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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 WEDNESDAY 14 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: I'll have the – sorry, did you take an oath or an affirmation yesterday?

DR AHMED: Oh, it was an affirmation, yeah.

THE COMMISSIONER: Thank you. Would you mind standing and I'll have it readministered.

THE COMMISSIONER: Thank you, Dr Ahmed. Take a seat. Yes, Mr Ranken.

MR RANKEN: Yes. Thank you, Commissioner. Now, Dr Ahmed, just at the conclusion of yesterday's evidence we were dealing with the meeting of the council on 3 November, 2015, correct?---(No Audible Reply)

10

You need to say yes or no.---Yes, yes.

And in particular part B of the resolution that was ultimately passed, which concerned the possibility of further looking at those three areas for possible rezoning, correct?---Yes.

Including the area that was of particular interest to Mr Sidoti, being the area on Waterview Street between Second Avenue and Barnstaple Road, correct?---Yes.

20

And I think you accepted that it appeared that that part of the resolution, that is part B, was something that Ms McCaffrey had some involvement in the circumstances in which it came to be on the resolution?---Yes.

And also I took you to the email chain involving yourself, Ms McCaffrey and Councillor Cestar in which Councillor Cestar had quoted from a page of the council staff report that indicated that there was no significant public benefit. Correct?---Now, I might correct you there because I don't believe I was on that email chain. Is that true? Just perhaps - - -

30

Well, if we go back. You were on the initial email, if we go to page 969. ---No, nothing's coming up on my screen.

No, it will come up in a moment.---Oh, okay.

Do you see at the bottom of the page is the original email from Ms Cestar? ---Oh, okay. Yeah, there we go. Yep, yep, yep.

40 What you weren't a party to, though, was the interchange between Ms McCaffrey and Ms Cestar that followed in that particular copy of the email chain, correct?---That's correct, that's correct.

But you were certainly alive to what Ms Cestar had actually put in her email.---Yes.

And I think you agreed that ultimately Ms Cestar voting against the resolution on 3 November reflected her view that you understood that she

was not in favour of further looking into those areas, correct?---That's correct.

But particularly the area on Waterview Street between Barnstaple Road and Second Avenue, correct?---Yes.

10 Now, I just want to draw your attention to a matter, and that is that 3 November, 2015 would appear to be the fifth occasion on which the issues concerning the Urban Design Study for Five Dock and the associated planning proposals had come before the council in meeting for decision.  
---Yes.

And on each of the prior occasions – that is 26 November, 2013, 20 May, 2014, 24 June, 2014 and 2 June 2015 – the resolutions that were passed in respect of the Urban Design Study and associated planning proposals were passed unanimously.---Yes.

20 That is, involving all councillors voting in favour of the particular resolution. Correct?---Yes.

And that is all councillors across party lines?---Yes.

So prior to 3 November, 2015 meeting, there had been a unanimous support on the part of the councillors for what had been recommended by the independent experts and council staff at each point along the way, correct?  
---Yes.

30 And it's at this point, 3 November, 2015, that we first see some disagreement amongst the councillors as to what is the appropriate way forward, correct?---Yes.

And the particular issue that appears to be creating that disunity amongst the councillors was the prospect of again looking at, amongst other areas, the area of land between Barnstaple Road and Second Avenue on Waterview Street, correct?---Yes.

40 And you understood that as a result of the resolution that was passed on 3 November, 2015, that there would need to be some further studies done by the independent experts, correct?---Yeah, I believe so. Yeah, I can't remember exactly.

And that was in fact done by Studio GL, correct?---Yes.

And there was a further report done by Studio GL in respect of the three sites, including the Waterview Street site, if I could call it that?---Yes.

And also there was some feasibility analysis that was conducted by HillPDA, correct?---Yes.

Which was an economic analysis to see whether or not development of those three sites would be feasible, correct?---Yes, yes.

And it was necessary to undertake that in order for council staff to then be able to come back to the council and present information before it on which it could make a decision as to what steps it could take in respect of those three sites, correct?---Yes.

10 And Studio GL in due course prepared a report that looked at options for redevelopment of those sites, which was completed on 3 March, 2016.  
---Sounds, right, yes.

Just you may not recall the actual date but that sounds about right. Correct?  
---Yeah.

And in particular do you recall that in relation to the Waterview Street site that there were two different options that were considered by Studio GL. Do you recall that?---Yes.

20 And do you recall that option 1 effectively involved retaining the existing heritage listing item, listing, sorry, for number 39 Waterview Street. Correct?---Yes.

And otherwise though all other planning controls would remain the same. Correct?---Yes.

30 So that effectively would be, let's not do anything other than what's already in the LEP. Correct?---Yes.

And when I mean in the LEP, in the LEP that was proposed to be amended as part of the Urban Design Study process and the planning proposals that had come out of that. Correct?---Yes.

And option 2 involved simply removing the heritage listing for number 39 Waterview Street. Does that accord with your recollection of what the issue was as far as that site?---Yes, it does, yes, it does.

40 And then HillPDA, with the benefit of the Studio GL report, prepared its feasibility analysis. Correct?---Yes.

And it looked at a number of sites at how development might be able to occur in relation to option 1 or option 2. Do you recall that?---Yes.

And in due course the recommendation of HillPDA was that in fact option 1 was the option that provided the greatest prospect that there might be a site that could be redeveloped in a manner that was economically viable.---Yes.

And just in respect of the two options that were considered by Studio GL, in each case Studio GL recommended that the Waterview Street site retain the B4 mixed – sorry, the R3 residential zoning. Correct?---Yes.

That is, either way that zone should not change, the zoning should not change. Correct?---Yes.

10 And the matter was then to come back before the council on 2 August, 2016. Does that ring a bell for you, about that time frame?---I think so, yeah.

And was it the case then, it's consistent with what you told us yesterday, that it is likely that in the lead-up to the meeting of August 2016, the intensity or number and nature of your communications with Mr Sidoti about the matter would have increased?---It's possible, yeah. I can't, I can't remember what it entailed but - - -

You don't recall any particular - - -?--- - - - it would fit the pattern, yes.

20 Now, were you aware at that time as to whether Mr Sidoti had engaged any other planners to act on either his behalf or on behalf of the interests of his family?---No, no.

No. You had no knowledge of that at all?---Certainly not a clear knowledge. I mean I think what I'd add there is almost right throughout council, almost anyone who was Italian and involved in council or local politics had an extended family, decades of residency in the area, and almost certainly had some properties in the area, so I think it was a general sense that, you know, he owned the function house and I knew his parents lived in  
30 the area, so to speak, but I certainly didn't have a sense that he was someone representing the family's interests.

But did – as I understood your evidence from yesterday, your understanding as far as the function centre was that yes, you were aware of the fact that his family owned a function centre - - -?---Yes.

- - - but you weren't particularly, you weren't particularly aware that that function centre was actually on that block between Barnstaple Road and Second Avenue.---Not explicitly, and certainly not something I thought was,  
40 was a potential to be redeveloped, if you like, yeah.

But that was not something that was consciously in your mind at the time - - -?---No, no.

- - - you were engaging with Mr Sidoti.---No, no, no.

I just want to draw your attention to some correspondence in the lead-up to the meeting on 2 August of 2016.

THE COMMISSIONER: Perhaps just before you go to that, just one matter I want to raise. Just going back to the meeting of council on 3 November, 2015 in which there was a resolution to investigate three additional sites, one of which, as mentioned a moment ago, include the Waterview/Barnstaple block, if I can call it that. You remember that issue coming up - - -?---Yes, I do.

10 - - - that is the three sites, the proposal being to have them investigated to see for example if a different, to see whether or not the B4 mixed-use zoning should be extended into those areas?---Yes, I do.

Now, those in support of the motion to have that investigation of the three sites included yourself, Mr Kenzler, Ms McCaffrey, O'Connell, Tsirekas voted in favour of the resolution. But on that occasion Ms Cestar and Ms Tyrrell voted against that proposal, that resolution. Do you recall that? ---Yes.

20 And so that as it were there was a division had occurred on this occasion between the three Liberal councillors on that issue as to whether there should be further investigation, in particular the Waterview/Barnstaple block.---Yes.

Do you remember whether Ms Cestar or Ms Tyrrell expressed to you or you and Ms McCaffrey the reason why she was or they were going to vote against that?---Not clearly, but I certainly interpreted both of them certainly in their broader decision making would, were likely to err on less development and not more. So I saw that in keeping with, with (not transcribable)

30 Whatever you believe their inclination was, politically or otherwise, did they articulate any particular reason why on this particular resolution they were not going to go along with it?---Certainly nothing new. There was nothing exceptional or new that they added why they wouldn't go along with it.

40 Because prior to this time the question of the zoning of that area which Waterview Street/Barnstaple Road area, the question of the rezoning of that had come before council on I think at least three occasions prior to that and you and indeed all councillors had agreed and in effect supported the conclusions of Studio GL that there should be no expansion of the B4 zoning mixed uses into that area of the block Barnstaple/Waterview Street. That's right, isn't it?---Yes.

Well, what on earth then would be the point on this occasion, 3 November, 2015, of you changing your view, that whereas you had fully accepted the Studio GL analysis on at least three occasions, when you're called upon with other councillors to deal with resolutions you supported it, and now

here on 3 November you're joining in the resolution to go and investigate the area you had previously been party to supporting should not have its zoning changed. Why would you now take that course?---Effectively because there was new information and advocacy.

What was the new information?---From the state representative.

Which is what?---Like Mr John Sidoti. I mean that was certainly a critical factor.

10

Yes, but you're saying there's further information. Well, what information came from him?---He's brought advocacy that he thought the council had potentially been too conservative on that and I guess the broader sweep of some of the interactions I'd had with him and including, you know, be it the Chamber of Commerce, and following on from that again, I wouldn't, I wouldn't accept that blindly but following on from that the council is now offering options which made me think, well, okay, it looks like there's something to be considered here given it was previously considered not worthy. And on top of that, the Labor councillors were also supporting it.

20

So that, that gives a considerable legitimacy. It didn't feel like it was something ridiculous anymore.

But that's a very generalised answer. What I am looking for, in order to assist the Commission in dealing with this, and indeed in fairness to Mr Sidoti, what additional information are you suggesting came from him which led you to alter your stance and now support investigation of the question of possible rezoning of that area I've spoken of before as the Barnstaple/Waterview Street, can you remember? What information made you change course as it were?---Not necessarily specific information but the authority of his advocacy as a state MP, as a former mayor, as someone who knew about planning and someone who was from our side of politics and someone who I had also met, you know, businessmen and locals with. So that held considerable authority and respect.

30

So do you recall having some discussion, or being present, when Mr Sidoti was speaking about the question of further information of the three additional sites prior to that matter coming up before council on 3 November, 2015?---Not specifically but the, I, I – on a general level, I would say that his advocacy was that this area should not have been, it should have fallen in the same classification. It was unjustified why it didn't necessarily fall into the same category as other areas that were allowed such development.

40

But again you don't have any specific recollection of him addressing that issue prior to 3 November, '15 resolution?---Not in any detail or clarity, no.

All right. Yes, thank you.



MR RANKEN: The advocacy of Mr Sidoti that you speak about is advocacy from Mr Sidoti to you, correct?---That's correct.

Not advocacy in the context of appearing in some public meeting?---No, no, no.

And he knew about a matter that was within your purview as a councillor to be making a decision upon, correct?---That's correct.

10 And did you have – well, no, I withdraw that. Just moving on from then 3 November, 2015 and leading up to the meeting of the council on 2 August, 2015. You appreciate that to this point there had been multiple occasions on which the Urban Design Study and the reports of the independent experts and the associated planning proposals had been put out for public exhibition, correct?---(No Audible Reply)

You need to answer yes or no.---Oh, yes, yes.

20 And you also appreciated that the purpose of that public exhibition process was that interested parties, whoever they may be, members of the community or persons who had particular interests in particular sites, had an opportunity to make submissions to the council, correct?---Yes.

That would be made to the council itself, correct?---Yes.

Not to councillors separately, correct?---Yes.

So that it could be done in an open and transparent manner, correct?---Yes.

30 And council's decision, in terms of the matters that were taken into account by council, could also be transparent. To see who had made submissions to council about the matter, correct?---Yes.

The substance of what those submissions are, correct?---Yes.

