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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 2.00PM

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THE COMMISSIONER: Ready to proceed?

MR RANKEN: Yes, I think we're ready to proceed, Commissioner. Now, Ms McCaffrey, just prior to the luncheon adjournment, I had taken you to the exhibitions outcome report from Studio GL that had been prepared in advance of the meeting of the council that was to take place on 20 October, 2015. In due course that was summarised in the subject of an agenda report prepared by Marjorie Ferguson for the purposes of that meeting and I just want to take you to that report briefly. Firstly, at page 929, just to identify the report – sorry, maybe it's a few, maybe 931 or 32, 33. That's the first page of the report and one of the things you will see is that it refers to the fact that following the exhibition period there were 389 submissions that had been received. Would you agree that's a large number of submissions to have received?---Yeah, that is. That is huge.

And in fact what one sees, going back to the original exhibition is that there were 31 submissions that were received in respect of the initial exhibition of the study in December 2013 and in January 2014. And then following the public exhibition following the Gateway Determination, there was a further 124 submissions that were received, so an increase on that, and then here we see that there was in fact a further increase of 389 submissions that were received. But you can see that it says that, "The primary issue raised in the submissions related to the proposed eight-storey height limit and the impact that this height on the public and private domain." Now, the one thing I wanted to draw your attention to in relation to this report however is at page 938, which deals with this question about land between Second Avenue and Barnstaple Road and the submissions that were received in respect of that. And do you see that it refers to the fact that two submissions had proposed substantial expansion to the B4 mixed-use zone to include the land on the western side of Waterview Street between Barnstaple Road and Second Avenue and that area had not been identified for the rezoning in the Five Dock Town Centre Urban Design Study or the exhibited planning proposal?---(No Audible Reply)

And ultimately the conclusion, after addressing the issues concerning that, the conclusion is that, "The part of Waterview Street between Barnstaple Road and Second Avenue is further away from the core of the centre and there are no significant public benefits arising from its rezoning and so the expansion of the B4 mixed-use zone to land between Barnstaple Road and Second Avenue is not supported," correct?---Yes, yes.

And that was consistent, again, with the Studio GL exhibition outcomes report, correct?---Yes.

So, this report would have become available to councillors around about 15 or 16 October, 2015, correct? That would be the Thursday or Friday before the 20<sup>th</sup>?---Correct, yes. Yes.

Being the Tuesday?---Yes.

And if we could then go to page 939, which is the next page, we can see the recommendation of the council staff as to what should be done in respect of the planning proposals at the meeting.---Yes.

10

And if you could read those to yourself, and perhaps we may need to go over to the next page once you've finished 939.---Yes.

Now, would you agree that effectively they were looking to progress the matter towards finalisation, and part of that would not involve looking further at this issue of the rezoning of that part of Waterview Street between Second Avenue and Barnstaple Road on the western side, that's not included there in any of the recommendations, and in fact the report did not support its inclusion.---It's to go back to Gateway, I think I read somewhere, it's to go back to - - -

20

To back to Gateway.---Yep. And then - - -

Yes, because there had been changes, some changes to it.---Yes.

So it needed to go back to Gateway, correct?---Yes, that's correct.

Now, so that report again would have been available the Thursday or Friday before the meeting, which would be 15 or 16 October of 2015. Could I take you then to an email at page 766? This is an email from Mr Sidoti that's addressed to yourself, Ms Cestar, and Dr Ahmed on the afternoon of 19 October of 2015. Do you see that?---Yes.

30

And it's sent from his parliamentary email address, correct?---Yes.

And it's forwarding an attachment. It says, "A one-pager from JS that may help." Do you see that?---Yes.

If we then go to the next page, page 767, and then just briefly if we also go to page 768 and then we'll come back, you can see that in fact it's a two-pager, but it's a document that appears to have been prepared, if one goes from the header and the footer, by MG Planning.---Yes.

40

Which was the organisation that had put in a submission both in November 2014 and more recently in July of 2015 on behalf of Deveme Pty Ltd and Anderlis Pty Ltd, correct?---Yes.

And that submission was directed to the possibility of the rezoning of the land on the western side of Waterview Street between Second Avenue and Barnstaple Road, correct?---Yes.

It's also apparent from the footer of this document that it was prepared on or about 19 October of 2015, if you look at the footer, there's a date there.  
---Yes, yes, yes.

10 This is the day prior to the meeting on 20 October of 2015. Correct?---Yes.

What we see in this two-pager, at the top of the page, is that instead of just being directed towards the one site, that is, the land on the western side of Waterview Street in the block between Second Avenue and Barnstaple Road, there appears to have been an additional site being forward. Correct?  
---Yes.

And do you know the circumstances in which you were being provided this one-pager by Mr Sidoti?---No, I don't recall.

20 No. To your knowledge, Mr Sidoti didn't have any property interests or his family didn't have any property interests in the area on the land on the eastern side of West Street to the south of Henry Street?---Not to my knowledge, no.

And to your knowledge, MG Planning did not act for anybody who had an interest in that block of land, correct?---Not to my knowledge.

30 Now, did you consider that this was being provided to you as a councillor so that you could make a submission in favour of the council again having another look at the rezoning of the Waterview Street site, but in a way where it was not so apparent that that was what the true intent was?---That's what it appears to be, yes.

THE COMMISSIONER: I'm sorry, I can't hear you.---Yeah, it, that's what it appears to be, yes.

40 MR RANKEN: Did you have some conversations with Mr Sidoti or communications with him where he suggested that to you that, "We want to have a look at, have that looked at again, but we don't want to make it obvious that it's just the Waterview Street site, so we'll need to have a look at other sites"?---I don't recall that conversation.

But is it possible you might have had a conversation of that kind?---It's possible. I don't recall it.

And just dealing with the key reasons that are provided underneath that. The first reason is, "One chance to get this right, need to plan for expansion of the town centre into the future." If you read the balance of the reasons to

yourself, and we may need to go over to page 768 once you've got to the end of 767.---Yes, yes. Yes.

What I wanted to suggest to you is that those reasons effectively reflect the substance of the reasons advanced by MG Planning in its submission of July of 2015, which had already been considered by council, correct?---Yes.

10 With one change, that in the submission in July of 2015, the changes to strata development had not yet passed the Lower House, whereas on this one pager, it's suggested that they had passed the Lower House. Do you see that?---Yes, I can.

But otherwise, I suggest to you, the substance was different to what had been put forward on behalf of Deveme Pty Ltd and Anderlis Pty Ltd in the submission of July of 2015, correct?---It would appear that's so.

20 And was this the case, that Mr Sidoti was providing this one-pager to you, and the two other Liberal councillors who were in a position to vote on this issue, as a way of instructing you as to what should be done in respect of the matter when it came before the council on 20 October, 2015?---It would appear so.

And that is encapsulated in the final sentence under Recommendation, "It is recommended that council amend the proposed LEP to include the subject land within the B4 zone"?---Yes.

30 Now, just going to the minutes of the meeting of the City of Canada Bay Council on 20 October, 2015, at page 944. This is the part of the minutes where the matter was dealt with as item 2 and you can see that there are a list of persons who actually presented to the meeting. Do you see that? ---Yes, yes.

Including Ms Miller from MG Planning Pty Ltd. Do you see that?---Yes, I do.

And just seeing her name there, do you understand that – and what you saw in that two-pager, is it likely that she presented in a similar vein to what was in that two-pager?---I would think so.

40 Ultimately though, the resolution or the recommendations that were proposed by the council staff that I took you to before, they were not passed at this meeting, correct?---That is correct.

Instead you and Councillor Ahmed put forward some resolution to defer the matter, pending the preparation of an addendum report setting out in tabular format the advantages and disadvantages of the alternative maximum height options presented in the consultant's exhibitions outcomes report. Do you see that?---I can see that.

Do you recall why it was that you and Councillor Ahmed put forward that recommendation?---I can surmise.

Well, what's your best summation to the best of your recollection?---That, that there were points put forward for both sides and in, I probably felt the need to be, well, for myself to be able to see the advantages and disadvantages set out in very simple form.

