

WITNEYPUB00932
15/04/2021

WITNEY
pp 00932-00998

PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION WITNEY

Reference: Operation E19/1452

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 15 APRIL, 2021

AT 10.00AM

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

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

THE COMMISSIONER: Yes.

MR RANKEN: Yes, Commissioner, we are ready to proceed with the next witness, who is Matthew Daniel.

THE COMMISSIONER: Yes, very well.

MR HALE: Yes, and I appear for Mr Daniel.

10 THE COMMISSIONER: Yes, Mr Hale, I grant leave to you to appear.

MR HALE: I think I've already got that leave and will be seeking a declaration under section 38.

THE COMMISSIONER: Yes, very good. Thank you. Just come forward, Mr Daniel. Good morning, Mr Daniel.

MR DANIEL: Hello.

20 THE COMMISSIONER: Do you take an oath or an affirmation to give evidence?

MR DANIEL: An oath, please, Commissioner.

THE COMMISSIONER: There's a Bible there, if you wouldn't mind taking that and if you would stand I'll have my associate administer the oath.

THE COMMISSIONER: Thank you, Mr Daniel. Just take a seat there. Mr Daniel, I understand the provisions of the Independent Commission Against Corruption Act have been explained to you, and you have a right to object to answering questions or producing documents and things.---Yes.

You do have an understanding of those provisions?---Yes.

10

And I understand your wish to give evidence under objection. Is that the case?---That's right, Commissioner, yes.

You understand you must of course, notwithstanding a declaration being made based on your objection, that you must answer all questions truthfully?---Yes.

And you must produce any item or document that you may be required to produce.---Yes.

20

The protection that the provisions of the Act provide is that the evidence given under objection by reason of the objection and the provisions of the Act means that the evidence cannot be used in any future proceedings, with one exception which I should explain, and that is that the evidence can be used in relation to a witness who intentionally gives false evidence, that is perjury, or any other offence under the Independent Commission Against Corruption Act. Aside from that exception it does provide the protection I've indicated. Do you understand all of that?---Yes, yes, Commissioner.

30

Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by the witness, Mr Matthew Daniel, and any documents or things that may be produced by him in the course of this public inquiry are to be regarded as having been given or produced on objection. There is accordingly no need for Mr Daniel to make objection in respect of any particular answer given or document or thing produced.

40

DIRECTION AS TO OBJECTIONS BY WITNESS: PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THE WITNESS, MR MATTHEW DANIEL, AND ANY DOCUMENTS OR THINGS THAT MAY BE PRODUCED BY HIM IN THE COURSE OF THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. THERE IS ACCORDINGLY NO NEED FOR MR DANIEL TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

THE COMMISSIONER: Yes, Mr Ranken.

MR RANKEN: Thank you, Commissioner. Now, sir, could you just tell us first your full name?---Matthew Daniel.

And Daniel is without an S at the end? Just so that we're clear.---Yeah, that's right, yes.

10

And what is your occupation?---I'm a Director of Pacific Planning, which is an urban development and, and planning, urban planning company.

Do you have some academic qualifications in respect of urban design and planning?---Yes, I do, yeah.

And what are those qualifications?---I've, so I've got mainly, I've got a, a, got a postgraduate degree in, in urban planning.

20

And from institution did you get that?---UTS.

And when?---Got that, I think I graduated finally two years ago. No, three years ago.

That would be, what, 2018?---Yeah, that's correct.

Other than that qualification, do you have any other qualifications in relation to town planning?---Well, I've got, I, I have a Masters of Project Management. I've got an MBA with an additional, with additional, additional subject study there on, in development and project management.

30

THE COMMISSIONER: Mr Daniel, could I just ask you just to keep your voice up.---Oh, sorry, sorry, Commissioner, yep.

No, that's all right. And perhaps just slightly towards the microphone so it picks it all up so that people at the back of the room can hear.---No problem.

That's all right. Thank you.

40

MR RANKEN: Now, you told us that you were a Director of Pacific Planning.---Yes.

And when was Pacific Planning established?---I think it was around about 2015, '16. The exact date of corporation I can't tell you, but it's around that sort of time, yeah.

So do you mean either late in 2015 or early 2016, is that what you - - -?
---I'm not 100 per cent sure, I'm sorry, I'd need to check the - - -

One or other of those two years, is that - - -?---Around that time, yeah.

And was it you who set up Pacific Planning?---It was myself and James Matthews decided to do that, yeah, my colleague.

James Matthews is a colleague of yours?---Yes, that's right.

10 And how do you know James Matthews?---We, we worked together in the Department of Planning for a number of years.

Okay, so you have some experience in planning from working with the Department of Planning, is that correct?---That's correct, sir.

And when did you commence working with the Department of Planning?
---In 2009.

20 And for how long did you work with the Department of Planning?---Until I think it was mid to late 2013.

So you had four years working with the Department of Planning, and between 2013 and the establishment of Pacific Planning in either 2015 or 2016, were you employed?---Yes, yes.

And with whom were you employed?---Well, after I left the Department, I was with Liverpool City Council for a short period of time.

Did you say the Liverpool City Council, is that right?---That's right, yep.

30 And when you say for a short time, what period of time?---I think was from, about three, four months in, in late 2013.

And in what role were you employed by Liverpool City Council?---I was executive director there.

Is that a position equivalent to being the general manager of a council, or - -
-?---No.

40 Oh, so were you a director of a particular department within the Liverpool City Council or of the council itself?---Yeah, no, there were a number of roles that, that I had, which was, which we had the, the, the area, the, we had the planning assessment area, strategic planning area, and, and some of the works areas as well.

So they came within your purview as the executive director, is that right?
---That's correct, sir, yes.

But you didn't have day-to-day responsibility for planning matters, is that right?---Not necessarily, no.

There were directors of each of those departments that would report to you, correct?---That's correct, and managers, yes.

And was there a director or manager of the relevant planning department that would report to you about planning matters in the three to four months that you were at the Liverpool City Council?---That's correct, sir, yes.

10

Other than those three to four months, were you employed elsewhere?
---Sorry, after Liverpool City Council?

Yes, after.---Yeah, yeah, oh, I had – after I left that role, I had, I had my own company and, and which I subcontracted out development management and project management services to the industry.

To what industry?---The property development industry.

20

So that was project management of property development, was it?---Yeah, in development management, that's right, yep.

But not so much in relation to planning and planning proposals?---Oh, yeah, no, we, we ran a number of those but we had a number of consultant town planners that we would engage and work with on things like that, yeah.

So when there were issues associated with planning proposals that needed to be sorted out, you would engage with consultant town planners who had that necessary expertise?---Yeah, that's right.

30

You would not consider yourself to be a town planner?---Not at that stage, no.

And is it the case that – well, do you consider yourself to be a town planner at this stage now?---Yes. Well, that's the qualification I now have but, yes.

And so does that mean that, at least up until you acquired that qualification, you didn't consider yourself to be a town planner?---Not primarily, no, no, and not at all, no.

40

And I think you told us that you got that qualification sometime in 2018?
---Yeah, finalised it then, that's right.

And prior to your work with the Department of Planning, did you have any experience in planning issues, working in the planning industry?---Yeah. We had a development management company a, and property company prior to that.

Was that your own company, was it?---Yes. It was, well, it was in partnership with some people in that, yeah.

And was that a similar kind of company to the company you set up after you had been working with the Liverpool Council?---Oh, similar but it had different roles in relation to, it had a project marketing arm as well and then it ran projects as, as well and it had some property holding businesses and, and mezzanine funding and things like that, we had.

- 10 Now, you mentioned James Matthews as a person with whom you set up Pacific Planning in either 2015 or 2016, and you told us that he was a colleague of yours from your time at the Department of Planning. Is that right?---That's correct, sir. Yes.

Was Mr Matthews a town planner?---Yes.

He had town planning qualifications to your knowledge, is that - - -?
---Absolutely, yes.

- 20 And for how long, to your knowledge, did he work at the Department of Planning?---I think, from my best recollection, he was there from just prior to me, I think, in around about 2008 or 2009 or maybe after and I think he completed his role there in around about 2015/16, I think.

And was this the position, that he actually left the Department of Planning to join you in the venture that you were setting up as Pacific Planning?
---Yeah, that's right.

- 30 To your knowledge, what was his role at the Department of Planning?---He had a number of roles but his final job, I understand, was he was the, he, he was the director of, of a number of different regional teams but he was also Senior Manager of Planning Operations at the Department.

And what does that job involve, to your knowledge?---Yeah, so, and that's how I got to know James a fair bit because I was the, I was on the Gateway Panel by appointment of the director-general, and James' team wrote a lot of those reports for that panel to consider.