And the information that had been collated as a result of that to inform the councillors in relation to their decision making?---Yes.

40 And that is a very important aspect, would you agree, of public accountability and transparency in the kinds of public decisions that councillors like yourself were making?---Yes.

And in that context, would you agree that, it would not be appropriate for councillors to take into account representations that were made directly to councillors and not made to the council staff, for example, as part of that public exhibition and submission process? Do you agree?---Possibly but at the same time I would say part of my role in, in local government was

canvassing local, my own experience of local residents and managing local significant players.

So if a private interest approached you and possibly through planners that they had engaged and said, “Look, this is the kind of thing that we want the council to do,” would you not say, “Well, the appropriate thing for you to do is to not just send it to me, but to provide that information to council?”  
Correct?---Absolutely, yes, yes, I would.

10 And so that that can be taken into account by council staff. Correct?  
---Yes.

And council staff can then take that into account when they produce a report that’s going to inform all of the councillors. Correct?---That’s correct.

Otherwise there might be a risk that you as a councillor could be representing the private interests of particular persons. Correct?---Yes.

20 Without that being apparent to the public.---Yes.

And that would be a matter of great concern, wouldn’t it?---Yes.

If you had somehow become an instrument of a private interest, whether knowingly or unknowingly.---Yes.

30 So do I take it then that on occasions when – because you said you saw it as part of your role as a councillor to receive the views of significant players or people who had particular interests, that you would communicate to those persons that that needs to be provided to the council as part of a public submission?---Certainly if I saw them as a private interest.

And would that be particularly the case if you were aware that the particular matter that was coming or recommendation that was coming from council staff was one that was not consistent with what this particular private interest was stating or was advocating for? Correct?---Yes.

Because it may be that that private interest has information that could inform, better inform the council staff. Correct?---Yes.

40 And that could be properly taken into consideration by council staff when they make their recommendation to the councillors.---Yes.

Again ensuring the transparency of any decisions that were to be made by council. Correct?---Yes.

Now, I just want to move briefly to the meeting of 2 August, 2016, that is the meeting of the council on that date, but briefly before I do, there was an event that occurred before the meeting of 2 August, 2016 that had some

significance, particularly for those councillors who were on the Liberal side of politics. Correct, or you don't recall?---I can't remember.

Perhaps I'm being a bit too obtuse.---Yeah.

You recall that in June 2016, Mayor Tsirekas actually resigned his position as mayor. Correct?---Resigned?

10 You don't recall Mayor Tsirekas resigning from the mayoralty?---Oh, only temporarily, wasn't it?

Well, did he not resign in order to pursue the possibility of a - - -?---Oh, federal, yeah, yeah, sure.

- - - federal election?---Sure, yeah, that's right.

And did he not remain resigned from council at least until the next council election in September 2017?---Yes, yes.

20 And that occurred in June 2016. Does that accord with - - -?---It sounds right.

- - - your basic recollection?---Yeah, it sounds right.

And at that point in time it just happened that Councillor McCaffrey was the deputy mayor.---Yes.

30 And that meant that there would need to be, following Mayor Tsirekas's resignation from council, there would need to be a vote amongst the councillors for who could be mayor. Correct?---Yes.

But of course the numbers had come down to eight councillors instead of nine. Right?---Yes.

And of those eight councillors, four were Liberal and three were Labor and one was a Green. Correct?---Yes.

40 And that meant that if there was an even split between the, if I might call it the right side of politics and the left side of politics, then the decision would be determined by the casting vote of the presiding councillor. Correct? ---Yes.

And as a result of Mayor Tsirekas's departure, Helen McCaffrey as deputy mayor became the presiding councillor at meetings. Is that right?---Yes.

That means that she had the casting vote in relation to any election from there.---Yes.

And so effectively it was a foregone conclusion that she would be elected mayor. Is that right?---Yes.

And in fact was it the case that she became mayor without any contested vote needing to be had?---I can't remember that, but I accept that, yeah.

10 You don't recall. But in any event, at least from the time that Mayor Tsirekas resigned the mayoralty and left council in June 2016 until September 2017, Ms McCaffrey held the casting vote in any even split between the councillors, correct?---Yes.

That is regardless of whether that even split was along party lines?---Yes.

And that, would you agree, was a significant development as far as the local government of the City of Canada Bay was concerned, correct?---Yes. I would think so.

20 Because for the first time in a long time it was the Liberals who held the balance of power for the council, correct?---Yes.

And that was shortly before the meeting on 2 August, 2016, only a bit over a month, correct?---I accept that, yes.

And that was the meeting at which the issues concerning particularly those three sites that were looked at again by Studio GL and HillPDA were to come back before the council for the council to make a decision as to which options they would go with, correct?---Yes.

30 And you were aware that, insofar as the recommendation of council staff had been informed by those independent experts was concerned, that it was recommended that controls should not be increased further than that which had been recommended by urban design advice in order to facilitate the viable outcomes?---I accept that.

And the particular recommendation from the council staff in its report was a little bit different to what had happened on previous occasions because on this occasion there were options to be considered by the council, correct? ---Yes.

40 And council staff merely recommended that the council needed to make a decision about which option they wanted to adopt, correct?---Yes.

So, if we could go then to the minutes of the meeting of 2 August, 2016, particularly at page 1169. Sorry, we might need to start with 1168 just so that I can direct your attention to that the item is at the bottom of the page. Do you see that, we're dealing with that?---Yes.

And do you see that the item commenced discussion at about 6.54pm when Councillors Fasanella and Megna declared their pecuniary interests in the matter and left the meeting?---Yes.

And that was something that they did on each occasion that this matter came up before the council, correct?---Yes.

10 And if we go over to the next page, above the motion that was moved by councillors Kenzler and Tyrrell, you can see that there is a list of persons who addressed the council, correct?---Yes.

And one of those persons is a Mr J Matthews of Pacific Planning, who was said to represent various landholders. Is that correct?---Yes.

And did you know James Matthews?---I, I had certainly, I'd had contact with him in some form. I can't, can't remember if it was an email or, yeah, but I think - - -

20 But did you know him independently – sorry. Was it an email in relation to this matter?---Yeah, probably, probably.

Did you have any knowledge of Mr James Matthews outside of the context of this issue of the Five Dock Town Centre and in particular the reinvestigation of these sites?---No, no. It was, any contact was possibly just before meetings or maybe emails.

30 So does that mean you had an understanding as to the persons, the various landholders, whom he represented?---I, I did know, I, I think I knew that he had some sort of link with John Sidoti but I don't think I necessarily linked, necessarily saw it as directly linked to properties that he'd owned.

Well, what was your understanding about the link that he had with Mr Sidoti?---I think he worked with Mr Sidoti in the past, over the years.

In what capacity?---Just as a town planner. Whether it was his private interests or not, I, I, I didn't know much detail about - - -

40 Where did you get that understanding from?---Possibly from other councillors. I'm not, not quite sure.

Which other councillors?---I couldn't tell you for sure. Well, whether there's information that I've – to be honest, there's possibly even information that, that I've, I've absorbed since then, you know, post hearings. I, I actually can't say for sure whether I knew it then or it's something I've come to know later.

Well, how did you first meeting Mr Matthews or how were you first introduced to him?---It's possible I've met him just at the meeting or just before the meeting. They were waiting or hanging around. I'm not sure.

Do you mean just before the meeting of 2 August of 2016?---Not this, whether it was this specific one or, or not I don't, I don't remember.

And were your dealings with Mr Matthews only ever in relation to this issue concerning Five Dock?---I believe so.

10

You had not met him through your membership of the Drummoyne branch of the Liberal Party?---I don't think so.

Do you know whether or not he is a member of the Liberal Party?---I certainly didn't at the time.

And do you know whether he is – I mean what's your current state of knowledge, is he a member of the Liberal Party to your knowledge?---If, I, I haven't dealt with him in the party so if he is I, I've had no dealings with him.

20

But you did know that he had some link with Mr Sidoti but the nature of that you cannot be clear?---It wasn't clear, no, and nor was it made clear in these meetings, no.

Nor was it made clear in what meetings?---Well, as in there was no reference to that.

30

The council meetings?---Yeah. There was no reference to that in the council meeting.

So where it refers to the fact that he was representing various landholders, to your knowledge he did not say anything during the course of that meeting, to the best of your recollection, as to exactly who he was representing?  
---That's correct.

Or what properties?---That's correct.

40

But do you have a belief that you had some correspondence with Mr Matthews prior to the meeting on 2 August, 2016?---It's possible because his name is familiar and I can't remember if he emailed us or, but yeah, it's possible.

Because if he'd emailed you and he was representing private interests, would that not have been of some concern insofar as you would have wanted to make sure that the information was not being provided to you as a councillor individually but in fact forwarded or provided to the council staff. Correct?---Yeah, absolutely. Yeah. If it was something like a private I

would certainly just go look, yeah, thanks but this will be processed through, through the council processes and we'll have a look at it that way. So that was certainly my normal practice.

That was your normal practice.---Yeah.

And do you say that you invariably followed that normal practice?---Yes, I did, yes.

10 So I wonder if we could go to page 1127. Now, this is an email chain, do you see that, and it's from Mr Sidoti, the top one is from Mr Sidoti to yourself. Correct?---Yes.

And do you see that his email to you says, "This forms the basis for motion JS." Do you see that?---Yes.

20 And he is forwarding to you an email that is from Mr Matthews that is addressed to Matt and John, and the Matt and John being mattdaniel@[REDACTED] and Mr Sidoti at his parliamentary email address. Do you see that?---Yes.

And this email was forwarded to you by Mr Sidoti on 1 August, 2016 at 8.42pm, the night before the meeting on 2 August, 2016. Correct?---Yes.

What was the motion that Mr Sidoti was referring to in that email?---I mean I can't remember exactly but I'm looking at it now. So, yeah, around, regarding the, the property Waterview Street, Barnstaple Road, yeah, floor, floor space ratio.

30 So what I want to suggest to you is that the motion that Mr Sidoti is referring to is effectively that part of this email that he's forwarded to you that says, "It is recommended that". Do you see that?---Yes.

40 So was Mr Sidoti suggesting that you should, or did you receive this as Mr Sidoti is suggesting you should put forward a motion recommending that "Number 39 Waterview Street, Five Dock be removed as an item of heritage significance from council's heritage schedule and that site B – being the land between Second Avenue and Barnstaple Road on the western side of Waterview Street, Five Dock – be rezoned to B4 mixed-use with a maximum building height of 17 metres and a maximum FSR of 2.5:1 consistent with the controls adopted but not yet gazetted for the land immediately to the south." Correct?---Yeah, I certainly interpreted this as part of his broader pattern of advocacy about this issue.

At this site?---This site, yeah.

Correct?---Yes.

But what he was suggesting to you, was he not, was that here is some information that I want you to take into account so that you can pass a resolution to that effect? Is that - - -?---I think it's fairly interpreted that way, yes.

10 So this was the member of parliament instructing you as a councillor to put forward a recommendation in relation to this site.---I, I, I think I, I don't think I would have taken it as an outright instruction but it would have been, it was another email that we thought, okay, we get this is something you're interested in and we'll fly it through council and the councillors et cetera.

So you didn't take this, you didn't take it as an instruction, just a suggestion?---Yes.

A friendly suggestion from your local member?---Yes, exactly. That's correct, yeah.

20 Could we - - -?---And once again I'd add, I was not seeing this as part of any, any private interest that he had.

Again you saw this as purely to do with him representing local constituents. ---Exactly, exactly.

30 But you didn't have any understanding at this stage as to who it was that Mr Matthews was acting on behalf of?---Well, I guess it's linked to him but even if he was linked to John – I mean look, some of this may appear naïve now – but I think I saw that as part of John and his advocacy and this was part of his advocacy that he'd had potentially someone helping in that advocacy.

One of the things that had occurred in relation to this site, was it not, was that on 3 November, 2016, the council had resolved to refer the matter for further study by Studio GL. Correct?---Yes.

And that further study had been conducted and the options that Studio GL put forward both recommended that the zoning remain the same. Correct? ---Yes.

40 So the second dot point of the recommended motion, if I might suggest that's what it was, was something that had already been looked at for a further time. Correct?---Yes.

And just simply wasn't being supported by the independent experts, or by council staff. Correct?---Yes.