- 10 What we see in that resolution, though, is that what is proposed to be looked at in tabular form were the various advantages and disadvantages of alternative maximum height options, not anything to do with rezoning, correct?---Yes, that appears to be so.

So it would appear that, notwithstanding the email that Mr Sidoti had forwarded to you and your fellow Liberal councillors, none of you had at this point put that forward as a matter to be actioned upon by a council resolution.---Can you just repeat that question?

- 20 Well, notwithstanding that Mr Sidoti had provided you with that two-pager, neither you nor any of your other Liberal councillors had put forward a motion that rezoning be looked at, correct?---Yes. Yes.

THE COMMISSIONER: Why not?---I obviously had issues with it.

- 30 Yes, I daresay you did. What were your issues that led you to say you're not going to play ball with this one?---I would think that I, I, I, I'm just trying to think of what was going on and that I think I just wanted to make absolutely certain and sure that I knew every aspect of this situation. And to get the advantages and disadvantages put out in a tabular form would have allowed me to clarify perhaps some of the issues that were raised by the residents at the time.

Yes, I can understand that. Why did you decide that you would not, in accordance with the document that had been sent to you by Mr Sidoti, there and then present it for him on his behalf? Did you - -?---I would think it was contrary to the recommendation that was in the council papers.

- 40 Well, there had been, of course, a number of reports from Studio GL. Council staff on a number of occasions had expressed the same views as Studio GL, that there was no place for expanding the rezoning. So by this time you were well informed as to what the experts were saying and what council was saying. So do I take it that you decided that it was time not to comply with what had been put before you and to simply get a tabular advantages/disadvantages document on the question of the height options? ---I would think so.

Well, does that display a reluctance by you to do anything towards carrying out what Mr Sidoti's wishes were at this stage?---Yes.

You said earlier that you understood that Mr Sidoti's focus had been seeking to get rezoning for his family interests. That right?---Yes.

Is that right? You've got to answer so it's taken down.---Yes. Sorry. Sorry. My voice was – yes.

- 10 And you gave evidence that, as you saw it, he was using his position to be able to pursue his family interests, and in that respect meet with the Liberal councillors, is that right?---Yes.

Well, if you understood he was using his position to be able to pursue a private interest, namely the family property interests you referred to, why did you continue to meet and communicate with him when you knew, as it were, that he was seeking to influence you in his favour on a matter of private interest? Can you explain why?---I, I can't.

- 20 Well, you have been in local government many, many years with a great deal of experience and you say it's always been your approach to listen to and read relevant material if the matter comes before council and independently make your own decision. Is that right?---That is correct.

- 30 Well, there must be some explanation as to why then, knowing as you have said, that Mr Sidoti was dealing with only the Liberal councillors in pursuing his private family interest, that you somehow felt obliged to go along with him. There must be some explanation as to why somebody of your experience would go along with him in terms of meeting with him, talking to him, receiving documents from him, in his pursuit of his interest, or his private interest.---I don't recall why, why I, I had, I did that. I, I assume it was because it was, you know, constant pressure and I wanted to make sure that every avenue was explored and explored and explored and make sure that in my own mind that the decision that was going to be made, or to be made, I was happy with. And when you keep having various presentations made to you by another planner, having a different point of view, I felt, I believe I felt that I needed to be absolutely certain that what was going on was the correct decision.

- 40 And what was the pressure that was on you that you referred to?---Emails - -

Sorry?---Emails.

No, no. What is the form of pressure? Where was the pressure coming from?---Oh, I think it was just the constancy of, of the, the, the representations.

Constancy of whose representations?---From Mr Sidoti.

But it must have reached a stage where you realised that he was wanting to deal only with the Liberal councillors and to favour them with information, but no one else, that that was highly irregular. Do you agree it was highly irregular?---I, don't know whether – possibly, yes.

10 Well, you said before that you had met with any other constituents, being a group of Liberal councillors, to take up what might be their interests. Is that right?---I meet with different groups, mainly with the Rhodes area, because they were the committees that I chaired in that area and I certainly had representation from residents in, in the Rhodes area over the issues of height and, and traffic and all those sorts of things, yes.

But was the point of difference what you said before in evidence, that you had a sense of that Mr Sidoti wanted to raise with you his own family interest in this area and pursue those as distinct from a general matter of public interest?---Yes.

20 All right. Yes, Mr Ranken.

MR RANKEN: And having taken you to that email from Mr Sidoti with the attached two-pager that had been prepared by MG Planning, do you now recall whether or not you had any knowledge at the time that MG Planning acted for persons who associated or interests associated with Mr Sidoti? ---I, after looking at the people on the list for the meeting, I may well have worked that out.

30 And when you spoke about pressure from Mr Sidoti, was this kind of communication one of the kinds of communication that was part of that pressure? That is, an email with an attached one-pager that suggests a recommendation of the kind that we saw in that two-pager?---Yes.

And did you have some apprehension that if you didn't go along with what Mr Sidoti was suggesting, that there may be consequences for you?---I probably did think that, yes.

40 And what sort of consequences did you apprehend there may be for you if you didn't go along with Mr Sidoti?---My position on council may have been compromised.

And from where did you get that apprehension?---Well, there was previous emails indicating that there was other people, that you've showed earlier.

There was that email. Was there any other communications that you had with Mr Sidoti where that kind of sentiment was conveyed to you?---That I don't recall.



Either in direct speech or in an email or some written form.---I, I don't recall. I, I don't recall.

Okay.---I really don't.

So either in face-to-face discussions or telephone discussions or email correspondence, text messages.---I, I don't, I don't recall. It was six years ago. I'm sorry, I don't recall.

- 10 Now, in any event, as you've already told us, despite what was in that two-pager, which you understood to be part of a direction, effectively, that Mr Sidoti was giving you and your fellow councillors, none of you actually made that recommendation at the 20<sup>th</sup> of October meeting. But rather the matter was deferred for that, for the information to be prepared in a, or provided in that tabular format, correct?---Yes.

- 20 So it would follow, would it not, from that resolution, that the next time the matter was to come before the council, the real thing that you would be concerned with is, for yourself, for your own mind, was to look at the material that had been presented in that tabular format about heights, correct?---Yes.

That was the only outstanding issue that was particularly preying on your mind at that time, correct?---I believe it, it was.

What wasn't preying on your mind at that time – that is, as at 20 October – was the question of rezoning.---Well, the heights and the rezoning were interrelated, I felt.

- 30 So you saw them as an interrelated issue, and so the deferral of the matter, as far as you were concerned, meant that you would still be considering the question of rezoning, possibly, correct?---Of the whole area. As had been presented, yes.

Well, so the only two areas, the only area that had actually been presented upon, as I understand it, was, firstly, in the submission from MG Planning, which was concerned only with the Waterview Street site, correct?---Yes.

- 40 And then we saw that two-pager that included the additional site that I think you accepted was most likely just there to make it look as if it wasn't just about the Waterview Street site.---Yes, I recall there was another site down, there was another area down the bottom end that I was concerned with that had seemed to be missed out of the whole, the whole thing as well. But it, it wasn't in there.

I think we're speaking at cross purposes.---Oh, probably.

I think what I'm referring to is if we go back to page – sorry, page 767, the two areas that were the subject of the two-pager.---Oh, yes. Yes, yes, yes.

The area you're talking about is towards the bottom of that diagram, correct?---That is, that is correct.

10 And I'll come to that in a moment. But I think you accepted or suggested that the inclusion in this two-pager of the other site – that is, the land on the eastern side of West Street to the south of Henry Street – was, to paraphrase, was a ruse to conceal the fact that the issue that was really being put before the council was the rezoning of the Waterview Street site.---It would appear so.

So does that mean that, as far as the next meeting of council, which, just for your edification, was to take place on 3 November of 2015, so two weeks after this meeting on 20 October, you considered that not only was the specific aspects about height in play, but also the question of rezoning.---I would think so.

20 Now I wonder if we could go to page 975. This is the first page of the report that Ms Ferguson prepared for the purposes of the meeting on 3 November, 2015. Do you see that?---Yes.

