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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 TUESDAY 13 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: We're ready to proceed, Mr Ranken?

MR RANKEN: Yes, we are, Commissioner, thank you.

THE COMMISSIONER: Just before we do that, I'll have the oath administered again, if you wouldn't mind. Thank you.

THE COMMISSIONER: Yes, thank you. Yes, Mr Ranken.

MR RANKEN: Yes, Ms McCaffrey, at the end of your evidence yesterday, we had gotten to the point of where the draft planning controls for the land on Waterview Street that had been passed by council on 2 August, 2016, which was effectively to adopt option 2 in Studio GL's report, which
10 involved the removal of the heritage listing for 39 Waterview Street, had occurred in August and September of 2016. That's the public exhibition. And then the matter was to come back before the council in December of 2016, at a meeting that was to be held on 6 December, 2016.---I believe so.

Now, was it the case that whenever this issue concerning particularly the Waterview Street was coming up before council for decision that there would be an increase in the amount of contact you would have with Mr Sidoti?---Yes, I believe so.

20 And invariably was that contact initiated by Mr Sidoti rather than being initiated by yourself?---Absolutely.

And plainly enough, if the meeting was to take place on 6 December, 2016, then by 4 December, 2016 the relevant reports that had been prepared by council staff would have been prepared and made available to the councillors?---The Thursday or Friday.

30 So 4 December would be the Sunday, so by that stage the reports would have been available, correct?---Yes.

And do you recall receiving a message from Mr Sidoti on the afternoon of 4 December, 2016 in which he implored you to take steps to make sure that in particular Councillor Ahmed attended the meeting that was coming?---I don't recall that.

40 Perhaps if we could go to page 1311 in Exhibit 24. So this is the first page, and you can see it's the heading, there's no subject, but it's from a particular telephone number, and it's to you at your Canada Bay email address, that's your mayoral email address or your councillor's email address?---The councillor email address, yes.

And if we go to the next page, we can see the substance, "Dear Helen, please show some leadership and ask Tanveer, his primary role as a councillor is to show up." Do you see that?---I can see that.

"This is disgraceful, for the last two meeting Liberal councillors plan outings around their elected duties, particularly when the numbers are so tight." Do you see that?---I can see that.

Now, just thinking back to this time in late 2016, obviously this particular issue concerning the Waterview Street site had not been back before the council since August of 2016 when the council had voted in favour of option 2, and no doubt there were a number of council meetings between that time and 6 December, 2016, at which there were other items discussed but not the Five Dock Town Centre, correct?---As far as I know, yes.

10 But as I understand your evidence, your contact with Mr Sidoti in relation to council matters, other than fairly day-to-day matters concerning issues being raised by constituents about roads, as in r-o-a-d-s, and trees and the like, or traffic and parking, the only particular issue in terms of a matter that the council would need to decide at council meetings that he had shown any interest in was, to your knowledge, this issue, that is, the Five Dock Town Centre and particularly the Waterview Street site, correct? And to some extent, issues concerning R-h-o-d-e-s, Rhodes.---That is my memory, yes.

20 And in respect of R-h-o-d-e-s, Rhodes, that issue, was that a matter where there were strong divisions along party lines about what the appropriate way forward was?---Not that I recall.

And to your knowledge, both Councillors Cestar and Councillor Ahmed were present at the meeting on 2 August, 2016, that's the immediately preceding meeting where this matter was discussed?---I think so. I, I can't remember.

30 And correct me if I'm wrong, but was there only really one other occasion where the Five Dock Town Centre Study was the subject of discussion and decision by council and where Dr Ahmed was not present?---I, I don't know. I - - -

If I could suggest to you that there was an occasion in June of 2015, that's the previous year, on 2 June, 2015, where Dr Ahmed was not present for the council meeting, correct?---If, if you, if you say so, yes.

40 And if I might suggest to you that also in October of 2015 there was at one stage a possibility that Dr Ahmed would not be able to attend that meeting but in the end he made some changes to his arrangements so that he could attend. Does that ring a bell with you?---It, it doesn't but if that's the information, yes.

But more generally speaking, as far as Dr Ahmed was concerned, was he a councillor who was regularly absent from council meetings to the best of your recollection?---He, he attended most meetings as I recall.

And from your recollection of his conduct as a councillor, was he generally an attentive councillor in terms of his duties?---Yes.

So just turning back to this message that was sent to you, and I want you to accept from me that this is a message from Mr Sidoti to you.---Yes.

Firstly, having now seen the message, does it ring any bells as far as your recollection of receiving it?---I do remember receiving something where he, he was implying that we didn't have an understanding of planning issues.

10 So, what you're referring to in your answer just now is, at about six lines down where it says, "This has come about because Neil Kenzler and staff confused the Liberal councillors that don't seem to understand planning." Is that what jogs your memory?---That's what jogs my memory, yes.

Receiving a message from Mr Sidoti that suggested that Liberal councillors did not seem to understand planning matters?---That's what jogs my memory.

20 And as a Liberal Councillor yourself, who had significant experience by December 2016 in council matters, including planning matters, did you have a view about the accuracy of that statement, at least as far as it concerned yourself?---I was offended.

So you considered it to be an offensive statement to you?---Yes, I did.

And what about as far as, for example, Mr Megna was concerned, insofar as it suggested that Liberal councillors don't seem to understand planning matters, did you feel that that was directed to include Mr Megna or not?---I felt it was directed at me at this point.

30 It also appears to be directed at Tanveer Ahmed because of the reference to the imploring a view to make sure that he turns up, correct?---Yes.

And what he's referred to as well is that after he said, "Particularly when the numbers are so tight, everybody agrees the politics playing out and to date the Liberals are just watching." What did you understand him to be referring to in relation to the politics that were playing out?---Which line is that?

40 After the line that says, "Particularly when the numbers are so tight," the fourth line.---Oh, yes.

"Everybody agrees the politics playing out and to date the Liberals are just watching."---I, I don't know what he would have been thinking.

Well, it appears to be plainly that this email is about something to do with planning matters, correct?---Yes.

And the one planning matter that he had particular interest in that was coming up before the council on 6 December, 2016, was the issue concerning the Waterview Street site, correct?---Yes.

And the proposed planning controls in relation to that, correct?---That's what I recall.

Well, with those two matters in mind, did you understand him to be referring to that matter?---I believe that he probably was.

10

And was this effectively a suggestion to you that you needed to make sure that you and your fellow Liberal councillors all attended and were able to vote as a bloc in relation to the issue concerning Waterview Street?---That's what I've – reading it, yes, that's what I understood.

20

Now, at the end of that email there are a number of points that Mr Sidoti seems to be suggesting to you. “Please rectify by 1, calling Tanveer, 2, if failing that call,” sorry, “If failing that, call an extraordinary meeting, 3, if Kenzler doesn't show up, refer to code of conduct.” Now, that on the face of that message would appear to be an instruction that's being sent to you by the state member. Correct?---It certainly does.

And what role, if any, does the state member have in directing you as the then Mayor of the City of Canada Bay to take any of the steps that are as stated there?---None.

Did you communicate to Mr Sidoti that look, you've got no right to be able to be mentioning this to me or directing me in this way?---I, I can't remember whether I did or I didn't.

30

Can I ask you this, did you have any apprehension about taking Mr Sidoti on about these sorts of things? I mean these instructions seem to be coming from Mr Sidoti fairly regularly. Correct?---They were.

And did you have some apprehension about actually pushing back, as it were, to say you're stepping over the bounds, John?---I probably did.

And what were your apprehensions?---My natural tendency is not to engage in confrontation.

40

And in your experience from your interactions with Mr Sidoti, was he someone who you considered to be a confrontational personality?---He, he – possibly.

Well, I'm talking about your experience and your own personal view of him.---I, I haven't, I haven't experienced that facet personally of his character.

The confrontational facet or some other facet are you talking about now?
---The confrontational facet.

So when I used the word confrontational, what, how did you understand that to be?---Oh, well, somebody that engages in confrontation.

What kind of confrontation?---Verbal.

10 Do you mean harsh words being said and the like, is that what your understanding is?---Yes, that's, that's what I feel, yes.

But did you have some understanding that other persons had been, had experienced that kind of behaviour from Mr Sidoti?---They may have. I, I -
- -

I didn't ask whether they had, I asked whether you were under the understanding that others may have.---Yes.

20 And was one of those persons Ms Cestar?---Yes. Whether I, yes, I believe so.

So had you had some discussions with Ms Cestar where she'd expressed to you or told you about incidents in which Mr Sidoti had acted in a confrontational way towards her?---I had, but at what point of time, I don't recall whether it was before the meeting or after the meeting.

That's okay.

30 THE COMMISSIONER: Ms McCaffrey, yesterday you were asked about events in November 2015 and in particular the meeting of 3 November, 2015. You were asked about matters such as why the resolution for the three sites was put up and you explained that you agree that you spoke to Mr McNamara about it and indicated that you councillors were under some pressure. Remember that?---Yes.

40 And you then – pages 705 of the transcript and continuing – said that you had been under considerable pressure in that particular time, and I put to you, “When you say this particular time, are you talking –” and you answered, “The whole time.” And you indicated that it was not just you who were under pressure, but at 710, you said, “I think we were all under pressure about it,” referring to the Liberal councillors.---Yes.

Now, you regard yourself as having been a conscientious councillor and mayor in the offices you held over the years?---Yes, I do.

And as at 2015 - - -?---Yes, I do.

- - - you were conscious of the need for you to act independently.---Yes.

And you said yesterday that it was apparent to you that your independence was possibly being jeopardised by this pressure.---Yes.

Is that right?---Yes. Yes.

10 Well, why would you not then, rather than tolerate the ongoing pressure that you've spoken of being exerted, as you see it, on an ongoing basis by Mr Sidoti, simply say to him, "You back off. This is – you are crossing the line. I am an independent officer of the council. I don't take instructions from you or from anyone, unless it is part and parcel of performing my functions properly"? Why did you not, instead of tolerating pressure, confront him? Was there anything in particular about him, his position, your position, that stopped you from taking that what might be seen to be an obvious step?---I don't know, in retrospect I certainly should have.

20 But I'm seeking to understand why you wouldn't. You have been, and people have spoken well of your service in your role as a councillor. Why, with this particular person, you wouldn't have simply said, "Enough. Stop. Don't tell me what to do as a mayor or as a councillor"?---I do not know why I did not do that.

He occupied a position as a public officer, as a member of parliament, throughout this period you say you had pressure applied to the councillors by him.---Yes.

You were at the lower rung in the tripartite system of government we have, federal, state, and local government.---Yes.

30 Was there anything about the position he occupied and the position you occupied that made you reticent to speak up and say, "Do not pressure me"? ---I, I don't know what I was – I, I, I don't know.

All right.---Sorry, I just can't recall.

40 So it had nothing to do with his personality, nothing to do with the office that he held, or your position?---It may, it may have had something to do with the office that he held, but I don't recall what my thoughts were at that point of time.

Well, looking back on it now, what do you think it was about the office? ---In, in retrospect, probably his position.

His position as what?---As, as local MP. Yes.

He was a colleague of yours in the Liberal Party of course as well as wearing his hat as a member of parliament.---Yes, he was.

Did that have any role, in retrospect, do you consider, in you not, as it were, standing up to him?---It could well have been.

Hmm?---It could well have been.