So on what basis did you see it as being appropriate for you to be receiving a communication of this nature from the local member suggesting that no, notwithstanding whatever has happened there, put forward this



recommendation?---Look, I don't think I – in the, in the midst of his various communications I would have seen it as, as another one of his suggestions. Whether I saw it as appropriate or not, I think it would have been fairly in passing, and knowing that we had the process of council to rely on, I didn't feel, I didn't feel this was particularly malevolent or I wasn't perturbed by this, it was more like, okay, thanks, we'll, we'll run it through the process.

10 Would your view have been different if you had been consciously aware of the fact that Mr Sidoti's family owned property within the very block that was being sought to, the border block that was being sought to be rezoned?  
---Yes, I think I'd be, I'd be very concerned.

Because whilst you were aware of the function centre, you weren't aware that the family, that is Mr Sidoti's family, also had by this stage acquired an interest in a property in Second Avenue?---No, no.

And were you also unaware that the family had acquired an interest in a property at 122 Great North Road?---Absolutely unaware.

20 Now, if we could go to page 1128. I just want to draw your attention to the last dot point on that page that refers to the fact that, "Landowners in the area have been working together to facilitate the future amalgamation of the subject sites to realise the redevelopment potential which would not be realised under the controls as proposed." Do you see that?---(No Audible Reply)

Did you – you need to say yes or no.---Yes.

30 Did you make an enquiries of Mr Matthews as to who these landowners were at this time?---No. Certainly in hindsight I, I probably should have but I think, well, I certainly, much like my testimony before, where I thought, okay, he's representing a, various other developers or other business interests and that's certainly how I interpreted it.

40 Do you say then that you never came to know who the landowners on behalf of – sorry. I withdraw that. Are you saying that you never came to know which landowners in the areas were working together to facilitate the future amalgamation of subject sites?---I mean, look, to be fair I think there were whispers but it's not, I don't think I, it was never explicit and I didn't come to think that it was, that was the likelihood or possibility.

When you talk about whispers, there were whispers about what?---I think, whether it was residents or, I'm, I'm not quite sure it, saying, oh, you know, you know, Sidoti's family, Sidoti's parents live around there, somewhere like this.

So there were whispers that the Sidoti's in fact in did have interests in developing this area, is that what you're saying to me?---Well, maybe not

explicitly this area but I think in that region. I think some people, you know, whether it was, whether it was ratepayers or not, but you often get ratepayers saying, oh yeah, you know, this, you get various rumours and stuff.

Please, Dr Ahmed, I just want to focus on this site.---Sorry. Yeah, sure, sure.

10 Were you aware of whispers of the fact that the Sidoti family had property interests in relation to this area, this block between Barnstaple Road and Second Avenue?---When I – I did not.

So you're saying you had – so this evidence that you've said about whispers has got nothing to do with this block?---No. I did not know that the Sidoti's family interest had - - -

I'm not asking if you knew or not, I'm asking if you had heard whispers. ---Possibly, possibly, yeah. I can't remember when or was it before or after or when that was.

20

And the whispers were that the Sidoti family had property interests in the Five Dock area, is that it?---Yeah, I think more general. They, they'd lived there a long time et cetera, yeah.

And were the whispers also that the Sidoti family were looking at redeveloping the sites that that had in Five Dock?---Not explicitly, no. That, that's not what I knew.

30 I know when you said not explicitly, what were the whispers about what the Sidoti family wished to do with the sites that they had in the Five Dock area?---I can't remember and I certainly didn't hear anything along the lines that they had redevelopment interest.

Were there any whispers about the possibility that the Sidoti family were looking to amalgamate their sites with other landowners?---No, I didn't hear anything like that.

Did you ever raise these whispers with Mr Sidoti?---No, but I should have.

40 You never said, "Hey John, I've heard you've got property interests in the Five Dock area and your family has property interests in the Five Dock area, what's the position?" Just to satisfy yourself?---Well, in hindsight I should have but I, I think right throughout it did not occur to me that he would be pushing his private interests as the state MP to us.

Is that because that's something that you would have thought would be improper?---Yeah, exactly, yeah. And I had a good relationship with him and I, I would not have expected that sort of betrayal.

Now, can we then go to page 1138? I'll just draw your attention to this email, which is another email chain, the top of which is an email from Mr Sidoti to you, dated 2 August, 2016, at 1.25pm, correct?---Yes.

So this is on the afternoon before the meeting of 2 August, correct?---Yes.

10 And so you see that effectively he is forwarding a further email from Mr Matthews that had been sent to himself, that is to Mr Sidoti, and Mr Daniel?---Yes.

And what Mr Sidoti has said to you is, "Addition point for resolution planning proposal." Do you see that?---Yes.

20 And what you can see in the email from Mr Matthews is instead of two points that were under that heading of Recommendation in the earlier email. we can see a third point which is that, "Council prepare a planning proposal to implement the proposed changes to the Canada Bay LEP 2013 in the planning proposal to be forwarded to the Department of Planning and Environment seeking a Gateway Determination and further community consultation." Do you see that?---Yes.

So that was effectively adding a mechanical aspect to the provision to see that the matter could proceed expeditiously through the Gateway if the council were to adopt the first two points in the resolution.---Yes.

30 Again, was this not an instruction to you from Mr Sidoti to move a resolution of the kind that's outlined in the email from Mr Matthews? ---Again, I certainly wouldn't say it was instruction and I can clearly say by now it was definitely getting a bit irritating, I think that's fair to say. I think all of us on council were feeling that way. But at the same time I thought okay, well, here's another suggestion and, you know, he certainly knows about planning and motions, et cetera, so we'll take it as suggestion and we'll put it through the council wringer so to speak.

40 That's still not suggesting to you that that's – sorry, I withdraw that. Still not directing you that this is the resolution that he would like to see you pass.---I would certainly not, I would certainly not take anything he said as a direct instruction. I would not allow that.

THE COMMISSIONER: This was putting up a resolution which is directly contrary to the Studio GL report that came in on the three sites dated 3 March, 2016 which recommended against what's being proposed here for the Waterview Street. Is that right?---Yes.

Why would you then be party to putting forward a resolution in circumstances when the most recent report of Studio GL, 3 March or received on or about 3 March, 2016 was dead against it?---Well, I'm not

sure if I went on and necessarily put it forward but I would again expect it to go through the processes. If, if council came back and said look, we actually don't recommend this then there's no way I would consider voting on it.

10 But as a responsible councillor why would you put somebody's request, in this case Mr Sidoti, to be party to putting up a resolution on a matter that had been well and truly dealt with by council on the basis of the independent consultant's report in March 2016, which is also followed by the feasibility report shortly thereafter? Why would you be party to it?---I agree. I think we're all thoroughly tired of the issue so to speak but at the same time again, this is the, it's a state MP with huge planning experience from outside of the party and as I'd said yesterday, I, I, I saw this issue, given how seriously he was advocating for this issue I thought he must have estimated and I thought he was a better estimator of the electorate than I was given I was working part-time as a local government councillor. He had a lot more information so I thought I, I, I measured his advocacy with great significance so, and I saw it as part of his broader advocacy both to constituents who were also rate payers. So as a result I, I certainly wouldn't  
20 dismiss, anything he forwarded to me I would not dismiss it. I would certainly go okay, I'll, I'll have a look. It's not unreasonable but let's see what council thinks and what my fellow Liberal councillors and fellow Labor, and other councillors as well because I did not, I did not have the information or experience to make definitive decisions when I would get a suggestion like this.

But you already knew what council thought about it. In fact - - -?---Well  
- - -

30 No, just a moment.---Yeah.

Council have, following the investigation of the three sites, put up a recommendation – sorry, put out a report, which was circulated that you would have received a copy, being strongly against what's now being sought in this proposed resolution framed by Mr Matthews which you see on the screen 1138 and the council had then after considering that report agreed. Right?---Yes.

40 Then why would you, knowing what council's view was, knowing what its independent consultant's view was, be party to going around the track another time, merely at the request, suggestion, however you describe it, coming through Mr Sidoti, supported by Mr Matthews? Why would you do it?---Well, to be frank, initially I don't think I would have had much interest in pursuing it, but that's where then I would have looked at both my fellow councils and councillors and if they deemed it of significance, or if they deemed it insignificant or inappropriate, they would laugh it off or push it off, and that would be a strong direction to me as well.

MR RANKEN: Now, in a number of your answers you've referred to the fact that one of the reasons you took into account what Mr Sidoti was saying to you in these representations was the fact that it was coming from your side of politics. Correct?---Yes.

He was a member of your side of politics. Correct?---Yes.

10 You appreciated though, didn't you, that as a councillor, in relation to planning decisions you were required to make decisions without regard to your side of politics. Correct?---Yes and no. I mean there's still an ideological component to things like development.

Sorry, are you suggesting then that you wouldn't take into account the representations or it wouldn't be relevant to you if the representations were coming from someone from the left side of politics?---No, not at all, not at all, but I, I'd potentially weigh it differently.

20 So what is the relevance of the fact that he is on your side of the politics as to why you would be prepared to take his views on board?---Well, as I said yesterday, I interpreted his advocacy as him potentially viewing us not having appropriately advocated for small business interests, and that is directly related to our side of politics.

So did you have some concerns then that if you took a position that was different to the position that he was advocating that your position within the Liberal Party possibly at the next local government election might be jeopardised?---No, I wasn't thinking that way.

30 You had no concern about that?---No, I wasn't thinking that way.

Now, just I've taken you to that email on page 1138. Could we go then through to page 1145. This is an email from Mr Sidoti to you at 4.05pm on 2 August, 2016. Correct?---Yes.

Less than two hours in advance of the meeting at which the issue was to be discussed. Correct?---Yes.

40 And you can see that the email has within it three points, 1, 2 and 3. Do you see that?---Yes.

And they reflect in numbered form rather than bullet point form, the same wording that was in that earlier, that email I just took you to on page 1138. ---Yes.

Correct. And he's included the words, "Hope this helps. I move that." Do you see that?---(No Audible Reply)

Correct?---Yes, yes.

Now, what that was, was Mr Sidoti, was it not, telling you these are the words you should say, “I move that,” and then 1, 2 and 3. Correct?---Yes.

He was effectively giving you the script that you should say at the meeting. Is that right?---Yes.

10 Now, that must have been perceived by you to be an instruction or a direction by Mr Sidoti.---Look, I think that, at that stage I suspected he was getting, you know, a little bit excessive, definitely.

And no doubt it being excessive, you would have taken the view that you should push back and say, well, John, it’s not really appropriate that you tell me what I should be saying in council meetings?---Possibly, but I think the way I started responding was potentially sometimes not taking his calls. And I, I do remember that in and in fact my wife reminded me of that more recently where sometimes he would call in the, you know, middle of dinner or something and so that’s probably how I started resisting a bit, we wouldn’t always respond to a text or a call.

20

THE COMMISSIONER: When you said more recently he had called, how recently?---Oh, not recently, he called, I was referring to that my wife had remembered a time when we were having dinner and he called in the midst of dinner and I said something like, “Look, I don’t want to take the call.”

MR RANKEN: Well, that was because you were at dinner.---Well, and we were getting a lot of communication, yeah.

30 Are you suggesting that if you weren’t at dinner, you would have said, “I won’t take that call”?---No, I think I probably, I think what was alluding to was that it was, at that – and I can’t tell when that was – but it was at a stage where I was like, look, I think he’s, I think he’s overdoing the communication and I’m not going to take this phone call.

So your approach then when it got to points like this where he’s actually come to the point of saying, “This is what I want you to say,” was to simply not respond?---Yeah, exactly.

40 To withdraw and retreat, correct?---Yes, exactly. It was more of a case – and remember sometimes I’m seeing this, you know, in between patients or something. I’m like, okay, here’s, here’s John again as part of what we said, the barrage of communications, and I took it, again, more as part of his personality and kind of his advocacy. I thought, okay, thank you but we’ll take it on notice, so to speak.

THE COMMISSIONER: Dr Ahmed, we’ve seen previous emails from Mr Sidoti which went through to the three Liberal councillors. This email entitled, “Five Dock Town Centre additional sites,” which came from Mr

Sidoti is addressed to you and you alone, and indeed the previous email we've been looking at, it's at 1138, is also addressed only to you, not to the other Liberal councillors. On the face of it that suggests that he was working with you, you and he were working together in relation to the council meeting of 2 August, 2016. Am I right that it does reflect that, that you and he had been tictacking, as it were, about this meeting?---Well, look, I would certainly not take it as that because there's no way, I certainly, any motion that I vaguely would consider I would be showing the other councillors and get their advice.

