eminently reasonable position for council to have taken. Do you agree?---Yep, yes. Yes.

And then he's gone into the issue about floor space ratios.---Ah hmm.

And one of the points he has made is that "The council was not being flooded with development proposals that would proceed only if council were more reasonable with their planning controls. The work to date has attracted real interest in developing council's land and the Five Dock Hotel. Interested parties are not asking for more FSR." Do you see that?---Ah
hmm. Yes.

10

So, "And in my view, adoption of the plans and implementation by council of the actions identified, especially in respect of council land and the laneways, will generate a mood for change which will transform Five Dock." So is this the position, that having received that email from Mr Sidoti, you felt somewhat dutybound to explore the issue?---Yes.

20

And having explored the issue by raising it with Marjorie Ferguson and then receiving a response from Mr McNamara, were you comfortably satisfied that you would not support a 3:1 FSR across the entire centre?---I don't recall what I was thinking but I, it would appear that that explanation was certainly helpful.

Now, in terms of the report that was prepared for council on 20 May, 2014 – that is, the report prepared by the council staff – one of the things that they needed to do was to consider the submissions regarding, in response – sorry, I withdraw that. Was to consider the submissions that had been received in response to the public exhibition of the Urban Design Study and associated planning proposals. Do you agree?---(No Audible Reply)

30

And they were summarised in a kind of tabular format as part of the report that was prepared.---If you say so, yes.

So if we could go to page – if you could go perhaps to page 389. This is the – it's very small writing.---I can't read it.

So we may have to blow it up. I'll take you to the relevant one I want to take you to in due course, but you can see that it says, can you read the words, Five Dock Urban Design Study Summary of Submissions?---I can't read anything on that, sorry.

40

Perhaps if we could enlarge, perhaps enlarge again. Do you see the heading?---I can read it. I can see it. I'm sorry, it's very blurred. My eyes aren't good enough for - - -

Can you read, though, the bold, above the table there's a bold statement that says Five Dock Urban Design Study Summary of Submissions?---I can read that, yes.

Then could we go to page – just one moment. Yes, so it’s page 390. And if we could go down to the second table, down the bottom of the page, there is a submission which is submission number 5, from a Silvana Cassisi of [REDACTED] in Five Dock.---Yes.

And do you see that she’s recommending “Studies should include properties along the western side of Waterview Street between Second Avenue and Barnstaple Road. This would improve the urban design outcomes delivered by the study.” Do you see that?---Yes.

10

Now, I want to suggest to you that that is the only recommendation or submission that was received at this time that recommended rezoning any area north of Second Avenue.---North, um - - -

That is between Second Avenue and Barnstaple Road.---Oh, yep, yep, yep.

Would you accept that? Do you accept that?---I, if you tell me that’s the case, yes.

20

And there was a response to that, and that response was prepared by the council staff, that “The study proposes to extend the B4 mixed-use zone surrounding the central core of the centre. These areas would benefit most greatly from the proposed investment and upgrade to the public domain. The core of the Five Dock Town Centre occurs around a natural ridge within the centre, and the area north and east of Second Avenue and Waterview Street is considered to be outside the core.”---Yes.

And you agree with that statement in terms of what was being desired - - -?
---Yes.

30

- - - to be achieved as far as the core of the town centre.---Yes.

“Waterview Street north of Second Avenue has a predominantly low-rise residential character with a few constrained sites on the western side, including a heritage building,” that was number 39 Waterview Street, “and existing strata development. And rezoning land outside the central core to additional land B4 mixed-use would give fewer benefits and is therefore not recommended.”---Yes, I can see that.

40

So council staff, having received a submission about that topic, had considered it and provided reasons as to why that would not be supported, correct?---Yes, yes.

Now, if we could go to the minutes of the meeting of the Canada Bay, City of Canada Bay Council on 20 May, 2014, at page 405. Can you see that it’s apparent that there were eight members who attended on that occasion of council?---Yes.

Ms Cestar appears not to have been present but you were present, as was Dr Ahmed.---Yes.

And if we could go then to page 408, you can see that there is identified the persons who did address the council.---Yes.

And also it does identify that Councillors Fasanella and Megna declared their pecuniary interest and left the room.---Yes.

10 Two persons who addressed are Mr Haron and Ms Cassisi or – yes, Ms Cassisi.---Yes.

And I've taken you to aspects of what you understood their likely submissions would have been about, correct?---Yes, yes.

And there was a resolution that was actually moved by Councillor Kenzler and supported by yourself, is that right?---Yes, seconded only, yes.

Seconded by you.---That is correct.

20

And ultimately adopted unanimously that it be - - -?---Yes.

- - - deferred to consider issues of height, setbacks, overshadowing, mix of development and the amenity of the surrounding residents.---Yes.

And did you anticipate that that would include a consideration about whether to extend the rezoning of B4 north of Second Avenue?---I don't recall. I imagine it was from the issues raised by, on the night.

30 So I want to then move quickly to 24 June, 2014, which is when there was a further meeting of the council to consider the Five Dock Urban Design Study and planning controls. Firstly, if you could perhaps just briefly go to the minutes at 427 of Exhibit 24. You can see from the first page of the minutes that you didn't actually attend that meeting.---Okay.

So I'll deal with this quite briefly. Do you recall why it was that you may not have attended that meeting? Was it you were away on holidays, on leave or you don't recall?---I do not recall. We could have been away working, I don't know.

40

That's fine. I just want to just draw your attention to a couple of matters, then we'll deal with this briefly. Firstly, if we could go to the council staff report that was prepared at page 416. So there's the report prepared for 24 June, 2014 by Marjorie Ferguson. I just want to take you briefly to page 417. And there's a subheading Extension of B4 Mixed-Use Zone. Do you see that?---Ah hmm.

And it talks about the fact that there are particular areas that had been identified for rezoning as they benefit most strongly from the proposed investment and upgrade to the public domain, and those three areas are identified. And then it refers to the fact that it was suggested that council consider extending the area of land being rezoned to the northern end of Waterview Street. Do you see that?---I do.

10 Now, just pausing there. I want to suggest to you, and it seems apparent, that the only area of land that was being considered for this possible further extension of the B4 mixed-use zone at this point in time that had been the subject of any submission to council was this area of Waterview Street between Second Avenue and Barnstaple Road. Do you agree with that?---It would appear so, yes.