- 40 So does that mean that you were on a panel that considered Gateway Determinations in relation to variations to Local Environment Plans and the like, is that - - -?---Yeah. We're, we're a panel set up by the director-general to provide him advice in relation to his determinations, under his delegation.

And the director-general was the person who had the actual delegation to make the Gateway Determination, is that correct?---Depending on the scale of the, of the proposal, it was, it was primarily his delegation that came from

the minister and then he would delegate that down to different officers if, if required.

And you never had a delegation to actually make a Gateway Determination?---No, no, no.

Now, are you a member of the Liberal Party?---Yes.

10 And of what branch are you currently a member of the Liberal Party?
---Caringbah.

When did you first become a member of the Liberal Party?---I think in about 1988, from recollection, or maybe before that but it around about that time, yeah.

1988?---Ah hmm.

And what branch did you join?---Caringbah.

20 So you joined the Caringbah branch in 1988 and you are presently a member of the Carington branch of the Liberal Party. Have you always been a member of the Carington – Caringbah, sorry I mispronounced that - - -?---No, that's okay. It's all good.

- - - three times now, I think.---Yeah, it's all good.

30 The Caringbah branch of the Liberal Party?---Well, there was a period of time that I joined the Young Liberals. Now, I'm not a hundred per cent sure if I let my membership to the – because you have Young Liberal branches and senior branches – I'm not a hundred per cent sure if I maintained my membership of the senior party all that time when I was in Young Liberals. There might have been a time where I wasn't but pretty consistently through that period of time.

Insofar as you were a member of the Young Liberals, was that a member of a branch of the Young Liberals that was within the same area as the Caringbah branch?---Yeah, it was, it was in the seat of Cook, yeah, and the seat of Miranda at that stage.

40 Those seats and the Caringbah branch, they're all in the south of Sydney. Correct?---That's correct.

Within the Shire, if we call it that, so Sutherland Shire.---Absolutely, that's right.

And so have you, you have never been a resident then of the seat of Drummoyne?---No.

Or of any local government area within that?---No.

So are you born and bred Shire, as it were?---Yes.

And do you know Mr John Sidoti?---Yes.

10 When did you first meet Mr Sidoti?---I'm not completely sure, but I would have met John through various, you know, party matters, probably in the, I'd say in around about, in, in the mid 2000s, that sort of time, but I can't be precisely sure.

So did you know him before he was elected to State Parliament as being the Member for the Seat of Drummoyne?---Yes.

Did you know him before he was elected to the Burwood Local Council?
---No.

20 So when you first met Mr Sidoti, he was already a member of the Burwood Council. Is that your recollection?---I can't be 100 per cent sure, but that sounds about right. I'm sorry I'm not precise.

If I was to tell you that Mr Sidoti was first elected to the Burwood Local Council in 2008, does that assist you with your recollection as to when it was you most likely first met him?---After that time, yes.

30 And what was the nature of your relationship with Mr Sidoti between the time you first met him and when you set up Pacific Planning?---Oh, it would have just been knowing him through the party, through two or three degrees of separation and just in that sort of a way, various functions and things that you come into contact with people, mmm.

Do you mean to say then that you didn't have any contact with Mr Sidoti really outside of the Liberal Party, the National Liberal Party?---No, not really. Well, that was, that was, that was where our relationship was established, yeah, through that.

No, I'm talking about prior to the establishment of Pacific Planning of course. Correct?---Yes, that's right.

40 Now, when you established Pacific Planning in 2015, was it with a view to providing services to participants in the development industry, if I can use that as a broad term?---Yeah, well, people that were interfacing with the New South Wales planning system.

And that would in the most part involve developers. Correct?---Yes.

And to provide assistance - - -?---I'm sorry, and, and, and builders as well.

And builders.---Which is slightly different there, you know.

Well, just for our edification, what's the slight difference between developers - - -?---Well, sometimes some of our clients are more specialised in the construction end and they find the planning system very, very complicated and difficult to navigate and so, you know, we have those sort of clients. If we have clients that are developers, they're more attuned in relation to it. So one class of client is more about the delivery of the product to the end, and sometimes developers will then get the project, change land use and then move on or sell it into a construction company or something like that.

So does that mean that those two different classes of client, your engagement with them might start at an earlier or a later stage of a particular development project?---Can do, yes.

So when you're dealing with builders, is it more a situation of them trying to make sure that they're complying with the relevant LEP when they're actually in course of constructing the site or is it something different?---Oh, no, it would be, it would be, sometime, it, depending on when we're engaged, right. So they may have projects that are running through the system to a certain point and we get engaged mid-point where they're trying to lodge development applications or they may be in the middle of a process where there's a wider strategic planning proposal going on and they need advice. It's, it's, you know, it depends on where the project may or may not be, yeah.

But is it fair to say that the kind of people who engage your services or engage your services in relation to those wider development processes that you're talking about are more likely to be developers who are looking in the long-term as to how they can ensure that the LEP is one that might favour the kind of developments they're looking to pursue in the future?---Oh, well, they're looking for strategic planning advice in relation to what the emerging strategies may be and, and how they need to frame their applications to meet that broader, wider state strategy.

And that might be including looking at things such as the rezoning of particular areas of land, correct?---That's correct.

And changes to requirements that are provided in LEPs in relation to such things as height limits, correct?---That's a, yeah, land-use control that may be concerned, yep.

And so 'land-use control', that's a general term. Would that include things such as, firstly, height limits, correct?---Yes, sir.

Floor space ratio?---Yes.

And setbacks, and the like, is that something you would include within that concept of land-use controls?---Typically setbacks primarily would not be an LEP control, so much. They'd be more of a Development Control Plan or a, a design standard that'd be set up in a specific state environmental planning policy, but yeah.

So when you talk about that other concept, you're talking really about floor space ratio and height limits?---If we're going to be, like, very specific, yes, but - - -

10

And they're separate to things to do with actual zoning of a particular area of land, whether it be R1, 2, 3, 4 or B4, or anything of that kind, correct? ---Well, I mean, certain rezoning applications, as you say, may be seeking just to change the land-use control in relation to a residential zone or an industrial zone, and some may be only seeking to – the underlying land use may be appropriate, and it just needs to have a change to the floor space ratio and, and the height elements or different other planning controls in, inside that whole microcosm of issues that you need to deal with.

20

Now, in 2015 or 2016, were you aware that the City of Canada Bay Council was in the process of having conducted a Urban Design Study in respect of the Five Dock Town Centre and were looking to progress various planning proposals as a result of that study?---I was aware that there was a, a Five Dock Town Centre study process going on.

30

How did you become aware of that process going on?---Oh, well, we're, well, I suppose we're generally aware of different sorts of studies that are going on across Sydney in relation to, that's our business to have a tacit knowledge of those sort of things that are happening and what strategic planning processes are going on, but to precisely say how I knew about it, but it'd, it'd probably in that sort of framework.

And did Pacific Planning at a point come to be engaged by persons who were interested in the Five Dock Town Centre Study and the associated planning proposals?---Yes, we were, yep.

40

And when did Pacific Planning first become engaged to assist any person in relation to that?---I, I can't precisely tell you, but I think it was around a, that 2016 period.

2016?---I think so, yeah, I'd – so I have notes that I've prepared and things like that but, that would help me, but I'm trying, doing my best, you know, to remember.

Who was it who first approached Pacific Planning to engage them to act on their behalf in relation to matters relating to the Five Dock Town Centre and the associated planning proposals?---Well, initially it was another person

that we were working with, an architectural firm, who were just asking us some generalised questions in relation to it, and, and we had that discussion.

Okay, can I just hold you there? And who was that architectural firm?---It was, it was, Tom Kudinar's firm, but I'm just trying to remember his name, the company name, I can't get off the top of my head.

THE COMMISSIONER: How do you spell his name, that name, Kumar?

10 MR RANKEN: Kudinar, I think it was.

THE COMMISSIONER: Kudinar.---That's, yeah, yeah, that's right. Sorry, Commissioner, yeah.

MR RANKEN: Was that K-u-d-i-n-a-r? Is that how you spell Mr Kudinar's surname?---I'd, it sounds right.

20 Did you have an understanding as to on whose behalf Mr Kudinar acted, when he made this enquiry of you?---Oh, he mentioned to us that John's family was, John Sidoti's family was, had a, had, had, had, you know, had some property there and was asking for our advice in that sort of a way.

30 So the initial approach to Pacific Planning came from Mr Kudinar, who was acting for Mr Sidoti's family in respect of some properties in the area of the Five Dock Town Centre, is that, have I encapsulated the effect of that?---I don't – look, it wasn't that formal if I can recall, and this is a long time ago, and so we were working with Tom on some other projects and if I can recall this got mentioned in relation to it and, and, and just some discussions around it and then it, it, it grew from there. So it wasn't like a formal, there wasn't a formal engagement in that sense. It was just a general discussion. Because we had a number of discussions on different things and projects during the time.