10

But you see the point I'm making?---Yeah, yeah. Sure, he is sending it to me.

He is now switching his communications, so far as the Liberal councillors are concerned, to you and not the others.---Sure. But, but certainly would not - - -

No, no, just – yes?---Yes.

20

And that the subject matter of the communication in this email, and the previous one we looked at at 1138, is either a request or however you style it, a direction, for you to do something and that is for you to, at the meeting of 2 August, 2006 [sic], say, "I move that," and then the three points as set out in the email were, as it was put to you by Counsel Assisting a moment ago, your script, correct?---Yes.

So, you and he had an understanding that this would be your role.---That's not certainly how I would have seen it.

30

Well, you may not have seen it but that's in fact the situation, isn't it? You and he were putting together the plan for you to be the spokesperson at the council meeting and that you would use this script, seen on 1145, in moving the motion, correct?---Yes but I knew I had the protections of my other councillors as well.

40

Oh, yes. So why were you and he getting your heads together, as it were, through these two emails I've referred to, to prepare for what you would do and say at the meeting of council on 2 August, 2016?---Well, I, I mean, I couldn't tell you exactly what was going on in my head at the time but again, it was, I didn't see it as exceptional, because he was communicating with us so often, I don't think I specifically noticed that, okay, he sent this to me. Because I know I would show it to the other councillors anyway. So I certainly didn't stake this as, hey, this is just us two talking and don't let the others show it. So, again, I thought, okay, thank you and, you know, I will certainly share it with my councillors. And I would say I'm certainly not dismissing things he's sending me. I, I, I think by then, now, I would have certainly started thinking, well, look, I, I don't think you need to send us all out motions but I didn't, I, I wasn't seeing this as malevolent. I, I was

not, I was just seeing it as a little bit inappropriate regarding, again, his enthusiasm and how aggressive he was. I didn't see it as malevolent and I looked at it and thought, okay, fair enough, no, I get your views and I had, again, with the, with the idea that some of it may have, I probably had some sympathy with, with some of what he was talking about in terms of perhaps there's room for wider development. But I certainly didn't take it as instruction. I would not be taking, you know, I don't think I – I was of a personality that I would not be taking any type of direct instruction from Mr Sidoti.

10

MR RANKEN: Regardless of whether or not you perceived it as being malevolent, there was absolutely no role for Mr Sidoti to send to you the form of a motion and what words you should say to put forward that notice of motion at a council meeting. Correct?---Sure. Yes.

You were a councillor on the local government, on the City of Canada Bay Council. Correct?---Yes.

20

The exercise of your functions and duties were not to be directed by the local member of parliament. Correct?---That's correct.

So it wouldn't matter if it was malevolent or not malevolent. Correct? ---Fair enough. Yes.

It wouldn't matter whether or not he was purporting to represent particular constituents or not. Correct?---Yes.

30

It was not for him to give any direction to you as a local councillor as to the kinds of motions that you might put forward or support. Correct?---Yes.

And so why did you not immediately recognise that and say to Mr Sidoti it's not appropriate for you to engage in these communications with me? ---Yeah, look, perhaps, perhaps I should of but I, I wasn't overly perturbed by it because I trusted the process. I knew there was a process and I trusted that.

40

If we could briefly go back to page 1127 which was the first of the emails that I took you to in relation to the lead-up to the meeting on 2 August and again, just dealing with the email that Mr Sidoti sent to you in terms of what he said to you. He says, "This forms the basis for motion". See that? ---Yes.

Now, that email suggests that this is not something that has come out of the blue, that there has been some communications between you and Mr Sidoti in advance of this email relating to some proposed motion that would be coming up at the council meeting. Correct?---Possibly but there's none that I remember anyway.



Well, it would be a very strange communication to receive if there hadn't been some other context to it, wouldn't there?---I agree. I agree.

And that context would have to have involved some communication between you and Mr Sidoti about the topic.---Yeah, possibly, yeah.

10 So you and Mr Sidoti then, would you accept, must have discussed a proposed motion that he had for the meeting of the council on 2 August, 2016 prior to you receiving this email?---It's possible. I can't remember it but it's possible.

And then this email and the other emails that I've taken you to at 1138 and 1145 were further developing the resolution that Mr Sidoti was suggesting or directing you to put forward at the meeting. Correct?---Yes.

And you told us earlier that by this point you felt it was getting a bit much and so your usual course was to withdraw. Correct?---To some extent, yes.

20 And that is not respond to what was coming from Mr Sidoti.---Yes.

Does that mean that you would not indicate one way or the other what you felt about what he was putting forward?---Yeah. My often response would be noted. Something along the lines of thank you, noted. Something along those lines.

If we could go then to page 1147, sorry, 1148. I apologise. I was one page out. Here we see your response which is at 4.13pm on 2 August where you say, "Thanks, John. All good." Correct?---Yeah.

30 Now, that's a little bit more than just simply noting his communication.---I would say that that would be one way I would express that.

Well, the obvious way to read that email, is it not, is to say that you're saying thank you for sending through that wording, that's all good. I'm happy with that. Oh, no - - -?---No, I think that would be an over interpretation. I think all good - - -

40 Oh, that's an overinterpretation?---Potentially. I mean I don't know, I don't know exactly what I was thinking but I, I can, such a short text probably done on the phone would probably be more along the lines of okay, I've seen it. Thanks. Yeah, all good.

This is not a text. This is an email.---No, but I've sent on my iPhone but, yeah, I - - -

It's an email - - -?---I know, I know, but - - -

- - - sent by you to Mr Sidoti. Correct?---Yes.

Eight minutes after he sent you the wording that he wants you to say at the meeting.---Again I, I, I'd say along the lines of I've received it, I know there's a process ah - - -

You don't need to say what you, what you would do.---Yeah.

We can see what you did do.---Sure, yeah, yeah.

10 And what you did is, you said, "Thanks, John. All good." Correct?---Yes.

And what I want to suggest to you is that you were effectively indicating that you were happy with what he'd suggested to you and you were going to go along with it.---Um - - -

At least at the stage of this email.---It's possible. I don't, I don't know for sure, but once again, I knew there was a process.

20 And did you have any discussion with Councillors Cestar or McCaffrey about this communication that you had received from Mr Sidoti?---I suspect I would have if it wasn't right away it would certainly be - - -

THE COMMISSIONER: No, the answer is did you?---I can't remember, I can't.

30 MR RANKEN: You can't remember.---But can I add something there? I would certainly not take it as some sort of secret communication between me and Sidoti, so I knew it would certainly be canvassed amongst my fellow councillors.

Now, just for your – well, can I ask this. Was there some discussion or understanding between you and Mr Sidoti that in fact it would be Mr Sidoti who would let the others know that you were going to move this motion? ---I can't remember. I can't remember.

Could that have been the case?---It's possible, yes, it's possible.

40 So, and if that was the case then it would be consistent, would it not, that the interpretation of your wording in your response to Mr Sidoti, "Thanks, John. All good," would suggest that you were prepared to move the motion that he was suggesting, at least at the time that you sent that email?---It's possible, yeah, it's possible.

And is it possible that, again I think you said it's possible that Mr, there was an understanding between yourself and Mr Sidoti that he would let the other two know that you were going to move it.---That's possible, yeah.

So essentially he would bring them in on the motion that was going to be forwarded or put forward?---Yeah, I would imagine so, yes.

And what, possibly see if he could get one or other of them to be the person who seconded it?---I think at that – that’s possible, that’s possible, definitely.

10 So just for your information, if we could go to page 1146. There are emails, this is an email forwarding effectively that earlier email to you where he suggested that you say, “I move that,” but he’s added the words, “Tanveer is moving, hope this helps,” and it’s forwarded to Ms McCaffrey. Do you see that?---Sure, yeah.

If we go to 1147, this is effectively the same thing happening in respect of Councillor Cestar, but just saying, “Tanveer is moving. Hoping that, Mirjana, you can second.” So that’s suggesting that Mirjana might second the motion.---Sure. If – can I respond to that?

20 No, no, I’m just asking you - - -?---Okay.

- - - do you accept that that’s - - -?---Yes, yes.

So he’s forwarded to you the wording that he wants you to say, and then he has gone and communicated that fact, that you were going to move the motion, and he was hoping that Mirjana Cestar was going to second it. Correct?---Yes.

30 Now, it’s plain from the substance of the motion that he was suggesting that he was seeking to have the area between Barnstaple Road and Second Avenue on Waterview Street included in the B4 mixed-use zone. Correct? ---Yes.

Now, that’s a matter that up to that point, Ms Cestar had consistently not supported, even as recently as 3 November, 2016. Correct?---Sure, yes.

Of all the Liberal councillors, she was the one who had consistently maintained that position right up to 2 August. Correct?---Yes, yes.

40 So did you have any understanding, thinking back on it now and seeing these emails, do you recall this interaction with Mr Sidoti where he was asking you to move a motion in such direct terms?---See, I, I would, I would respond to this where I think he’s over, I think in these interactions I thought he overestimated to what extent we would necessarily - - -

I’m not asking you to speculate as to what was in his mind.---Right, okay, sure.

I was asking - - -?---Yeah.

I was asking you about the fact that you, the view that you had about the interactions you were having with him at this point and particularly in respect of the likelihood that Ms Cestar would be the person who seconded the kind of motion that he was asking you to put forward.---That was not my role to argue, you know, argue whether Mirjana should second it or not. I mean, I, I, it, it may well be that I communicated that I would be willing to move the motion and I, I don't think I was, like, completely against the motion but, and I would be, you know, very much looking towards council and elsewhere for further direction and, and debate but I would, I was certainly not party to anything that was instructing Mirjana how to vote.

Now, I want to now take you to a series of text messages, and these commence at page 1828 of Exhibit 24. You may recall, when I took you to the minutes of the meeting on 2 August, 2016, that I identified that the topic of the additional sites commenced consideration at about 6.54pm. I'll just direct your attention firstly to the message at 111. Do you see the messages are numbered?---(No Audible Reply)

20 And that message is a message from Helen McCaffrey that's sent to Mirjana Cestar and you also see that it was sent to you as well?---Yes, yes, yes.

And it was sent at 7.04pm on 2 August, 2016. Do you see that?---Sure, yeah, it was at the meeting.

Not only in the meeting, in the meeting whilst this topic was being discussed, correct?---Yes.

30 And was this a common occurrence that the Liberal Party councillors would, when a matter was being discussed in an open council meeting, sometimes have these surreptitious private communications going between them about the matters that were being discussed?---Yes, but they were more often amusing little side comments.

Now, do you see that the first message which I've take you to is the message from Helen Mac that appears to be an image file? Do you see it says img\_1477.png?---Sure. Yes, yes.

40 You would reflect that as, you recognise that as being a file name for what was probably a picture?---Yes.

And your response to that is at message number 112, where you said, "WTF?" And I think we all know what that's an abbreviation for. "Is this different? I think we just support option 2." Do you have a recollection as to what that was a reference to?---Well, all I can think was, if the, if the image was something that just seemed to be beyond what we were being recommended or wasn't, wasn't necessarily in the options council was giving us, that probably would have made me anxious and thought, well

what, where is this coming, like, we should go, you know – I basically, would have, would have been a little bit confusing. That, that’s all I can think.

And Ms Cestar then responds, “Last ask to defer to examine FSR on basis that it is not consistent with existing recommendation to the south,” question mark, question mark, question mark. Do you see that?---Yes.

10 And McCaffrey has responded, “Maybe deferred as residents didn’t get,” I think it’s supposed to say, “didn’t get notification.” And Cestar says, “Yes, and examine FSR.” And then Cestar says, “He can eff off.” Do you recall what that was a reference to or what you understood it to be a reference to? ---I can’t remember but I, I can certainly say, well, during this period I think all three of us did feel like we were being overly communicated to, put it that way, yeah.

20 THE COMMISSIONER: What does that mean? I mean, that sounds like – what does that phrase you just used mean?---I, I think we, I think we felt harassed a little, I, I would say that.

MR RANKEN: Harassed by whom?---Mr Sidoti.

And in respect of what?---In, in, in respect of sort of planning decisions.