And do you see that it actually identifies that, at the meeting of 20 October, 2015, the council had resolved to defer the issue - - -?---Yes.

- - - pending the preparation of the addendum report setting out, in tabular format, the advantages and disadvantages of the alternative max height options presented in the consultants' exhibition outcomes report.---Yes.

30 And then if one goes to page 983, can you see that there is what was the information that you had requested, as far as being the person who moved the motion for deferral?---Yes.

And it proceeds on that page. And the next page. And finally the next page.---Yes.

I think there are also some diagrams the following page.---Yes.

40 Now, are you able to identify in there, and maybe you might need to look at it closely, where there is any further consideration of rezoning the site of Waterview Street as B4 mixed-use?---Not, not that I, not that I can see it.

Because what I want to suggest to you is that the resolution that you had advanced on 20 October, 2015 had nothing to do with zoning, the rezoning from B4, from R3 to B4.---Okay.

It was only concerned with particular height constraints.---Well, that, that's what the information shows, yes.

Because to that point, the question of the rezoning, particularly of Waterview Street, had been considered on a number of occasions by both the experts and council staff, correct?---Yes.

And it had repeatedly been not supported, correct?---Yes.

10 And was this not the case, that by 20 October, and notwithstanding Mr Sidoti's repeated entreaties to you about the issue, you were, in your own mind, certain that the extension of the B4 mixed-use zone was not something that you supported?---That's what I recall.

In your own mind.---That, I'm, I believe that's what it was.

As far as you were concerned, that issue was done.---I imagine so.

20 THE COMMISSIONER: Was it also clear to you that Ms Cestar was a reluctant player, as it were, by 20 October, 2016? By that I mean that she had expressed her misgivings about entertaining the proposal to have Water Street property, Barnstaple, rezoned B4?---I, I believe she, she had misgivings.

She expressed those in fairly strong terms, did she not? For example, in the email that she sent to you and said, "Where is the public benefit"?---Yes.

By that time she was exhibiting significant reservations, is that right?---Yes.

30 MR RANKEN: I might just come to that in a moment, but I want to just jump ahead a little bit to the meeting of 3 November, 2015, but before I do so, if we could just go back to page 982, or perhaps 981, you can see the recommendations commencing at the bottom of page 981?---Yes.

And going over to 982.---Yes.

And I want to suggest to you that those recommendations reflect the same recommendations that were in the report prepared for the meeting of 20 October of 2015?---Yes.

40

Then moving to the minutes of the meeting on 3 November, 2015. Could we go to page 990? You can see again there's a list of the persons who presented on the issue.---Yes.

And they included a Mr Thebridge, representing Deveme Pty Ltd and Anderlis Pty Ltd.---Yes.

And there are two parts to this resolution ultimately. One is part A, which we see commencing with 1, 2 and then if we go over the page, 3, 4, 5 and then if we go over the page, 6 and 7, and I want to suggest that those paragraphs reflect, with additional detail, the recommendations that were put forward by council. There is then a part B that we see and a paragraph 8, which provides that a separate report be prepared to investigate the zoning, heritage and development controls for, and then there's three sites identified. Do you see that?---Yes.

10 The first of those sites is what I've been referring to as the Waterview Street site, correct?---Yes, yes.

There is then the East Street and West Street site, which made its way onto that two pager that Mr Sidoti had sent to you, correct?---Ah hmm.

And then there is a final site, a neighbourhood centre that was down at Ramsay Road, Five Dock, correct?---Yes, yes.

20 And is that the site that you said you had some interest in?---That's, that's the one that was, I was - - -

Down the bottom.--- - - -wondering why it hadn't been included in all the work.

And do you know how this part of the resolution came to be on - - -?---It, no, I don't. It could have been the outcome of the presentations on the night and it, the word – yes.

30 If I was to suggest to you that the recommendation – or sorry – this resolution came about as a result of a request made by you of Mr McNamara following a councillors' workshop, would you agree with that? ---It, it could have done.

40 Well, if it could have done, what would the circumstances have been, to the best of your recollection, in which you would have requested that Mr McNamara arrange for a resolution of this kind to be drafted?---Well, there had been some discussion of whether the heritage site, the heritage item was heritage. I do recall that. I personally didn't think it was. And I distinctly recall the B1 neighbourhood centre down the bottom of Ramsay Road not being included and I, I distinctly recall feeling I couldn't understand why it wasn't in it when everything else had been put in it.

Well, now the heritage listing of 39 Waterview Street was not the only impediment to the zoning of that block, correct?---No, there was some - - -

There was a strata development?---It, it, it was, yes, there was some discussion about the strata development.

And in addition, there was the very fact that the expansion of the town centre core beyond that which had already been recommended in the study was considered to not have significant public benefit to be supported, correct?---That's what the original plan said, yes.

Not just the original plan. That's what the experts had expressed in their opinion at each stage that this issue had come up, correct?---Yes.

And you were quite satisfied about that, correct?---Yes.

10

You just told us a moment ago that at 20 October you were satisfied that the issue was done, correct?---Yes. Yes.

So what I want to ask you, then, is why was it, if you recommended that or you asked for this recommendation and resolution to be drafted, that you did so?---Well, I, I keep saying that for me it was that neighbourhood centre. The other part, I don't recall that. I do remember the neighbourhood centre area.

20 THE COMMISSIONER: But if you just look at part B, it's somewhat, well, not unusual, but it's a specific recommendation, very specific. It's been drafted in these terms, as you'll see, that a separate report be prepared to investigate. And then it says the zoning.---Yes.

30 Heritage and development controls for, then there's (a), (b), (c). There's three specific properties chosen to be included in this resolution. The first one is the Waterview Street property, which we've been talking about now for some time. And then adding in (b) and (c), Henry Street, Five Dock and the Ramsay Road, Five Dock properties. That's a very specific resolution dealing with three aspects of the investigation – zoning, heritage, development controls – for three particular properties, one of which is the Waterview Street. How did it come about that you have that resolution drafted?---I, I seconded the resolution.

I know, yes, but we're talking about the drafting of the resolution, how it came into existence. And I think it's been put to you that you had some conversation with Mr McNamara about it, leading up to it. Does that help? ---It doesn't help me remember why, how it came about.

40 No. Well, perhaps Mr Ranken might ask you some questions about that.

MR RANKEN: Yes, is it possible that Mr McNamara had a conversation with you following a councillors' workshop, immediately following a councillors' workshop, in which the topic of a resolution of this kind was discussed between the two of you?---It is possible.

And did you say to Mr McNamara words to the effect of "Can you put together a notice of motion so that we can investigate the Waterview site

and the other two sites within the vicinity, one on the western side and one on the southern side of the Five Dock Town Centre”---It is possible.

Is that something that you asked him to do?---It is possible.

And do you recall in a conversation Mr McNamara asking you, “Why are we investigating these and where did this come from?”---I don’t recall that.

10 You don’t. Is it possible that he asked, “Why are we investigating these?”---I don’t really. It, it is possible. It is possible that he asked me, yes.

“Where did this come from?”---It is possible that he asked me.

Did you tell Mr McNamara, “We need to investigate the three so it doesn’t look like we’re just looking at the Waterview Street site specifically. It looks as though we’re being more even-handed. I’m getting pressure from within the party to put forward this submission.”---I don’t recall using those words. I don’t recall that.

20

Is it possible that you did use those words?---It, it may have been possible, yes.

If you used those words, “That I’m getting pressure” - - -?---It’s just, doesn’t sound like me, but anyway, yes.

Well, if you did use the words, “I’m getting pressure from within the party to forward this submission,” the party you would have been referring to was the Liberal Party, correct?---Yes.

30

And from whom within the Liberal Party was pressuring you to put forward a submission to investigate those three sites?

MR NEIL: Well, I object. I object. She hasn’t accepted that, Commissioner.

THE COMMISSIONER: She hasn’t what?

40 MR NEIL: She hasn’t accepted, and I don’t want to say too much in front of the witness, she hasn’t accepted the premise in the question.

THE COMMISSIONER: I think she has.

MR NEIL: Well, if it please the court.