Well, only you know.---I, I, yes, and I can't definitively answer that question.

All right, thank you.

10

MR RANKEN: If we might just go back to page 1312 again and bring that up on the monitor. I just want to work through, briefly, the three points where he seems to be, steps that he is suggesting that you should be taking. Now, one of them was calling Tanveer, presumably, what, to make sure that he would attend the next meeting?---I assume so.

The second one is that, "If failing that, call an extraordinary meeting." Now, were you cognisant at the time of what the extent of your powers as mayor or ability to call an extraordinary meeting of the council?---No, I, I wasn't.

20

Would it be something that was only ever rarely done, to call an extraordinary meeting of the council?---In my time on, on council, I, I'm just trying to think, I, maybe it had only happened once or twice, if that.

And for what sort of issue?---It's usually, it would be – and I'm not saying this is what it was, the extraordinary meeting – but it would be over a, a, say a financial aspect of something that was happening in council or maybe something happening with one of the council staff or something like that.

30

So there might be a matter of pressing importance as it were?---That was considered that it couldn't wait until the next meeting, and they were generally two-weekly, so it would have been extraordinary, well extraordinary, that something like this would happen.

And did you have any appreciation as to what purpose the calling of the extraordinary meeting would serve, that he's suggesting there?---No, I did not.

40

And what about the third point, "If Kenzler doesn't show up, refer to code of conduct"?---I had, reading it now and I still don't know what, what that would be referring to.

Was it some suggestion that if Kenzler didn't turn up then there could be some reference to Kenzler breaching the code of conduct in some manner? ---That's what, how I'm reading it now, yes, and I don't understand how that could happen, to my knowledge.

To your knowledge, did you know of any matters that would require or cause you to consider referring Council Kenzler, regarding any potential breach of the code of conduct?---No.

Do you recall whether, in fact, in response to that email, you did contact at least Dr Ahmed to see if he would attend the meeting?---I don't recall whether I contacted him or not.

10 Councillor Ahmed was a practicing psychiatrist at the time, is that correct?
---Yes, he was, and still is.

Sorry?---And still is.

And still is, yes. And were there times when his professional obligations to his patients and the like meant that he could not attend council meetings for one reason or another?---Yes, yes.

Concerning his practice?---Yes.

20 And would he invariably give you prior notice of that fact before he failed to turn up?---Sometimes, or sometimes not if he was caught up.

Now, a little while ago I asked you if Ms Cestar was someone who had spoken to you about having experienced Mr Sidoti's confrontational behaviours and you indicated that she may have.---Yes.

30 And would that have been in the course of some conversation between the two of you about the kind of pressure you were each experiencing from Mr Sidoti?---I believe so.

Did Ms Cestar ever tell you about an occasion when she encountered Mr Sidoti on the Bay Run?---She had told me but in the time frame I don't recall when it was.

But was it within the time frame when this issue was coming before council?---Most likely.

40 And thinking back on when she told you about it, did you have the impression that the incident that she was telling you about or the occasion she was telling you about was something that had only happened recently, as in recently to when she's, in relation to when she was telling you about it?---I believe so.

Can you recall what she told you about the incident?---That she was running or on the Bay Run and she'd run into him and he was, appeared to be highly aggravated, agitated.

What else did she say about that?---I don't recall.

Did she say what he said to her?---I don't recall that.

Did she say what he was aggravated about?---I don't recall.

And again, you say you don't recall exactly when it was during this whole period, but was it close to an occasion when the matter was coming before council to be decided on?---I assume so.

10 And just trying to narrow down the time period a little bit further, is it likely that it was towards the end of the process or earlier on?---My memory is not kicking in on this I'm sorry.

Now, do you recall that by this stage, Mr Sidoti and others were represented by Pacific Planning?---I do. I believe it was a Mr Matthews who was - - -

Yes.---Yes, representing him.

20 And you understood that Mr Sidoti was at least one of the persons who Mr Matthews purported to represent. Is that - - -?---I believe so, yes.

Was it your understanding that in fact Mr Matthews was only representing Mr Sidoti or did you have an understanding that it wasn't just Mr Sidoti but there were other persons as well?---My memory was that he was, he was representing Mr Sidoti. I didn't know who else. I can't remember who else he was representing.

30 Now, prior to the meeting on 6 December, 2016, the council received an email from Mr Matthews that was addressed to Mr Dewar and Ms Boyle, but copied to yourself and Councillor Megna. Do you recall seeing an email of that kind or addressed to those persons?---I assume I did.

You know who Mr Dewar is obviously.---Yes.

Did you know who Ms Boyle was, Yolanna Boyle?---I'm not recalling her name.

40 Perhaps if we could bring up the email which is at 1313. The top email is from Mr Dewar to Mr Matthews just responding briefly but indicating that, "Your request will be circulated to councillors." The main body of the email commences about a third of the way down the page. You can see it's from Mr Matthews to Yolanna Boyle, Paul Dewar and it's sent at 1.13pm on 5 December, 2016.---Yes.

And it's copied to yourself, Councillor Megna and Matthew Daniel. Correct?---Yes.

And you were at this stage the mayor. Correct?---Yes.

Councillor Megna, was he anything other than an ordinary councillor?---He, he was a councillor, yes.

But he wasn't the deputy mayor or anything, any position such as that?
---No.

10 And Matthew Daniel, he was someone who was associated with Pacific Planning to your knowledge or - - -?---I, I don't recall who he was associated with.

Now, if you look at the body of the email itself, you might see that about four lines down, Mr Matthews says, "I am representing the views of 2 Second Avenue an 37, 39, 41 and 43 Waterview Street."---Yes.

"These lots form more than half of the block the subject of the planning proposal." So this is about the Waterview Street site plan. Correct?
---(No Audible Reply)

20 And it goes on to say, "I therefore respectfully request that the matter be deferred due to a number of concerns with the content and level of analysis of the recommended controls." Do you see that?---Yes, I do.

"Particularly with regard to feasibility and lot amalgamation. This will enable us to meet with council's consultants to discuss their findings and the level of feasibility analysis to enable any development here in the future." Do you see that?---I can.

30 And if we go down towards the bottom, three lines from the bottom of that page, do you see there's a sentence that commences, "The designated development controls to this part of the town centre are inequitable in comparison to other very similar sites, and the rationale and justification is in many ways flawed, e.g. proximity to the centre of the Five Dock, the site is closer," go over the page, "than other sites that contain bonus provisions." Do you see that?---Yes.

40 So the position is this, is that effectively there – council had already made a decision as to which option to go with in August 2016, that had been exhibited with the proposed planning controls, and it was really back to finalise, for council to finalise on this occasion. Do you see that?---That's correct.

And this was an email that was plainly sent to you at least initially because you were copied into it, correct?---That's correct.

Then most likely because Mr Dewar has indicated that he would forward it to all councillors.---Yes.

Now, I wonder if we could then go to page 1320. Now, if you look just towards the bottom of that page, you can see, and you may recognise that the substance of the email at the bottom is that it's the same email that I just took you to from Mr Matthews that was sent to Ms Boyle and Mr Dewar but copied to yourself, Councillor Megna, and Mr Daniel.---Yes.

Above it is an email from Tony McNamara to all councillors. Do you see that?---I can.

- 10 And it's also copied to a number of persons who I daresay you would recognise to be both the general manager and other members of the executive team at council, correct?---Yes.

And this was sent at 2.27 on 6 December.---The 5th - - -

Sorry, 5 December. I apologise. 5 December.---Yes.

If you just perhaps might just take a moment to read that to yourself.---Yes.

- 20 Now, Mr McNamara was a person of considerable planning experience to your knowledge, correct?---Yes, yes.

And you've already told us that he was a person whose views you respected. ---Yes.

And he was a person who you would – sorry, I withdraw that. Would you agree with the sentiments that Mr McNamara has expressed in that email? ---Yes, look, I believe so.

- 30 One of the things he's said, that firstly, he's referred to the fact that there's a request for it to be deferred, but then he's identified that "In addition to a request for deferral, James," that's Mr Matthews, "appears to be seeking planning controls which are greater than those contained in the recommendation to item 5 on tomorrow night's meeting. The basis for the request appears to be what James considers flawed and inequitable planning outcomes." You see that?---Yes, I do.

- 40 "May I respectfully suggest that the basis for all recommendations has been well and truly canvassed in the various reports despite not suiting all landowners." You see that?---Yes, I do.

And would you agree with that as a statement as to what had occurred in relation to this issue?---Yes.

That is, that all of the recommendations that have been put forward have been well and truly canvassed and considered. Correct?---Yes. Yes.

And then Mr McNamara suggested that the matter not be deferred but the council make the decision so that the matter could be finalised, essentially. That's the effect of the final sentence, correct?---Yes, it appears so.

But that's still noting that, of course, the persons on whose behalf Mr Matthews was seeking the deferral and the additional planning controls, they would still be able, or have an avenue available to them, which would be to put in their own planning proposal. Correct?---Yes. Yes, I can see that.

10

Now, just in relation to this submission that Mr Matthews was making about flawed and inequitable planning outcomes, were you ever presented with any feasibility analysis that had been conducted by Mr Matthews or at Mr Matthews' request on behalf of his clients that showed that there was feasible development that could take place?---I don't recall, I don't recall any but I, I don't recall receiving that.

And what I want to suggest to you is that all Mr Matthews would indicate was that he considered there to be flawed planning considerations, correct?

20

---Yes, yes.

And considered the feasibility analysis to be flawed?---Yes.

But never presented any alternative feasibility analysis that demonstrated how it was flawed, correct?---I don't recall that. He may have but I don't recall.

But to your knowledge, apart from their assertions as to there being flaws, there was never any demonstration as to how it was flawed, correct, to your memory?---To my memory, I don't recall.

30

THE COMMISSIONER: Do you recall whether anybody at any stage had called into question the feasibility analysis which was undertaken by PDA? ---No, I don't, I don't have memory of that. There was - - -

You have no recall of anybody challenging the feasibility study that had been done, as being flawed?---I don't have a, a memory of that. No, I don't. I just can't - no.

40

MR RANKEN: So that email from Mr McNamara was at 2.27pm on 5 December. I want to take you now to a message exchange between yourself and Councillor Cestar. And for that purpose, could we go to page 1808? Now, if I could ask you to focus firstly on the message at 20, message 20, where Ms Cestar has sent a message to you saying, "Helen, can we chat later? The emails I received regarding Great North Road are disturbing. M." And when one goes to the metadata for that, one can see that that was sent at 2.44pm on 5 December, 2016. Do you see that?---Yes.

Now, I won't go through each of them, but if we could scroll through so that you may read messages 21 through to 30 to yourself.---Yes.

If we could go to the next page.---Yes.

And then do you see also – so the last of those messages, message number 30, is at 3.19pm. Do you see that?---Yes.

10 And then the next message between the two of you is at 6.16pm, so there's a three hour gap, or so, between - - -?---Yes.

So, firstly, those messages, 20 through to 30, it would appear that Ms Cestar and you were trying to arrange a telephone hook-up to be able to be able to discuss the emails, at least, that Ms Cestar had received regarding Great North Road, which she considered to be disturbing.---Yes.

And do you have a recollection as to what discussion you did have with Ms Cestar about the matter at that - - -?---I, I don't, I imagine we – no, I don't.