Any particular planning decisions?---I mean, this particular one, yeah. Five Dock.

30 In fact, this was the only planning decision in which he was harassing you, isn’t that correct?---That’s correct.

And then McCaffrey says, “Foreshadow a motion if it is defeated.” And Ms Cestar has asked, “Then what?” And McCaffrey has gone on to say, “Move the motion I sent through on the photo, option 2.” Do you see that?---(No Audible Reply)

Have you seen, been able to identify that?---Yes, yes.

40 And then Ms Cestar said, “Yes,” and then she has said, “Tanveer, will you?” Cestar said, “Me, and they don’t like losing.” Do you see that?---Yes, yes.

Now, if we were to go to the minutes of the meeting, particularly to page 1169, initially there was a motion that was moved by Councillors Kenzler and Tyrrell and I want to suggest to you if we go through that page, the next page and the page following – sorry, just that page and 1170, that effectively what Councillors Kenzler and Tyrrell were moving or proposing was that there be no change to any of the LEP as a result of the further analysis that had been done by Studio GL and HillPDA, and that that would then put an end to the whole thing. Correct?---Yes.

And that was ultimately put and lost on the casting vote of the deputy mayor. Correct?---Yes.

And the three councillors against were yourself, Ms Cestar and Ms McCaffrey.---Yes.

10 And then moving to the next page, there was an alternative motion that was put forward by, moved by Cestar and seconded by yourself. Correct?---Yes.

And if I could suggest you that that was effectively adopting option 2 in the additional sites report, at least insofar as the Waterview Street site was concerned.---Yes.

And paragraph 2 was effectively accepting the recommendation that nothing should happen with the other two sites that were investigated. Correct? ---Yes.

20 And the remaining provisions were effectively mechanical paragraphs designed to give effect to 1 and 2, or 1 really.---Yes.

Now, that necessitated, did it not, a further public exhibition of the planning controls because obviously there would be changes that needed to be made to reflect the removal of the heritage item. Correct?---Yes.

And the matter was then to come back before the council in late 2016 and specifically on 6 December, 2016. Do your recall that?---Yes.

30 Now, do you recall any communications that you had with Mr Sidoti in advance of that meeting?---I can't remember.

At that meeting on 5 December, or just prior to that meeting on 5 December, 2016, there was an email that was sent to the council by Mr Matthews.---I accept that, yeah.

40 And I'll take you to it. It's an email that appears at page 1313. This is part of an email chain, but the first in time you can see is from Mr Matthews and it's dated 5 December, and it's addressed to Yolanna Boyle and Paul Dewar. Did you know who either of those persons were?---I certainly knew Paul.

He was a strategic planning coordinator at the council. Correct?---That's right.

And we can see that in fact from his signature block on the email above. But it was copied to Helen McCaffrey, who was the mayor at the time. Correct?---Yes.

And it was also copied to Michael Megna.---Yes.

He was one of the other Liberal councillors. That's right?---Yes.

But a Liberal councillor who did not have the ability to participate in any discussions or decisions in relation to this topic. Correct?---Yes.

Now, do you see that in that email, Mr Matthews indicates that he is representing the views of 2 Second Avenue and 37, 39, 41 and 43 Waterview Street?---Yes.

10

And I take it consistent with the evidence you've given thus far that you did not know who in fact owned any of those properties?---Yes.

And do you see that one of the things that Mr Matthews is requesting was that the matter be deferred for consideration to the next council meeting, that is a council meeting after the scheduled meeting for 6 December, to allow Pacific Planning to meet with Studio GL to understand the level of analysis undertaken to inform recommendations that will have a significant impact on the type and level of development that may occur across the block in the future. Correct?---Yes, I can see that.

20

So this was an email by the same person who you had received a forwarded email from through Mr Sidoti. Correct?---Yes.

Concerning the particular item being the block between Second Avenue and Barnstaple Road. Correct?---Yes.

And about seeking to make some further representations to council about what was to be done with that block. Correct?---Yes.

30

Now, council had already considered the issue about planning controls and rezoning and everything in relation to that block at the 2 August, 2016 meeting. Correct?---Yes.

And notwithstanding the fact that Mr Sidoti had sent through to you a proposed resolution that suggested amongst other things that the block could be rezoned as B4 mixed-use, you had not ultimately moved that motion. Correct?---Yes.

40

And so you had been content to adopt the recommendations of the Studio GL at least insofar as accepting option 2 in the Studio GL report. Correct?---Yes. Yes.

And that that was the only appropriate course that you considered to then put forward firstly by way of amendments to the LEP. Correct?---Yes.

And then after public exhibition to receive any submissions and then act upon the advice of council staff.---Yes.

So you can see that one of the things that Mr Matthews also says, and you'll see this towards the bottom of the page where he says that, "The designated development" – this is three lines from the bottom.---Yep, yep.

"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," and then it goes on to provide some examples.---Yeah.

10

Or an example. Now, do you see at the top of the page Mr Dewar has indicated that the request for a deferral of the matter would be circulated to the councillors?---I can see that, yeah.

And so it's likely that it was in fact circulated to you as a councillor.---I would imagine so, yeah.

Now, can we then go to page 1320. Can you see at the bottom of that page there is an email from Mr Matthews to Yolanna Boyle, Mr Dewar and  
20 copied to Helen McCaffrey, Michael Megna and Matthew Daniel?---Yeah.

And I want to suggest to you that that is the same email that I've just taken you to.---Yes.

You can just see the commencement at the bottom of that page. The email at the top of the page is from Tony McNamara. Do you see that?  
---Ah hmm.

And he was effectively the head of the Planning Department at council.  
30 Correct?---Ah hmm, hmm.

And he was a very professional operator?---Yes, yeah, absolutely. Yeah, very well regarded.

And he's essentially forwarded the email that Mr Matthews had sent to council to all of the councillors.---Yes.

That would include yourself.---Yes.

40 And he has also copied it to the general manager of the council, Mr Sawyer, and all other members of the executive team at council. Correct?---Yes.

You recognise those persons who are referred to in the cc or the copy section to be members of the executive team.---Yes, I do, yeah.

Now, this is on the afternoon of 5 December, 2016, that is the day before the council meeting on the 6<sup>th</sup>. Correct?---Yes.



And what he has indicated there is 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.” Do you see that?---Yes.

10 “May I respectfully suggest that the basis for all recommendations has been well and truly canvassed in the various reports despite not suiting all land owners.” Do you see that?---Yes.

And would you agree that that is actually a very accurate characterisation as to what had occurred in respect of both the Five Dock Town Centre Study and in particular this area of land between Second Avenue and Barnstaple Road?---Yes.

It had been done and done to death. Correct?---Yes.

20 And he goes on to say, “Rather than deferring this item may I suggest the item be adopted as per the recommendation and Mr Matthews be advised to submit a planning proposal setting out his client’s preferred position for future development with appropriate planning justification.” Do you see that?---Yes.

And what I want to suggest to you is that effectively what Mr McNamara was saying was this needs to be finalised. Correct?---Yes.

30 And that’s not going to preclude Mr Matthews or his client putting in their own separate planning proposal. Correct?---Yes.

Which would then be considered separately on its merits presumably on the basis of material that would be advanced in support of it as part of any planning proposal. Correct?---Yes.

THE COMMISSIONER: Mr Ranken, I see the time.

MR RANKEN: Yes, Commissioner.

40 THE COMMISSIONER: Is that a convenient time to take a morning tea break?

MR RANKEN: That is convenient, yes.

THE COMMISSIONER: Yes. Very well. I’ll adjourn.

**SHORT ADJOURNMENT**

**[11.41am]**

THE COMMISSIONER: Yes, Mr Ranken.

MR RANKEN: Yes, thank you, Commissioner. Dr Ahmed, we got to the point of the email from Mr McNamara to the councillors, forwarding that email that had been received from Mr Matthews. And notwithstanding that email, ultimately the matter was in fact deferred on 6 December of 2016 and it was deferred in order to be considered at a councillors' workshop in 2017. I say that for your edification more than anything else because, as it happens, it would appear that you did not in fact turn up to the meeting on 6 December, 2016.---Sure, yep.

At which the matter was dealt with. Of course the fact that you were not going to be present at the meeting on 6 December, 2016 would have meant that the number, the way that the numbers fell would not necessarily be in favour of the Liberal councillors, correct? Because you wouldn't be present.---Yep, that's possible, yep, yes.

And in any event it was deferred, but just for your information as well, that was on a motion that was moved by Councillors Kenzler and Parnaby. ---Yes.

Both of those being Labor councillors, correct?---Yes.

It then came back before the council for consideration on 7 February of 2017. And effectively what had come back before council was the same recommendation from council staff as that which was before council in December of 2016, which was a set of paragraphs or a proposed resolution that would give effect to a decision of the council of 2 August, 2016 and have the matter move towards a Gateway Determination because it had been – the position had been August 2016 the council had adopted option 2 from the Studio GL report, correct?---Yes.

That meant the removal of the heritage listing for 39 Waterview Street, correct?---Yes.

That necessitated some changes to the LEP, correct?---Yes.

Because of the substantive nature of those changes, that required public exhibition and feedback from landowners and the like, correct?---Yes.

And then the matter would have to come back for consideration by council before it could go to the Gateway Determination. That's the general process and that's a consistent, ordinary process that you would expect to be undertaken, correct?---Yes.

If I could just go to, firstly, the report that was prepared by the council staff at 1379. This is immediately above the recommendation, can you see that

effectively what was being recommended was, at paragraph 2, that the planning proposal include the removal of heritage item number I486, being the house at 39 Waterview Street, correct?---Yes, yes.

And that's what was being recommended by council staff and you see there's five parts to that recommendation?---Yes.

Now, when we get to the meetings of the meeting at 1409, we have item 2, being the relevant item, correct?---Yes.

10

And there's a list of persons who addressed the meeting, including Mr Matthews of Pacific Planning, representing residents. Do you see that? ---Yes.

And again, you weren't consciously aware as to exactly who he was representing?---No.

20

And then one can see that the resolution that was moved was moved by Councillors Cestar and seconded by yourself. And if you look at those first two paragraphs, they reflect the first two paragraphs of what we saw previously in the council recommendations from the staff, correct?---Yes, yes.

And moving to 1410, I want to suggest to you that 3, 4 and 5 represent the balance of the recommendations that came from council staff, correct? ---Yes, yes.

And then number 6 was an additional paragraph. Do you see that?---Yes.

30

Now, you were one of the persons who seconded this motion?---Yes.

Do you see that paragraph 6 says that, "If the owners of the 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." Do you see that?---Yes.

Now, would you agree that that paragraph has no actual practical operation, correct?---Yes. That doesn't lead to anything immediately from there.

40

In the sense that there's nothing that council staff would need to do, correct?---Yes.

Or that council would need to do in respect of that?---Yes.

It seems that that paragraph is some kind of communication to the residents in the area who might believe that there is a better planning outcome. Now, given that you were one of the persons who sponsored this motion, as it were, you were the seconder, are you able to assist us in how it was that this

final paragraph came to be included in the resolution?---I, I don't have a clear memory but obviously it has significant overlaps to the email sent by Mr McNamara.

And that's an email sent by Mr McNamara back in December 2016?---Yes.

It doesn't appear though in the recommendations of the report that was prepared by council staff for the purposes of the meeting in February 2017? ---Yes.

10

Was this the position, though, was there some discussion between yourself, Councillor Cestar and Councillor McCaffrey about possibly including something to that effect?---If there was, I can't remember.

Well, is it possible that it came up during the course of the meeting itself? ---It's possible, yeah.

Is it possible that one or other of yourself, Councillor Cestar or Councillor McCaffrey suggested the inclusion of this paragraph?---It's possible.

20

When one looks at the voting, the vote was passed on the casting vote of the mayor and those in favour were yourself, Cestar and McCaffrey, correct? ---Yes.

So all the other councillors voted against it, correct?---Yes.

So we could probably safely exclude them from being the persons who proposed that paragraph?---Yes.

30

So, whether or not it was you, council McCaffrey or Council Cestar, it was one or other of the Liberal councillors that suggested that?---I would suspect so, yes.

And as far as the residents – what I want to suggest to you – as far as the persons to whom they were directed, did you understand that that included Mr Sidoti?---No, not necessarily, no. Not clearly.