No other submissions had been received for any other areas around or in the vicinity of the town centre for inclusion in the B4 mixed-use, other than that which had already been recommended by the study?---Well, I, I assume so.

20 Now, it goes on to say, “The northern part of Waterview Street between Second Avenue and Barnstaple Road was not identified for rezoning as it is located outside the central core of the centre, contains a few constrained sites, including a heritage item and existing strata development, and would necessitate the extension of the proposed Waterview Lane to facilitate improved access. Rezoning land outside the central core would provide fewer benefits and is therefore not recommended.” Do you see that?---Yes.

And that does reflect the response that had been prepared by council staff to Ms Cassisi’s original submission, correct?---Yes.

30 “So having further considered the issue, council staff maintain the position that was against extending the areas of land to be rezoned to that part of Waterview Street between Second Avenue and Barnstaple Road.” Would you agree?---Yes.

THE COMMISSIONER: Mr Ranken, is that a convenient time?

MR RANKEN: Yes.

40 THE COMMISSIONER: Very well. We’ll adjourn for 15 minutes and then – thank you. I’ll adjourn.

MR RANKEN: Thank you, Commissioner.

SHORT ADJOURNMENT

[11.32am]

THE COMMISSIONER: Mr Ranken.

MR RANKEN: Yes. Thank you, Commissioner. Now, just prior to the morning tea adjournment, Ms McCaffrey, I took you to the report that had been prepared by the council staff in relation to, or in advance of the meeting of 24 June, 2014, which you did not yourself attend. But just so you may be aware, though, that at that meeting all six councillors present at the council, including Dr Ahmed and Ms Cestar, voted to endorse the amendments to the town centre Local Environmental Plan as recommended by council staff and referred the proposed changes to the Department of Planning for a Gateway Determination. You understand what a Gateway Determination is?---I do.

Yes. So, and that meant that the planning controls included the bonus provision that allowed for an increased floor space ratio of 3:1 only on those larger sites, that is sites with a 1,500 square metre area, and also a frontage of 20 metres. So you'd be aware, from your knowledge of Gateway Determinations, that they can take a number of months to consider by the Department.---Or more.

20 Or more. In this case, it appears that the delegate of the minister at the Department of Planning and Environment determined that the amendment to the LEP should proceed, subject to some further consultation and the public exhibition of the planning proposals. And then following that, the council would be required to refer the proposed LEP back to the Department for finalisation. And that decision came down in the end of, sorry, the end of September 2014, namely the 25th of September. Does that sound about right for the timing?---Yes.

30 So following that, there was the, a period of public exhibition that was required to be undertaken, would you agree? And that took place between the 21st of October, 2014, and 17 November, 2014. Does that sound about right?---(not transcribable)

And the purpose of that public exhibition, to your understanding, was to allow the public to provide further submissions on any aspects of the proposed LEP amendments that they might wish to make, correct?---That's the procedure.

40 Now, in that context I want to – sorry, I withdraw that. And it's the case though that sometimes persons will engage planners on their behalf to prepare submissions to council from time to time, correct?---From time to time, yes.

And sometimes those planners might miss the cut-off date for the actual submission for when submissions are due?---Probably.

But that does not necessarily prevent council staff from receiving the submissions and taking them into consideration prior to any report being prepared for council?---Often that did happen, yes.

10 I just want to take you to a submission that was received on behalf of two companies. If we could go to page 490. This is an email from a Mr Thebridge, who seems to be a principal of Group GSA, and it's forwarded on 21 November, 2014, to an address which looks to be a generic council address, council@canadabay.nsw.gov.au, correct?---Yes, that, that would be.

Is that the address that ordinarily submissions in relation to planning matters would be forwarded to?---Often, yes.

You may, just so that you can see that it's copied to sandrasidoti@[REDACTED] and a helena@[REDACTED] and John Sidoti at his parliamentary email address. Do you see that?---I can see that.

20 And there's an attachment, a submission for 120 Great North Road and 2 Second Avenue, Five Dock. Do you see that?---Yes, yes.

Now, I think you understood that 120 Great North Road was the address of the Sidoti family's function centre?---I don't know the number but they, they were in that, it was in that Great North Road bit and if you tell me it's 120, it's 120.

But you didn't know necessarily off the top of your mind that it was 120? ---I, I couldn't remember.

30 Because if we could then go to the next page, you can see that this the first cover page of a submission dated November 2014, submitted to the Canada Bay Council on behalf of, and there are two companies that are identified there, Deveme Pty Ltd and Anderlis Pty Ltd.---Yes.

Now, did you know who was behind or associated with those companies? ---No. I have no idea.

40 Do we take it then you didn't have any understanding that in fact as at the date of this submission, Deveme Pty Ltd, the shareholders and directors were Richard Sidoti and Catherine Sidoti, Mr Sidoti's parents?---No. I, I didn't know.

And similarly, they were also the shareholders and directors of Anderlis Pty Ltd?---No.

If you could go to the next page, 492, do you see that it refers to the owners of 120 Great North Road, Deveme Pty Ltd and 2 Second Avenue, Anderlis Pty Ltd?---Yes.

So they wish to, “Make a submission on the current draft LEP amendments proposed for the Five Dock Town Centre Study.” And specifically, if I draw your attention to, the submission argues that, “The subject land should be rezoned B4 mixed-use in line with existing B4 land immediately to the west, along Great North Road and with corresponding land in the block to the south of Waterview Street, which is proposed to be rezoned.” So this was a submission that was put on behalf of these two companies, which were the owners of those properties to extend the B4 mixed-use zone north of Second Avenue, up to Barnstaple Road. Would you agree that’s
10 - - -?---Yeah, yes.

And essentially they were then put forward for reasons why it is submitted that that area should be rezoned?---Yes.

And just reading those four points to yourself – well, perhaps I’ll just go through them briefly. The first of them is, it’s suggested that, “The expansion of the B4 zone to include this land is a logical extension of the proposed rezoning of similar land to the south on the western side of
20 Waterview Street.” Do you see that?---Yes.

Now, of course you were aware that that part of the western side of Waterview Street that was proposed to be rezoned as part of the study and planning proposals was in order to enlarge the core of the town centre. The central core.---If that’s the area, yes.