THE WITNESS: Sorry, I’m confused.

THE COMMISSIONER: Perhaps just go back over it. The witness may need to have it refreshed, that's all.

MR RANKEN: Yes. If you did say those words, "I'm getting pressure from within the party to put forward this submission," who was it within the party that would have been giving you the pressure to put forward a submission of that kind?---It would have been the local member.

Was there anybody else in the - - -

10

THE COMMISSIONER: Well, just to clear that up. If you said those words to Mr McNamara, words to the effect that you were under pressure from the party to put this resolution up, the question is at this time were in fact under pressure to deal with this matter? That is, we're talking now about October, aren't we, Mr Ranken?

MR RANKEN: October/November. Early November.

THE COMMISSIONER: 2015?

20

MR RANKEN: 2015.

THE WITNESS: I had been under considerable pressure through, through this particular time, yes.

THE COMMISSIONER: When you say this particular time, are you talking - - -?---The whole time.

30

The whole time. Does that include the period we're focusing on, which is October 2015 when this resolution, you'll see at the footer of the screen, 3 November, 2015, is the minutes of the meeting?---And before that time.

And before that time you're saying you were under pressure?---Yes, yes. I had been.

MR RANKEN: And that pressure had come from whom?---Mr Sidoti.

40

THE COMMISSIONER: How were you responding to the pressure within yourself, I mean? How were you internally dealing with it? Were you relaxed and - - -?---Oh no.

Or what was the impact of this pressure on you?---On me, I, every time this came up I felt probably like I'm feeling at the moment, pressure

Probably you thought what?---I said I was, I was feeling a lot of, like – how do I describe an emotion? Was feeling a lot of pressure, I felt, I was feeling probably a little bit like I'm feeling at the moment, which is, I was, I was concerned, I was worried, I, I, I thought - - -

Just put it in your own words as - - -?---I'm trying to. I just felt that it was, I needed to make sure that every angle of this was looked at so that I knew I was making the right decision.

Well, I take it you always took that approach with your work, from what you've said, that you diligently examined issues.---I did, I did.

10 So that you made the right decision.---I did and that's what I hoped I was, you know, when, when different issues are raised, and they were being constantly raised, "Look at this, look at that," I thought okay, I'll look at that issue and get the feedback from staff to make sure that I, I was looking at it in the right way.

And again, when you said "constantly being raised" by whom are you referring?---Mr Sidoti.

20 MR RANKEN: And so is it fair to say then also that insofar as Mr Sidoti was putting that pressure upon you, he was doing so by reason of the fact that you were both members of the Liberal Party?---I assume that was the case.

So, a statement from you to the effect that you were getting pressure from within the party to put forward that submission would actually reflect the position that you actually found yourself in at the time, correct?---Yes.

And did you also say to Mr McNamara words to the effect of, "I'm not very comfortable with this"?---I could well have said that. I don't recall.

30 But that would also reflect an accurate statement of the position you felt you were in at the time?---I would think so.

Putting forward recommendations of that kind, correct? I just want to take you to some emails in relation to this resolution. Firstly, could we go to page 963. You'll see that's an email from yourself to yourself, I think, at the top. Forwarding an email that Mr McNamara had sent to you.  
---Yep.

40 Do you see that?---Ah hmm.

On 30 October.---Yes.

Saying, "Attached is a draft motion for next Tuesday. Happy to discuss."  
---Yes.

If we go to the attached, the attachment, which is the next page, do you see that at the bottom of that page, in a highlighted portion - - -?---Yes.



- - - that actually is the wording that we see in part B.---Yes.

Now I want to take you to some other emails. That, so that was on 30 October of 2015. And then leading up to the meeting on 3 November, 2015, I wonder if we could go to page – just bear with me. We’ll go to page 966. This is a chain of emails between yourself, Dr Ahmed and Ms Cestar and also Mr Megna. He’s copied in on the top one at least. Do you see that? And at the bottom of those emails, the first in time was sent by Dr Ahmed on 1 November, 2015, at 2.14pm.---Yes.

10

Saying, “Can we just have a clear plan for Tuesday re Five Dock? I am firmly in support of eight storeys.” And Mirjana Cestar has said, “Can I call you, Tanveer?” And then you have said, at 7.01pm on 1 November, “Do we have an option to meet beforehand? I have another motion which may solve some problems.” Do you see that?---Yes.

Given the email from Mr McNamara to you on the previous day with the attached resolution, is it likely that that was the motion that you were referring to in this email?---It could well have been.

20

Can you think of any other motion it could have been?---Not off the top of my head, no.

And you’re referring to that the motion may solve some problems. Is there a particular problem you needed to solve?---I, I don’t recall.

Well, was the problem the pressure you were receiving from Mr - - -?---I would think that that - - -

30

- - - Mr Sidoti?---I would think that that was probably the problem.

Well, was this the position, that this was one way for you to assuage the pressure that you were receiving from Mr Sidoti, and yet still have the matter be able to be determined on its merits? That is, let it be seen, let it be looked at one more time, and then you could consider it again on its merits. It would have been done three or four times by then and you could put the whole thing to rest.---I would - - -

40

Was that your thinking at the time?---I would think so.

Now, did you appreciate that the likelihood was that in order to do so – that is, in order to reconsider those areas and rezoning – it would be necessary to engage independent experts again to prepare a further report?---I, I don’t know. I would, I don’t know whether I thought that or not.

Well, it was unlikely to be something that would be done by council staff. ---It could have been done by council staff.

You considered that it was something that could be done by council staff?  
---Well, they were professional planners.

They had, all along this process, they had engaged external consultants to prepare reports, correct?---Yes.

And to look at, particularly look at site-specific issues such as rezonings, correct?---Yes. Yes.

10 And that was because they recognised in part that they did not have the full expertise in urban design. Not just planning but urban design. Correct?  
---Yes.

And what the whole Urban Design Study was concerned with is about how to look at both planning controls, zonings, all of those things, in order to achieve an outcome, an urban design outcome that best suited the public interest.---Yes.

20 And one of the key aspects about engaging independent experts about that was that it meant that there could be no issue with the independence of the views that were being expressed, correct?---Yes, yes.

And so you no doubt appreciated, did you not, that the very real likelihood was that, this resolution having passed, the council would need to go to the expense of engaging the experts again to look at it all again?---Look, to look at a small part of it, yes.

30 And you appreciated, did you not, that the two, that it was really all about the Waterview Street site, it wasn't really about the other two sites?---I still say I was concerned about the bottom bit but, yes.

THE COMMISSIONER: Can I ask you, where do you think you got the idea for the part B resolution that we're discussing with the three sites, which you then spoke to Mr McNamara about, where did the idea come from? Was it your own idea or do you think it came from somewhere else?  
---I, I, I don't recall.

Sorry, I don't think what?---I don't recall.

40 Oh, I see.---Yes.

Do you have any idea - - -?---I don't recall whether it, it was raised in another workshop. I have a funny feeling it might have been.

Well, it was put to you that you had the conversation with Mr McNamara after, or following somewhere workshop.---Yes.

Then I'm simply asking you whether you have any recollection as to where the idea came from to have these three sites as at November 2015 placed under investigation? Was it your idea or somebody else's or don't you know?---I don't, I don't recall.

Do you think it was your idea?---Well, part of it was, which is the number 3 point, yes.

10 Which one?---The, the third point, which I referred back to, the one down near Ramsay Road.

Oh, the Ramsay Road, yes. But you're uncertain or you're unable to say where the idea came from to include the Waterview Street property and the other property, the East/West?---That, that, that is correct.

MR RANKEN: Now, given the pressure that you appeared to be under had got to the point where it would appear you were requesting council staff to draft a resolution of this kind, did you feel that your independence as a councillor was being interfered with?---Possibly.  
20

And did you feel that it was becoming quite difficult to resist that interference, given the relentless nature of the pressure, as you have said? ---Well, it was certainly relentless.

THE COMMISSIONER: Sorry, I couldn't hear that.---It was certainly relentless.