40

You don't have a recollection as to that being in your mind, that this was actually a communication to Mr Sidoti?---I don't have that. It was fairly, I guess, a knockback of sorts to some of the advocacy, but I certainly wasn't – that's not how I was interpreting that directly - - -

No?--- - - - at the time of the motion, no.

No. So you would dispute that this was, insofar as you were supporting that aspect of the motion, that you were trying to communicate to Mr Sidoti that enough is enough, I'm sick of you hounding us or vexing us.---It's certainly not how it was discussed and I couldn't, I, I would interpret that as us

following the process of the council and taking the advice of our most senior planner. That's how I would interpret that motion.

And, of course, that was something that could have been done back in December of 2016, correct?---Possibly. But that email was especially firm. That was a very strong communication and, you know, and that's a very strong direction and I think we, you know, that was, that was powerful.

10 Now, just going back to page 1410, one can see that, following the recording in the minutes of the motion that was passed on the casting vote of Mayor McCaffrey, there is then set out a motion that was foreshadowed by Councillor Kenzler. And I want to suggest to you that when one reads that motion, that what it effectively was was a rescission motion that was being foreshadowed by Councillor Kenzler.---I accept that, yeah.

20 And to effectively allow the possibility of not proceeding with option 2 as the council had actually determined, albeit on the casting vote of the mayor in August of 2016, but rather to revert to option 1, which would mean there would be nothing further done, correct?---Yes.

And that rescission motion came before the council on 21 February, 2017. ---Yes.

So two weeks after the meeting on 7 February. And do you recall whether or not you had any further communications with Mr Sidoti in the interim about this proposed rescission motion?---I certainly can't, I can't remember any.

30 No. Because up to the, as at 7 February, 2017, the matter was essentially put to bed, wasn't it, correct?---Would certainly have hoped so, yes.

And whilst Mr Sidoti had not achieved the rezoning of that block of land between Second Avenue and Barnstaple Road, there had been some achievement insofar as there'd been the removal of the heritage listing for number 39 Waterview Street, correct?---Yes.

And the rescission motion threatened to undo all of that, correct?---Yes.

40 And effectively put things back to the position that was taken by the council, at least insofar as the Five Dock Town Centre Study area was concerned in November of 2015.---Yes.

Now, as I said, the rescission motion was to come before the council on 21 February, 2017. And do you recall having some communications with Mayor McCaffrey and/or Ms Cestar in which it was conveyed to you that you needed to make sure you were present on 21 February?---I, I don't remember.

You don't remember? Perhaps if we could go to 1412 in Exhibit 24. Do you see that? There's an email there from Ms McCaffrey to each of you and Ms Cestar on 16 February, saying, "The rescission is on this Tuesday. Will you both be there, hopefully? Regards." See that?---Yes.

And as it happens, you did, you and Ms Cestar did in fact attend the meeting on 21 February.---Yes.

10 Now, prior to attending the meeting, do you recall receiving an email from Mr Matthews?---I don't.

Well, you understood Mr Matthews was one of the persons who, or he represented the residents in the area who had a different view about the planning proposal. Correct?---Yeah, I remember him from Pacific Planning. I, I did know who he was, yeah.

20 Yes, but also, he was the person whose email Tony McNamara had specifically addressed back in December 2016 in a way that you considered was quite strong.---Yes.

In which he'd suggested, well, if you want something different you can put in your own planning proposal. Correct?---Yes.

Now, if we could go then to page 1428. Here we see an email from Mr Matthews and it's addressed to Ms McCaffrey and Ms Cestar, but it's copied to you and I would suggest an email address that is Mr Megna's work email address. Do you see that?---Yes.

30 And this was sent at 3.14pm on the afternoon of 21 February, 2017, right? ---Yes.

So less than three hours before the meeting was due to start at which this matter would be discussed.---Yes.

And do you see that it says, "Dear Mayor and Councillors." Correct?---Yes.

But it's only been forwarded to the Liberal councillors.---Yes.

40 "I understand that a motion of rescission has been received and will be considered at tonight's council meeting. I am acting on behalf of the landowners and spoke at a previous meeting of 7 February." Okay. Correct?---Yes.

So no doubt about the fact that he's the person, well, his clients would be persons who were covered by paragraph 6 of the motion of 7 February, 2017. And you can see in bold it says, "It is my strong planning opinion that the rescission motion is not supported and I encourage you to consider

moving the motion in the attached document.” And then he says, “I have addressed the reasons below.” Do you see that?---Yes.

And then there’s a whole lot of reasons that I thought you would by now were probably well-versed in, given the amount of times the matter had come back and forth before council.---Yes.

10 But could we go along, over to page 1329, first of all, or it’s the next page. Now, you can see it says, about halfway down that page, says, “That the motion of 7 February, 2017 be carried and the following amendment be included. 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.” Do you see that?---Yes.

20 And then a mechanical provision that, “The planning proposal be amended accordingly and submitted to the Department of Planning and Environment for a Gateway Determination.”---Yes.

So this was effectively saying, well, notwithstanding what the council had resolved on 7 February, not only am I suggesting to you that you should not support the rescission motion, but let’s go back and have some increased heights and floor space ratio for that block or for that part of the block that fronts Great North Road. Correct?---Yes.

30 And did you have a view about the appropriateness of such a suggestion to you and your fellow councillors?---Look, I think by this stage – I mean there’s a very good chance I would not have even read the email. I think by this stage, I think we’d thoroughly canvassed the topic and coming from him, I don’t think I would have given it much notice.

And do you say that still at this point, that is at 21 February, 2017, you did not have any appreciation that amongst other persons, Mr Matthews represented the interests of the family of Mr Sidoti?---No.

40 If we could go then to page 1430. Can you see just that he’s also attached the actual form of the resolution that he was proposing that the Liberal councillors might advance. Correct?---Yes.

But you do understand though, don’t you, that the kind of resolution that Mr Matthews was putting forward here, and indeed on previous occasions, were the same kinds of resolutions, or outcomes I should say, that Mr Sidoti had been advocating to you, correct?---Yes.

But you never put two and two together to consider that perhaps Mr Sidoti had some interest beyond that which about simply representing certain constituents in the area?---Look, I should have, certainly, in hindsight. I

most certainly should have and it'll, it'll sound naive now in hindsight but it's not something that I thought was in the realm of probability so it wasn't something I was, I was thinking of. And it is interesting, like, when it comes directly from someone like him, an email, it didn't carry much weight even though, yes, in the past I, I linked him with Mr Sidoti's email as well, I think when it came directly from him, I would not have given it much weight.

10 THE COMMISSIONER: You're referring to Mr Matthews?---Yes, that's right.

MR RANKEN: So when the email came directly from Mr Matthews to you, you didn't give it much weight but you did give it some weight when it came from Mr Matthews via Mr Sidoti, is that the point you're trying to say?---Yes, yes. That's exactly the point I'm trying to make.

20 So the fact that a representation from Mr Matthews may have been passed onto you by Mr Sidoti meant that you were prepared to give it your genuine consideration?---Yes.

And is that because of the particular position that Mr Sidoti held as being the member of parliament for the seat of Drummoyne?---Yes.

And is it also because of the particular position that he held within the Liberal Party as you perceived it?---Yes.

30 In effect, the weight of his office and his position within the Liberal Party was what lent some credibility to the submissions that were being forwarded to you?---Absolutely.

Now, as it happens, you will recall, that at the meeting of the council on 21 February, 2017, the rescission motion was defeated on the casting vote of the mayor and neither you nor any of your fellow Liberal councillors put forward the items that had been suggested by Mr Matthews, correct?---Yes.

And that effectively put the matter, as far as the Waterview Street site in the Five Dock Town Centre Study, to bed?---Certainly hope so, yes.

40 Now, that is February 2017. Moving forward to July 2017, we're in a position then when there is some gearing up for the local government elections that were to held in September of 2017, correct?---Yes.

And that meant that there was a need for you and other persons who may be interested in seeking office to put nomination forms with the Liberal Party to be considered to be on the ticket, as it were, for the local government elections, correct?---Yes.



And did you have some discussions in advance of putting in a nomination for yourself with your fellow sitting members?---I should clarify my own position there because I think it's quite different from the others. So, one, we should, I think it's worth giving context that during 2016, I think, it was State Government policy, potentially, to merge the councils. So I think even through some of these votes we're talking about, there was a quite a bit of uncertainty about the future of City of Canada Bay. There was a very good change that City of Canada Bay would not exist. So I think the idea of, probably for a good 12/18 months, I certainly had a great deal of  
10 uncertainty, both about the future of council but also about whether I would recontest. I, I think I, I, I certainly wanted to be on local government but even with regards to these proceedings and, I think which are relevant, I really didn't, it was, local government was virtually a voluntary role and there was a part of me that felt, I just cannot give it justice in, in terms of time. So I would, I would say I was noncommittal about continuing in local government, yeah.

20 THE COMMISSIONER: With respect, I still don't think you've answered the question.

MR RANKEN: Which was, did you have discussions with your fellow sitting - - -?---Yes, yes.

And those discussions were about the four of you working out the order in which you might appear on the ticket, is that correct?---Yes.

And were those discussions held before you became aware of who else may have put their names forward for nomination to be on the ticket?---Yes.

30 So up to that, I mean, on the previous occasion when you were elected to the council, you told us that there had been a discussion between the four of you and you were happy to be number 4 on the ticket, correct?---Yes, yes.

And you had indicated to us that, in fact, that meant that there was no certainty you would in fact be elected to council, is that right?---Yes.

So do we take it, then, that the discussion was of a similar kind, like who would be number 1, 2, 3, 4, correct?---Yes.

40 And what was the arrangement that you had worked out with your fellow sitting members?---Well, I had no objection to being number 4 again, and in some ways that suited my own - - -

THE COMMISSIONER: Just think about the question.---Yep.

MR RANKEN: What was the arrangement? Who was to be 1, who was to be 2, who was 3, who was 4?---There was, there were no discussions of any

changes. So Michael Megna number 1, Helen McCaffrey number 2, Mirjana Cestar number 3 and me number 4.

And had there also been discussion amongst you as to which of your number might consider to run for the mayor position?---Yeah, Helen, yeah, absolutely, yeah.

And was that because, up to that point, she had in fact been mayor for a period, correct?---Absolutely, yeah.

10

And would you agree that she had been doing a fine job as mayor?---She was well regarded, definitely.

Well regarded?---Yes.

Well regarded amongst not just the Liberal councillors but the other councillors on council, is that correct?---Absolutely, and throughout the community, yes.

20

And throughout the community. And that was a sense that you have, a strong sense of that?---Yes.

Now, when you've put in your nomination form, did you seek support from any particular persons of your application to be on the ticket?---Yeah, I would say it was a terribly – again, it was fairly non-committal but I did, I did, I did go to John, I think, yeah.

30

And what did you ask of John?---Not a great deal, to be honest. I think I needed a form, essentially. I needed someone to nominate or something along those lines. But it wasn't terribly hefty discussion, no

And was he able to assist you in that or did he tell you he could not assist you?---For, for, I think he said, I think, I think he said (not transcribable) I think his wife could be some sort of nominator or something like that.

But he could not by reason of his position, is that right?---I, it may have been a party-related, it was some sort of administrative or bureaucratic reason that he couldn't, yes.

40

Now, did you ask any other support from him? For example, would he be prepared to write a reference to the State Director in support of his, your nomination or anything of that kind?---No, I didn't.

Did he provide any such kind of letter of reference when you previously ran for council in 2012?---I don't think so.

Yes, okay, that's fine. So when it came to putting your name forward at the, in the nomination process, you're able to put your name down for a particular position on the ticket, correct?---Yes.

And even though you yourself have told us that you were happy to be the number 4 spot, as it happens, you in fact put your name forward for every spot on the ticket other than the mayor, is that correct?---Yes.

10 And so why was that? If there'd been this arrangement that had been worked out amongst the four of you, why was it that you put your name forward for every position on the ticket?---I can't actually remember, but it's something to do with process there. I'm not quite sure how it works. But I think it was that understanding that I would be number 4.

But – and I suppose at that point you weren't aware of any other persons who were nominating for preselection, correct?---No.

20 As it happened, you did become aware, did you not, that two other persons had nominated for preselection, being Mr Yap and Ms Di Pasqua.---Yes.