Yes, but that was also to ensure that there was still the retention of a village feel for the town centre.---Yes, yes.

30 Correct?---Yes.

So just from your own understanding of what had been proposed in the study, would you agree that it was not necessarily a logical – it would not be a logical extension of the proposed rezoning to extend it further north, given that would be contrary to what had been considered to be the objective of expanding the town, the core town centre but retaining a village feel?---Yes. To, yes.

40 And secondly, “That there appears to be no logic to applying a split zoning to the block, which will hinder redevelopment of the land fronting Great North Road and will not provide an appropriate transition between the two zones as is provided when a public street separates the zones.” Do you see that?---Yes.

“The split zoning and site constraints limit the redevelopment potential of sites fronting Great North Road in terms of vehicular access, loading, unloading, et cetera.” Do you see that?---Yes.

And then it goes on to say, “The proposed split zoning has the potential to result in adverse amenity impacts for land zoned R3 medium-density on Waterview Street, with the rear boundary of the allotment. These allotments immediately adjoining the mixed-use zone, where land can potentially be developed, FSR of 3:1 and maximum width of,” sorry, “maximum height of 27 metres.” Do you see that? So that third point is directed, is it not, as you understand it, to the fact that so long as that area remained split-zoned, that is with B4 on the Great North Road side and R3 medium-density residential on the Waterview Street side, that no blocks on the Great North Road or fronting Great North Road would be able to get the bonus provision of the 3:1 FSR and 27-metre height, correct?---Well, I assume so, yes.

That’s the effect of that point.---That’s what, that’s, yes.

And finally, “The inclusion of the subject land in B4 mixed-use zone will result in a better urban form.”---Yes.

So this was a submission that was plainly, would you agree, directed to that block being able to achieve the increased heights and floor space ratio that might be available if the entire block was zoned B4 mixed-use.---Yes.

And in due course, do you recall that Studio GL was engaged by the council to consider all of the submissions that had been received following the public exhibition as a result of the Gateway Determination?---I assume they were.

And one of the reasons that was was because there was actually a significant number of submissions that was received by council.---I don’t recall the reason, but if, I assume that would be the case.

So if we could go to page 568 of Exhibit 24. Now, do you see that’s the final report that was prepared by Studio GL for the exhibition outcomes of the Five Dock Town Centre planning proposal?---Yes.

See that? And it’s dated 21 May of 2015.---Yes.

Just want to draw your attention to one of the recommendations. If we could go to page 600. Now, there’s a reference at the top of that page, a subheading that says Reducing the Amount of Area 1 Sites.---Yes.

Now, what it says is that “If council is not able to reduce the height to five storeys across the entire centre, it is recommended that the number of sites that have access to this area 1 development bonus in the town centre are reduced. Currently sites that identify as area 1 within the town centre are able to develop up to eight storeys high and with an FSR of 3:1.” Do you see that?---That’s the first paragraph, or - - -

Yes, the first paragraph underneath the subheading.---Right. Yes.

Do you see that?---Yes.

So what they were suggesting was, sites that might otherwise be able to satisfy the requirements for the bonus uplift of floor space ratio and height as part of the incentive for amalgamation should be reduced in terms of the number.--- Yes.

10 And that was in response to submissions that had been received by the council that had expressed concern about the number of sites that might achieve that sort of height and floor space ratio, correct?---Well, it appears so, yes.

20 So it then goes on to identify some key sites that should be changed and one of those is the block on the eastern side of Waterview Street between Barnstaple and Second Avenue. “This is not considered a good location to encourage amalgamation and increased height and FSR as the interface between these tall buildings and the residential uses and the heritage items on Waterview Street is likely to be poor. This change also ensures future development more closely reflects the planning controls in this area on the opposite side of Great North Road.” Do you see that?---I can see that.

Now, I just want to suggest to you that the reference in the very first line to, “The block on the eastern side of Waterview Street,” appears to be a typographical and that it properly should be understood as reading, “The block on the eastern side of Great North Road between Barnstaple Road and Second Avenue” - - -?---I don’t have a map in front of me. I assume that, yeah.

30 So, perhaps if we can bring up then, if we could go to 599, which is the previous page. Now, can you see there, there’s a map of the town centre? ---Yes.

And can you identify the area between Second Avenue and Barnstaple Road?---Yes.

40 And you can see the split zoning effective in respect of the Great North Road side the Waterview Street side, it’s of that block between Second Avenue and Barnstaple Road?---Ah - - -

See where there is a 1 in a blue circle?---Oh, yes, yeah, I can see the 1, yes.

So that together with the shaded grey area just outside the boundary of the town centre represents the relevant block of Waterview Street, between Second Avenue and Barnstaple Road?---Okay.

And so what I am suggesting to you is that the reference on page 600 to the eastern side of Waterview street should actually be a reference to the eastern side of Great North Road?---Okay.

Would you accept that or - - -?---Yeah, I'll – okay. Yep,

10 MR NEIL: Well, Commissioner, could I just point out, Commissioner, that I know you have a misapprehension but I thought that it had been previously put to another witness that it should be read as the western side of Waterview Street.

THE COMMISSIONER: Yes. I think that's right, isn't it?

MR RANKEN: Oh, I might have misspoke on that occasion. I think - - -

THE COMMISSIONER: In any event, the position is – just going back to that page - - -

20 MR RANKEN: Going back to page 600?

THE COMMISSIONER: 600. Talking about - - -

MR RANKEN: It's about encouraging amalgamation and increased height.

THE COMMISSIONER: The eastern side should be changed to R1. The block on the eastern side of Waterview street between Barnstaple and Second Avenue is what we're talking about, isn't it? You're suggesting there's an error there

30 MR RANKEN: Yes. It appears that the error is that it's the block on the eastern side of the Great North Road, which actually borders onto Waterview Street. It's the Western side of Waterview Street. But the particular block that falls within the B4 mixed zone, which is the only area where, where one can get the bonus height and FSR is that which is within the B4 mixed-use zone.

THE COMMISSIONER: Yes. Mr Neil, is the point you raise related to this segment of the report? Paragraph number 1?

40 MR NEIL: Yes, Commissioner. Look, it's clear that the grey shaded area is the same - - -

THE COMMISSIONER: Yes.