If you wouldn't mind just moving slightly closer to the microphone.  
---Sorry. I'm trying to go two angles here. It's just - - -  
30

MR RANKEN: And was it that relentlessness, did that make you feel as if it was difficult to resist that pressure and that interference with your independence?---I wanted to make sure, as I said a few minutes ago, that every aspect had been looked at.

Not but I'm asking about the pressure that you were receiving and your concerns about the interference with your independence as a councillor.  
---Possibly.

40 Did you consider making some declaration about that, perhaps informing someone that you were under pressure from Mr Sidoti regarding this particular area of land?---I think we were all under pressure about it.

When you say, "We were all under pressure," are you referring to you and your fellow Liberal councillors?---Yes.

Or are you referring to other persons?---Well, the fact that it had come back to often, I think we were, you know, everybody was wanting to make sure that every aspect of this had been looked.

No, Ms McCaffrey, I'm just focusing on this issue of the pressure that you said you were receiving from Mr Sidoti and the interference that you felt it was having in your independence as a councillor. That's what I'm focusing on.---Yes, I, I appreciate that.

10 And what I'm focusing on is whether or not you turned your mind to telling someone, making some formal declaration about the fact that you were receiving this sort of pressure and your concerns with its impact on your independence.---I didn't, I didn't make, make, do that, no.

THE COMMISSIONER: Why not?---Well, hopefully, I was hoping that I could deal with it myself.

MR RANKEN: And one of the ways you wanted to deal with it was to  
20 effectively get a further study done that would look at the matter one more time in the hope that by doing so you would be able to finally put it all to rest, is that the position?---Yes.

So I was dealing with that email chain at page 966 that was on 1 November. Can I then go to page 969? Sorry – so can you see this is an email chain involving yourself and Ms Cestar?---Yes.

And commencing at the bottom, you see Ms Cestar has sent an email at 6.00pm on 1 November to yourself – that's your work address, is it?---Yes.

30 Mr Megna and Dr Ahmed, and it refers to "page 10 of report." Do you see that?---Yes.

What I want to suggest to you is that what is extracted there in that email is a direct quote from page 10 of the report that had been prepared by council staff for the purposes of the 3 November, 2015 meeting, correct?---Yes, yes.

And we've already read from that report, but do you see that she's referring effectively to the fact that it wasn't supported because there was no public benefit, no significant public benefit. Do you see that?---Yes. Yes.  
40

And your response was to say, "We need to make it supported. I'll talk to you about when is the best time and number to ring you on."---Yes.

What is the reason why you needed to make it supported?---I have no idea.

Is it not because Mr Sidoti was pressing upon you to support it, to get that area rezoned?---I, I don't think that's what it was referring to. I think it was the, perhaps the second part or part B, D of - - -

The part B, yes.---Of, of that recommendation.

But what Ms Cestar is clearly communicating here, I would suggest to you, is that there's no need to have a look at these sites again, it's not supported. ---Yep.

10 There's no significant public benefit. Why go and have a look at it again? Isn't that the obvious thing to take from Ms Cestar's email?---Yes, yes, it was. I think there was so much noise and everything going about over this issue that – I, I don't know what I was referring to in that we need to make it with, support it.

Is it possible that what you were referring to is that that's the direction that had come from Mr Sidoti, to support that kind of resolution?---I, I think I may have well, no, I don't think it was. I think it was the fact that we, that the resolution that was being put up was what needed to be supported.

20 Well, just look at Ms Cestar's response to you. She says, "We need to argue significant public benefit. What is the significant public benefit for any of it?" And in the context of that email chain, it's plain that what the subject matter is, is the prospect of rezoning that part of Waterview Street between Barnstaple Road and Second Avenue. Correct?---I, I don't know.

Well, Ms McCaffrey, just look at the email. Look at the bottom email from Ms Cestar.---Yes, I, I'm, I am, sorry, I am reading that.

You see that.---I can.

30 It's a direct quote from the council staff report, correct?---Yes, yes.

It's clearly stating that the rezoning of that part of Waterview Street between Barnstaple Road and Second Avenue is further away from the core of the centre and there are no significant public benefits arising from its rezoning, and so the expansion of the B4 mixed-use zone to land between Barnstaple Road and Second Avenue is not supported. So there's the word, "not supported."---Yes.

40 Your response is we need to make it supported, correct? That must only be, I want to suggest to you, a reference to supporting the rezoning of that part of Waterview Street between Barnstaple Road and Second Avenue.---I think it's the resolution that was put up, not that bit.

How can you possibly say it was the resolution in circumstances where this is the context of the email? You don't say, well, the resolution needs to be supported. You say, "We need to make it supported."---Well, I don't - - -

The only thing – sorry, Ms McCaffrey – the only thing that’s referred to being supported or not supported in the email from Ms Cestar is the rezoning of that part of Waterview Street between Barnstaple Road and Second Avenue.---I don’t know what I was referring to in the word “it”.

Are you saying you definitely were not supporting, you were not referring to the rezoning of the land on Waterview Street between Barnstaple Road and Second Avenue?---I don’t know. I don’t know.

10 Is it possible?---I don’t know. I just – I, I don’t know.

Well, is it possible?---Is what possible?

Is it possible that that’s what you were referring to?---I still think I was referring to the resolution that was being put up.

20 Well, look at Ms Cestar’s response to yours, then. “We need to argue significant public benefit.” Now, just pausing there, that is a direct quote, and she’s even used inverted commas, and that’s a direct quote from the quote that she’s taken from page 10 of the staff report, is it not?---I believe so.

“No significant public benefit arriving from its rezoning.” What I want to suggest to you is that what Ms Cestar is saying is before we go against this recommendation of council staff, we need to be able to identify significant public benefit. What is the significant public benefit for any of it? That’s the question. Correct?---It appears so.

30 And there was none, was there?---Not that I recall.

THE COMMISSIONER: You recall the very first Studio GL report they addressed the question of public benefit or none.---Yes.

And in that report, Studio GL stated it did not consider there was significant public benefit in extending the zoning to Waterview Street. Do you have a recollection of that?---Yes.

It was right at the beginning of the whole process.---Yes.

40 And it had repeated its view later when it carried out its next report. So the question of whether there was significant public benefit or not was a key issue, wasn’t it, in determining whether or not the town centre should be expanded still further?---Yes.

All right.---I’m just trying to, to think what I was referring to when I said we need to make it supported. I - - -

Well, the key property of the three sites contained in the resolution that was drawn up at your request was of course the Waterview Street property. There hadn't been any strong support for the other two to be rezoned, had there?---No.

10 So I think what's being asked of you, we won't press you any further, but if you can shed any light on it, when you use the word "need", "we need to make it supported", whether that reflects any pressure or influence that was operating on you for you to have made that statement.---If I'm reading it that way, it would appear that there was pressure, yes.

All right.

MR RANKEN: And what was the source of that pressure?---I think, I think I've said, the, the emails that, and the contact – no, I'm going to use the wrong word. The emails that were coming through.

From?---Mr Sidoti.

20 Now, as a result of that resolution of the council on 3 November, 2016, Studio GL prepared a further report following an investigation of the three sites that were the subject of the resolution. Do you recall that?---Yes.

Well, presumably you would have had an interest in that report because this was your resolution?---Well, it, I seconded the resolution, yes.

Well, I've taken you through to the emails, correct?---I appreciate that, I appreciate that.

30 And the evidence that suggests that you were the person who requested the resolution be drafted in the first place?---Yes.

Now, whether or not it was Councillor Kenzler or yourself who actually moved it, it was a resolution that had its origins with yourself, I want to suggest.---Yes, yes.

40 As far as its drafting is concerned. And it's a matter that you appear to have wanted to have supported, if we take your characterisation of your response to Ms Cestar in the email I've just taken to you, correct?---Yes.

So, you would then have had an interest in the report that Studio GL had prepared in respect of its further investigation of those sites, correct?---I would have had a – yes.

And that report was prepared and finalised on 3 March, 2016, and following that report there was also a further feasibility analysis that was conducted by HillPDA Consulting. Do you remember - - -?---I believe so.

And that was to look at the economics and the feasibility of development actually occurring if the kinds of changes that were being suggested were made, correct?---I believe so.