And this was sometime in 2016, just so that we're clear?---I think so, yeah.

40 So, what was the initial contact from Mr Kudinar? Did he call you and ask you to undertake some particular task?---I am not a hundred per cent sure. As I recall, to the best of my ability, it was, it was a generalised discussion at first.

THE COMMISSIONER: How did it come about though?---Oh, Commissioner, I, I, I think it was just a, look, look, I'm not a hundred per cent sure.

Who initiated the generalised discussion?---I, I, I cannot, I cannot specifically remember.

MR RANKEN: Well, what was the generalised – I mean, you talk about a generalised discussion. A generalised discussion about what aspect of the Five Dock Town Centre Study?---In relation to there was, there was a study going on and what our view was in relation to certain aspects of it and were, we available to - - -

What aspects?-- - were we available to have a, have a closer look at it. But, look, I mean, this is, I mean, I, precise questions on this, it's so long away, I'm, I'm not a hundred per cent sure, I'm sorry.

10

I appreciate that. If you just bear with me, we will try and see if we can exhaust your memory as you can.---Yeah, thank you.

Just try your best and we'll see if we can get there. You mentioned that there was some mention or you were aware that Mr Kudinar was, at that time, acting for Mr Sidoti's family.---I, I didn't know if was acting for him or not.

20

But there was some mention of the fact that Mr Sidoti's family owned property in the area?---Correct, yeah.

And that was a mention that Mr Kudinar made in the context of this general discussion with you, is that right?---Yes, to the best of my recollection, that is true.

Mr Kudinar didn't mention any other property owners in the area who he was acting for at the time?---No.

30

So is it fair to say that you were aware that if there was some particular interest in the area, it was an interest that was coming, most likely, from the Sidoti family?---Yes.

And as far as – you also mentioned that he asked about what your views were about the Town Centre Study or the planning proposals. Was there some particular aspect of the planning proposals that that was directed to, that enquiry?---Oh, I, I, I cannot remember the specifics, I'm very sorry.

40

But you also said that there was a query as to whether or not you could assist, that is Pacific Planning, could assist, correct?---Yes, that's right.

And did you indicate that, yes, you could, or you could have a look at it at least?---Yes, I did. It's my recollection that I would have discussed it with James, you know, on the periphery with him, and, and get his views on it but then from there, we moved on with it, yeah.

So what do you mean by you would have discussed it with James to get his views on it? Are you saying that you would have discussed it with James to see whether this was a kind of job Pacific Planning ought to take on or are

you suggesting that you had a discussion with James to see if he had particular views about the Five Dock Town Centre Study and the associated planning proposals?---It would have been a very, very high-level discussion about the, the, the Five Dock area generally and the strategic nature of the processes that were going on.

10 And having had that discussion with Mr Matthews, did the two of you come to a position where you were happy to take it on and provide the kind of assistance that Mr Kudinar was requesting?---Oh, we were, at that stage, then post that we were, we had a discussion with, with John on, on the project and then we discovered we, we seeking more information to understand the, understand the situation a little bit better and a little more in depth.

So I wonder if you could assist us with that aspect of it, how it moved from the initial discussion you had with Mr Kudinar to a discussion with Mr – when you say John, you’re referring to John Sidoti, is that correct?---Yes, that’s right.

20 To a discussion with John Sidoti. Did you reach out to John having had this initial contact from Tom or did Mr Sidoti reach out to you?---Oh, the, the, the specifics I can’t be sure on. As I recall, you know, Tom’s made a mention of it and then John’s got in contact with us and then we’ve discussed the proposal in that sort of context. So it’s kind of like, oh, you know.

So your best recollection is there was initial contact from Mr Kudinar, there was some - - -?---Yeah, and it might have been very minor, you know, yeah.

30 There was some mention of the fact that the Sidotis owned property in the area and that in a sense kind of was a prelude to some contact that you received from Mr Sidoti.---That’s correct.

And the contact you received from Mr Sidoti provided some further information as to what advice Mr Sidoti was actually seeking. Is that correct?---Yes.

40 And what was the advice that he was seeking?---He was just trying to get our opinion on, as I can recall, about what, what was the strategic, what he, he just wanted some advice about the strategic process of this land and the Five Dock Town Centre and in relation to the development of properties, you know, in, in the Waterview Street area and how, and how, what our view of it was.

When you refer to advice as to strategic, the strategic planning, I think were your words?---Yeah.

What do you mean by that?---Well, the strategic planning process going on at that stage and studies that the council was conducting and so he wanted our advice as to what we thought of, what our professional views were on that, on that process.

Any particular aspect of the process?---I'm sorry?

Well, the process at that stage had been going for some time. Do you recall?---Yeah, I understand it had been, yes.

10

And was there a particular aspect of the process that he wanted advice about?---Yes. Well, he, he indicated to us that his family had a traditional landholding in the area, his parents had the function centre there and it was a, and this rezoning was affecting him and a number of his neighbours that were there and they wanted to get some advice about what we felt, you know, what, what our views were on the, on the studies that were being conducted and how that process was progressing. That's how, generally, I mean, which is not unusual, that's the general theme I think how it was.

20 So is it fair to say then that the interest that Mr Sidoti was expressing was at a particular block or particular part of the Five Dock Town Centre Study - - -?---Yeah, it was.

- - - rather than the whole of the Five Dock Town Centre?---Oh, well, what he, he, he was talking particularly about those, that, that block of, you know, of Second Avenue and Waterview and Great North Road and that sort of area, and specifically about his, you know, his parents' property at that stage, but also, but of course as a strategic planning process he was interested in we'd need to look at these things holistically in that way, so that's what he was talking to us about.

30

But was he suggesting to you anything about whether or not he considered that there were some flaws within the planning process up to that point? ---Well, no, he was asking our opinion.

Okay. So are you saying he didn't express to you any particular view that he held in respect of the planning process that had been undertaken up to the point at which he was coming and approaching you for your advice?---Oh, he, he, sorry, I just need time to – can you just ask me that again, sorry?

40

That's okay. Yes. Did he express to you any views that he had about the planning process that had been undertaken up to the point at which he was coming to you to seek your advice?---Yeah, there was a, there was, there was a interest as to, there was concern, he wanted our advice as to why certain controls on the opposite side of the road were, and the block were receiving certain sorts of densities and heights and certain sorts of, you know, bonus provisions and they weren't being considered perhaps in these, in, in these, in this block next door and saying, "What's the issue around

there?" And then we went away subsequent to that to look at that in more detail, but primarily my colleague, James, was doing that in more detail.

And I'll come to that in a moment.---Yeah.

But when you referred there to Mr Sidoti referring to not getting the same controls as were available to the block on the other side of the road, are you referring to the block on the other side of Second Avenue?---Yes, that's correct.

10

That is the block that was bounded by Second Avenue to the north, First Avenue to the south, Great North Road to the west and Waterview Street to the east?---Yes. Where, where the council-owned land was.

And so and you and in particular James Matthews then, do I take it, went and had a look at the process and the history of what had gone on, is that correct?---Yes, we were able to obtain the MG Planning report which was quite helpful, and we were also able to then look a bit more deeper into the strategic planning nature of the, the Five Dock Town Centre and the history of it and the study.

20

Now, MG Planning was a, the town planning consultants who had prepared some submissions to the City of Canada Bay Council on behalf of two companies, Deveme Pty Ltd and Anderlis Pty Ltd.---That's correct.

Those two companies owned at least – well, by 2016, Deveme Pty Ltd was the owner or was said to be the owner of 120 and 122 Great North Road.
---Um - - -

30 Or you don't recall which properties?---Oh, I don't precisely recall, sorry.

And Anderlis Pty Ltd was the owner of a property at 2 Second Avenue in Five Dock.---Yeah, I know the property of 2 Second Avenue.

Did you have an understanding when you read the MG Planning reports that – well, firstly, did you, you said you read the MG Planning report, I think. Is that correct?---Yes, oh, yeah, we're talking a long time ago, but yes.

40 Because – but you have an understanding that those two companies had some association with Mr Sidoti's family, is that fair to say?---Well, the, I had an understanding they wrote reports in relation to it, and it seemed that they were writing them on their behalf, but I have to recheck the reports again, but that, that was reasonably well known, yes.

You might have misunderstood my question, I was actually - - -?---Sorry.