MR NEIL: - - - and doesn't change. But I had thought – and I'm subject to correction – that on a previous occasion the typographical error suggested was that the word “eastern” should have meant “western”.

THE COMMISSIONER: Yes.

MR NEIL: And therefore it should have read “western side of Waterview Street”.

MR RANKEN: In fairness to Mr Neil, I think what was suggested to the previous witness, as I recall, was that I had suggested that that was a reference to the block that’s on the western side of Waterview Street, and that fronts the eastern side of Great North Road. And it may well be that there’s been a misapprehension or a misunderstanding as to what I was saying the typographical error was on that occasion.

THE COMMISSIONER: All right. I think we understand what you’re saying, but the position is, as Mr Neil said and as you had earlier said, it should read “on the western side of Waterview Street”.

MR RANKEN: Yes, but I think the particular block that this is concerned with - - -

20 THE COMMISSIONER: Perhaps we could go to diagram again.

MR RANKEN: If we go to - - -

THE COMMISSIONER: 599.

MR RANKEN: Figure 13. Figure 13 has the split block.

THE WITNESS: Can you put the little hand where you - - -

30 MR RANKEN: Sorry, if we can put the hand over the 1.

THE WITNESS: Yeah, and the bit you’re talking about.

THE COMMISSIONER: Perhaps you might explain what you mean by a split block.

MR RANKEN: Okay, yes. So do you see, Ms McCaffrey, that there is the area, all the areas that are shaded in grey are areas that are outside of the proposed B4 mixed-use zone, correct?---Yes.

40

Now, when one gets to the block that is bounded by Barnstaple Road to the north, Second Avenue to the south - - -?---Yes.

- - - Waterview Street to the east - - -?---Yes.

- - - and Great North Road to the west - - -?---Yes.

- - - one can see that that block, the zoning seems to have been split because you've got mixed use on the one side.---Yes.

And on the other side you have, there is R3, what is R3 residential, correct?
---Yes. Yes.

And that's how you recall the issue?---I don't recall the issue, but looking at it, that is the case, yes.

10 THE COMMISSIONER: Well, that is the issue. So you've got that area that's been identified, then.---Yes.

Split, as it were, between - - -?---Yes, I can see that.

- - - that portion on the western side that fronts Great North Road.---Yep, yep.

And then the area adjacent, sorry, immediately behind that area is the area that's residential zoning.---R3, yes. I think, yes.

20

MR RANKEN: And indeed the submission that I took you to from MG Planning on behalf of those two companies, Deveme Pty Ltd and Anderlis Pty Ltd, was directed to this particular block and the possibility of having the entire block included in the B4 mixed-use zone, correct?---(No Audible Reply)

So effectively including that part of the block that is shaded grey - - -?
---Mmm.

30 - - - within the bounds of the town centre B4 mixed-use zone.---Yes.

And what I was suggesting was that the recommendation at page 600, what I was wanting to suggest is it's effectively it was directed to that part in exhibit – sorry, on page 602.

THE COMMISSIONER: Well, the witness may not be able to follow your reference to 602.

40 THE WITNESS: I can see it there now. It's going - - -

MR RANKEN: Sorry, go back to 599. That was the map we were using.

THE WITNESS: Is it the same map?

MR RANKEN: If we just deal with this map for the time being. And do you see that there is, just in that area, the recommendation that I took you to at page 600 was directed to a suggestion that the block, the block that we see with the 1 - - -?---Yes.

10 - - - that that block was not considered a good location to encourage amalgamation and increased height and FSR as the interface between these tall buildings, that is tall buildings that would result there, and the residential uses and the heritage item on Waterview Street, that is the heritage item on that part of the block that fronts Waterview Street, is likely to be poor. “This change also ensures future development more closely reflects the planning controls in this area on the opposite side of Great North Road.” So that’s referring to planning controls that are on the opposite side of Great North Road.---Yes.

So does that make sense then now that that’s the block that that particular recommendation was directed towards?---It - - -

Would you agree?---I, I believe so, yes.

Just one moment. And If we could go back to page 596, do you see there’s a subheading of Rezoning?---Yes.

20 And underneath that subheading it says, “Extending the area to be rezoned between East and West Street and moving the boundary is not recommended.” That’s a separate area. So I’ll just move onto the relevant part, which is, “Rezoning of the western side of Waterview Street between Barnstaple Road and Second Avenue is not recommended due to the small heritage house in this block and the likely impact rezoning would have on this dwelling and on the existing dwellings around this building.”---Yes. I can see that.

30 So there was no support from Studio GL for extending the mixed-use zone? ---Yes.

And then going to the council staff report, if we could go to page 525.

MR NEIL: Commissioner, I’m sorry to intervene again, but it may be that this witness might have attention drawn to what I think might have been a previous matter, and I hope I am not causing difficulty here, but the word, “The key sites that should be changed,” I have some recollection of suggestion that it should have said, “Should not be changed.”

40 MR RANKEN: Sorry, no, I think that’s - - -

THE COMMISSIONER: Under the subheading Rezoning, “Extending the area between East and West Street and moving the boundary is not recommended.” Sorry, going down. “Rezoning of the western side of Waterview Street between Barnstaple Road and Second Avenue is not recommended,” et cetera. Doesn’t that make sense as read, Mr Neil?

MR NEIL: Well, I do apologise if I am being overcautious but I had thought it was put, at some stage, that the line above 1 had some error in that it should read, "The key sites should not be changed," because it then goes on to talking about not changing, "In the various proposals below." But I'm entirely subject to correction. I'm just trying to draw attention. I may be wrong.

THE COMMISSIONER: All right. Perhaps we can give it attention and check that, if you come back to it, Mr Ranken, if it is necessary.

10

MR RANKEN: Yes. I might have a word with Mr Neil in the luncheon adjournment about that and if necessary we can clarify.

MR NEIL: Yes.

THE COMMISSIONER: Yes. I suggest you speak to Mr Neil.

MR RANKEN: So, I was dealing with the report at page 525, which is the council staff report prepared for the meeting on 2 June, 2015. So, we're in June 2015.---Is this the one I was at or not at?

20

This is one that you, I think will find, that you were present but we'll come to that in due course. We've already dealt with the June 2014 meeting, which you weren't present at.---Okay.