20 This is the afternoon of the day before the meeting when the matter was to be dealt with, correct?---Yes, yes.

Shortly after, Mr McNamara had circulated the email from Mr Matthews with his own views about that email, correct?---Correct.

Is it possible that those emails were, at least, may have been part of the emails to which Ms Cestar was referring?---I assume so.

30 Now, just moving on then to the messages that follow, the message at 31, which is at 6.16pm, Ms Cestar says, "Helen, do you think it's a good idea to ask Tony Mac or Gary or both to brief us tomorrow before the meeting?" Do you see that?---Yes, I can.

And then if we go over the page, you've asked, "Did you ring Tony? The question is, is everyone on the strip getting seven storeys? If not, why not? I'm so confused, I don't know what's happening." Do you see that?---I can.

40 And Ms Cestar has then messaged you to say, "Jesus, Helen, I just finished reading the item. The conclusion on the paper is quite good, despite all the reasons for not increasing height, it really does seem odd to have a line right down the middle of the block and not include the Waterview Street side. Weird. I'm going to message Tony now to meet with him tomorrow to explain to me in English why the," I think it should be they, "broke the block in two for heights."---Ah hmm.

And she's followed that up to say, "In studying the maps again the justification for not allowing more height is actually very weak." Do you see that?---(No Audible Reply)

Now, appreciating that it was Ms Cestar who was suggesting that she might speak with either Tony Mac or Gary, that's Gary Sawyer, she was suggesting initially that the two of you might be able to be briefed by them. Correct?---Yeah, well, yes, that's what it said.

And especially you being the mayor, you would be able to have easy fairly direct contact with either Tony McNamara and/or Mr Sawyer. Correct? ---Yes.

10

Did you raise any concerns about the matter with either of them?---I, I don't recall. I probably did.

And I mean what were your concerns at the time, if you had any?---Well, I had yet another email coming in raising another issue and you've got to look at all the, all the emails, all the requests, and as I've said earlier, to make sure that you've looked at every aspect.

20

But see this is all information that's been coming in to you as councillors the day before the meeting. Correct?---Yes.

After the council has already decided upon an option that had been the subject of both design analysis by Studio GL and feasibility analysis by HillPDA that had resulted in the planning controls that were now being presented and had been publicly exhibited. Correct?---Yes.

So a lot of time and thought had been already put into the heights and aspects of that in terms of the planning controls that would be approved. Correct?---Yes.

30

And then it would appear that upon the bare assertion of someone who has been engaged on behalf of, amongst others, Mr Sidoti's family's interests is suggesting that there ought to be additional heights for this block, and suddenly everything seems to be thrown out of whack.---It appears so, yes.

And Mr McNamara has made it quite clear that the matter has already been looked at from every angle. Correct?---Yes.

40

And has made it quite clear that the council really should just go forward and do what it had in fact resolved to do, which was to put in place the planning controls that reflected option 2 in the Studio GL report. Correct? ---Yes.

Now, just moving to the meeting – or just perhaps before we go to the meeting of 6 December, I just want to take you to one email at page 1366 – or sorry, no, I withdraw that. I'll go the meeting first. The email's a later email in point of time. If we go to the minutes of the meeting. Firstly if we

could go to 1360. Do you see that's the cover page for the minutes of the meeting?---Yes, I do.

I just want to draw your attention to the fact that notwithstanding Mr Sidoti's request that you make sure that Dr Ahmed was present for that meeting, he in fact was not present.---Yes.

10 And if we go to item 1364 – sorry, page 1364, you see item 6 is there, Implementation. Sorry, item 5, Exhibition Outcomes, Change to Planning Controls for Land on Waterview Street, Five Dock.---Yes. Ah hmm.

And there's a resolution that's recorded there that was in fact moved by Councillors Kenzler and Parnaby that the matter be deferred for consideration at the first councillor workshop in 2017.---I do.

20 Now, the matter then came before the meeting of the City of Canada Bay Council on 7 February, 2017. And is it likely, given the purpose for which it was deferred, that there would have been a meeting, sorry, a councillors' workshop to discuss the matter prior to that meeting?---I assume so.

Because that was the purpose of the deferral.---Yes.

And would you have most likely attended that councillors' workshop?---I assume I attended.

And would it have been sometime, possibly in the week before that meeting on 7 February of 2017?---Yes, it would have been, I, I believe.

30 And that is because there aren't any meetings of council in January each year, are there?---No. No.

And is it usually the case that the first meeting of council doesn't happen until at least after Australia Day?---That's my recollection, yes.

I want to now take you to that email that's at 1366. This is an email from yourself to Ms Cestar on 24 January at 6.29pm, do you see that?---Yes, I do.

40 Now, that would suggest, that email, that you had looked a little bit more closely or looked closely at the proposals and the reports, correct?---Oh, yes, I think so.

And you were questioning why blocks either side of the block could have seven storeys and why it would matter if it was classified as being un-financial.---Yes. Well, that's right, yes.

Is it likely, given the timing – this is 24 January, it's before Australia Day obviously, but it's also a couple of weeks out from the 7 February, 2017

meeting – that you had been looking at this issue in preparation for a councillors’ workshop?---Oh, it, it could have been, yes.

And this email was you bouncing your queries off Ms Cestar.---Yeah, I, it looks, that’s what it looks like.

Now seeing that email, are you able to recall what was playing on your mind in relation to the issue at that time?---Well, only what I read there, that the, you know, why were the blocks either side seven storeys, I suppose.

10

That’s the only thing that’s playing on your mind?---Well, yeah.

Okay. And then do you have any recollection of raising those questions, not with another councillor, but rather with council staff themselves?---I may well have.

Mr McNamara, perhaps?---Perhaps, yes.

20 And do we take it then though that if you did discuss the matter with Councillor McNamara - - -?---No, not - - -

Sorry, Mr McNamara, then you would have been satisfied – you would have discussed the matter in a way with McNamara until you got to the point where you understood what the position was, and you were content that you knew where you were going to go in respect of the matter, correct?---I, I would think so.

In terms of how you felt you should vote.---I would think so.

30 And is it also possible that you may have attended a councillors’ workshop that would also have informed, further informed your thinking of the matter, correct?---I, I would think so.

And that would have enabled you to have an opportunity to raise questions, much like these questions, correct?---Yes.

And have them answered to the point where you were satisfied that you had a satisfactory grasp of the issue, correct?---I would think so.

40 And were satisfied with the decision that you were going to make when the matter came before the council for that final decision?---I believe so.

So, I now want to then move to the meeting of 7 February, 2017, and for the purposes of that meeting, there was a report that was prepared by Mr Dewar for the councillors. And if I could bring that report up, which is at page 1371. That’s the first page of the report. I just want to take you then to the recommendations of the report, if we could go to 1379. Now, at the bottom of that page is the recommendation for the planning proposal and associated

Development Control Plans to be prepared to implement the recommendations of the exhibitions outcomes report that was prepared by Studio GL, dated 26 November, 2016.---Yes.

And that included the removal of the heritage item from number 39 Waterview Street. That was to make it clear that option 2 was the option that was being endorsed?---Yes.

10 And that the planning proposal should then be submitted to the Department of Planning and Environment for a Gateway Determination and, if it passed that, it would then go on further public exhibition and that there be some authority granted to the general manager to make minor changes to the planning proposal, correct?---Yes.

And the draft Development Control Plan. Now, they were the five recommendations or five aspects of the recommendation of council staff, correct?---Yes.

20 If we then move to the minutes of the meeting, particularly if we could go to 1409. We can see here that item 2 was the relevant item and it commenced at 6.17pm, was when the discussion commenced because Councillors Fasanella and Megna declared their pecuniary interest and left.---Yes.

And you can see a number of persons who addressed council, including a Mr J Matthews from Pacific Planning?---Yes.

And he is indicated there as representing residents, correct?---Yes.

30 And if you just read, you can see there the first two paragraphs of a resolution that was moved by Councillors Cestar and seconded by Councillor Ahmed?---Yes.

And then once you've satisfied yourself that you've read them, we can go over to page 1410.---Yes.

Have you read all those six paragraphs?---Oh, well, yes, yes.

40 So what you can see there is that the first five paragraphs reflect the recommendation from council, staff that is, correct?---Yeah, yes.

There is a sixth paragraph though that states that, "If the owners of property in the area believe there is a better planning outcome to be achieved than the recommendation they lodge a planning proposal in the normal way." Are you able to assist this Commission with how that paragraph came to be included in this?---Just from what you've shown previously, I believe that was part of the, Mr McNamara's email that he had sent.

THE COMMISSIONER: Sorry, you dropped your voice. I couldn't hear. ---Sorry. I believe that that might have been a suggestion, or a part of the email that Mr McNamara had sent previously to us about, about this.

MR RANKEN: Yes. So it certainly reflects what was in that final sentence of the email from Mr McNamara on the 5 December, 2016, would you agree?---Yes.

10 Is it the case that, in fact, it was added onto this particular resolution at your suggestion during the course of the meeting?---I, it could well have been. I don't, I don't recall.

Well, if it had been you who had suggested its inclusion, are you able to assist us with why you had asked for that to be included?---Probably because I recall that Mr McNamara had made that comment at some stage.

20 But were you trying to send some message by this paragraph?---That the, that the matter, if you, reading it now, if, if the matter, if you weren't happy with the matter, well, you knew the processes that you needed to go through.

Because when one looks at that paragraph, it's not a paragraph that has any real work to do, does it?---Not for council.

Not for council.---No.

There's nothing that's required to be done as a result of it, correct, by any councillor or council staff, correct?---That, that is correct.

30 It seems that its only relevance is some form of communication. Correct? ---Yes. Yes.

And now reflecting back on it, and with that appreciation, are you able to assist this Commission as to what was being sought to be conveyed by that paragraph and to whom?---For, for the objectors, I would think, to say, you know the process that you've got to go through if you're not happy with this decision.

40 I might just put it to you plainly. Was it not the case that in fact you were the person who suggested this paragraph?---I could well have been.

I want to suggest to you that the reason why you included this paragraph was to send a message to, amongst others or in particular Mr Sidoti, to say that enough was enough, this matter was being put to bed?---That, I believe, is what it was.

And do you see that the motion was passed, but on your casting vote, do you see that?---Yes. Yes, I do.

But during the discussion of that item, there was a foreshadowed motion by Councillor Kenzler, which is then recorded.---Yes. Yes.

Is this bringing back a memory about these events, particularly in relation to this meeting where the matter was finally put to bed?---Yes.

Or as you understood it was to be finally put to bed?---Yes. Yes.

10 And perhaps if you could just read what the foreshadowed motion was, and it goes over to page 1411, I think. It may not.---Yes.

That's a different page, that's a separate page.---Yes.

That's just to show when the meeting actually closed, so that's not part of the foreshadowed motion.---Yes, that's – no, no.

THE COMMISSIONER: Just go back to the previous page, thank you. ---Yep.

20

MR RANKEN: The effect of paragraph 1 of that foreshadowed motion was to effectively backtrack on what the council had actually resolved on 2 August, 2016, to revert to what was option 1, which would involve retaining the heritage listing on 39 Waterview Street, correct?---Yes.

And so at that point, there was this tension then, between both sides, between the sides of politics, with one side wanting to actually go back on what had already previously been decided by council, correct?---It, it, it appears so, yes.

30

Albeit that that previous decision had been passed on the casting vote of yourself as the mayor.---That's the August.