That's okay. I was just directing it to your knowledge about Deveme Pty Ltd and Anderlis Pty Ltd, the two companies, who were the owners of those

blocks of land, that they were associated with Mr Sidoti's family.---Right. I can't specifically say if that was my recollection at the time, I'm sorry.

10 But your understanding was that you were being engaged to provide advice to Mr Sidoti about the planning process, is that right?---Not to John, to, it was to the owners of those properties, but it was, wasn't only, it wasn't only that, the, the property, the, you know, the corner on Great Northern Road, which is 120, I think, and 122, it was also number 2. And I recall some, a, a couple of other properties at that time as well that were impacted by the study.

But it was Mr Sidoti who approached your firm in order to engage you to provide that advice, correct?---Yeah, that's right, he was discussing that with us, yep.

20 And so did your firm then, having agreed to take it on and provide the advice, or sorry, having agreed to look into it and provide the advice, did you enter into a formal agreement or engagement with Mr Sidoti about that? ---Well, I suppose – well, a formal written contract, no.

30 Is it not usually the case when you are engaged by your clients that you will execute or there will be a formal letter of engagement or formal contract of engagement that sets out the work that you are being engaged to do, the basis on which you might charge for your fees for acting in the matter, correct, that would be your usual course?---Yes, yeah, yeah. For, well, if I could say, for large, detailed projects, yes, that, that go over a number of years or months, we would have that, we'd have contracts in place. Obviously we do that. But for smaller jobs it'll, might be done on a, on, on an email, just to say, "Hey, yeah, we'll do this." But in this case, because we had an associated with Tom and, and with John and half of his family, it was, I think there was some communication via email, but a lot, it was just a, it was a verbal discussion in relation to it. And initially we didn't think that it would be quite a long process. We had the view that this would be assisting them with some strategic planning advice and then providing some submissions. So it didn't seem like a significant amount of work, because it was a council-led process, which is different to other projects and more complicated projects we may run that are quite detailed. So in that, in that situation, we weren't that formal.

40 So you say that you were informally engaged by – Mr Sidoti was the person who formally, informally engaged you, correct?---I wouldn't say it was informal, but - - -

Well, was it written or was it unwritten? Was it formal or was it informal? ---I suppose it depends on your meaning of the word 'formal'. I, my meaning, my understanding is that we, we, we knew we were formally engaged by, on behalf of, you know, through John, John's parents and the other landowners. So we had that clear understanding, because I'd asked

that a couple of times, just to be clear. But, but was there a, there, was there a written contract in that way? No, there wasn't.

Before you undertook any work in relation to the matter, did you have any contact with any of the other landowners?---Ah, ah, I'm not, if it was, it, before or just after I think would be the right sort of thing, but we did have a meeting with, if I recall, with, I was introduced to one of the other landowners and possibly another landowner, but I can't tell you the specific date or how it was that we met with them.

10

THE COMMISSIONER: When approximately was that?---Commissioner, I'm very sorry, it was early in the piece when we were discussing the proposal, but I can't exactly remember the date, I'm sorry.

And what were the names of these neighbours that you referred to, the two neighbours?---I think it was the owner of, I recall it was the owner of number 2 and, and maybe the owner of, of, oh, look, I'm very sorry, I cannot recall.

20

Well, what was the owner's name of number 2?---I, I, I cannot remember.

What was the name of the other neighbour?---I recall later in the piece Mr Durkin was, was, we, we were, we were providing some submissions there that included his property. He was number, he was number 39.

Durkin, yeah.---I think Mr, was it Mr Tannous, I think, on the top of my head, maybe from number 2, the other name I'm struggling, I'm very sorry.

30

MR RANKEN: Can I suggest to you that number 2 Second Avenue was in fact owned by Anderlis Pty Ltd, which was a company the directors and shareholders of which were Mrs and Mr Catherine and Richard Sidoti, Mr John Sidoti's parents.---Ah hmm.

So that company was the owner of number 2.---Ah hmm.

And Deveme Pty Ltd was represented to be the owner of 120 Great North Road, which is the function centre.---Ah hmm.

40

So they're two properties that were linked to the Sidoti family. Correct?
---Yes.

And you said one of the persons, other persons who you met was a Mr Tannous.---I think so, yeah, I think that's his, the gentleman's name, yeah.

And was his name Charlie Tannous, does that ring a bell?---It rings a bell but I cannot be absolutely precise, but I think that's probably correct.

THE COMMISSIONER: Well, can you say whether he is one of the neighbours that you were asked to advise or are you not able to say that?---I, I can recall I think, I can recall - - -

No, just stay with my questions.---Sorry.

10 Are you able to say or not as to who, whether Mr, either Mr Durkin or Mr Tannous were the neighbours who you were going to give advice to or are you not, can't you remember?---Mr Durkin was later in the process, as I recall.

Was he - - -?---Mr – sorry.

Yes, you go on.---But Mr Tannous I understand was earlier in the process. I recall meeting him in Five Dock and having, you know, having discussion with him.

20 Are you saying to this Commission that your firm was acting on behalf of Mr Tannous in relation to any aspect of this town centre project or are you not saying that?---I'm not completely clear. We were, we were, it was the, we weren't looking at them as names of people but the actual properties that we were, we were looking at in the study and who we were representing.

So do I understand you to be saying that they weren't clients of the firm but their properties were relevant to the issue that Mr Sidoti had brought to you for advice. Is that what you're saying?---I definitely met - - -

No, just answer my question.---Sorry, could you ask it again?

30 Yes, certainly.---Sorry.

I just want to understand this.---Yeah, no, I appreciate it, yeah.

40 Whether you're saying the neighbours, the two neighbours, whether they be Mr Durkin and Mr Tannous or some other people, are you saying that you were acting on their behalf as clients to give advice, or are you saying that their properties were relevant or considered to be possibly relevant to the advice that Mr Sidoti and/or his parents engaged you to provide or firm to provide?---Commissioner, because the time ago it was, the only clear answer I can give is I am not sure.

Were the neighbours, the two neighbours or either one of them, clients of your firm or not?---I cannot be completely sure. This is five years ago. I'm very sorry.

MR RANKEN: Is that partly because you have no written record as to exactly who it was who engaged you to undertake this work?---No, we, we had email communication and messages communication in relation to it but,

and I had a face-to-face meeting with, of, with one of the other landowners but as I say it was in that, it was in that, it was in that kind of context that we were acting on their behalf but, as for who did we send a, you know, the, that's, that's, so we, that's, that's the context, that's how it was.

Well, who did you send any invoices to?---We sent our invoices to, if I recall, Sandra Sidoti's email address.

10 And who was the invoice addressed to, as in who was the person who was, or entity that was responsible for the payment of the invoices?---Oh, I would have to look at that invoice to tell you, I'm sorry. I cannot remember off the top of my head.

Well, we'll come to that in a moment.---I think you have those though but - - -

We'll come to that in a moment.---Yes.

20 Now, you said you do recall having a face-to-face meeting with one of the neighbours and the landowners who you believe was Charlie Tannous, is that - - -?---To the best of my recollection.

Well, Mr Tannous, at least. And there was just the one meeting with Mr Tannous, is that correct?---To the best of my recollection.

And where did that meeting take place?---In Five Dock.

30 Any particular location in Five Dock?---I, I, I recall it being in a coffee shop, just down the road from, in the main street. The exact address I couldn't tell you where.

And who arranged that meeting?---John had arranged that meeting.

So was it Mr Sidoti who introduced you then to Mr Tannous?---That's correct, sir, yes.

40 And other than that meeting, though, you did not have any further communications with Mr Tannous directly?---I may have. I cannot be a hundred sure. I'm very sorry. But they would have been very rare.

Is this the case that in relation to the work that you were being engaged to do in relation to the Five Dock Town Centre, your instructions generally came through Mr Sidoti?---Correct.

And did you ever receive instructions or have any contact with either of Mr Sidoti's parents, that is Richard Sidoti or Catherine Sidoti?---No.

So insofar as any instructions that were coming from Deveme Pty Ltd or Anderlis Pty Ltd as the holders of the land at 120 Great North Road and 2 Second Avenue, those instructions were coming to you from Mr John Sidoti?---Yes. And I'm just trying, well the, and I'm just trying to – yeah, yeah, that's right.

10 Now, you also indicated that apart from being engaged to provide some strategic advice about the planning process to those landholders, you were also being engaged to provide submissions, I think that was your words. Do you mean submissions to council in respect of the matter when it was coming up for decision, is that right?---Yes. That sort of strategic planning process. So we were writing, you know, my colleague was writing submissions to, to the council, yeah.

So the usual process in such matters is that when there is a development proposal, particularly if it's a significant one such as the Five Dock Town Centre was, it's necessary for there to be a process by which the proposed plans are exhibited, correct, publicly?---Yes.