Now, I just want to go to deal firstly with the Studio GL report. That commences at page 1010. You can see that there's the first page of the report. If we could then go to – sorry, perhaps go to the next, page 1012. Can you see that there are three sites, site A, site B and site C, but in respect of site B there are two options, option 1 and option 2, correct?---Yes.

10

And then if we could then go to page 1014, and we can see on this plan the three sites are identified as the areas that are shaded in blue, correct?---Yes, yes.

And you can see that site B is the site that this Commission is particularly interested in, which is the Waterview Street site.---Yes.

20

If we can go to 1021, this presents the first option in respect of site B and you can see in the second paragraph it describes that, “Option 1 proposes to retain the heritage status of number 39 Waterview Street and protect its setting, building heights and (not transcribable) are set so that development transitions to the one-storey building in a sensitive manner.” Correct? ---Yes.

Going into 1022. In relation to this option, I just want to draw your attention to, “Land use zoning.” Do you see that in the table?---Yes.

30

And it refers to the fact that the site is zoned R3 medium-density residential and then in terms of the recommendation, it provides that, “It is recommended that zoning remains R3 medium-density. B4 mixed-use is not recommended as it's not seen as desirable to increase commercial development away from Great North Road and the town centre core or locate businesses along this section of Waterview Street.” Do you see that? ---Yes.

And that is essentially consistent with what had been expressed by the experts and council staff all the way along, correct?---Yes.

40

And then moving to option 2, if we could of to 1027. Option 2 is identified there as involving the removal of the heritage listing at 39 Waterview Street. Do you see that?---Yes.

And again, if we move over to page 1028, just drawing your attention to the, “Land use zoning,” again. “Even with the removal of 39 Waterview Street, the heritage listing, it is still recommended that it not be rezoned at B4.” ---Yes.



And for the same reason that development away from the central core was not supported.---Yes.

10 So turning to the feasibility study by HillPDA, which commences at 1058. I just want to go to the conclusion, though, at 1091. Can you see that the conclusion of HillPDA was that “Having done testing for the three additional sites for the total of 11 development options, of the total 11 options, our modelling revealed that site B1, which involved retaining the heritage listing for 39, was the only option to achieve a marginally feasible scheme at an FSR of 1.28:1. The option demonstrated a project IRR of 16.38 per cent per annum and development margin of 15.99 per cent per annum.” Do you see that?---Yes.

So effectively what HillPDA was suggesting was that, really, the most feasible option was to retain the existing heritage listing for 39 Waterview Street and go with that option, correct?---Yes.

20 But in each case the zoning would not change as far as Waterview Street site.---Yes.

Now, the matter came before the council again in August of 2016. Correct?---I believe so.

Now, in that time – that is, between Studio GL doing its further report following its investigation of the three additional sites, and HillPDA doing its feasibility analysis, you became the mayor, correct?---That is correct.

That was in about June of 2016.---Yes, it was around about that period.

30 And that was following the resignation of Mayor Tsirekas so he could pursue a federal political career.---That is correct.

Now, upon his resignation, that left the balance of power on the City of Canada Bay Council as one in which there were four Liberal councillors and four non-Liberal councillors, correct?---Yes, that’s correct.

40 And you in your position as initially acting mayor, and then subsequently mayor, would be the presiding councillor at any meetings that you attended?---That is correct.

And the event of all councillors being present and able to vote on a particular matter, if there was an even split between the number of Liberal councillors in favour or against, and the number of non-Liberal councillors in favour or against, then you would have the casting vote.---That is correct.

Now, did your contact with Mr Sidoti over this period – that is, from the point that you became mayor – did it change in any way in terms of the nature of the contact that you had with him?---I don’t recall, unless there

was a request from council to contact the state member to advance, I don't know, something like roads or - - -

You're talking about ordinary council matters - - -?---Yes. Yes.

- - - or things that might require something done by the state member.---Yes. Yes.

10 Because as a mayor you would need to, you may need to engage directly with the state member in your capacity as mayor, correct?---That is correct.

I want to talk about a different aspect of your contact with Mr Sidoti, and that in terms of that which arises by reason of you being a member of the Liberal Party and you being now the Mayor of the City of Canada Bay Council, correct?---Yes.

Which took up the entirety of the Drummoyne electorate, correct?---Yes.

20 And did Mr Sidoti express to you any particular expectations he had of you now that you were the Liberal Mayor of the City of Canada Bay?---In what way?

Well, in terms of how you were to act in relation to matters that were coming before the council.---I don't recall.

30 What about in relation to the Five Dock Town Centre Study? Was there any expectations that he expressed to you about how that issue was to be dealt with, given that you were now the mayor with the casting vote?---I don't recall.

Do you have a recollection of your perception of what the relationship was like, now that you were the Mayor of City of Canada Bay?---I think, it's all gone blurry. I, I don't recall.

You have no recollection as to how you perceived the relationship with the state member once you were made Mayor of City of Canada Bay?---Not really, no.

40 Now, given that you had become the mayor in June of 2016, and the matter came before council on 2 August of 2016, is it fair to say that this matter was one of the most significant matters for you to be dealing with after you became mayor, in terms of its importance?---For a planning matter?

Yes.---Yes, probably, yes.

And what you had to consider in advance of, or at the meeting on 2 August, 2016, was which of the options the council should go with in relation to the further investigation that had been done by Studio GL, correct?---Yes.

And do I take it, then, because you were now mayor, firstly, and secondly that the investigation that had been conducted by Studio GL was done as a result of a resolution that you had had some involvement in arranging to have before the council in November 2015, correct?---I assume so.

That therefore you would have paid some close attention to the detail of the various options and what was being recommended.---I would think so.

- 10 And when one goes to the report that was prepared by council staff for the purposes of the meeting on 2 August, commencing at page 1154, this is the report prepared by Mr Dewar, we can see from the initials PLD.---Yes.

And it refers in the executive summary to the fact of “Following the preparation of an Urban Design Study and the adoption of new planning controls for the Five Dock Town Centre, council resolves to investigate the zoning and development controls that apply to those three areas of land.” Correct?---Yes. Yes.

- 20 And ultimately that report outlines the various options. And if we go to page 1156, in respect of the land between Second Avenue and Barnstaple Road on the western side of Waterview Street, Mr Dewar then sets out option 1 and the various aspects of that, and continuing over to 1157, option 2 as well. Do you see that?---Yes.

And if we go to page 1160, in relation to the feasibility analysis, there’s a summary of the feasibility analysis that was conducted by HillPDA at the top of the page.---Yes. Yes.

- 30 And then in relation to assessment, it records, or he records, “It is strongly recommended that controls should not be increased further than recommended by urban design advice in order to facilitate viable outcomes. This would create new impacts on surrounding properties and be contrary to broad-ranging consultation undertaken and the principles of the Urban Design Study adopted by council. There are therefore two alternative options available to council. One, leave the current zoning and controls unchanged. Two, proceed with changing the zoning controls in accordance with urban design report prepared by Studio GL, dated 3 March, 2016.” Do you see that?---Yes.

- 40 And the only option that really involved making any change in respect of the Waterview Street site was option 2. Agreed?---Yes. Yes.

And that option involved the removal of the heritage site.---Yes.

So if we go to the next page – sorry, perhaps if we can just go to page 1163. The recommendation from Mr Dewar was not for any one particular outcome. Do you see that?---Yes.

But rather that council needs to make its choice.---Yes.

And for the additional sites to be included or how to deal with those additional sites. Now, that report would have been available about five days prior to the meeting on 2 August.---Yes.

So that would have been at least by 28 or 29 July of 2016, correct?---Yes.

10 I just want to take you to some text messages or messages between yourself and Ms Cestar from 30 July of 2016, and so for this purpose, could we go firstly to page 1786? Just drawing your attention to the message at the top of that page, which is message number 8.---Yes.

And can you see there that that's a message from Ms Cestar to you, you're identified as Helen Mac.---Yep.

And Ms Cestar has asked, "Hey there, did you speak to John Sidoti re: Five Dock?"---Yes.