The August. Correct?---Yes.

Now, did you come to learn following this meeting on 7 February, 2017 that Councillor Kenzler was – sorry, I withdraw that – that there was a rescission motion that had been suggested, to rescind this decision?---I learnt it at some stage, I can't recall when. Oh, because he foreshadowed it, so yes.

40

Yes, so he was effectively foreshadowing the rescission motion in the meeting itself.---I believe so.

And then the rescission motion itself was to come back before the council at the next meeting, which was 21 February, 2017.---Yes.

So was that the point of recording that foreshadowed motion in the minutes was because there were requirements as far as the timing was concerned for

persons to make rescission motions?---The, there are requirements, and I don't recall what those requirements are, but there's a time frame on it.

But certainly those requirements would be met if in the very meeting at which the decision was made someone foreshadowed the rescission motion. Correct?---Ah hmm.

Now, obviously that was of concern to you, that there was this foreshadowed rescission motion.---Yes.

10

And did you have any contact with Mr Sidoti in between 7 February and 21 February, 2017 regarding the rescission motion?---I don't recall.

You don't have any recollection?---I don't.

Now, you took steps though, did you not, to make sure that each of Councillors Cestar and Ahmed would attend that meeting. Correct? ---I don't know. I don't recall.

20

Well, if either Cestar, that's Councillor Cestar or Councillor Ahmed failed to attend the meeting on 21 February, 2017, and both councillors Parnaby and Kenzler, as well as the Greens councillor, Councillor Tyrrell, were in attendance, then it would be most likely that the rescission motion would get up. Correct?---(No Audible Reply)

That is, the motion that Councillor Kenzler had foreshadowed on 7 February would be successful, there would be three - - -?---And three.

30

No, three and two. Well, Councillor Megna couldn't vote.---Yes, and I didn't have a - - -

And Councillor Fasanella couldn't vote.---Yes, sorry, yes, yes, yes.

So that meant they weren't in the mix.---Yes, that's true, yes.

And so you're left with yourself and one or other of Ahmed or Cestar against the two Labor and one Green. Correct?---That is correct, yes.

40

So it was of critical importance, wasn't it, that each of Councillors Cestar and Ahmed attended?---Yes.

And you took steps to make sure that happened?---I, I don't recall.

Well, just briefly if we could go to page 1412. Do you see there's an email there from yourself to each of Councillors Cestar and Ahmed?---Yep, yep.

Just making sure, trying to make sure that they would attend.---Yes, that appears so.

Now, so the meeting was to take place at 6.00pm on 21 February, 2017, and I just want to take you to an email that you received that afternoon, that is the afternoon of 21 February, 2017, which is at page 1428. Do you see that this is an email from Mr Matthews and it's been sent to yourself, Ms Cestar, and copied to Dr Ahmed and also to Mr Megna?---Yes.

Do you see that?---Mmm.

10 And do you see it's not addressed to any other councillors?---Yes.

And the email is, well, the salutation is, "Dear Mayor and Councillors?"
---Ah hmm.

And the effect of the email, and by all means take the time to read it to yourself if you need to, but I want to suggest to you that the effect of the email is to firstly encourage you not to support the rescission motion.
---Yes.

20 I take it that you didn't need any encouragement in that regard, given that you'd voted the other way.---Yeah, that's - - -

But I just want to also draw your attention to the fact that if you look about two-thirds of the way down the paragraph, he says, "I therefore encourage you to carry the original resolution of 7 February, 2017, and in doing so also review the justification for the bonus provision, and I provide justification below." Do you see that?---Ah hmm.

30 And then there's some further points, and if we go to the next page, please, after he's elucidated or enumerated those points, he's got what I would suggest to you is a form of motion that says that, "The motion of 7 February, 2017 be carried and the following amendment be included. Firstly, to apply the bonus height provision to land that fronts Great North Road bound by Second Avenue and Barnstaple Road to permit a maximum building height of 24 metres and a maximum floor space ratio of 2.7:1, where land has a site area of 1,000 square metres and a street frontage of at least 20 metres, and secondly, a mechanical provision, that the planning proposal be amended accordingly and submitted to the Department of Planning and Environment for a Gateway Determination." Correct?---Yes.

40 Now, this was effectively the planners, on behalf of Mr Sidoti amongst others, seeking to have a further bite of the cherry notwithstanding what had been passed by council on 7 February, correct?---Yes.

Did you have a view about the appropriateness of the proposed resolution in this email?---I felt that we, we'd done it and it was finished.

But wasn't this quite an extraordinary thing to be occurring, where the planner, on behalf of a particular private interest, was contacting the Liberal councillors alone and suggesting the wording of a motion that was to effectively go back and revisit an issue that had already been considered a number of times and put to bed?---Yes.

Now, turning to the meeting of 21 February, 2017. Sorry, if we could go to page 1430. Just so we're clear, that's the actual motion that was being proposed by Mr Matthews?---Yes.

10

And then if we could go to 1426. Can you see that – we might have to go to 1425 to start with just so we can see that we're dealing with the right item, item 12, the notice of motion of rescission.---Ah hmm.

And there's a number of persons who are listed as having addressed the meeting, including Mr Matthews.---Yes.

If we go to the next page we can see that there's the motion that was moved by Councillor Kenzler and seconded by Parnaby?---Yes.

20

And it was lost on your casting vote?---Yes.

And then the matter then moved onto something else?---Yes.

So that effectively brought the matter to a final conclusion, is that right? ---Yes, yes.

30

Now, I want to move onto a different topic because this was in February of 2017 but of course in July 2017 there was the requirement to nominate for preselection in the upcoming council elections that were scheduled for September 2017, correct?---Yes.

Now, in advance of nominating for that upcoming election, did you have a discussion with your fellow councillors – that is Ms Cestar, Dr Ahmed and Mr Megna – about the four of you presenting yourselves as a team, effectively?---I don't recall that discussion but I imagine that we did.

40

Well, was there any discussions about positions that each of you might have on the ticket and who would run for what positions?---I, I would think that we would have wanted to maintain where we were, our positions as they stood.

And you're talking about the positions and they stood as at the 2012 election?---Yes.

Which was, I think, was Mr Megna number 1?---Yep.

You were the number 2?---Yes.

Ms Cestar was 3 and Dr Ahmed was 4?---That is correct.

To the best of your recollection there was some understanding between the four of you about, in general terms, about that?---That's, yes.

In addition, you put yourself forward and the mayoral candidate, is that correct?---Yes, I did.

10 Now, when you were initially putting in your nomination, did you have any understanding as to whether any other persons outside of the four of you were intending to run for local government?---No, I, I didn't.

Did you subsequently come to learn that, in addition to the four of you, there were two further persons who had put their name forward for the selection?---I believe I did.

And, I mean, do you recall who they were?---There was Nick Yap and I, it's Stephanie Di, I can't, Di Pasqua.

20

Di Pasqua. And did you know either of those persons prior to finding out that they had put their names forward for selection or preselection?---I had, I knew Nick Yap. I don't remember meeting Stephanie Di Pasqua before that.

Now, the preselection process involved, firstly, prospective candidates nominating themselves, correct?---That's correct.

30 And then if there were more positions that places on the ticket, there would need to a competitive preselection process, correct?---Yes.

Prior to this election in 2017, in your experience, had you ever seen a competitive preselection process for local government?---Oh well, not on Canada Bay.

Not on Canada Bay. So not since 2004?---No.

40 And was this the case that, effectively, in 2004, 2008, 2012, the way it had worked is, the Liberal Party candidates had worked out amongst themselves, in a discussion, who would be in which position on the ticket and that there was no need for there to be any delegates or anybody voting on the matter, it would just be put forward, correct?---Yeah, yes. That's my understanding. Well, that's what I remember, yes.

And is that what you had anticipated would be the most likely way this would run on this occasion?---I, I did anticipate that.

And prior to learning, that is prior to you learning of the fact that Ms Di Pasqua and Mr Yap had put their names forward as well, correct?---That's correct.

And I think you might have told us that you don't recall how it was you came to learn that they had put their name forward?---I don't recall.

10 Once a person puts their name forward by nominating themselves, an email in generated by the head office, is that correct, that says, "Look, these are the people who have nominated." Is that right?---That's, that's what, yes, I believe that's what happens.

I wonder if we could go to page 1492? So do you see, this is an email dated 4 July, from Simon McInnes, and it seems to be a kind of form email, a standard form email, "Dear Candidate, the final list of nominations is received as follows," and then it lists them. Do you see that?---Yep, yes, I do.

20 And we can see from that list that you had nominated yourself for the position of mayor?---Yes.

You had also nominated yourself for each of the remaining positions on the ticket, correct?---Yes.

30 Now, given that ordinarily you work out between yourselves – that is between yourself, Mr Megna, Ms Cestar and Dr Ahmed – the order, is there any reason why you nominated yourself for every position, including number 1?---At the time I, I had made an error on the nomination form and had only ticked the mayoral one, and I went, I think I went back to headquarters and asked them to be included and they did that, they put it out as that.

Because one could actually put oneself forward for mayor but if one didn't also put yourself forward to be on the ticket otherwise, if you lost the mayoral election, you wouldn't - - -?---Oh, you're gone. Sorry, yes.

You're gone. You wouldn't be on council?---That's right, that's correct.

40 So you needed also to have your name in one of the spots and you chose to put your name in all spots?---I, they, they put me on all spots, I think.

And Michael Megna appears only to have put himself forward for the number 1 position, correct?---Yes, yes.

And Ms Cestar has only put herself forward for the number 2 and the number 3 position. Do you see that?---That, that is correct.

And Dr Ahmed put himself for each of positions 1, 2, 3 and 4?---Yes.

And Stephanie Di Pasqua, somewhat similar to yourself, has nominated herself for mayor and each of the other positions?---Yes.

And Mr Yap only nominated for 1, 2, 3 and 4, didn't nominate for mayor?
---That's correct.

10 So, when you saw that there was going to be a competitive preselection process, did you have any further discussions with your fellow sitting councillors about, "How are we going to work this out? Ordinarily this is something that we work out amongst ourselves." Did you have some discussions of that nature?---Oh, I may have. I, I don't recall.

Well, did you have some discussions about, "Oh, who are these people, who's Mr Yap and Ms Di Pasqua, why are they nominating for council?"
---Well, well, I certainly knew Mr Yap. Yes.

20 But did you ask him why he was nominating for - - -?---I, I didn't. I don't recall personally asking him.

Did you make some enquiries to find out who Ms Di Pasqua was?---I probably did. I don't recall, yeah.

Well, what did you find out about Ms Di Pasqua?---I found out that she worked in Mr Sidoti's office.

30 Did you come to suspect that there had been an alternative ticket that had been organised, as in an alternative to the existing councillors?---There appeared to be something happening, yes.

What did you do satisfy yourself as to what the position was? There may – you must have been curious about, well, how's this going to play out, is there an alternative ticket that's being organised, what's going on here? That sort of thing, that must have been going through your mind.---It, it no doubt was going through my mind. I can't recall what was going through my mind at that stage. We were, we were, the family were planning to go away on a holiday, we'd booked it, and that was also occupying my mind at the same time.

40 And that was a holiday to the Kimberley, is that correct, or somewhere - - -?
---It was to the Kimberleys, that's correct.

And for how long was that holiday going to be, it was a two-week holiday?
---Two, two weeks, two weeks.