20 And that provides interested parties and members of the public to be able to make formal submissions directly to the council, correct?---That's, yeah, that's, it's, it's a dynamic process, yes.

30 Which can then be considered by council staff in the relevant area so that the information that's received from the community can be synthesised and presented with other information to the councillors so that they can make an appropriate decision in respect of the matter? I'm just talking in a generic sense.---Well, that's a generic explanation of how a planning application may work but there is a whole lot of inputs into that through the process as well, such as studies and different things that go on, and reviews and whatnot.

Yes, so studies may be part of the information that is fed to the council staff and that becomes some of the material that needs to be synthesised for councillors so that they have at their disposal the relevant information, correct?---Yes.

40 And that would include studies that have been conducted by independent experts, correct?---It would, studies by, by appointed experts.

Appointed experts, so when I say 'independent', experts that have been engaged by the council but aren't employed by the council. Do you see what I mean?---Yes, I do.

I mean, you would consider yourself when you are being engaged by a particular party to be providing independent expert advice about matters, correct?---I'd, yes, we would provide advice of what our professional opinion was on something, yes.

And so the term 'independent', I'm referring to in terms of, your role as an expert is to provide independent professional advice. That's why you're being engaged. Correct?---Yes.

And sometimes that might involve telling the client something that they might not necessarily want to hear, because that's your professional opinion, correct?---Absolutely, yeah.

10 So, and it's ordinarily the case that if a party wishes to make a submission about an LEP, for example, that's been publicly exhibited, that should be made to the council. Correct? Like to council staff, in the sense that a submission, a formal submission is sent through to council.---Yes.

And then can be considered by council staff, and included as part of the material that's provided to councillors. Correct?---Yes. Yeah, that's, that is a way of, yeah, doing it, yep.

20 Rather than making submissions, for example, directly to select councillors. ---Sorry, I, can you - - -

Well, the whole purpose of having a public exhibition process, is it not, Mr Daniel, is so that the public have an opportunity, and any interested parties, I should say, have an opportunity to put in submissions to the council in respect of the matter, correct?---Yes, that's right.

30 That that is done in a transparent fashion, that is, by there being some email address or some post address where submissions can be sent to, correct? ---Yes.

And then will form part of the records, the public records as to the kind of information that was received by council, correct? And taken into account when the council come s to make its decisions.---Well, there's many inputs into those sort of strategic planning process studies. But yes, there is a formal exhibition period when submissions are, submissions are considered, but - - -

40 But the purpose of that formal exhibition process is to ensure that there is transparency as to the information that is received from the public and other interested parties and then presented to the councillors, and that might form the basis of their ultimate decision.

MR HALE: Could I object at this stage, we perhaps need to be a bit precise about what we're dealing with, because there are formal statutory provisions which deal with exhibitions and how submissions have been received, and then there are also informal exhibitions, which I think is what my learned friend is referring to, which don't have any particular statutory force. So

perhaps he could confine his questions and be precise whether he's dealing with one of the statutory exhibitions or one that's informal in its nature.

THE COMMISSIONER: Mr Hale, yes, I hear what you say. I'll deal with it myself this way. The project in question was a one-off major project, was it not? That is, the Five Dock Town Centre plan. Is that right?---There were two planning proposals in this, in the history of this.

No, just stay with me, please.---Yes.

10

Was the Five Dock Town Centre Study and the plan that came out of it a major project?---A, sorry, there's, I'm, there's – 'major project' is a specific term in planning law.

Yes, okay.---But this is not a, no, this is not a major project.

Well, I'm using it in the ordinary English dictionary meaning of the word. ---Okay, yep.

20

It was a very big project.---Oh, it was a town centre study.

Are you agreeing with me?---It's, it, I wouldn't say it was a significantly complex town centre study as compared to other ones.

I'm not talking about its complexity, sir.---Yes.

This was not just an ordinary DA application, was it?---No.

30

It was a project that was looking at rezoning, dealing with potential redevelopment, amalgamation of sites, that sort of thing.---It was a, it was a study to promote the urban renewal of the Five Dock Town Centre so it could compete with the Burwood Town Centre.

And it was a substantial project, wasn't it?---Yes, that would be my description.

It took years.---It's a substantial project.

40

And it took years to develop, between 2013 and 2017, didn't it?---Yes.

It involved coming before council on multiple occasions in those years for its consideration, did it not?---Yes.

It involved multiple public exhibitions at various stages.---And consultations, yes, yes.

And submissions, public submissions were received by council following those public exhibitions. Correct?---Yes.

And those wishing to make submissions would be given, were given time to make them and a place to send them. Right?---Yes.

To send them to council.---Yes.

The purpose of that is so the council staff could then examine, collate and process all of the information coming in through the submissions. Right? ---Yes.

10

So that the council could, A, make an assessment of those submissions? ---Yes.

B, whether there needs to be any recommendations put forward for change to accommodate points, matters arising out of the submissions?---Yes.

So that it directly involved council staff in the process, that is the outcome of a public exhibition.---Yes.

20

Right. And that's standard procedure, isn't it?---Yes, it is, yes.

What Counsel Assisting was putting to you that in that context it is the normal process to send the submissions following public exhibition to the council and not to individual councillors. Correct?---It's a democratic process.

Just answer my question. It was normal standard practice, was it not, after a public exhibition of a matter that was under consideration by council, that the public be given an opportunity to make submissions?---Yes.

30

To be sent to the council so that they could receive the submissions?---Yes.

So that the council staff could assess the submissions.---That's correct, yes.

And make any recommendations as a result of those submissions - - -?---Yes.

- - - and their assessment. Correct?---Yes. That, that is the way a study process typically works, yes.

40

And it is not normal for submissions to be addressed directly to an individual councillor or councillors. It was, as I've said, normally a process, in fact standard process for it to be received by the council staff.---Yes. But when a political body is going to assess something it is not un-normal for us to send applications on behalf of clients to elected officials for them to consider things.

I think we are at one, are we not, that the normal process involved making the submission to council in written form, not to send it to individual councillors. ---I would disagree with you.

Oh, what do you say is normal standard practice once a public exhibition has been undertaken by council?---Yes.

Who receives, who should the, who are the recipients of those submissions, as standard practice?---Yeah, well, the council officers would get those and collate them to put them before a council meeting. That's correct. But there's a period of time when they've made their recommendation, where there is a political process that we would, we may find need to, to place, to put, to put
10 a submission into that process as well.

But you are not suggesting that what I put to you is in any way inaccurate, about the public exhibition process with submissions being received by the council staff.---Yes, that's right.

Thank you. Yes, Mr Ranken.

MR RANKEN: Yes, thank you, Commissioner. And in addition, what you just said in answer to the Commission was that insofar as the political process
20 after the recommendations had been made by council staff was concerned, that you might consider putting in submissions directly to councillors as well as having, as any submission that had been put forward to the council. Correct?

MR HALE: I object. That wasn't the answer he gave. He said that in addition to that there would be representations to council.

THE WITNESS: As well. Sorry.

30 THE COMMISSIONER: All right. I thought that was something that might assist the witness, Mr Hale, but if you object to it - - -

MR HALE: As somebody who spent many decades being aware of the planning process perhaps I am being too pedantic but - - -

MR RANKEN: Could I just respond - - -

THE COMMISSIONER: All right. I'll allow the question.

40 MR RANKEN: You said that you might put in a submission to councillors as well, correct?---Yes.

And what you meant was, as well as any submission that might have been put forward to the council?---Of course.

But you wouldn't simply put a submission to councillors without having put

a submission to the council staff first? Do you understand the difference?
---Oh, I understand the difference but these are long, these are long processes - - -

Well, just answer my question. You wouldn't only put a submission to councillors, make representations of that kind to councillors without having put in a submission to council, correct?---Yeah. Well, we'd, we'd obviously want to go, we'd want to put our, our statements forwards, that's right.

- 10 And then so essentially what you're saying is, in terms of ordinary practice, would be, you might put a submission into council staff but once they'd made their recommendation, you might also make submissions to councillors supporting the submission that had already been put forward, effectively, to council staff, correct? Is that what you were trying to convey?---I would like to explain it a bit more.

- 20 Well, what would you like to say about it?---Thank you. These are, town centre studies are long processes, and complex. They will involve a number of briefings to the political body from their staff. During that process it will be public knowledge and it will be, and it will be reported to council meetings about how those study process are going. They're political processes and they're planning processes where staff are seeking policy advice from the political body in relation to how things go. Through those processes that go over a number of times, we may put submissions forward to the political arm of council and the professional arm of council because it assists to bring forward discussion and detailed study in relation to the issues that are there, specifically when we feel there are areas that are not being appropriately studied and we think they should be.