From there it went to the Gateway Determination.---Yep. Okay, I'm back, back live.

There were submissions received. I took you to one of the submissions that was received, correct?---Yes.

30

Studio GL prepared their report that I've just taken you to a couple of matters in.---Yes, yes.

And then the matter was to come back to council in early June of 2015, specifically the meeting of 2 June of 2015.---Okay.

And one of the things that council staff did, as they usually did, was prepare a report for the councillors to be part of the agenda papers that effectively summarised the effect of the report that had been prepared by Studio GL and suggested recommendations. Would you agree?---That was the procedure.

40

Go to 525, you can see that's the first page of the report.---Yes.

And if we could go then to – you can see on that first page of the report that it refers to the fact that following the exhibition period, 124 submissions and a petition with 421 signatures were received.---Ah hmm.

The primary issue raised in the submissions relating to the proposed eight-storey height limit and the impact of this height limit on the public and private domain. Do you see that?---Yes.

Now, just from your experience in planning matters, and obviously appreciating that this was one of the more significant planning matters that was to come before the council in your time, was that 124 a significant number of submissions to receive from the community?---It was.

10

And that's just the submissions itself, correct?---Yes.

And what about petitions? There's also a reference to a petition with 421 signatures. Was that fairly significant?---A petition, yes, yes.

And it appears that the main concern they were directed to was the proposed uplift, as it were, to get the eight storeys on the larger sites, correct?---Yes.

20 And now if we could go to page 529. There's a subheading there For Rezoning. Do you see that?---Yes.

And there are three areas that are identified there, and the first one is the land between east and west street. The second is the land between Barnstaple Road and Second Avenue on Waterview Street. And the final one is the land between Kings Road and Garfield Street.---Yes.

30 Now, I just want to focus specifically on the second dot point for the time being, the land between Barnstaple Road and Second Avenue and Waterview Street. It says two submissions, so that's two out of the 124 submissions that had been received, two submissions requested that this land be rezoned to B4 mixed-use. And then it goes on to say that "The existence of a heritage-listed house and a strata-titled residential flat building result in limited opportunity for change should this area be rezoned. Future development would impact these properties and would be unlikely to resolve vehicular access issues for properties fronting both Great North Road and Waterview Street. It is recommended that this land retain an R3 medium-density residential zone." Do you see that?---Yes.

40 And so that was the recommendation that was being put forward concerning the rezoning of that block between Barnstaple Road and Second Avenue. Now, so the effect of that was, just having taken you to the Studio GL report and the agenda report that was prepared by council staff, is that, firstly, that there was a recommendation that the number of sites that might be able to qualify for the bonus uplift in terms of floor space ratio and height be reduced. And one of the areas that was said to be not appropriate for that bonus provision to apply was the strip between Barnstaple Road and Second Avenue that fronted Great North Road, effectively.---Yes. Yes.

The other aspect of it was that having again considered submissions in respect of the possible rezoning of the area between Barnstaple Road and Second Avenue on the western side of Waterview Street, the recommendation from the independent experts and council staff was that that was not supported.---Yes.

Now, if we go to the meeting of the council on 2 June of 2015 which commences at page 634, you can see that eight of the councillors attended on that occasion.---Yes.

10

You were present.---Yes.

As was Councillor Cestar, but it appears that Dr Ahmed was not present on this occasion. Do you see that?---Yes, yes.

So then if we could then move to the matter at hand, which is at page 637, you can see that there's the item concerning the Five Dock Town Centre, the outcome of the public exhibition of the draft planning proposal, planning documents, sorry, and it refers to Councillors Fasanella and Megna excusing themselves because of their pecuniary interests, correct?---Yes.

20

Then there is a list of persons who actually addressed the council.---Yes.

And can you see that one of those is a Ms H Miller representing Deveme Pty Ltd and Anderlis Pty Ltd?---Yes.

Now, I take it that even though you were in attendance, do you have any independent recollection as to what it was that Ms Miller submitted to the council on that occasion?---I, I don't.

30

We could – it's likely though, isn't it not, that she made some submission that was in support or at least reiterated the substance of what was in the submission that had been made on behalf of Deveme Pty Ltd and Anderlis Pty Ltd, correct?---I would assume so, yes.

And just as it's recorded in that minute, it's not apparent from the minute as to what properties she was representing. One would need to go back and read her submission, correct?---Oh, yes.

40

And did you actually go back and read her submission or not?---I don't even recall whether I received the submission.

Or as to whether or not you had any understanding that she was representing interests associated with Mr Sidoti.---Whether – yes, that, that's correct, yes.

You didn't have any (not transcribable) - - -?---Well, I don't know whether they were in the council papers that we received or not.

Now, if we go to that page, you can see the resolution – sorry, there is a number of matters that are resolved, and particularly paragraph 2 refers to that the planning proposal be amended to revise the land to which the 27-metre, that’s the eight-storey and 3:1 floor space ratio applies, as shown in an attachment, attachment 3, it’s referred to, and to permit a floor space ratio of up to 3:1 on land where no more than 50 per cent of the floor area is used for residential accommodation and the building has a maximum height of 17 metres, that is five storeys. Do you see that?---Yes, I can.

- 10 One of the things that was not recommended at that point or resolved was to rezone the area between Barnstaple Road and Second Avenue on Waterview Street as B4 mixed-use. Correct?---Well, it appears so, yes.

And if we just go to the next page, page 638, it then provides that there will be some further exhibition of the planning proposals, and that a further report be provided to council following that exhibition. Do you see that? ---Yes, I can.

- 20 And so every councillor who was able to vote and was present voted in favour of those resolutions.---Yes.

And it follows then, doesn’t it, that at least as at this date, 2 June, 2015, each of you and Councillor Cestar and indeed on the previous occasion in June of 2014, Councillor Ahmed, had also voted against any proposed rezoning of that block between Barnstaple Road and Second Avenue as B4 mixed-use. ---It appears so, yes.

- 30 And that was in accordance with the recommendations of council staff and the experts.---It appears so, yes.

And the effect of this resolution was that the Waterview Street site would therefore remain outside the proposed expanded town centre and would retain its residential zoning, and those of Mr Sidoti’s family’s properties fronting Great North Road and backing onto Waterview Street would be constrained to a maximum height of five storeys, correct?---Yes.