And a two-week holiday over the period, the date on which there would actually be the preselection event, is that correct?---That, that is correct.

And it's fair to say that whilst you were very experienced in local politics, and local government politics in particular, you had no previous experience of a competitive preselection process, at least in Canada Bay?---No. No.

Did you have any experience of a competitive preselection process in relation to the Concord Council, when you were on that?---No. It happened the – no.

10 So you were aware that there have been competitive preselection processes in relation to local government elections, but you yourself had not any experience in that, correct?---That is correct.

Now, in terms of putting yourself forward for preselection, did you try to see if there would be persons who might support your nomination?---Yes, there was a, a list of preselectors, yes.

Those preselectors were delegates, is that what you're talking about?---Yes.

20 Delegates from the particular branches within the City of Canada Bay local government area, correct?---That is correct.

And they had a number of delegates, or the number of delegates per branch depended on the number of members, or was dependent upon the number of members, correct?---That's what I recall, yes.

And the two, the three branches again were Five Dock, Drummoyne, and Concord, is that correct?---Yeah, I think there was a fourth.

30 Was there a fourth?---Drummoyne Womens or something like that, yeah.

The two most populous or largest branches were Drummoyne and Concord West, is that correct?---That's correct.

And you were a member of Concord West?---I was.

But there were also, were there not, delegates who were from head office? ---Yes. I believe so, yes.

40 And do you remember how many of those delegates there were?---No.

Okay. But in total, were there about somewhere in the vicinity of 25 to possibly up to 30 delegates?---20, oh, definitely over 20, as I recall.

But going back to my question about support, you mentioned the selectors. Did you write to them or contact them by telephoning them or emailing them or something of that nature?---I recall trying to telephone them before I went away, and I phoned a couple before I went on the, on the boat.

Did you also speak to Mr Sidoti about him possibly writing a reference for you in support of your nomination?---I think he, he, yes, I, I, I believe I, I did, and he, he wrote one for me in 2012 and I believe he, I can't remember, but I think he wrote one for 2017.

But was that something that he did at your request, so you said, "Would you write a letter supporting my nomination, John?"---I, I, I, I would have done that, yes.

10 And he said yes, did he say, "Yes, of course," or - - -?---I don't know exactly his words, but you know, you're the sitting mayor and he's the member of parliament, I would have assumed that, naturally assumed that he would have done that.

And so, and he did do that?---I believe so.

Perhaps if I could show you this document. If we could bring that on the screen. Can you read that document?---Yes.

20 Now, appreciating that there is, Mr Sidoti's signature itself is blocked out, but that appears to be a reference that Mr Sidoti wrote in support of your preselection for the City of Canada Bay's upcoming local election.---Yes.

Do you see that?---Yes.

And it's addressed to the State Director of the New South Wales Liberal Party.---Yes.

And dated 13 April, 2017.---Yes.

30 So that appears to have been something he wrote prior to you actually formally nominating.---Yes.

But on your evidence is it that he did so at your request.---Yes, he would have done it at my request.

And do you know whether or not he wrote in support of any other, as in wrote the State Director in support of anybody else's nomination for council?---I, I have no idea.

40 Commissioner, if I might formally tender that reference under the hand of Mr John Sidoti dated 13 April, 2017. I think that will be Exhibit 28.

THE COMMISSIONER: Yes. The reference of Mr Sidoti 13 April, 2017 in respect of Helen McCaffrey will be admitted and become Exhibit 28.

#EXH-028 – REFERENCE OF HELEN McCAFFREY BY JOHN SIDOTI DATED 13 APRIL 2017

MR RANKEN: And if the matter can remain on the screen for a moment, and if I could draw your attention to particularly the penultimate paragraph that begins, “Helen has always held strong community ties and is well-known in the local community. Her contribution as a councillor and now mayor has been outstanding and she is highly regarded by all councillors in the City of Canada Bay Council.” Correct?---Yes.

So the view that Mr Sidoti appears to be expressing there is one that could only be considered to be favourable in terms of his views as to your capacity as a councillor and as a mayor. Correct?---Yes.

Yes, thank you. Now, you were not present for the preselection event itself. Correct?---That is correct.

But was there an opportunity for you to present a case to the selectors by submitting a video message or video recording or something of that nature? ---I recall doing that.

You did do something of that nature?---Yes, I did.

And did you understand that that was something that would be shown to the selectors but in the absence of the other candidates?---I, I assumed, I, I didn't know where it would be shown, but I certainly did one because I knew I wasn't going to be there and I couldn't present on the, on the night, so - - -

Yes. So you were unable to be actually present and present yourself.---Yes, that's right.

Ultimately the process resulted in Mr Megna – well, firstly you being successful with your mayoralty preselection. Correct?---Yes.

Although ultimately not successful in securing that position. Correct? ---That's correct.

But insofar as that particular position, did you come to learn that Ms Di Pasqua in fact withdrew her nomination for the mayoral position?---Only after it, I - - -

After the fact.---Yes.

And but did you come to learn that she in fact did that on the day of the preselection event?---After the event.

And ordinarily if someone was being put forward as the mayoral candidate, would one expect to see that person fairly high up on the ticket in terms of the number?---One would.

That would be a sensible thing, would it not?---It would.

If the party was saying that this is the person we think should be mayor, they would be saying this is one of the people we think should be towards the top of the ticket.---Yes.

10

Correct?---Yes, absolutely.

In the event of this preselection, however, you did not get the number 1 position, correct?---I did not.

That went to Mr Megna?---Yes.

And that was something that you had anticipated would happen in any event, correct?---Yes, yes.

20

And in fact Mr Megna had only put himself forward for that one position, correct?---Yes, yes.

But you did not get the number 2 position either?---No.

Was it a surprise to you when you did not get number 2?---Well, yes.

30

And so do I take it then that prior to the actual preselection event, you anticipated that, well, if I'm successful with getting the preselection as the mayoral candidate, then I will most likely be the number 2 position?---I would have assumed so, yes.

The number 2 position in fact went to Stephanie Di Pasqua?---Yes.

A person of relatively young age, would you agree?---Yes.

And of relatively limited experience in council matters?---Oh, she had no experience.

40

THE COMMISSIONER: Did she have any public profile that you're aware of in the electorate or the area?---Not, not that I was aware of. No.

MR RANKEN: Did you know which branch she was a member of within the City of Canada Bay local government area?---I, I didn't, no.

You'd in fact never heard of her?---No. I'd heard of her mother but I hadn't heard of her. Well, I, I don't recall that.

And you don't recall meeting her prior to the preselection event?---I, I don't, no.

And Mr Yap went into the third position. You in fact did not get the third position on the ticket, correct?---That is correct,

Again, was that also a surprise?---Yes.

10 You did, however, get the fourth position on the ticket?---Yes, yes.

Now when you, I mean, how long after the event was it that you found out about this?---The results?

Yes.---It was in, in a, within a day or so. The email communication on the vote was terrible.

20 And was it an official email from the party executive that communicated the result to you or did you get some other communications from other persons that might have been a bit more informal?---It, it was more informal, as I recall.

Are you recalling in terms of friends and associates who you know through the Liberal Party who were letting you know about the result, is that correct?---Yeah, yes, yes, that is correct.

And what were they telling you about the result?---Well, that I certainly – it, it seemed to be a bloc vote.

30 It seemed to be a bloc vote?---Yes.

THE COMMISSIONER: Did you receive any comments from Liberal Party members about the outcome that you recall?---That I recall?

What sort of comments, if any, were made?---Well, that it was, it seemed like it was a forgone conclusion that it was a bloc vote.

40 MR RANKEN: What do you mean by a bloc vote? I'll just ask you to explain that concept.---It, it, the vote didn't, didn't move. I can't quite formulate what I mean by that.

Do you mean that that there was a certain number of delegates that seemed to all vote as one in relation to particular positions and - - -?---Yes, yes, yes.

Right. So, the same group of delegates appeared to vote for Mr Megna? ---Well, the numbers appeared to show that, yes.

And the same number of delegates appearing to vote for Ms Di Pasqua in number 2?---Yes, yes.

And the same number voting for Mr Yap in number 3?---Yes.

THE COMMISSIONER: Just to clarify that, are you saying that's an assumption or conclusion that you arrived at or was anybody making statements to that effect, of a bloc vote?---Well, there were members of my branch that were making – and I don't recall which members that were making that comment.

10 MR RANKEN: That it appeared to them as if there was a bloc vote in relation to each of those positions?---Yes.

And that naturally raised your suspicions about the possibility of an alternative ticket?---Well, it certainly raised my suspicions, an alternate ticket, possibly, yes.

20 Because the outcome in the ultimate event was that at the election in September of 2017, each of the three Liberal councillors who were able to vote in respect of matters concerning the Five Dock Town Centre were no longer on council?---That is correct.

Now, no doubt you were concerned about the prospect that there had been an alternative ticket that had been organised, correct?---Yes.

Did you have concerns as to the possibility of Mr Megna being involved in the formation of that alternative ticket?---I, I, I didn't think that, I don't recall thinking that.

30 Did you have any – well, what were your concerns and what were your suspicions as far as the alternative ticket was concerned?---That it may have been a reflection on a vote.

What vote are you referring to?---I'm referring to the one in, on 7 February.

So are you referring to, in particular, that sixth paragraph that was added to the resolution that suggested that if you want a different planning outcome, put in your own planning proposal?---I think I was referring to the whole - -

40 The whole of the resolution.---The whole thing.

Why do you think that that might have been the reason that an alternative ticket was organised?---Well, I couldn't think of any other reason.

But there must be something about that vote.---It was surprising. I found it surprising that, you know, I, that I'd served on council for a long period, that I would be dropped.

And is this the case, that the only thing you could put it down to was the fact that you did not in the event vote in favour of the kinds of changes to the Five Dock Town Centre planning proposals that Mr Sidoti had been pushing for?

---That's all I, that's all I could think of.

THE COMMISSIONER: Mr Ranken, I see the time, might take a morning tea adjournment if that's convenient?

10 MR RANKEN: Yes, I only have a few things to do, but that's convenient.

THE COMMISSIONER: All right. I'll take a break now. We'll resume in 15 minutes. I'll adjourn.

SHORT ADJOURNMENT

[11.37am]

THE COMMISSIONER: Mr Ranken.

20

MR RANKEN: Yes, thank you, Commissioner. Now, Ms McCaffrey, I want to explore further with you this conclusion you came to that an alternative ticket had been arranged in some way as some retribution against you and your fellow Liberal councillors in respect of the resolution of the council from 7 February, 2017. That's the effect of the conclusion you came to. Is that right?---It would, would seem that way, yes.

And that would suggest that Mr Sidoti had some involvement in, or your suspicion was that Mr Sidoti had some involvement in the formation of the alternative ticket. Correct?---That was my suspicion, yes.

30

And that would be somewhat inconsistent, would it not, with the fact that he'd written a letter in support of your nomination in April of 2017?---Yes.

40

So how was it that you were able to reconcile this conclusion that Mr Sidoti was somehow involved in forming an alternative ticket with the fact that he had been apparently prepared to write a letter in support of your nomination in which he expressed quite high praise, I might suggest, for your abilities as a councillor and mayor?---It, it was a period on local government of great flux because of the amalgamation issue. He may have thought that we would be amalgamated and therefore there was, you know, to write a letter was not a problem.