- 30 And, sorry, so we're just clear about that, we were talking about submissions being made to council following a period of public exhibition, that's what the questions were directed to, okay? And in answer to the Commissioner's questions, you indicated that it was ordinary practice for submissions to be made to the council, as in the council staff or what you refer to the professional arm of council, correct?---Yes.

But you also said that you may also make representations, or make submissions to councillors as well, correct?---Yes.

- 40 And what I was drawing your attention to was that that would be in the contact where, having already put in a submission to council, you were making representations, effectively, to councillors in support of the submission that had already been put forward to the council staff, correct?
---Yes.

It wouldn't be ordinary practice to not put any submission into council staff but only direct any submissions directly to councillors?---It depends on what stage of the process it's at.

Well, we're talking about a stage where there's been public exhibition of a particular planning proposal, it's then going to come back before council and there's the opportunity to make submissions. That's the stage we're talking about.---So if it's at the end of the process where council's about to make a decision on set of recommendations, yes, we would put additional submissions in to there, but of course it's difficult to know what, if, if there's new information that comes up in that staff recommendation or areas that are there, well, then even though we've made a submission generally on a proposal, we may have unique aspects that we're then putting forward in relation to recommendation, say X, Y and Z in that sort of a way, as well, in addition, to assist the decision-making process.

And you're saying you would do that by direct representations to councillors, or are you saying you would do that in some other way, for example, by registering in order to address the council at the actual council meeting and raise the matter in that way?---Yeah. That, that, that might form part of it, that's right. Yeah. So we would, we would register to speak at the council meeting or we would, and we would send emails to councillors prior to them making the decision to try to highlight points and issues there for them to consider so they could make a, you know, informed decision.

Now, at the point at which you came to be involved in relation to the Five Dock Town Centre Study, do you recall that the matter had already been before the council on a number of occasions and the council had most recently dealt with the matter in November of 2015, at which time there was a resolution whereby, effectively, a planning proposal was to go off to be finalised and gazetted, but a further aspect of the resolution that there were three sites that would be relooked at?---Yes, additional, additional sites planning proposal.

And is that what you were referring to when you said I think in answer to one of the questions from the Commissioner, that there were in fact two planning proposals in relation to the Five Dock Town Centre Study?---Yes.

And what you're referring to is the fact that as a result of a resolution of the council that took place in November of 2015, there was a kind of bifurcation in the sense that the main planning proposal went off to be finalised but there was going to be some further studies and a possible further planning proposal in relation to three additional sites. Correct?---Yes.

And one of the additional sites that was to be the subject of that further study was the block of land that was bound by Barnstaple Road to the north, Second Avenue to the south, Great North Road to the west and Waterview Street to the east. Correct?---Yes.

And that was the very block of land in respect of which Mr Sidoti had sought to engage you on behalf of his family's property interest and possibly other landowners - - -?---Yes.

- - - to provide advice and submissions.---Yes.

Have I accurately represented the position?---Generally, yes.

10 And do you recall whether, by the time your firm came to be engaged, the study of those additional three sites had already been undertaken and a report prepared?---Oh, the timing of it, I'm sorry, sir, I can't be completely clear. I'm very sorry.

Well, I might be able to assist you in terms of timings.---Yes, thank you.

So the resolution of the council that resulted in the additional study or the additional sites being looked at again was in November of 2015.---Yes.

20 The matter then came back before the council for a decision following the study in August of 2016.---Okay.

There was a report prepared by experts engaged by the council, Studio GL – is that a name that you're familiar with?---Yes, yeah, know the Studio GL study, yes.

And that report was prepared in March of 2016.---Yes.

30 There was, on the back of that report, do you recall that there were some feasibility studies that were undertaken by HillPDA?---Yes.

And that report was made available sometime in May of 2016.---That sounds about right.

That all sounds right.---Yeah, I'll take your - - -

Now, were – sorry, I interrupted you.---That's okay. I was going to say, yes, I'll take that as you, yeah, that's right, yeah.

40 So when you came, your firm came to be engaged to provide the advice and submissions, were those studies already available for you to consider and read and the like?---Yes. I'm pretty sure they were around, yeah.

So we take it that you or possibly it was Mr Matthews, because I think you said he did most of the work on this matter - - -?---Yeah, he did, yep.

- - - took the time to read those reports?---Yes.

And to consider them and provide some advice to Mr Sidoti about the way forward.---Yes.

Now, with those sort of timelines in mind, do you recall how close it was to the meeting on 2 August, 2016 that you were first engaged by Mr Sidoti to provide your advice and submissions?---I can't be precise without my notes, I'm sorry.

10 Well, do you recall whether or not your firm put in a formal submission to council in response to the Studio GL report and the HillPDA feasibility analysis prior to the meeting on 2 August, 2016?---Yes, yes, we did, as I understand it.

You did.---I think we, we put in a number of, we put a number of submissions in, yeah.

When you say you put a number of submissions in, do you mean you put a number of submissions in over the course of the plans being considered? ---Yes.

20 By council.---Yeah.

And that includes after things had gone off to Gateway and come back et cetera, et cetera.---Correct.

Well, I just want to focus though on this period, after Studio GL and HillPDA had done their studies and feasibility analyses, and it's to come back before the council on 2 August of 2016. What I want to suggest to you is that your firm did not put, that is, Pacific Planning did not submit any formal written submission to the council in respect of the matter prior to 2 August, 2016. What do you say to that?---I'd, I'd say that I'm, I'm unclear, because I, I cannot recall when we were putting these, the dates of individual submissions. But I knew that we were reviewing matters. But the exact dates, I can't tell you.

THE COMMISSIONER: We're not talking about dates.

MR RANKEN: No, I'm just asking in relation to doing something prior to 2 August, 2016.---Sorry but, I don't mean to be cute, but that's a date and - -

40 Oh, I understand that. I'm not asking you what date you put it in, but just whether or not you put – you can't be sure as to whether or not you did or did not.---Yeah, I, I, look, I cannot be sure, because I was not running, I was not the lead on this project.

But you were copied in on all relevant correspondence relating to it, were you not?---On, on some of them, yes, I was, yeah, but - - -

THE COMMISSIONER: I take it that the lead person for your firm undertaking this work concerning the town centre project was Mr Matthews.
---Yes, that's correct, Commissioner.

Is Mr Matthews a member of the Liberal Party?---Yes, I think he is, yep.

And do you know how he became a member of the Liberal Party, or his, who introduced him, as it were, or suggested he join?---Me.

10 And do you remember when, how long ago was that?---Oh, I - - -

I don't want a precise date, but just a rough estimate.---I, I, I cannot tell you.

Was it years before – we're now talking about 2016.---Oh, well, that was around the, it was, was when James was living, living in, in Drummoyne, I suggested to him, "Why don't you join the party around here?" that's, I - - -

MR RANKEN: And you said Drummoyne. When did Mr Matthews live in Drummoyne?---For, that's where he was living for quite a while.

20

So was that where he was living the whole time you've known him?---I can't precisely tell you that, but he was at that stage, he was living around the Drummoyne area, yeah. Sorry, I - - -

And so did he, to your knowledge, in fact join the Drummoyne branch of the Liberal Party?---Yes.

30

And to your knowledge, has he remained a member of the Drummoyne branch of the Liberal Party?---I don't know.

Did you know that Mr Sidoti is a member of the Drummoyne branch of the Liberal Party?---I do not.

So you've only just found that out now, have you?---Oh, well, yeah, oh, it's, I don't really, well, you know, I know he's a member of the Liberal Party. Which branch, I wouldn't particularly know. I, yeah, I've been slow. I wouldn't, yeah, I mean it's the, the Drummoyne SEC area, obviously, or (not transcribable)

40 Now, I just want to take you to an email.---Mmm, mmm.

If we could bring up page 1132. You can see there this is a chain of emails, the last of which is from Mr Matthews addressed to yourself and Mr Sidoti at 12.45 on 2 August of 2016, do you see that?---Yes, yes, yeah.

That is an email that is further to an earlier email of 1 August at 8.04pm that Mr Matthews sent to you and Mr Sidoti, do you see that, that's connected about halfway down the page?---Yeah, I, I can, I can see it, yep.

And do you see that he's indicated that, "Please see below my suggested outcome for the future of additional site B"?---Ah hmm.

Do you see that?---Yep.

And he's expressed some detail or some views about, following from his review of the feasibility report and other material.---Yes, I can see that, yep.

10 And he's then gone on to say that he would be working on speaking notes which would develop the points, and then below, there's a subheading or there's some writing that is in bold and italics saying, "It is recommended 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 be for mixed use with a maximum building height of 17 metres and a maximum FSR of 2.5:1 consistent with controls adopted but not yet gazetted for the land immediately to the south." Do you see that?---Yes, I do.