- 40 So that LEP was then publicly exhibited between 30 June, 2015 and 31 July, 2015. So over July there was a period of public exhibition as recommended and resolved by the council.---Yes.

Now, I just want to draw your attention to an email. If we could go to page 640. Now, this is an email to which you weren’t actually a party, but it’s from a Ms Helena Miller, who had addressed council on 2 June, 2015, to Mr Thebridge. And you may note that it’s sent on 3 June, 2015.---Yes.

And one of the things Ms Miller tells Mr Thebridge is “As you are aware, 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, from that, does that assist your memory as to what Ms Miller addressed council about?---No.

It would appear from that that she, if it’s accurate, an accurate description, that she had made a submission that the council should have a further look at the zoning of land on the western side of Waterview Street north of Second Avenue, would you agree?---Well, that’s what’s written, yes.

10 Ms Miller then goes on to say that, “I have followed up with council this morning and they have indicated that they would be happy to receive a further submission from us during the upcoming re-exhibition that looks in more detail at how the constraints of the heritage item at 39 Waterview Street and strata development at 45-47 Waterview Street could be addressed while providing for the redevelopment of the subject land.” Do you see that?---Yes.

20 So effectively it appears that Ms Miller has followed up with council staff the next morning about the possibility of putting in a further submission within the exhibition period.---It would appear so, yes.

And there has been at least some indication from council staff as to the kinds of things that they would need to address, that the council staff would need to be satisfied of before they could take on any such recommendation, correct?---Yes, yes.

30 Now, did you at any time come to learn that Ms Miller was in fact representing interests associated with Mr Sidoti’s family?---No. I have no memory of that. I, I don’t - - -

No memory. No.---I don’t, no.

So it’s not a situation that your recollection is you didn’t know at one point but you did come to learn at another point? Is your recollection that you’ve never known that Ms Miller was acting on behalf of persons associated with Mr Sidoti?---To my, to my memory, to my memory, I’ve never known.

40 I wonder if we could go to page 686. This is an email chain involving yourself, Mr Sidoti and others. Just want to draw your attention to page 687. This appears to be the first in time of the emails. It seems to be from you.---Okay.

Saying, “Hi, John. I think I missed an email. Did you want to arrange a meeting with us re the town centre? Cheers.” Now, that would suggest that you had some understanding that Mr Sidoti was seeking to arrange a meeting with you and others regarding the town centre.---It would, yes.

And who do you or who were you referring to by “us”?---I have no recollection.

No. Is it likely that you were referring to your fellow Liberal councillors?
---It could well have been.

If we could go to page 686. There’s a response from Mr Sidoti on 8 July where he says, “Yes, great. Any time that suits. Cheers, JS.” Do you see that?---Yes.

10

And that’s been sent from his parliamentary email address. Do you see that?---Yes.

And you’ve responded that same date to advise that Ms Cestar is off until Monday, that possibly you could do the next day, or tomorrow.---Okay, yes.

Do you see that?---Yes.

You couldn’t do Fridays and then there’s some further suggestions.---Yes.

20

And Mr Sidoti has responded, “Can do after 6.00pm tomorrow, is that okay?” You’ve responded to say, “Okay. Will you contact the others?” Do you see that?---Yes.

So there are these back and forth between you and Mr Sidoti to arrange a meeting.---Yes.

And this was during the course of the re-exhibition of the planning proposals, correct?---Yes.

30

And you’ve also responded later on – oh sorry. Mr Sidoti has responded to you to indicate that, “Mirjana and Tanveer are good for tonight at 6.30. Are you good at my office? Cheers, John.” And that’s at 8.35am on 9 July. Do you see that?---Yes.

And here you’ve responded, “Okay. See you there.” Do you see that?
---Okay. Yes, I can.

40 Now, given the circumstances in which things were happening at this point in time, do you recall what the purpose of the meeting was and what was discussed at that meeting?---I don’t recall, no.

Is it likely that the meeting did in fact occur that day? I mean, this is at least at 12.08 on the day that the meeting was to occur, you had indicated that you would see him there at his office.---It, it is likely but I don’t recall.

And likely that other councillors were present, the other Liberal councillors?---If they’ve indicated they would be, I’d assume so.

Well, do you recall having any discussions with Mr Sidoti in the presence of other councillors around this time in which he discussed the Five Dock Town Centre Study and in particular anything to do with the site between Barnstaple Road and Second Avenue on the Waterview Street side?---Oh, I have, I don't have any recollection.

None whatsoever?---Oh, no.

10 THE COMMISSIONER: Did you and the other two Liberal councillors ever meet with Mr Sidoti about matters other than the Five Dock Town Centre that you recall?---I don't recall. We may have, you know, met at, at official functions or something like that but I don't – nothing is coming to me.

So you're simply unable to say what this meeting these emails are talking about related to?---Well, I – with respect, I can see that it, up the top somewhere it said about the Five Dock Centre. Maybe it was the next page. So that's what I assume that it was referring to.

20

MR RANKEN: Well, if you go back to 687, your email is asking whether or not he wanted to meet with you regarding the town centre.---Yes, yes.

THE COMMISSIONER: What's the date of that?

MR RANKEN: If we go back to 686, it's right down the bottom of the page. It appears to be 8 July, 2015.

30

THE COMMISSIONER: Oh, I see.

MR RANKEN: 11.30am.

THE COMMISSIONER: I see. So, yes, I see. I see your point.---Yes.

MR RANKEN: And if we can just briefly go to page 690, this is a different copy of the chain that does include your original email, if we were to go to page 691. You can see your original email is the first in time at 691?---Yes, yes.

40

So then going back to 690, do you see that the very top email is an email from Dr Ahmed to Ms Cestar and copied to yourself and Mr Sidoti and Ms Cestar as well in which he says, "Ran late again. There at 6.40." And that's sent at just after 6.00pm on 9 July.---That's from Tanveer.

Yes, from Tanveer, yes.---Yes, yes.

So it would appear that certainly at least as at just past 6.00pm, the meeting was still scheduled to occur and people were still likely to be attending?
---Yes.

I mean, are you able to assist the Commission with information as to what the nature of your communications with Mr Sidoti about the town centre were over this period.---Not, not really.