By that do you mean that you are speculating, as it were, that he possibly thought that this was going to be all for nothing anyway because the council was going to cease to exist and therefore what would it matter if I wrote a letter in support of your candidacy. Is that what you're suggesting?---I could, I could surmise that, yes.

So you're suggesting that it may have been that Mr Sidoti didn't in fact mean the things he said in that letter?---I have no idea what Mr Sidoti was thinking at the time.

10 You mentioned – well, perhaps before I ask the question I was going to just then I'll ask a different question. Did you discuss this idea or conclusion of yours that Mr Sidoti might have been involved in the formation of an alternative ticket with any of the other councillors, that is either Ms Cestar, Mr Megna or Dr Ahmed?---I, I don't recall discussing it.

Well, Ms Cestar missed out on being on the ticket. Agree?---Yes, yes.

And so did Dr Ahmed.---Yes.

Were you not in concern for the position that they found themselves in as well, not being on the ticket?---After the event?

20 Yes.---I may well have discussed it with them. I don't recall.

Well, if it was the case as you were suspecting, that Mr Sidoti had some involvement in the formation of an alternative ticket, is that something that you from your understanding of Mr Sidoti in his position in the power, in the party, that you considered he could orchestrate on his own?---I have no idea.

30 Would he need the assistance of other persons in the party to be able to go about forming an alternative ticket and - - -?---He could have, I don't, I don't know.

Well, did Ms Cestar ever raise with you a suspicion that Mr Sidoti was working with a Mr Joe Tannous in respect of the formation of an alternative ticket?---I have no recollection of that happening.

Do you know who Joe Tannous is?---I know, I know of him, yes. I may have met him. I, he was - - -

40 Well, how do you know of him, you know him by reputation, do you? ---Through, through the Liberal Party channels, yeah.

What do you know him to be through the Liberal Party channels?---I think he may have been on the State Executive of the Liberal Party.

When was he on the State Executive of the Liberal Party to your knowledge?---I don't, I don't know. Time is, yeah, I don't know.

Was he someone who you knew to be a powerbroker within the Liberal Party?---I believe he was, yes.

What does that term mean, to be a powerbroker within the Liberal Party?
---Oh, somebody who organises events and people. I think that's what I mean.

Organises events and people.---Yeah.

To do what?---To – I really don't know what I mean by that.

- 10 Well, is he someone who if someone was wishing to run for office, at any level of government, that they might seek his assistance with being able to marshal the numbers to get over the line?---That, yes, yes, okay, that's - - -

Is that what you're saying?---That's what I think I'm saying, yes.

And did you know Mr Tannous to be a person of – that kind of a person back in 2017?---He, possibly. I, I don't remember having much contact with him at all.

- 20 He was not a member of any branch within the City of Canada Bay local government area?---Not to my knowledge. He certainly wasn't in my branch, no.

Did you know whether he had any relationship with Mr Sidoti?---No.

Did you know that he was Mr Sidoti's campaign manager when Mr Sidoti first ran for election to the Burwood Council?---I may have, I don't recall. I, oh, I might, I have nothing that's coming to my mind about that.

- 30 Did you know that he was Mr Sidoti's campaign manager when he first ran for the state electorate of Drummoyne?---Now that you mention it, I, I, I, he could well have been. I, I mean I, I, that was 2011, I, I - - -

That's right.---I don't, I, I don't recall - - -

Did you have – sorry.--- - - - the timeframe on that.

Did you have any involvement in Mr Sidoti's election campaign in 2011?
---I probably did.

40

Is it possible that you might have met Mr Tannous during the course of that election campaign?---Oh, I, most likely, yes.

So you do have a recollection of having met Mr Tannous?---I, I have a recollection, but not, you know, anything that's flashing out at me, no.

But as far as your conversations at least with Ms Cestar, you don't recall her telling you that she had some information or some suspicion that Mr

Tannous and Mr Sidoti had worked together to form an alternative ticket?
---Nothing's coming to mind, no.

No. Now, you mentioned in some of your evidence a short while ago that the suggestion that it appeared that there had been a, voting as a bloc at the preselection event, had come from associates from within your own branch of the Liberal Party?---Yes.

That is, the Concord West branch?---Yes.

10

Did they express any views to you about how they felt about the outcome?
---They weren't happy.

And what did they say or do in response?---I, look, I can't remember their words, that it just, that they were probably upset for me, they weren't happy about how it appeared to take place. I can only report what they said, because I wasn't there and in the room.

20

Did some of them in fact resign from the Liberal Party following this preselection process?---I believe one of them or a couple of them may have, yes.

Did they tell you that that's the reason why they were resigning their membership of the Liberal Party?---One of them did, yes.

Just one moment. Thank you, Commissioner. They're my only questions.

THE COMMISSIONER: Very well. Yes, Mr Neil

30

MR NEIL: Thank you, Commissioner. Now, Ms McCaffrey, I appear for Mr Sidoti. Now, I just want to explore a little background relating to the email of 7 April, 2014, which the witness could be shown at page 356, Commissioner. Now, do you see that email is – well, there's an email chain on that page which includes an email from Mr Sidoti of 9.02pm of 7 April, 2014, do you see that?---I do.

Now, I'd like you to just – if the witness might be shown 350, Commissioner.

40

THE COMMISSIONER: Yes.

MR NEIL: That's minutes of a meeting of the Five Dock Chamber of Commerce on Monday, 7 April, that opened at 6.35pm. Were you invited to attend that meeting?---I, I have no idea whether I was or not.

You see that there are a number of matters discussed, including the Urban Design Study, which is set out at page 350. Do you see that?---Yes.

Do you see that on the same page, the president welcomed persons including Mr Sidoti, the federal MP, Mr Laundry and the mayor, Mr Tsirekas. Do you see that?---Yes.

And do you see that on page – might the witness be shown 353, Commissioner? Do you see there are a number of dot points on that page apparently attributed to Mr Tsirekas speaking. Do you see that?---Yes.

10 And about the centre of the page do you see the one that says, “Lots of people have raised the issue of floor space ratio. Five Dock has had a very good floor space ratio. However, no stimulation. Large developments required, as well as smaller ones, to stimulate the area.” Do you see that? ---I do.

And do you see he is also attributed the next one, “There’s been a lot of significant private interest to see what can be done and be part of Five Dock.” Do you see that?---I do.

20 And do you see that Mr Laundry, the Federal Member for Reid, if you look at – if the witness be shown page 354 – he appears to have addressed the meeting. Do you see that?---I do.

Now, is it the fact that you would have been aware, at that time of April in 2014, the shopkeepers or business owners on the Great North Road were concerned about council’s exhibited planning proposal, do you agree?---I, from reading this, I can’t see that but no doubt they were.

30 Now, there had been public exhibition that had ended only a short time earlier on 31 January, 2014. Is that correct?---If you’re indicating that that’s when it ended, yes.

You’re aware there were numerous submissions from the public, correct? ---Yes, I do recall that.

And was the Urban Design Study regularly discussed at council workshops?---It had been discussed at a number of workshops.

40 And I want to ask you this. You say you’ve got no recollection of being invited to attend the Chamber of Commerce meeting. Is that what you say? ---That’s what I said, yes.

But in light of the personnel who attended and the subject matters that I’ve drawn to your attention in the pages of the minutes of that meeting, is it likely that, as a councillor, you were a person who might well have been invited to the meeting but you can’t remember?---That is, that is possible.

Do you remember ever going to a meeting shortly after the Chamber of Commerce meeting? Do you remember ever meeting a Mr Haron at a meeting sometime thereafter?---I don't recall meeting a Mr Haron. I know a Mr Haron. I don't recall meeting him. It depends on, in what, why I would be meeting him.

And who is Mr Haron?---Mr Haron was a member of the Five Dock Chamber of Commerce. - - -

10 Did you ever have a meeting with him at Mr Sidoti's office at which Mr Sidoti, after pleasantries, left the meeting and did not participate in that meeting. Do you remember such a thing?---I, I do not recall, no.

Now, you have also, as I understand it, had a concern at about this time that there might have been shopkeepers organising in areas such as Five Dock and other areas. Correct?---I believe that's what I indicated.

Yes. If the witness might be shown page 376, Commissioner.

20 THE COMMISSIONER: Yes.

MR NEIL: You had concerns, did you not, about a possible group at Rhodes, R-h-o-d-e-s, one at Breakfast Point, and then you said now Five Dock. Correct?---I indicated that there had been, yeah, yes.

And was your concern that there might be shopkeepers or businesspersons in those areas who were not happy with the state of the council's approach to the Urban Design Study at that time?---They may well have been.

30 And might the witness be shown the page prior, 375, Commissioner. That is an email which you received from Mr Sidoti. Do you see that?---I do.

And did you not understand, where Mr Sidoti was pointing out to you that there had been a number of shopkeepers lining up to run for council next election if the proposal goes ahead in its current form, that Mr Sidoti was giving you advice that might assist you to understand that there were shopkeepers or businesspeople developing adverse reactions to the then council's position in relation to the Urban Design Study? Didn't you understand him to be telling you that?---He, from what I'm reading there, he was just saying that shopkeepers were lining up to run for council.

40 And one of the points you made in an email on page 376 was you said, "Everyone is entitled to run for council." You saw that, you said that, didn't you?---Yes.

And that's the fact, is it not?---Well, yes, it is, it's a democratic country.

And it would have been in your interests if Mr Sidoti had been aware of the potential for shopkeepers and businesspeople to run for council, it would be interests if he told you that, wouldn't it?---He, possibly.

Now, as of 2017, you were a very experienced councillor. Is that so?---I'd been in council for a number of years, yes.

10 And you came to be aware at some time that Mr Sidoti's family had an interest in a property known as Second Avenue, number 2 Second Avenue at Five Dock, did you not?---I was aware that Mr Sidoti had an interest in the function centre.

Well, that's 120 Great North Road. Correct?---I believe so.

Did you have any understanding as to whether or not he had an interest in any of the properties on the western side of Waterview Street between Barnstaple Street and Second Avenue?---I don't recall. He - - -

20 All right, thank you. Now - - -

THE COMMISSIONER: Sorry, just on that. You knew that his family had an interest in 120 Great North Road?---The function centre.

That was the function centre?---Yes.

And at some stage did you become aware of any other properties that were owned by the Sidoti family or had an interest in it?---I may have. I don't, I don't recall which, which properties they had, had an interest in.

30 MR NEIL: All right. Thank you. Now, I just want to ask you a few things about some of your evidence already. 120 Great Northern Road was in the B4 mixed-use town centre zone, was it not?---Which, which number?

120, the function centre, was part of the B4 mixed-use town centre, agreed? ---I have, I, if you're saying it was, yes.

40 Now, you would agree, would you not, that there would be no need for Mr Sidoti to be making any representations or advocating in respect of 120 Great Northern Road becoming B4 mixed zone because it was already B4 mixed zone? Are you able to agree with that?---I haven't got the zoning maps in front of me. If you're saying that I assume it's correct.

Now, you did say that – at page 658, Commissioner – that you thought that Mr Sidoti at times had some distorted views about the mayor. Were you referring to Mayor Tsirekas?---If I said that, that's who I would be referring to.

Can you recall any specific instance of Mr Sidoti telling you about any distorted view of Mr Tsirekas?---No.