20

And it was the case, was it not, that from your review of the material as to what had occurred in respect of the town centre up this point was that the matter had come back to council on a number of occasions, in which one of the issues that was looked was the possibility of rezoning that whole block – that is, the block bound by Second Avenue, Barnstaple Road, Great North Road and Waterview Street. I might just refer to that in general terms as the Waterview Street site.---Ah hmm.

30 That the Waterview Street site should be changed so that it was mixed B4 across the entire site.---Yes.

And on each occasion, the recommendation that had ultimately been adopted was that – that is, prior to the November 2015 council meeting – was that there should be no rezoning of that block in terms of changing it from being split-zoned between B4 and R3 to being entirely B4, correct? ---Ah hmm, yes.

40 And that as part of the study or the report that came out of the further study following the council meeting in November of 2015, insofar as the Waterview Street site was concerned, each of the two options recommended that the split zoning be retained, effectively. Correct?---Yes.

The only difference between the two options was that one would involve the removal of the heritage listing for 39 Waterview Street, correct?---Yes.

And the other one retained the heritage listing, effectively.---Yes.

But there were changes to heights that would result if there was the removal of the heritage listing, correct?---I - - -

In that it could accommodate some greater height, particularly on Great North Road.---The staff seemed to indicate in their studies that the heritage, the listing of that heritage item in schedule 5 of the LEP was an impediment to that site having higher land-use controls.

It was one of the impediments, wasn't it?---One of them.

10

Yes. Another impediment was the fact of the strata development, correct? ---This is the, look, I don't say they're impediments. That's just what their study was saying, impediments.

That's what was being, what was presented.---Suggested.

And also another aspect of it was the fact that it was considered, as part of the Urban Design Study that had been undertaken over some time, it was considered that that part of Waterview Street was further away from the centre core of the town.---Yeah, about 10 metres.

20

There has to be a limit somewhere, doesn't there, Mr Daniel?---Yes, usually under town planning you have the edges of roads as the limit to those sort of town centre urban studies.

You understood, did you not, that as part of the Urban Design Study, the recommendation was that the extent of the B4 mixed-use zone was to be extended, correct?---Yes.

30

And there were additional parts of the town centre that were expanded to include B4 mixed-use that weren't previously B4 mixed-use, correct? ---That's correct.

And that included right up to the road of Second Avenue, correct?---That's right.

And the Second Avenue is a road, correct?---That's right. But it, but the town - - -

40

So consistent with – no, just hold. Consistent with your statement you've just made, that ordinarily you would put the zoning if you're going to do town planning or town centre, you would put the zoning up to a particular road, correct?---Can I expand on my decision or - - -

THE COMMISSIONER: No, just answer the question.

MR RANKEN: That's correct, isn't it?---Sorry, ask me the question again, sorry.

Well, consistent with what you said about when you're doing a town centre, that you would put the planning, the zoning up to a particular road, correct?
---I wouldn't put it through someone's back fence, no.

Well, that's what had occurred in the Urban Design Study, correct?---Going through someone's - - -

10 It had gone up to Second Avenue.---Through, and then in the middle of a block.

That was an existing split zoning, correct?---As I understand, yep. 'Cause you had the high street, you had the properties on the high street and then you had properties on Waterview Street.

20 So that was not something that came out of – the split zoning of the Waterview Street site was not something that was a feature of the changes to the LEP being made as a result of the Urban Design Study, correct?---Sorry, you'll need to ask me that again. So, the split zoning - - -

THE COMMISSIONER: The split zoning predated the Town Centre Study being published?---Yes.

MR RANKEN: Yes, thank you. Now, going back to page 1132, this email that Mr Matthews sent to you and Mr Sidoti was, in a sense, in preparation for presenting to the town meeting at – sorry, not town meeting – the council meeting on 2 August, 2016. Correct?---Ah hmm.

30 And you understood that at that meeting it was expected that the council would make a decision as to which of the options on the Studio GL report it would adopt moving forward, as far as that, in particular, that block of the Waterview Street site was concerned?---Yeah. To, to promote additional studies, yeah, and considerations, yeah.

40 Well, what it was really to do was to say, "Well, let's either adopt option 1 or option 2 and, if there are any necessary planning controls that need to be amended, then we can provide for them," correct? That's what the process would have involved?---Well, this is a stage in the process, to consider those things. There's still assessment that needs to be done post this.

THE COMMISSIONER: I don't think you've answered the question. Would you just please listen to the point of the question and answer the point of the question, which I think was along the lines - - -?---Sorry, sir, you – sorry, I've got - - -

- - - that the meeting of 2 August, you understood, was to consider whether options 1 or 2, which of those would be chosen by council and if there had to be come amendments, then control planning and so on could be looked at.

Now, do you agree that that's what you understand was going to be on the agenda, as it were, of the council on 2 August, 2016?---I'm sorry, but you've put an email up in front of me and you've asked me to read it and look at it and then you've asked me a question five seconds later. I need to read this and then I need to consider your question.

MR RANKEN: Sorry, what I was suggesting, I'm just talking about the email of 1 August, 2016.---Yeah, and so - - -

10 The one commencing at halfway down on page 1132.---Ah hmm, thank you,

THE COMMISSIONER: Just take your time to read that email.---Thank you.

MR RANKEN: If you would like to – and just let me know when you need to go over to page 1133.---Thank you. Yep, okay. Sorry, now I understand that. Yep.

20 And just what I was suggesting to you was that it's apparent from that email, is it not, that this was being prepared in advance of, or with a view to some presentation being made to the council at the next meeting on 2 August, 2016?---Yes.

And one can see that because Mr Matthews refers to the fact that, "I am working on the speaking notes which will develop these points," correct? ---Yes.

30 And obviously the date being the day before the meeting itself, correct? ---Yes.

And under the recommendation, and I took you to the two points that appears under the words, "It is recommended that." Do you see that?---Ah - - -

It's the first point at the bottom of page 1132?---Yes, I see that, sir, yes.

40 And I drew your attention to the fact that one of the points was actually advocating for something different to either of the options that were being proposed by Studio GL, insofar as it also sought to have the entire block to be rezoned as B4 mixed-use, correct?---Yes.

And was that in part because Mr Sidoti had expressed to you a desire for an outcome of that nature, that he wished to see the whole block rezoned as B4 mixed-use?---No. John wanted to know what our professional opinion was as, in relation to what the right land-use controls were for this site and we have had a look at this, and my colleague James has, and this is our suggestion in relation to what we feel the land-use controls should be

considered and further tested at, because we were concerned that a proper assessment, under the objectives of the Act, was not being conducted.

Now, if we go back to page 1132, and I'll draw your attention to the email above, which is the email of 2 August. Can you see that there are three dot points in that email? And essentially the first two dot points, I want to suggest to you, are identical to the two dot points that I took you to under the term "It is recommended that", correct?---Yes.

10 But what Mr Matthews has added here is an additional recommendation, and that's apparent from the very first line of his email.---Yes.

Which was, appears to be addressed mainly to Mr Sidoti, correct?---Yes.

And he's copied you in, apparently, to just see whether you have any thoughts or views, correct?---Yes.

And underneath that part of the email where Mr Matthews has asked you for any thoughts or views you may have, do you see that he says, "Otherwise
20 please feel free to make any changes and forward to the necessary recipients." Do you see that?---Yes.

And who were the necessary recipients of this recommendation?---I imagine it may be the other landowners and councillors in relation who were going to consider this.

So did you have some understanding that – well, were you going to be referring or forwarding this recommendation to councillors?---Yes.

30 You yourself were?---Me?

Yes.---Oh, no, not me personally. But it would be in the course of things that either James Wood or, or the landowners may.

Well, it wasn't going to be James because he's the one who's suggesting that someone else forward it. He's saying, "Otherwise please feel free to make any changes and forward to the necessary recipients." He's not saying, "I will forward it to the necessary recipients."---Look, I, I, I can't be
40 precise about what actually was in his mind at that stage, but this would have been a collective sort of situation. I'm not sure whether I was to or, or the landowners were to or he was to. I'm sorry.

Or John was to?---Yeah, possibly.

Mr Sidoti.---Yes.

You said this was, I think, a collective process or something. Do you mean that the three of you – that is, yourself, Mr Matthews and Mr Sidoti – were

discussing what would be done with this recommendation?---Yes, so this has, this has obviously emerged after we've – well, particularly James has done a review and given his opinion on it, and then we're putting together if the council is to progress further study and planning proposals in this way to interrogate these things further, these are the sort of decisions that council needs to make to promote that process.