10 What things he was communicating to you about, what was he expressing to you in his communications about the town centre.---My memory is that he was expressing that he wasn't happy about this latest recommendation that had been passed.

But what was he saying about why he was unhappy with it?---Because he wasn't, because the uplift wasn't occurring.

And when he made those kinds of statements to you, did you understand him to be representing himself or constituents in the Five Dock area?
---Himself.

20

And was he coupling these statements about his views as to being unhappy about the latest reports and recommendations and what should occur in relation to it? That is, what decisions you should do as a councillor.---Look for the area to be included in the, the whole study, as I recall.

So what was it he was saying to you? Look, look for the area to be included in the study?---Well, that area between, that had been left out. The, the strip behind.

30 So was he pressing you to have further reviews undertaken to consider that area? Is that the sense of, is that the effect of what you recall his statements to you?---That's the sense that I recall.

And you were aware, though, weren't you, by this stage, that the question of rezoning that area and, indeed, of increased height and floor space ratio for that area, had already been considered on a number of occasions by council?---I was aware it had been.

40 And on each occasion both council staff and the independent experts had not supported that matter being the subject of rezoning or increased heights, correct?---Yes.

Or increased floor space ratio, correct?---As I recall.

So did you not tell Mr Sidoti that, look, John, this has already been looked at a number of times by council, and the council just doesn't, council staff and the experts just do not support the position you're advocating for?---I honestly don't recall what I said to him.

But do you agree that that would have been an available thing to have done on your part, to have just pointed out to Mr Sidoti, look, that's just not going to happen because the consistent view is being expressed that it's not supported?---Yes.

Are you able to assist the Commission with any reason why – well, is it likely that you did not in fact express that view to him at least at this point in time?---I don't recall what I said to Mr Sidoti. I, I have no memory of it.

10

Was it a concern to you that Mr Sidoti appeared to be repeatedly raising this issue, notwithstanding the clear position of council and the independent experts that it was not supported?---Yes, it was a concern.

THE COMMISSIONER: Well, if by this time – we're now talking about July 2015 – there had been reports in support of Mr Sidoti's request for inclusion of the area between Barnstaple and Waterview Streets included. He had had Ms Miller, as we've seen, from MG Planning, prepare submissions and reports to support it. Council, as has been put, and council's independent experts, had been repeatedly rejecting it for inclusion. By this time in July, then, what was he expecting you to do? He had made submissions through experts and he had, that they had been reviewed and rejected. So as at July of 2015, what was he expecting you to do? What was the purpose of meeting with you again at about this time?---Possibly to ask for another review.

20

That is - - -?---Look at it again.

- - - what, a motion by the Liberal councillors seeking a further review, is that what you mean?---It, that, that, that is possible. I'm sorry, I just don't recall.

30

Well, if he's meeting again with Liberal councillors, against the background as to what had happened up till July 2015, is there anything else he could have been seeking assistance from the councillors for other than moving a motion for a review?---Not, not that I recall, unless he had other information, and I don't recall that either.

So are you saying that he was in some way seeking the Liberal councillors to render assistance to his cause, I'll call it that, that is to say for the inclusion of this area between Barnstaple and Waterview Streets?---Yes.

40

Why would you be prepared to entertain from him at this point a request for your support, for your assistance to advance or promote his interests? Why would you go along with it?---Only if he had further information that I was unaware of. I didn't know whether he did, I assume, I didn't know whether he did or he didn't, because over the period of time, there had been, you know, different, there had been changes that had been made for the whole

thing, as we've seen with the, the progression. Maybe I assumed that he probably, he may have had more information that I was unaware of.

I see. All right, thank you.

MR RANKEN: Thank you. Now, I just want to take you to a submission that was then made by MG Planning on behalf of Deveme Pty Ltd and Anderlis Pty Ltd in July of 2015. If you could go to page 641, that's the cover page for the submission. You can see it's dated July 2015.---Yes.

10

And this is in the context of having taken you to that email from Ms Miller where she indicated that she'd had communication with the council and they said that they could provide further submissions, they would need to address the two issues about the heritage listing and the strata development.---Yes.

If we could go to page 642, do you see there that the background identifies again that it's the owners of 120 Great North Road, Deveme Pty Ltd, and 2 Second Avenue, Anderlis Pty Ltd, who had made a submission in November 2014.---Yes.

20

That's in the first sentence.---Yes.

I've taken you to that submission previously, so you remember that, and the four points that were being put in favour of why the area should be rezoned.---I do.

And indeed, those four points are reiterated in dot form beneath that first paragraph. Do you see that?---I do.

30

And then it goes on to say, after a brief paragraph, it says, "This additional submission has been prepared in response to the recommendations contained in the exhibition outcomes report in respect of area B, page 22, that rezoning this block is not proposed due to the location of the heritage item, and the existing strata development," which is at number 45 to 47 Waterview Street site, "it is understood that this statement encapsulates the two main reasons why the subject land is not being considered for rezoning." Correct?---Yes.

40

But of course, you were aware that they weren't the only reasons why it wasn't considered for rezoning.---Yes.

One of the – perhaps the principal reason was that it would expand the core of the town – or it would expand the zone beyond what was considered to be the core of the centre. Correct?---That's correct. Yes.

Now, the other aspect of this submission that I'm just wanting to draw your attention to though, is that it was a submission that was made only on behalf of Deveme Pty Ltd and Anderlis Pty Ltd, and only in respect of that block

between Barnstaple Road and Second Avenue on Waterview Street, correct?---That's, yes, that's what I'm reading, yes.

No other areas around the vicinity of the town centre, correct?---I, from what I'm reading, that is correct.

And if we go to page 649, there is the conclusion, and you can see that there are essentially seven points that are being made in support of the rezoning that are identified there. They're in dot form.---Yes.

10

But I would suggest to you that they, when enumerated, there are seven of them.---Right.

You might read them to yourself.---Yes.

Now could we perhaps go to page 740. This is an email between, or from Mr Sidoti to yourself, Ms Cestar and Dr Ahmed of 12 October of 2015. ---Yes.

20

Now, do you recall that there was going to be a meeting to discuss the outcome of the exhibition of the Five Dock Town Centre planning proposals on 20 October, 2015?---I don't recall, but it seems that it could well have been from that.