Did you understand that although there may be political differences between Mayor Tsirekas and Mr Sidoti, they appear to get on quite well together?---I only generally saw them at official functions.

Had you ever noticed some apparent discord between Council Kenzler and Mr Sidoti?---I don't recall seeing that. I only saw them at official functions.

10

All right, thank you. Now, I think you were asked a question – at 664, Commissioner – about the possibility of people running for council from the areas of Rhodes or Breakfast Point. The question was this, do we take it then that you weren't, as far as Five Dock is concerned, was it also directed to persons who may or may not be members of the Liberal Party, and that was in connection with Breakfast Point. But I just want to try and clarify this – were you concerned that shopkeepers and businesspeople in any of the places such as Five Dock, Breakfast Point, or Rhodes, might run for council?---I think I indicated that anybody has a right to run for council.

20

Thank you. But I just want to try and clarify this – the topic of such persons running for council was a matter that you considered, but was it the case that you were not concerned about any shopkeepers in those areas or businesspeople in those areas running for any preselection in the Liberal Party?---I'm sorry, I don't understand the question.

Well, can we take it that the topic never arose of any shopkeepers or businesspeople in those three areas or any other areas running for preselection for Liberal Party selection for the local council?---I, I don't think they did.

30

All right, thank you. Now, just going back again, if the witness might be shown page 375, did you seek any assistance or advice from Mr Megna about that email?---I, I have no idea. I, I have no memory of it.

Did you refer any of the matters referred to in that email to any of the council staff?---I have no memory.

All right. Did you take up with Mr McNamara or any other council staff any of the matters mentioned there about floor space ratios or 1,500 square metre requirements?---I'm sure those issues had been discussed at some stage in a workshop.

40

No, but did you raise those matters referred to in Mr Sidoti's email with any of the council staff?---As I said, I may have. It's, it's 2014. I have no memory of that.

Understood, but matters such as floor space ratios, the 1,500 square metre requirement, 20 metres in the town centre, were these topics that were discussed at council workshops?---There were many issues around this that were discussed. I'm sure that one probably was too.

And are council workshops held in private?---The staff and the councillors attend the workshops.

Yes, staff and councillors, not public?---No.

10

Thank you. Now, you were asked some questions by my learned friend Mr Ranken and also I think by the Commissioner about some evidence you gave about pressure. Now, you have said that you never told Mr Sidoti anything along the lines of "back off" – correct? You never told him anything like that?---I don't recall doing so.

But you were under pressure between 2014 and 2017 about the topic generally, were you not, of the Urban Design Study?---I was under pressure.

20

And it was one of the biggest, if not the biggest, decisions that the council had had to make for quite a number of years. Do you agree?---There were a number of decisions going on at that point in time, that was one of them.

And it was a very important matter, was it not?---Yes.

And the very nature of the urban design proposal for the town centre was one that had created considerable controversy. Correct?---There were many people that responded to the, the plans.

30

And you as a councillor had to evaluate and take into account a large number of different matters and views of persons in the community to eventually come to a decision. Correct?---Yes.

And of itself that was, that involved balancing competing views, did it not? ---Yes, we had, I had to take into account all sorts of views, yes.

And the topic of itself was a difficult topic, was it not, you had to make difficult decisions about this project. Correct?---I had to make decisions about the project.

40

And they weren't easy, were they?---No decision you make on council is easy.

The very nature of the issues involved meant you had to make difficult decisions about the topic. Correct?---I had to make decisions about the, the topic, yes.

And it provided of itself, the topic, pressure upon you, did it not?---The topic itself I don't think had pressure, I was perfectly able to read all the documentations, it was the continual representation that added the pressure.

But is it not the case that every time there is a new exhibition, submissions are invited? Correct?---Are you referring generally?

Firstly generally, yes.---Yes. When topics come up you review the submissions.

10

And in this case there were a number of occasions, I think three or four, on which the question of the town centre project was exhibited. Isn't that right?---I believe there – I can't recall the number.

And you were elected to make important and at times difficult decisions about such matters, were you not?---I was.

Now, what I want to suggest to you is, Mr Sidoti never put you under any pressure whatsoever. What do you say about that?---I disagree.

20

You never asked him to, to use the phrase, "back off," correct?---I don't recall doing so.

You never made any official complaint about him to anybody in authority. Do you agree?---I did not make an official complaint.

You sought from him a reference for preselection which he provided you in April of 2017. Correct?---It seemed to be the appropriate protocol.

30

By that time, the matter had been, or the Urban Design Study, had been finalised by the meeting of 7 of February, 2017, and the rejection of the rescission motion on 21, I think it was, February, 2017, correct?---That is correct.

Those two meetings had, in effect, reflected the choice of the council to adopt option 2 in August of 2016, correct?---I believe those dates are correct.

40

Now, I just want to ask you this, the email at – could the witness be shown 1311, Commissioner. That is an email on 4 December, 2016, and it would appear to have, as part of its content, either directly or via attachment, could the witness be shown page 1312? Now, would you agree that you had an annual Christmas party a few days after 4 December, 2016?---I could have.

Was Mr Sidoti there?---Depending what the Christmas party was for. If it was a, if it was for the Liberal Party, for my branch, he could well have been there.

Would you agree that you maintained a cordial and friendly relationship with Mr Sidoti right through 2017?---It's my natural tendency to do so. I don't see any reason why I would not have done that.

Were you friendly, polite and courteous to him in your dealings with him throughout the remainder of 2017?---I certainly hope I was, yes.

And did you at time speak to him on the telephone?---I have, I, I could have, I don't recall.

10

Could you have at times communicated him by SMS or text messages?---I could have. I don't recall.

Now, what I want to suggest to you is that your claim that there was some form of bloc vote at the preselection is completely unfounded and could I ask, Commissioner, if the witness might be shown page 1501?

THE COMMISSIONER: Yes.

20

MR NEIL: This appears to be an email that Ms Cestar has sent to herself, and could I ask if it, I think it can be done, Commissioner, if the handwritten could be reoriented and if possible - - -

THE COMMISSIONER: Yes. If It can be reorientated.

MR NEIL: Yes, and if possible, expand it. I think they can do that too.

THE COMMISSIONER: Can we blow that up a bit? Thank you.

30

MR NEIL: Thank you. Now, what this appears to show is Ms Cestar's understanding of some of the voting. Now I ask you this – preselection voting is commonplace, is it not, within the Liberal Party for state seats, and was during the 2010s, correct?---Oh, I, I believe so.

And it's commonplace for preselection for federal seats, correct?---Yes.

There have been preselections for local government areas for Liberal Party positions, correct?---There, before this one there hadn't been in Canada Bay.

40

I'm asking you, are you aware – setting aside Canada Bay for the moment – that there were preselections in other local government areas for the Liberal Party?---I have no knowledge of other preselections.

All right. But preselections are held by the delegates voting in a secret ballot, is that not correct?---That's my, my recollection of it, yes.

In this case, you were not present on the day, but sent a video message, correct?---That is correct.

Did you know sufficient about the matter to know that candidates would not be present whilst other candidates made their speeches, or in your case put forward their video presentation?---That's the general protocol.

And if we look at these numbers, for position 1, according to those numbers, Mr Megna simply won overwhelmingly, didn't he? He got 20.---Yes.

10 Then if you look at number 2, Ms Di Pasqua got 11. You got nine. Do you see that?---I can see that.

And do you have any recollection of there being more than one ballot in respect of some of the positions?---I'm sorry, I wasn't there.

All right. But number 3, it appears that Mr Yap got the major number, 13. You got nine. Do you see that?---I can see that.

20 With Ms Di Pasqua getting none. Do you see that?---I assume that she had been excluded at that point in time.

All right. And number 4, you got 18. Do you see that?---I can see that.

Now, do you know whether or not the nine votes that you got for position 2 were part of a bloc vote that you also got for position 3?---They could have been. I wasn't, I wasn't there. I don't know.

30 What I want to suggest to you is, the figures on this page do not support any proposition of a bloc vote. Do you agree?---I, I don't agree one way or the other. I, I'm just looking at those figures. It could be construed in any way.

And what I think you said earlier in evidence, that you thought there was a bloc vote, is entirely speculation on your part, is that not right?

MR RANKEN: I object. I think the evidence in respect of this was that Ms McCaffrey said that certain persons she knew had expressed the view that it was a bloc vote.

THE COMMISSIONER: Yes, but I think she's - - -

40 MR RANKEN: She's accepted - - -

THE COMMISSIONER: She's adopted that view, I think, essentially.

MR RANKEN: That may be so, but to say that it was speculation on her part, it was informed by the views that had been expressed to her, so whether or not it was speculation on the other person's part might be another matter.

THE COMMISSIONER: Well, perhaps I'll allow the question and if you want to further explore it you can. Yes, I'll allow the question.

MR NEIL: Thank you. Well, I want to suggest to you the figures on that page don't provide any support for a suggestion of a bloc vote and your use of a bloc vote is purely speculation. What do you say about that?---Look, it could well be but I, I wasn't there, I can only be what I was informed that happened.

10 On another topic, was Canada Bay Council subject to any report by any authority recommending to the government that it should be amalgamated with any other council?---There – during that period of time there were various reports from my recollection that Canada Bay was, it was suggested it be amalgamated with Burwood and Strathfield.

But what was the time frame as to when you understood such a recommendation had been made?---I don't recall the time frame.

20 What I want to suggest to you is that your suggestion that Mr Sidoti had given you a reference because he thought you might be made redundant by reason of some amalgamation is pure speculation. Do you agree?---I don't know what was going on in Mr Sidoti's mind.

Now, can we take it this that prior to 2011 the Drummoyne state electorate area and the Canada Bay local government area or its predecessor or predecessors had been politically strongly Labor. Is that right?---Yes, yes, I believe so.

30 And it was a, it had been the case for many years. Correct?---That's my recollection.

And the election of Mr Sidoti to the state seat in 2011 was a great morale boost to Liberal Party members in the area. Correct?---Yes.

And Mr Laundry took the seat I think formerly called Lowe and then became Reid, in 2016. Is that right?---I, I – he took, took it, I don't recall the dates.

40 And whatever the date, that provided a morale boost for Liberal Party members, did it not?---It certainly did.

And would you agree that where a seat or a local government area is strongly held by Labor and there's not much hope of more than a limited number of Liberals becoming elected, the incentive for people to put their names forward to be candidates is reduced. Do you agree?---I'm sorry, could you repeat that question?

Well, if it's basically a hopeless proposition to get elected, that mitigates against people putting themselves forward for preselection for election. Correct?---Well, it could well, although we hadn't had a preselection.

But what I'm putting to you is by 2017, a number of factors had developed. One, you had already got four councillors from the Liberal Party onto the council. Is that right?---That is correct.

10 Prospects of Liberal councillors getting on the council had improved considerably from, say, 2008, correct?---Well, that was the result, yes.

And between 2012 and 2017, you yourself had become mayor, correct? ---Because the mayor at the time had resigned to stand for federal, federal, I think, parliament.

20 Yes. But what I'm suggesting to you, the incentive for people to run for preselection, even though you hadn't had preselections previously, was greater than it had been in previous times, do you agree?---It could have been.

Just finally, Commissioner, could I ask if the witness be shown again page 350?

THE COMMISSIONER: Yes.

MR NEIL: I just want you to have a look at page 350. We see there that Mr di Giacomo, the president, appears to be present. Do you see that? ---Yes.