Did you know either of those persons before you saw their names as being persons who had nominated?---Yes, knew them, certainly knew Nick Yap well and I knew of Stephanie Di Pasqua as well

How did you know of Stephanie Di Pasqua?---I knew Stephanie through John's office and certainly through meetings. The family was, were closely involved. And in fact, I remember John once telling me that their family effectively controlled one of the branches.

30 Their family? Which family?---The Di Pasqua family.

The Di Pasqua – Mr Sidoti told you the Di Pasqua family - -?---Well, he, he alluded once that, look, they basically control one of the Drummoyne branches, the family.

Well, how many Drummoyne branches are there?---There's two, possibly three. I think there's two branches, yeah.

40 Of the Liberal Party?---Yes.

Within Drummoyne or do you mean, do you mean the Drummoyne electorate?---No, no, in Drummoyne branches, yeah. There's two different Drummoyne branches, yeah.

Oh, right. So one or other of the Drummoyne branches was actually controlled by the Di Pasqua family?---Can't remember if he used the word "controlled", but he certainly alluded that they had a lot of influence in one of the key branches.

So when you saw her name on the list you must have felt that well, she could be at least assured of the support of that branch?---Look, I did see her name and, and thought – well, I certainly knew the background behind her (a) she, she was, she worked for Mr Sidoti. Her family was heavily involved. Her mother worked for Mr Sidoti. She was Italian, that was a clear advantage in this area, and, and she was quite capable. In my dealings with her she was quite capable so I saw her as, as a real chance.

10 But do I take it just from the manner in which you're giving your evidence today that you were quite ambivalent one way or the other as to whether or not you even got onto the ticket. Is that it?---I think that's fair to say, yes.

So does that mean that you didn't actually care that there were other people who were running for the ticket?---Oh, that's probably excessive. I think once you're in the room you kind of, you know, you're, you're certainly interested in, in the sport of it and there was still a part of me that, you know, you've, you've put your hat in the ring so there was definitely a part of me thought okay, well, I'm here, let's see. But I wasn't, I would not be, I  
20 was certainly not going to be heartbroken if I, if I didn't get on.

Once you saw that there were more than the existing four councillors who were putting their names forward, did you have concerns that there might actually be an alternative ticket that was being arranged?---I don't, I wouldn't say I was thinking that deeply about it but it did make me think well, okay, this is a, for, you know, a relatively modest municipal vote if you like. It was, it did feel like there was a bit more edge to it and there was a bit more drama about it and was scheduled at a funny time too because Helen was away. So it did feel like there was, it's not something afoot but it  
30 did feel like there was a, there was a bit of drama and edge about the vote.

So what was the drama and edge? You've described one aspect of it, that it was scheduled at a funny time, that is when Helen was away. Did you have some discussions with some people about that's a bit of an odd timing? ---Look, I didn't see it as my role. I was, I think I was too far down the pecking order in that sort of stuff to make those sort of representations.

Well, what about amongst your fellow members of council with whom you had come to an arrangement in terms of the order in which she'd appear on  
40 the ticket? Were you not like oh, this is going to send things into a bit of a flux or could send things into a flux. What do you think of this?---I think I definitely anxiety, from memory I definitely got a sense of anxiety from Helen and Mirjana. I think there was definitely a degree of anxiety.

Well, what did they say to you about it?---I can't remember. I can't remember. I certainly don't remember specifics but I don't doubt there was a sense that they felt a little bit anxious about the vote.

Did they suggest to you that they felt anxious about the possibility that Mr Sidoti had arranged an alternative ticket?---If they did, I don't remember that. I don't remember.

You don't remember them ever mentioning anything about the possibility that Mr Sidoti was running candidates in positions in order to unseat them from council?---I don't remember any such discussion.

10 Did you have any perception in terms of yourself as to whether or not this might be directed towards you, the possibility of an alternative ticket?---It would not have entirely surprised me.

Why would it not have entirely surprised you?---I thought it would have been in the realm of, you know, even though I was relatively naïve I was starting to learn the game so to speak so I - - -

20 What were you learning of the game?---What may or, may or may not happen in politics is, may have nothing to do with the merit of anything you've done. I would see it in the, I would see it in the accepted range of political behaviour that we could be unseated.

But you just expressed in that answer that in politics what may or may not happen may have little to do with the merits of what you've done. Correct? That suggests that you had a concern that notwithstanding that you were satisfied that the merits of the things that you had done as a councillor were meritorious, that someone within the Liberal Party might have thought otherwise. Correct?---Yes, that's possible.

30 And did you – well, let's get a little bit more specific about that. Were you particularly concerned that the merits of the position that you had ultimately, the positions you had ultimately taken in respect of the issue of the Five Dock Town Centre Study and the block between Second Avenue and Barnstaple Road in particular, were not shared by Mr Sidoti?---No, that's not what I was thinking, but I did have a thought, and I'll give you that, but John, Mr Sidoti had told me in conversations, I remember him expressing a belief that he felt like the old, some of the councillors that had been on council for a long time were not terribly supporting him of being on council there, like we're talking whether it's Drummoyne or City of Canada Bay, I can't remember the exact - - -

40 I'm sorry, I don't understand what you've just said.---So my suspicion was, when I first saw what happened, that it may have had something, I remember a conversation I had with Mr Sidoti in the year or two prior where he was talking about the history of his political involvement and I do remember him talking about that he felt he was slightly blocked from getting on like, whether it was Drummoyne or City of Canada Bay in the past, which is partly why he went to Burwood, and I sort of thought that might have had something to do with it.

If I'm understanding you correctly, are you suggesting that you had had a conversation with Mr Sidoti in the one or two years prior to the council election in 2017 in which he expressed some view about the fact that he'd been prevented from getting onto the City of Canada Bay Council by what, by the fact of - - -?---By the Liberal - - -

- - - the Liberal council candidates who were - - -?---Especially the older ones, some of the older ones, and again I can't the specifics of it.

10

If I can just hold you there.---Yeah.

The only persons he could have been referring to in that regard were either Helen McCaffrey or Michael Megna. Correct?---That's correct.

Because prior to 2008 they were the only councillors who had ever been on, sorry, Liberal councillors who had been on the City of Canada Bay Council. Correct?---Yes.

20

And in fact they had only been on the City of Canada Bay Council since 2004.---Yes, and Michael, the old, the previous Drummoyne, yeah.

Yes, but insofar as Mr Sidoti was concerned, he didn't stand for election in 2008 for the City of Canada Bay Council, he had moved to Burwood and stood there. Correct?---Yes.

And Ms Cestar was not previously on the council until 2008. Correct?---Yes.

30

So that must mean that any comments that Mr Sidoti was saying about that could only have been directed to either Mr Megna or Ms McCaffrey.---Yes.

Well, did he express a view about either of those?---It was a fairly casual conversation but when – I'm trying to put my views in context, because that's actually what I thought of, rather than the development decision, I was thinking, oh, I wonder if that had something to do with it.

Oh, right.---Yeah.

40

So regardless of that, whether it was – I mean you did turn your mind to the possibility that it was a development decision. Correct?---It was, it was a possibility, yeah.

So but you had that as a possibility in your mind and you also had the possibility in your mind of what Mr Sidoti had told you in respect of his own political career and who had been in his way, as it were.---Yes, that's true.

And you thought that that might be what's behind it. Correct?---Possibly, yeah.

In both of those scenarios that you had in your mind at the time, this is in 2017, it's Mr Sidoti who you considered to be possibly behind the organising of an alternative ticket. Correct?---I definitely expected him to have a role.

10 But a principal role. Correct?---Possibly, but I guess what I would say, knowing what I knew about the Di Pasqua family, I couldn't say he was, I knew that they were pretty influential in the branch.

Hang on.---Yeah.

You've told us about two possibilities that you had in your mind.---Yeah.

One was the planning decision that you accept he was not happy with. ---Yes.

20 THE COMMISSIONER: When we're talking about the planning decision we're talking about?---Yes.

What?

MR RANKEN: What planning - - -?---Oh, the Five Dock, Five Dock.

And in particular the Waterview Street site - - -?---Yes, yes.

30 - - - if I could call it that, between Barnstaple Road and Second Avenue. ---Yes.

The second other thing was the, his history of persons who had blocked his political career. Correct?---Yes.

Both of those motivations are motivations that were particular to Mr Sidoti. ---Yes.

40 So if they were what was behind it, he must have been a principal role, in your mind, had a principal role in the possible organising of an alternative ticket.---Yes.

So going back to a question that I actually said at some time before but I think you did not agree with, it was in your mind that Mr Sidoti may be behind the organising of an alternative ticket.---Yes.

Now, did you discuss that with anybody, that you had this idea that maybe he was behind an alternative ticket?---No. It wasn't – I certainly felt for Helen, particularly Helen, but certainly Helen and Mirjana, because it was a

dramatic vote, so I was upset for them, but I myself was not terribly upset and I was, I was happy to move on, yeah.

So going back to your understanding, as I understood your evidence, this was an understanding you had when you came to see that there were Ms Di Pasqua and Mr Yap who were also contesting for preselection, correct?  
---Yes.

10 So it's something that you had in your mind prior to the preselection event, correct? Itself.---Yes.

And one of the reasons of that was because, of course, the preselection event had been organised on a date that was not suitable to Ms McCaffrey because she was going to be away with her family.---Yes.

20 And you said that the vote itself on the day was quite dramatic?---Yeah, as I was alluding to, where this was a relatively modest municipal vote. So the, I think the nature of it felt – and I'm relatively inexperienced at preselections, but yeah, it had a, it had a drama and edge to it that was, was more similar to a state or federal type preselection, yeah.

And by that do you mean because of the number of persons who had attended to see it, to witness it?---Yeah, all of those things and the fact that, yeah, it was on an alternative ticket and there was a lot of jockeying, if you like, yep.

30 So that suggests that in your mind by the actual date of the preselection event, you were aware, in fact, that there was an alternative ticket.---No, I wouldn't say that.

Well, you just said the fact of there being an alternative ticket. That was one of the things that made it a dramatic day. Or is that - - -?---I wasn't, I wasn't aware that there was a definitive alternative ticket. There was obviously alternate players. But in terms of there being a definitive alternative ticket, I certainly wasn't aware. It was certainly possible, but I wasn't aware of it, yeah.

40 But you said also that there was a lot of jockeying on the day.---Oh, any time where there's, there's a competition, you know, there's, there's people vying for votes and – and I guess there was a funny tension, just the fact that, I guess, there were new entrants that were slightly unexpected. But I, I saw that as a positive. I thought that's good, that shows, you know, council's a worthwhile position and people are fighting for it, so I didn't, I didn't see anything untoward about it.

Was Mr Sidoti present?---I would think so, yes.



And were there other persons who you saw who were present who you did not know to be members of any of the branches within the City of Canada Bay local government area?---I would not be an expert of who, who or isn't attends all these branches, but there was certainly lots of people there that I didn't know or recognise.

But they could have been persons who were not members of the Drummoynes branch.---Exactly, yeah, they could have been.

10 That's your position?---Yeah.

Do you know a person by the name of Joseph Tannous?---Yes, yes.

How do you know Joseph Tannous?---Just through meetings, et cetera, and I knew that he, you know, was, was significant in terms of, you know, preselection. He was, he was an important player, if you like.

20 Important in what way?---Well, you know (not transcribable) he was, you know, he was, I'm not sure if he was a lobbyist then, but he was certainly renowned as a, as a mover and shaker and a kind of deal, a deal-maker of sorts.

Deal-maker within the Liberal Party, is that right?---Yes, yes.

30 THE COMMISSIONER: What sort of deals?---Every kind. Preselection and I think he was a – I'm not sure if he was a lobbyist then, but he may have been. So he was one of those, he was a, he was one of the classic characters in politics you get that are, you know, on every side of the divide. They're, they're lobbying on one side, they're doing preselections here and – so he was an important, I knew he was an important mover and shaker, but he was a bit further away. He was in Strathfield area and we had less to do with him.

MR RANKEN: Would you agree he was a powerbroker within the Liberal Party?---That's a, yeah, it's a fair description, yeah.

And in relation to, you said in relation to preselections. Did that include preselections for local government elections?---Yes.

40 THE COMMISSIONER: What skills did he bring to bear in relation to preselections for local government?---Well, he could run a meeting.