20

If we could then go to page 1785, the previous page, and – sorry, perhaps before I do that, if I could just go back to that message on page 1786, just noting the time is at 12.59 on 30 July. Do you see that in the timestamp? ---Which one are you referring to?

Message number 8, the top one that I just took you to.---Yes, yes, yeah, yes.

And then just going back to page 1785, and firstly to message number 2, we see your response, do we not, at message number 2, given the time at which  
30 it was sent, which appears to be 1 o'clock, so just a minute later.---Ah hmm.

It says, "Only that I managed to get it on the papers, has he spoken to you?" Now, does that refresh your memory at all as to you having a conversation with Mr Sidoti in which you indicated to him that you managed to get the Five Dock Town Centre issue on the papers for 2 August, 2016?---I, I don't recall.

Then Ms Cestar responds at message number 3 to say, "Just call me, but I can't pick up as am at hairdresser, will call him later." Do you see that?  
40 ---Yes.

And you have responded to say, "If you have the papers, have a look at option B. He has just called me."---Yes.

That would suggest – and just pausing there, though, the time that you sent that was at 1.22.---Yes.

So that was some 12 minutes or so or maybe 14 minutes after Ms Cestar had messaged you. Correct?---Yes. Yes.

Now, does that mean that between you receiving those earlier text messages from Ms Cestar, you had a brief telephone conversation with Mr Sidoti?---It appears so.

And it would appear that from whatever that conversation involved, there was something to do with option B.---Yes.

10

Is it likely that the reference to option B is a reference to the second option in relation to the Waterview Street site, correct?---Option 2, yes.

The removal of the heritage listing?---Yes. Yes.

Now, does that assist you in terms of your recollection?---No.

THE COMMISSIONER: Do you recall what you did discuss with Mr Sidoti?---No, I do not.

20

Does it appear that – I withdraw that Do you know whether you meant to convey that his choice was option B?---(No Audible Reply)

You don't know?---No, I do not know.

MR RANKEN: I wonder if I can take you to an email between yourself and Mr Sidoti at page 1146. Now, do you see this is an email from Mr Sidoti to you?---Yes.

30 Do you see it's dated 2 August at 4.06pm?---Yes.

That would be less than two hours prior to the meeting?---Yes.

And he is forwarding to you what appears to be a form of resolution. Do you see that?---Yes,

And he has said, "Tanveer is moving. Hope this helps. I move that firstly number 39 Waterview Street, Five Dock, be removed as an item of heritage significance from council's heritage schedule." Correct?---Yes.

40

That would be consistent with option 2?---Yes.

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

Now, that was no part of the recommendation of Studio GL, correct?  
---That's correct.

And no part of the recommendation from council staff – well, no part of the substance of the report from council staff, correct?---Yes.

And more to the point, it's a matter that had been consistently identified as not being an appropriate rezoning, correct?---That is correct.

10

And, I mean, seeing this now, this form of resolution that was being provided to you with details that Tanveer would be moving, what did you understand the purpose of him communicating this to you?---Well, change the resolution.

THE COMMISSIONER: Sorry?---To change the resolution that was on the paper.

MR RANKEN: Well, there was no resolution on the paper, other than the  
20 - - -?---Oh, that's right. There wasn't. Yes. To, to use this as the resolution.

But what's being put here is, or what's being included in this resolution is a matter that certainly hasn't been the subject of any positive recommendation, correct?---No, no. But I see that as what was being put forward as the resolution that should be put forward because on the council papers it said councillors, or council had to make the decision and I see this as what was Mr Sidoti's desired resolution.

30 He was effectively instructing you and your fellow councillors, was he not, as to the form of the resolution that you should pass at this council meeting in respect of this matter?---Yes.

In which you understood he had, through his family, a financial interest?  
---Yes.

THE COMMISSIONER: Well, since when have members of parliament, or for that matter anybody, the power to go and instruct councillors what they're to do in the chamber?---Well, they shouldn't.

40

No. Well, furthermore, paragraph 2, sort of is as if nobody's considered whether it should be zoned B4 mixed-use and yet it had been multiple times, by experts, consultants, council staff and so on?---Yes.

Well, I presume you would have read this email?---Well, I have read it now. I assume I read it before,

And does it occasion any surprise to you to see that Mr Sidoti was reintroducing rezoning to B4 mixed-use for that property specified in paragraph 2?---Yes, although I, I just note the, the time on it, which was 4 o'clock in the afternoon. I don't recall whether I would have – but it's not taking away of what's there, but I don't recall whether I would have seen this, because often I went to council earlier and I didn't have access to my emails, 'cause this is my work email. So I, whether I may have had access to it, I may not have had access. That's what I don't recall.

10 MR RANKEN: Now, I just want to take you to a different email, not one involving Mr Sidoti. If we could go to page 1134. This is an email that was forwarded to you by Mr Pavlovic, who was the Manager of Health, Building and Environment.---Yes.

And from time to time he stepped in to perform the role of Mr McNamara, is that correct, when Mr McNamara wasn't available?---Yes, he took on that role.

20 And obviously you as mayor would have contact, direct contact with persons such as Mr Pavlovic.---Yes.

And what Mr Pavlovic has forwarded to you are two draft resolutions, each depending upon the particular option that council might take in respect of the Waterview Street site, correct?---Yes.

Do you see that? Two draft resolutions are attached. One, proceed with proposed changes and remove heritage. And, two, proceed with proposed changes and retain heritage.---Yes. Yes.

30 And then if one goes to page 1136, it refers to option 2 being endorsed. ---Yes. Yes.

And if we go to 1137, there's a draft resolution if option 1 was endorsed. ---Yes.

Do you see that?---Yes.

40 And neither of those suggested resolutions proposed the rezoning of Waterview Street, correct?---Yes. Yes.

So this subsequent form of resolution that was being proposed by Mr Sidoti was one that was not consistent with the options that were being provided to you by council staff.---Yes.

But I think your evidence is that it may be that you didn't actually even see that form of resolution.---It may not. I don't know. I just noticed the time on it when I read it there, and it may not have been.

Well, I just want to take you to – so I withdraw that. So I think you said that you don't have, when you go to council before meetings sometimes, earlier, you don't have access to your work emails, is that right? You need to say yes or no.---Well, I don't know – sometimes I did. It depends whether I needed to look, if we had work, my own work, coming up that I needed to look at something. Sometimes I did, sometimes I didn't.

But you - - -?---It depends whether I took an iPad with me.

10 Well, that's the other thing I was going to ask. In 2016, were you able to receive work emails on your mobile phone?---I, I'm a bit of a Luddite. I don't - - -

You don't have an iPhone or a smartphone?---I do have, I do have an iPhone.

Did you have one in 2016?---Oh, yes, I did but whether or - - -

20 And would you receive emails on that?---I, I think so. I, I think so.

So I want to take you to some other emails then on 2 August, 2016. But perhaps before I do that, what I shall do is go to the minutes of a meeting at page 1169. Perhaps if we go to the previous page first. Do you see right down the bottom of the page is where the (not transcribable) starts?---Oh, yes, yes.

And it says that at 6.54pm, Councillors Fasanella and Megna declared a pecuniary interest in this matter and left the meeting, correct?---Yes.

30 So that would indicate that the discussion about the Five Dock Town Centre commenced at 6.54pm.---Yes.

And then if you go through to page 1171, do you see that item 4, which is the Canada Bay Local Traffic Committee minutes, it's recorded that at 7.50pm, Councillors Fasanella and Megna return to the meeting?---Yes.

40 So the discussion and the presentations to council by persons who were registered to present, and I will come back to that in a moment, occurred sometime between 6.54pm and 7.50pm. That's when the matter was being dealt with. So in all told, it took an hour almost to deal with that one issue concerning – correct?---Yes.

So with that in mind, and those time frames in mind, I wonder if we could go to page 1828. This is a series of messages, and I want to commence with message number 111, which is a message, an attachment effectively which appears to be an image sent from you to Ms Cestar and Dr Ahmed at 7.04. ---Ah hmm.



So this is whilst the meeting is ongoing, correct?---Ah hmm.