30 Plus the other persons said to be in attendance. Do you see that?---Yes.

And one of them being Mr Haron. Do you see that?---I do.

One of them being Mr Tsirekas, the mayor. Do you see that?---I do.

40 And there were obviously important matters the subject of that meeting, including Urban Design Study and other matters that go through to page 355, which I invite you to look at if you need to familiarise yourself further.---Yes.

And is that the kind of meeting that if you had have been invited to it, you would have ordinarily gone to?---I may or may not. It depends on what, what was in my calendar.

So you have no memory of whether you were invited at all, is that right?---I have no memory of being invited or not being invited.

If you had have been invited, and you couldn't get there, would you have been likely to discuss the result of that meeting with Mr Tsirekas who had attended?---If it, if it had been raised in any forum, I, I could have. I don't recall.

Those are my questions, Commissioner.

THE COMMISSIONER: Yes. Thank you, Mr Neil.

10

MR RANKEN: I do have a little bit of re-examination but I should be able to do it hopefully within five minutes.

THE COMMISSIONER: Yes. I think we'll let the witness get away.

MR RANKEN: Or maybe just a tad longer. Perhaps if we could start – before I do embark on my questions, Commissioner, it occurs to me that, I'm not sure if Mr Blair has any questions he wished to ask of Ms - - -

20

THE COMMISSIONER: Yes. I should - - -

MR BLAIR: No, I have no questions, Commissioner.

MR RANKEN: Thank you.

THE COMMISSIONER: Thank you, Mr Blair.

30

MR RANKEN: Then on that basis we will proceed. Now, Ms McCaffrey, you were asked some questions about the document that appears at page 350 of Exhibit 24, which is the minutes of the meeting of the Five Dock Chamber of Commerce from 7 April, 2014.---Yes.

And your attention was drawn to the persons who attended that meeting. ---Yes.

And one of whom was Mr Haron and one of whom was Mr Joe di Giacomo.---Yes.

40

Both of whom were member of the Executive Committee of the Five Dock Chamber of Commerce, correct?---Well, it appears that's the case, yeah.

That's apparent from the face of the minutes, correct?---Yes, that is correct.

And also Mr Laundry, who was the federal member of parliament.---That is correct.

And Mr Tsirekas, who was the mayor.---That is correct.

We also see in attendance was Mr Sidoti. Do you see that?---I do.

And do you see that under the subheading 2. President, that would suggest to be some introductory remarks that were made by the president, being Mr di Giacomo?---Yes.

10 One of the things he did was welcome everyone to the meeting as well as special mention to the guest John Sidoti, MP, Craig Laundry, MP.---Mmm.

And Angelo Tsirekas, the Mayor of City of Canada Bay. Do you see that? ---Yes. Yes.

And then the next dot point records, “The purpose of the state and federal members’ attendance to discuss the current issues that have been affecting small business, namely electricity and land tax costs.”---Yes.

20 So it would appear that the main purpose for their attendance was to discuss electricity and land tax costs as they were current issues that were affecting local businesses. Do you see that?---It, it, that’s what the minutes say, yes.

Now, your attention was drawn by Mr Neil to the reference to the Urban Design Study as being one of the topics that was discussed during the course of the meeting, correct?---Yes.

And you can see that that was identified at the next topic, 3, topic number 3. ---Yes.

30 If we could go to the next page, to page 351, you weren’t taken directly to this part of these minutes, but do you see that the fourth dot point down refers to the fact that one of the many features of the report was to look at consolidation and incentives to increase the floor space ratios?---I can see that.

40 If you look at the second last dot point under that subheading which says, “One of the chamber’s recommendations was to rethink the consolidation aspect, anything over 1,500 square metres to ensure quality development. Floor space ratio should be looked at. If it isn’t, increased development will not occur.”---I can see that.

And then you weren’t taken to this part, but do you see that it then records a subheading of John Sidoti?---Yes.

And it’s apparent from the dot points that are presented under there that there appears to be things that he told the Chamber of Commerce?---Yeah, yes.

The first one is, “Thanked the president for the opportunity to speak,” correct?---Yes. Yes, I can see, yes.

So this would seem to be jotting down in a point form what Mr Sidoti said to the Chamber of Commerce, do you see that?---Yes. Yes.

And if we turn to page 352, do you see the third dot point, it appears to be recording that Mr Sidoti expressed the view that Five Dock density is far too low?---I can see that.

10

And then three dot points below that, he appears to express the view that, “Attractive buildings can be built on a small and large parcels of land, variation is important, not a one size fits all, 3:1 floor space ratio is required.”---I can - - -

Again, that’s a view that it appears that he was expressing to the Chamber of Commerce?---I can, I can see that.

20

And then the next dot point is, “Unless it is 3:1 and unless the LEP marries with the DCP, the same problems will continue where you will not be able to reach your floor space ratio maximums with the height levels set, will basically come down to a situation with it that it will be at the discretion of council.” Do you see that?---I can.

Now, they aren’t views being expressed about either of the topics of electricity and land tax costs. Would you agree?---Yes.

30

Which appear to have been, from the opening remarks of the president, the main purpose for which he and Mr Laundry had been invited to address the council, the Chamber of Commerce.---The, the chamber, yes.

Your attention was then drawn to Mr Tsirekas’ comments at page 353. Do you remember that?---Yes.

40

And do you see that about in the middle of the page, there’s a dot – I think your attention was drawn to the dot point that records, “Lots of people have raised the issue of floor space ratio, Five Dock has had a very good floor space ratio, however no stimulation, large developments required, as well as smaller ones to stimulate the area.” Do you see that?---I, I can see that.

Now, you were asked some questions by Mr Neil about the email that Mr Sidoti sent to you and your fellow councillors, Councillor Megna and Councillor Cestar, which is at page 375 of Exhibit 24.---Yes.

Now, just dealing with that page and that email, this is the email where there was reference made to the vision of the shopkeepers, and that vision was outlined in this email or was said to have been outlined in this email.---Yes.

Would you agree?---Yes.

And he's talked about, "What we spoke about was increasing the glass content, not the size of the glass, the FSR proposed increase from 2.5 to 3:1, only on large sites which will unlikely be amalgamated." Do you see that?
---Mmm.

10 And he says, "All the shopkeepers I have spoken to at worst want the current proposal but with no minimum width requirement and no minimum lot size." Now, I want to suggest to you that that reflects the views that Mr Sidoti expressed as recorded in the minutes of the Chamber of Commerce. Correct?---It appears to be, yes.

Now, you were asked some questions by Mr Neil about whether or not you could recall any occasion on which Mr Sidoti had raised with you any distorted views Mr Mayor had. Correct?---Yes.

20 And you could not recall any such occasion. I wonder if we could bring back up page 375. Could I just draw your attention to the third-last paragraph and what is recorded there about, "Please deliver the vision of the shopkeepers in the interests of the community, not the mayor's distorted views." Do you see that?---I can see that, yes.

So this was an occasion, was it not, when Mr Sidoti was raising with you a suggestion that the mayor had distorted views?---Yes.

30 But is the point that as to what those distorted views were as far as Mr Sidoti was concerned, you cannot recall any particular instance here he outlined what they were?---The mayor or Mr Sidoti?

Mr Sidoti, where he outlined what he considered to be the mayor's distorted views.---Not that I recall.

You were also asked some questions as to whether or not you raised with any members of council staff issues concerning the floor space ratio, and I think your answer was that you could not recall whether or not you had, but you may have done so.---Yes.

40 Could we go to page 403. This is the end of a chain of emails, the first in time being an email from yourself to Marjorie Ferguson and copied to Mr McNamara. Do you see that?---Yes.

And you may recall that I took you to this email yesterday.---Oh, vaguely, yes.

This is on 20 May at 7.43am, that is on the morning of the meeting of the, the meeting of the council on 20 May, 2014.---Yes.

Correct?---Yes.

And you've raised there that, "The Chamber of Commerce still want 3.5:1. Can this be achieved anywhere with a height of 27 metres?" Do you see that – so would you agree that this appears to be an instance of you in fact raising that question of floor space ratio?---It appears so, yes.

10 And we can see a response, or firstly, we can see if we go to page 402, you can see at the bottom that, you can see that it says, "From Paul Dewar." So the email that appeared immediately above you was in fact the response from Paul Dewar to Mr McNamara.---Yes.

And then Mr McNamara has forwarded that on to you with some comments of his own about the issue.---Yes.

Correct?---Yes.

20 Mr Neil asked you some questions about the pressure that was associated with the very topic of the Five Dock Town Centre issue, and you gave an answer to this effect. You said firstly that no decision you make on a council is easy. Do you recall giving that evidence?---Um - - -

And then you said in answer to a further question, you said, "The topic itself I don't think had pressure, it was the continual representations that added the pressure." Do you remember giving that evidence?---I do.

In response to questions from Mr Neil?---I do.

30 And when you referred to continued representations, continued representations from whom?---Of Mr Sidoti.

Thank you. And then it was suggested to you that your claim that there had been a bloc vote in respect of the preselection in 2017 was completely unfounded. You told us in examination in chief that you had learnt of the result informally from associates of yours in your branch, which is the Concord West branch of the Liberal Party, correct?---That is correct.

40 And that the view had been expressed by those persons that it appears to have been a bloc vote, correct?---That is correct.

And was it their opinions upon which you based your own conclusion that there was a bloc vote?---Well, they had to be, I wasn't there.

And you were asked some questions about, effectively, the change that had occurred within the local government area of Canada Bay from the time when you were first elected to being on the council to 2017 and in a sense it was suggested that over the course of that period of time there had been a

move to make it more winnable, as far as Liberals were concerned, both at the federal, state and local government area, correct?---Yes.

And it was also suggested to you that by 2017, there might be a greater incentive to persons to put their name forward for election at local government level because of those changing fortunes of the Liberal Party in the area, correct?---That's what was suggested.

10 You were also asked some questions about the fact that the City of Canada Bay, amongst other councils, had been the subject of reports concerning the prospect of amalgamation, correct?---That is correct.

And the issue of amalgamation was an issue that was being developed or progressed at a state level in terms of the State Government, correct?---Yes.

That was a Liberal government at the time, correct?---That is correct.

20 And it was also, was it not the case, that certainly in the City of Canada Bay local government area, it was a matter about which there was a degree of unhappiness with the prospect of being amalgamated with other councils. Would you agree with that?---By the councillors, yes.

What about by the community in general?---Yeah, lot of the communities certainly weren't happy about it.

And that was an unhappiness, would you agree, that was likely to have been directed towards the Liberal Party, given that it was the party in power at the state level, correct?---One would, yes, assume so, yes.

30 So would you have expected that the prospects for Liberal Party success at elections in circumstances where this amalgamation issue was such a hot topic, might not be as certain as they had been developing over time? ---Well, one could extrapolate that view.

And of course in the event at the local government elections in 2017, the Liberal Party lost a position, is that correct?---Yeah, that is correct.

And went from having four councillors to just three?---Yes.

40 Just one moment. Yes, they're my only questions in re-examination.

THE COMMISSIONER: Yes. Thank you for your evidence, Ms McCaffrey. You are excused.---Thank you, Commissioner.

THE WITNESS EXCUSED

[1.14pm]

THE COMMISSIONER: Thank you. I'll adjourn until 2.15.

LUNCHEON ADJOURNMENT

[1.14pm]