No, no - - -?---I guess, you know, political skills. You know, he could, he controlled numbers. He would - - -

I'm sorry, you used the word "deal" and then you explained that would include preselection deals. What does that phrase mean?---Essentially it means, you know, that's the art of politics, trying to get people to vote, you

know, getting people in certain positions and getting motions, getting, you know, particular positions passed and then it's the dark arts of politics behind the scenes, yeah.

When you said getting people into positions, you mean positions on a ticket?---Potentially, yeah, absolutely.

MR RANKEN: And do you also mean generating support amongst the kind of persons who might vote for the ticket?---Yes.

10

That is, the delegates.---Yes.

And doing deals in order to get that, is that what you're saying?---Yes.

And did you come to learn whether or not Mr Tannous had had some involvement in that kind of deal-making in relation to the preselection on this occasion in 2017 for the City of Canada Bay Liberal ticket?---It's possible Mirjana or Helen may have mentioned something but I can't remember anything for sure. But to be honest I would be surprised if he wasn't involved. Like, I would expect, I would him to be, have a hand in, in, in any sort of preselection in that area.

20

In the City of Canada Bay?---I would, yeah, just that whole region of, if not City of Canada Bay, certainly that region.

THE COMMISSIONER: Why in that area or region?---This his domain, so to speak, you know, Strathfield area and everything and everything that kind of overlaps, that sort of, the middle western part of Sydney, he, he was an important sort of mover and shaker there.

30

MR RANKEN: Even though he was not a member of any branch within the City of Canada Bay local government area?---Yes.

And as it happens, you did not make onto the Liberal Party ticket, correct? ---No.

And nor did Ms Cestar?---Correct.

Were you surprise when Helen McCaffrey did not make it onto either the number 1 or number 2 position?---Yes. Certainly number 2, I would have expected her at number 2.

40

THE COMMISSIONER: Did you regard her prospects for either of those positions, 1 or 2, as being good?---Absolutely, yes. Certainly number 2, I would have expected her at number 2, yeah.

MR RANKEN: But also, she was the mayoral candidate effectively, wasn't she?---Yes.

Ms Di Pasqua had initially nominated for the mayoral position but had withdrawn that nomination, I think, on the day, is that correct? Does that accord with your recollection?---Yes. That, that sounds right. Yes, it does, yeah.

10 THE COMMISSIONER: Would that be surprising that somebody who's not previously been in politics, particularly local government politics, perhaps at about the age of 20, would actually put him or herself forward for the first preselection ever that they had been involved in for the position of mayor?---Well, I certainly, I certainly felt that putting your hat in the ring as mayor as a 20-year-old is precocious, was precocious but, but certainly her, putting herself on the ticket I didn't see as, as extraordinary.

MR RANKEN: Now, Ms Cestar, were you surprised to see that she did not achieve either the number 2 or the number 2 position on the ticket?---I wouldn't say I was hugely surprised that myself - - -

20 Why were you not surprised about Ms Cestar, I'm just speaking about Ms Cestar, not yourself, Ms Cestar?---Oh, sure. Mainly because there is jockeying for positions and, and, you know, we were lower down, both Mirjana and myself were lower down on the, on the order. So, if, if people are going to get dumped, it was likely to be her and myself.

THE COMMISSIONER: Ms Cestar had become quite vocal in her opposing the expansion of the rezoning into the we've been talking about, Barnstaple Road and Waterview, Second Avenue, had she not?---Yes but I, I would add - yes.

30 She had. And after June 2016, what had previously been a unanimous position across party lines started to fracture, did it not, with her siding with, for example, one of the non-Liberal Party councillors to oppose the expansion of the rezoning as Mr Sidoti had been advocating?---Yes.

And are you able to say whether you were aware of whether there was some disaffection or disapproval of her having, in Liberal circles I'm talking about, having adopted that role as opposing?---I'm not aware of any.

40 MR RANKEN: And ultimately the outcome of the preselection meant that neither you nor Ms Cestar were on the ticket at all, correct?---Yes.

And that effectively ended your time on council, in the sense that at the next election neither of you were going to be elected at all?---Yes.

Ms McCaffrey was up for election for the position of mayor but also she was number 4 on the ticket. Correct?---Yes. Actually can I add there sorry, Peter, I think I ended up on the ticket on an unwinnable position.

Number 5. Is that right?---Yeah, yeah, yeah. Yeah, I think - - -

So you actually ended up - - -?---That was more just to make up the numbers sort of, yeah.

Yes, and I think that in fact you only nominated for positions 1, 2, 3 and 4 because they were seen to be winnable positions at that time. Correct?  
---Yes, yes.

10 And then the fifth one was just well, you were happy to just be on the ticket on the off chance that something happened.---Yeah, just - - -

Correct?---Yes.

But by this stage, of course, one of the issues that was fairly significant in the context of local government was the prospect of amalgamations. You've already told us that. Correct?---Yes.

20 And that was a policy that was being driven at a state level by the State Liberal Government. Correct?---Yes.

And it's fair to say that that was an issue that was of some concern to the electorate and the constituents of the City of Canada Bay local government area. Correct?---Yes.

And was relatively unpopular.---I think in surveys, I think they'd done surveys suggesting it may be unpopular but I mean I'd argue, I'd say they were self-interest surveys to some extent.

30 But there was some - - -?---Yeah.

There was some suggestion that it was unpopular amongst the City of Canada Bay. Correct?---Yes, yes.

And you would have apprehended, would you not, that that might well be, that unpopularity might well be reflected at the ballot box. Correct?---It's possible.

40 And possibly at the ballot box at the local government elections. Correct?  
---It's possible.

So being number 4 or number 5 on the ticket would have meant that it was highly likely that you would not get elected to council.---That's correct.

And in the event neither you nor Ms McCaffrey were successful at the local government election. Correct?---Yes.

And that meant that of the four Liberal councillors that had been elected to council in 2012, the three who were able to vote in respect of the Five Dock Town Centre Study and associated planning proposals and in respect of the particular site on Waterview Street between Barnstaple Road and Second Avenue were no longer members of council from September 2017.  
Correct?---Yes.

10 Just one moment, Commissioner. Yes, thank you. They're my questions.

THE COMMISSIONER: Yes, thank you. Mr Neil, do you wish to cross-examine?

MR NEIL: Yes, I would, thank you, Commissioner.

THE COMMISSIONER: Yes, I grant leave.

MR NEIL: Thank you very much. Dr Ahmed, I represent Mr John Sidoti.  
20 Is the dark arts phrase that you've used one directed towards the exercise of political skills?---Yes. I don't, it's not a, it's not really a negative connotation. I think it's, it's just part of playing politics so I don't see it as a, as a negative thing. It's just a, it's an important skill that you don't, they're important skills. They don't, that you don't immediately see but are, are intricate to, you know, the various political processes.

Did you come to understand in your time within the Liberal Party – I should interpret that. Are you still a member of the Liberal Party?---Yes, I am.

30 Thank you. Have you come to understand in your time in the Liberal Party that the party when in government seeks to provide to the community both good policy and good politics?---Yes.

Such that one man or woman's dark arts might be seen by another man or woman as the exercise of democracy. Correct?---Yes.

And you say that on the day of the preselection, and I'll come back to some detail later, there was some edge or some vibrancy. I don't think you used that word but something similar. Correct?---Yes.

40 Was that an emanation of the exercise of members' democratic rights?  
---Yes.

And there was a secret ballot, was there not?---Yes.

And each candidate would address the selection panel separately from other candidates. Correct?---Yes.

So that other candidates did not have the benefit of listening in on their opponents' speeches. Correct?---Yes.

And would it be correct to say that with the Drummoyne seat being taken by the Liberal Party in 2011, the federal seat in the area some seven or eight years later, and Liberals having up to four members of the Canada Bay Council, these were, for the Liberal Party, historically positive events, correct?---Yes, absolutely.

10

They provided a degree of morale boost for the members.---Yes, I would agree.

And likely to be an incentive to people to want to put themselves forward for local government with there being a better chance of winning, correct?---Yes.

20

Because if the position were that putting yourself forward was really, in the long run, a dead loss because you're not going to get elected and have any real chance, that's a disincentive to put yourself forward for preselection, correct?---Exactly.

Now, you have said that Ms Di Pasqua and, I think you say, family members had some control of one of the branches in the Drummoyne part of the electorate, is that right?---Yes.

THE COMMISSIONER: Well, you said "control" and then I think later you toned it down.---I don't know. I don't know the - - -

30

No, wait a minute. Just let me finish talking.---Yep.

You used, I think you withdrew that and said "influence".---Yes.

Is that right?---Yes.

MR NEIL: Thank you. Thank you, Commissioner. Now, as you understood it at the time, was she a young lady who you understood was ambitious and capable?---Yes, yeah, I would say I did, yep.

40

And to the extent that you knew Mr Yap, would you describe him as ambitious and capable?---Yeah, yeah, I would say so.

All right, thank you. And now Ms McCaffrey had been a councillor for quite a considerable time, is that right?---Yes.

Did she have influence in the Concord branch?---Yes, she did.

Now, just going back a little to another topic. Might the witness, Commissioner, be shown page 1441.

THE COMMISSIONER: Yes.

MR NEIL: Sorry, I may have got the wrong reference. I'm sorry, I'm correct I'm told. 1441, I'm sorry. Now, this is an email trail, I think they call it, and at the lower part of the page there's an email from Sean Durkin dated Sunday, 4 December, 2016, at 4.42pm. Do you see that?---Yes, I do.

10

And were you a recipient of that email? As it appears, your name is shown towards the end of the page?---Yes, yeah, I can see it, yeah.

Now, did you at any time between 2014 and 2017 meet or speak with Mr Durkin?---I can't remember who he is. I don't know who he is, yeah.

Did you ever attend a meeting of council at which he'd address the council?---It's possible but I can't, I can't remember who he is.

20 And this subject matter is said to be draft DCP, do you see that?---Yes.

And it's addressed to councillors, do you see that?---Yes.

And do we take it it's an email that you would have read?---I can't guarantee it but I suspect, I suspect I would have.

Thank you. And if you go – could the witness be shown 1142, Commissioner? If you look at the fifth paragraph on that page, do you see that Mr Durkin is saying that “It is well known that Mr Sidoti's family own property at the Great North Road reception centre adjoining my house, the property adjoining the reception centre to the north, as well as Second Avenue.” Now, do you remember reading that paragraph, as you sit in the witness box, or not?---Look, I wouldn't say I remember it clearly, no.

30

Could it be that you had read that and, over the passage of time, your memory about it had faded?---When, I'm not sure when this was sent but I was certainly aware that he owned the reception centre, so it was not new information there.

40 But what I'm asking you, as of 4 December, 2016, is it likely that you would have actually read this letter which was averring not only that Mr Sidoti's family owned property at Great North Road reception centre but property adjoining the reception centre to the north, as well as Second Avenue?---It's, that was not well-known to me.

But is it reasonable to suggest that it is likely that you read the information conveyed in that paragraph on or about 4 December, 2016?---Yes.

Right. And if we go down to the third-last paragraph on the page, is it likely that you would have read the part of that paragraph starting in the second line, at the end of the second line, "I'm sure that the Sidoti family want to gain financially from any rezoning, but if that was a crime a lot of people would be in gaol?"---(No Audible Reply)

Is it likely you would have read that?---It's possible, but to be honest, I think I would have remembered that line, but yeah, but it's possible I read it.

10 All right. But one thing I think you said in your evidence, that you had attended or you thought you had attended a fundraising activity at the function centre. Is that right?---Yes.

And was it clear to you when you attended that function that the function centre was on Great North Road?---Yes, yes.

Was it your understanding that Great North Road was part of the B4 mixed-use zone?---I believe so.

20 And was it your understanding that when you attended the function centre it was in that part of Great North Road in the vicinity between Barnstaple Street and Second Avenue?---I don't think at the time when I – it would have been fairly early probably in my time at council, so I wouldn't say I was aware of all the various streets et cetera, and probably well before the decision-making for the Five Dock decision.

30 But did you understand it to be if one considers the north/south dimension of the town centre, that it was in the north or middle portion rather than the southern portion?---Yeah, I had a sense that it was certainly in the far end of what might be considered the town centre.

I wonder if, is that a convenient time, Commissioner?

THE COMMISSIONER: Yes, it is, yes. Thank you. We'll resume about 5 past 2.00. I'll adjourn.

**LUNCHEON ADJOURNMENT**

**[1.04pm]**