And whilst this particular topic, that is, the Five Dock Town Centre study, was being considered, correct?---Yes.

And you seem to be forwarding an attachment, and the first response is from Dr Ahmed, which is at message number 112, where he has said, “WTF. Is this different, I think we just support option 2.” Correct?---Yes.

10 Now, that would suggest that you had forwarded to Dr Ahmed some image of some alternative resolution to that which appeared or which had been provided to you by council staff, possibly. Is that - - -?---I have, I don’t know. Probably, I, it, it - - -

Is that possible, that you would have sent a screenshot perhaps of some message you received?---It could be.

And then Ms Cestar, at 113, has said, “Last asked to defer to exam FSR on basis that it is not consistent with existing recommendation to the south???”  
20 ---Yep.

Does that assist you in terms of what might have been the - - -?---No. It does not.

And then you’ve said, “May be deferred as residents didn’t get notification,” I think is what it’s supposed to read.---Right.

Sorry, it’s at message 114. And then going over the page to 115, Ms Cestar has responded by saying, “Yes, and examine FSR.”---Yes.  
30

And then she’s followed that with a further message where she says, “He can eff off.”---Yes.

Now, do you have a recollection as to who she was referring to by he?---No.

This doesn’t assist you to recall - - -?---I don’t - - -

- - - why you were exchanging these messages?---Oh, if, if it’s related to – yeah, well, the time it is related, yes, I, I don’t know whether she, or we  
40 were receiving text messages from Mr Sidoti or not, at this point of time.

But this is an exchange that is happening effectively surreptitiously between you and your fellow Liberal councillors, correct?---Ah hmm.

About an issue that’s actually being discussed in open council session, which is a public forum, correct?---Yes. Yes.

I mean, do you have a view, from all your experience, about the appropriateness of councillors engaging in surreptitious communications during an open public council meeting about the very topics that are being discussed?---Mmm, it, it happened, that happened. Often it was writing a note between councillors, so it was not unusual.

But what it appears that you are discussing is some approach to the issue that, if I could be so bold as to suggest, was being suggested to you by Mr Sidoti?---It could have been, I don't know.

10

Well, what else could it be?---I don't know.

Was there anything else that, any other reason why the three of you would be discussing this issue surreptitiously through text messages?---I, I don't know.

Well, was any other person or group of persons who were communicating with you and your fellow Liberal councillors about this issue to do with Five Dock?---At this time, I don't know.

20

At any time was there anybody else who communicated directly with you and your fellow Liberal councillors about Five Dock, other than Mr Sidoti? ---Not that I recall.

THE COMMISSIONER: Looking at message 114, the top of the page, 115, whatever is being discussed seems to have related to come form of a motion to put before the council. The first one says, "Deferred as (not transcribable). Did I get notification?" And the next one was talking about, "Yes, and examine FSR," which of course has got nothing to do with options A or B. So is there, under discussion by text messaging here, another alternative being bandied about, as it were, bouncing back and forth between you and Ms Cestar and perhaps somebody else?---I, I don't recall.

30

MR RANKEN: Anyway, continuing on with those messages, do you see that after Ms Cestar's message, "He can eff off," you've said, "Foreshadow a motion if it is defeated." And Ms Cestar has said, "Then what?" Do you see that?---Yes.

And then your response to Ms Cestar was, "Move the motion I sent through on the photo," and you followed up with that with a further one, "Option 2." Ms Cestar says, "Yes." And then Ms Cestar has said, "Tanveer, will you?" And then she's asked, "Me?" And then if we go over to the next page or perhaps the bottom of that page, 124. "They don't like losing, do they?" Do you know to whom that was referring to, the "they"?---I think it was perhaps referring to the Labor councillors.

40

You were referring to the Labor councillors?

THE COMMISSIONER: Just scrolling up the page, if that can be done a bit. No, the other way, I'm sorry. All right. What's the number of the message? Oh, I see, down the bottom of the page there. Yes, so I just see that a bit more clearly.

MR RANKEN: The details are over the next page.

THE COMMISSIONER: Yes, I see, I see.

10 MR RANKEN: If we go to the next page, you can see - - -

THE COMMISSIONER: So in context here, there is no reference to anybody associated with the Labor Party. It seems to be this back and forth communication by text, possibly about some other form of motion, and then the entry, "They don't like losing, do they?"---I, I don't know.

In the context of the string of emails you've just been shown, who could - - - ?---I, I don't know.

20 You don't know?---I do not know.

MR RANKEN: Perhaps if we could go to the minutes of the meeting, back to the minutes of the meeting on 1169. Now, do you see that, firstly, there are a number of persons who are identified as speaking in relation to the matter, including a Mr J Matthews of Pacific Planning?---Yes.

Do you know who Mr J Matthews is?---I think he's Mr James Matthews, yes.

30 Did you know James Matthews?---Not personally, no.

Did you know Pacific Planning?---No.

Did you know which various landholders they were acting for?---I think he was acting for Mr Sidoti.

Is that an understanding you had at the time of this meeting, do you think? ---I think so. I, I - yeah, I think he was a member of the Liberal Party, and he was a branch member of Drummoyne, as far as I can recall.

40

And you can see that there was a motion that was moved by Councillors Kenzler and Tyrrell, correct?---Yes.

That's the Labor councillor and a Green councillor.---Yes.

And that was effectively one that would, if we could go over to the next page. It would effectively retain the existing controls without removing the heritage listing, correct?---Yes.

And that motion was defeated or was put and lost on your casting vote, correct?---Yes.

And the voting was along party lines, effectively, correct?---Yes.

10 And so these messages that were going to and fro between yourself and your other Liberal councillors, they were about, were they about how to vote in respect of the resolutions? Effectively getting a united stance against it.---I, I don't recall.

If you move over to the next page, there is then a motion that was in fact put by Ms Cestar and Dr Ahmed, correct?---Yes, yes.

And that effectively said that there would be no change in respect of the two sites, two other sites that were considered, correct?---Yes.

20 But that option 2 would be adopted as far as the Waterview Street site. ---Yes.

And that would mean that there would be a removal of the heritage listing for number 39 Waterview Street, correct?---Yes, yes.

And it also provided that the planning and the draft Development Control Plan should be amended to reflect that, any consequential amendments, and then they were to be publicly exhibited so there could be public comment. ---Yes.

30 And that happened, did it not, throughout August and September of 2016? That is, the public exhibition?---I believe so.

And then the matter was to come back before the council in December of 2016.---Yes.

Is that right?---I believe so.

40 But the effect of that resolution, though, by adopting option 2, was it not, was that whilst there might be the removal of the heritage listing item on number 39 Waterview Street was concerned, there would be no rezoning of Waterview Street.---Yes.

But the removal of the heritage listing item might provide a basis to allow for some further height in respect of sites on the Great North Road.---It may have.

Subject to appropriate setbacks and the like, correct?---I believe so.

Now, I'm going to move – I'm about to move to a new topic concerning December of 2016. I just note the time.

THE COMMISSIONER: Yes. All right. Well, you'll be finished in the morning?

MR RANKEN: I'll be finished some time in the morning because we're very close to – we're reasonably close to the end of the chronology, I expect. I would expect to be hopefully by morning tea.

10

THE COMMISSIONER: Yes, very well. I'll just inquire, Mr Neil, do you want to make application to cross-examine Ms McCaffrey?

MR NEIL: Yes, I will, Commissioner. At this stage I'd anticipate probably a half to three quarters of an hour.

THE COMMISSIONER: All right, thank you, Mr Neil. Ms McCaffrey, we're going to adjourn. There will be a need, unfortunately, I'm afraid, for you to return tomorrow.---Thank you.

20

I just can't say just exactly how long, but this sounds like there's every opportunity you might be finished by lunchtime tomorrow.---(not transcribable) thank you.

It's always difficult, though, to assess the length of these things, so thank you for your attendance. If you'd return tomorrow for a 10 o'clock start. ---Thank you.

Thank you. I'll adjourn.

30

**THE WITNESS STOOD DOWN [4.00pm]**

**AT 4.00PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.00pm]**