Well, we'll get to that meeting in a moment, but essentially what Mr Sidoti's asking is to, is to meet with the three of you before the next council meeting as a group. Do you see that?---Yes. Yes.

30

And appreciating that there is no subject given, but noting that Mr Megna has not been included, is it likely that the meeting about which or the matter about which he wished to discuss with you would have been the town centre study and associated planning proposals?---It, that would be my assumption.

And if we could then go to page 761. You can see this is a chain of emails regarding Five Dock.---Ah hmm.

40

And if we could go to page 762. You can see that the first of time of this email appears to be on 15 October. So about three days after that previous email. Where Mr Sidoti is saying, "Hi, Councillors. Know you're busy. Have to meet before Tuesday as a group. Any time, any place. Please respond."---Yes.

"Cheers, John Sidoti MP." Do you see that?---Yes.

And there's a response from Dr Ahmed about his availability.---Ah hmm.

And a further response from Mr Sidoti. And we can see at the bottom of page 761, you've indicated some issues to do with your availability in an email.---Yes. Yes.

And Ms Cestar, sorry, Mr, Dr Ahmed has responded, and then Ms Cestar has indicated issues to do with her availability, correct? And it would appear that Mr Sidoti has responded to the effect that he would see you all separately.---Okay.

10 Do you have a recollection of meeting with him separately prior to the meeting on 20 October?---I don't.

No?---I don't recall.

And Ms Cestar at the top appears to have indicated that she would meet with him, well, drop by his office on her way home on the Monday evening.---Right.

See that?---Yes.

20

And do I take it then that you wouldn't be able to assist us with what might have been discussed at any such meeting?---I, I have no, I don't remember meeting.

I just want to take you then to the outcome report from the further exhibition that was prepared by Studio GL. If we could go to page 788, that's an outcomes report that was being prepared by the council staff. Do you see that?---Ah hmm.

30 If we go to page 790 for the executive summary, you can see that it refers to the fact that, "The report summarises the matters raised in submissions, provides responses to the predominant issues raised and makes recommendations," and then refers to the report comprising two parts. And if I could draw your attention to the fact that Part 2 is an urban design responses that was prepared by the independent expert, Studio GL." And that was the part of the report that dealt specifically with urban design matters such as building height, rezoning and building envelopes?---That came up before, yes.

40 Yes. If we could go to page 793. This page gives a summary of the kind of consultation that has been undertaken in relation to the whole study over the course of its consideration by council.---Yes.

And over the page to 794, again you can see there's further detail about the exhibition of the planning proposals?---Yes.

And the most recent part being that the draft planning documents are exhibited from 30 June, 2015, to 31 July, 2015?---Yes.

And then if we could go to page 795. It identifies the issues that were raised, and the various submissions and a list of them.---Yes.

Specifically, I just want to draw your attention to the fact that, “The consideration of issues in relation to building height, zoning and site specific matters is included in part 2 of the exhibition outcomes report.” Again, that’s a reference to that part of the report that was prepared by Studio GL, correct?---Yes.

10

And then if we could go to the Studio GL report that considered those issues, which is at page 805. That’s the first page of the report that was prepared by Studio GL, dated 9 October, 2015.---Yes.

And can you see that, if we go to page 812, refers to rezoning in the left-hand column?---Yes.

20

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 the Waterview Street between Barnstaple Avenue 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.” If we could go to chapter 3 at page 820. That’s the cover page for chapter 3, and then move to 821. So, there are issues relating here to particular sites. So, “This section considers a review of submissions on specific sites that provide additional detail.” Do you see that?---Yes.

30

And one of those sites is site D, which is 39-41 Waterview Street, 120 Great North Road and 2 Second Avenue. Do you see that?---Yes.

And essentially they were the interests or the property owners who had put in a submission about that block. If we go then to page 826. This is the part of chapter 3 of the Studio GL report that deals with the particular site, or the submission that had been received on behalf of those property owners. Do you see that?---Yes.

40

And the key issue raised is that, “The proposed height of adjoining development along Great North Road will create adverse amenity for blocks along Waterview Street. The submissions argue that these sites should also be rezoned to allow the entire block to be redeveloped.” Do you see that? ---I can see that.

Now, I just want to suggest to you that you can, if you go through to – just bear with me – that what is set out below is particular issues and the response of Studio GL to the issues that are being raised.---Yes.

And if we could go particularly to page 827. There are particular issues set there. Firstly, that “The heritage item at 39 Waterview Street is not of such

significance to preclude the expansion of the Five Dock Town Centre and rezoned land to the west of Waterview Street between Second Avenue and Barnstaple Road as B4 mixed-use.”---Yes.

Correct? And do you agree that that was one of the points that was being made by MG Planning on behalf of the owners of 120 Great North Road and 2 Second Avenue?---(No Audible Reply)

10 And there has been a response to that. Part of that response is that “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 the zoning to B4.”---Yes.

And corresponding increase in height from 8.5 metres to 15 metres.---Yes.

20 And then if you go to the next row in this table, we see a specific reference to MG Planning in conjunction with Group GSA architects which was Mr Thebridge, you might recall, from those emails. And “Futurepast Heritage Consultants provided a detailed submission in favour of rezoning land on the western side of Waterview Street between Second Avenue and Barnstaple Road for the following reasons.” And can you see there are four points that are made there?---Yes.

And they reflect points that were made in the – sorry, not the Studio GL, the MG Planning submissions.---Yep.

30 And the responses to those four points are provided by Studio GL, and the effect of those responses is that “Ultimately the rezoning of the western side of Waterview Street is not recommended as it would impact on the context of the heritage item and provide little public benefit.”---Yes.

So the upshot of all of that was that, as a result of the further public exhibition and the further submissions received, including from MG Planning, that the experts engaged by the council had considered the issue of extending the rezoning for another time and had concluded that it was not in the public interest. That’s the effect of that, correct?---Yes.

So if we could - - -

40 THE COMMISSIONER: Just before you go on, is it convenient to break now?

MR RANKEN: Yes, that might be a convenient point to break.

THE COMMISSIONER: Yes, very well. We’ll take the luncheon adjournment and I’ll resume at 2.05.

LUNCHEON ADJOURNMENT

[1.03pm]