10 What part of that recommendation talks about getting further studies done in respect of it?---That council prepare a planning proposal to implement the proposed changes to the Canada Bay LEP.

That's a planning proposal.---That's right.

That's actually the changes. That's not about conducting any further studies looking into it, correct?---No, incorrect.

20 Well, you say that that is, it does involve conducting further studies.---Yes, a planning proposal does that. There's a number of submitting reports that will go to that. They'll prepare studies and things to support these sort of land-use controls.

Where, where does it say "study"? Where does it say that these are the things that ought to be studied? In the recommendation.---"That council prepare a planning proposal to implement the proposed changes."

That would be – the planning proposal to implement proposed changes would be here are clauses that we would propose to include in the LEP, correct?---Yes.

30 And then they would then come back to council, correct?---Yes.

And might be publicly exhibited.---Well, yes.

And then it would go off to a Gateway Determination, or something of that kind, correct?---Yeah, but they'd need to be supported by studies and, and further work in that sort of a way.

40 Where does it say here that there should be some further study of the prospects of development if it was to be rezoned B4 mixed-use?---"That council prepare a planning proposal."

And so you say the very fact of the planning proposal would involve some study being done?---Yes. I mean, that's, that's what occurs. I mean, you would do a study, it would go to the Gateway. The council would say this is the considered policy direction we'd like to go. It would go to the Gateway for further consideration. The minister would give his requirements as to what additional studies may or may not need to be done to consider that.

And, and that'd be the process. That's, so that's, that's how planning proposals occur.

You would be aware, though, would you not, and would have been aware at this time, that it had already been the subject of a number of studies, the prospect of rezoning to B4 mixed-use, that entire site, correct?---Yes.

10 Those studies, and on numerous occasions the studies had concluded and had recommended that the zoning remain B4 mixed-use. Correct?---It had, but we felt they hadn't studied the right, they hadn't undertaken appropriate study of those lands.

20 THE COMMISSIONER: But you hadn't established that they in fact had not done it correctly, you just might have had a feeling about it but you didn't run that to ground, did you? When I say you, I mean you or Mr Matthews.---I don't think it was a feeling. Our eyes got – I just, look, I don't know the date or when exactly it happened, but I recall just myself looking at it and, and understanding the principles of urban design and understanding the objectives of the Act where you need to do social, economic and community benefits tests in relation to these sort of things, we felt, and I'll come back to that issue with the road where, you know, to not, to put a zoning change to a back fence when you're doing a major study, that's the first thing that highlighted our eyes to it going, why is it, why have they cut the boundary off there, that's very, very strange, when the rest of the town centre's doing it a certain way. That's what we couldn't understand. And that was, so that was a preliminary view at a certain point of it, but that, that's a pretty fundamental issue to not push a town centre zoning out in a uniform way across, across a street and, and to dog-leg it in to a certain area. We thought that was very strange. And so that pushed us further to look at it further, we could see that the, the issues of their economic study wasn't at a level of, of a robust nature to expand it to, to, to really test what it should, what should be considered.

30 MR RANKEN: And what economic - - -?---So therefore we felt that there needed to be more study done.

What economic analysis had you performed prior to coming up with this recommendation?---Well, I suppose in this sort of sense, we would know from our experience - - -

40 No, that's not, I didn't ask what you would know from your experience, what economic analysis did you conduct before coming up with this recommendation?---Well, we would have done our own in-house, I imagine preliminary assessment in relation to our own feasibility in relation to what could actually be stimulated by certain land-use controls. That's not particularly difficult to do.

Well, did you - - -

THE COMMISSIONER: Mr Daniel, you are not asked what you would have done, you are asked whether you did a feasibility or economic analysis in relation to the Five Dock Town Centre plan. Did you – when I say you I’m of course talking including Mr Matthews and anyone else in your firm – undertake such an analysis?---We subsequently got a detailed analysis done which you know of.

10 I’m sorry, would you just answer my question. If you can’t answer it, just say “I don’t know” or “I can’t remember” or whatever the appropriate answer be. Do you know whether your firm did undertake a feasibility or economic analysis of the proposed town centre plan?---I’m confident that internally we would have done our own high-level analysis.

You keep saying “would have”. Please, I’m trying to ascertain issues of fact in this inquiry. It’s not what somebody would have done.---Okay.

20 We’re interested to know what they did do. I know it might sound pedantic to the layperson but that’s the function I have to perform. I need to know the facts and I’m looking to you to help me on this fact.---And I’m trying to assist you, Commissioner.

Well, what’s the answer?---The answer is that when we undertake preliminary studies of urban rezonings and larger sites, we in-house do our own desktop review of what we think appropriate land-use controls would be. I see no reason to think that when we were doing the discussion of this that we wouldn’t have done the same in this case. And that’s my answer.

30 Now, are you able to answer my question? Did your firm do a feasibility or economic analysis on the town centre study?---We did our - - -

No, I haven’t finished.---Sorry.

Or not? If you can’t answer the question, just say I don’t know, I can’t answer it, yes, answer no, whatever is the appropriate answer, but I want an answer to my question. Did your firm do such an analysis or not?---We didn’t do a, a publishable analysis at that stage but we’d done a preliminary review of the land-use controls in an economic sense in our own mind.

40 All right. Thank you. I see the time. We might take the morning - - -

MR RANKEN: I do note the time.

THE COMMISSIONER: Is this a convenient time?

MR RANKEN: There’s just one point I wish to draw your attention to, Mr Daniel, and it’s in relation to that recommendation. Now, do you see that the third point does not simply refer to council preparing a planning proposal to implement the proposed changes, it also says that the planning proposal be

forwarded to the Department of Planning and Environment seeking a Gateway Determination and further community consultation. Do you see that?---Yes.

So this recommendation, if adopted by the council, would not result in a further study being done, but rather changes being proposed to the LEP and then submitted directly to the Department for a Gateway Determination. Do you accept that?---What I accept is - - -

10 Do you accept that?---No, I don't. I, because - - -

You say it would have come back, there would have been a further study before it goes to the Gateway Determination? Is that what you're saying? ---What I'm saying is that it goes off to the Department to consider, and the Department, in its role as delegate for the minister, provides the recommendations of what additional studies need to be done for the Department to then formally allow that to go on consultation, and then after that work is done, for the Department to do their assessment on it. That's the planning proposal process. So, yes, the Gateway study would promote
20 additional studies and test the rigour of, of, of the planning proposal proposition.

Can I suggest to you that, at most, it might result in the Department suggesting that there be further studies done.---No, it will.

As a matter of course?---Absolutely.

So do you say that every Gateway Determination results in a requirement that a further study be done, undertaken by the council in relation to the
30 planning proposal that it has been the subject of the Gateway Determination? Is that your evidence? Honestly and truthfully?---What are you getting at? I'm trying to – this is really standard.

THE COMMISSIONER: Just answer the question.---Well, there are different forms of planning proposals. Some are quite simple, that may not require that. But ones that are trying to seek land-use changes and, and may have environmental impact or social benefit or economic or orderly economic development of land, yes, the Department would typically say, "You need to study these items." That's usually what occurs.
40

MR RANKEN: That might be a convenient - - -

THE COMMISSIONER: Yes.

THE WITNESS: I'm - - -

THE COMMISSIONER: Yes, you want to add something?---I'm, I'm really confused with the question because it's about what – it's, that's a standard process in the Gateway procedure.

MR RANKEN: I'll come back to it after the morning tea.

THE COMMISSIONER: I'll take the morning tea adjournment. And I'll adjourn.

10

SHORT ADJOURNMENT

[11.42am]

THE COMMISSIONER: Yes, Mr Ranken,

MR RANKEN: Yes, thank you. Now, Mr Daniel, just in relation to that email on 1132, at the top of the page, and your evidence that you certainly weren't the person who was going to be forwarding it on to the necessary recipients. Was that because, in a sense, James Matthews was doing the actual work and you were being kept in the loop, as it were, but you weren't yourself doing anything other than possibly liaising from time to time with John Sidoti?---I, I might have assisted James in certain tasks during the process, but pretty much he was the lead on the project.

20

So it's likely then, is it not, that the person who was to forward this recommendation that Mr Matthews has suggested, and its three points, to any necessary recipients, was to be John Sidoti?---Oh, yeah. That, that could be, yeah, because – yeah, yes. Sorry.

And in fact, did you understand that the necessary recipients to whom Mr Matthews was in fact referring to were the Liberal councillors on the City of Canada Bay Council?---I, I'm, it could be the landowners and the, and the councillors, yes, but the decision makers at the time, yes.

30

THE COMMISSIONER: The Liberal councillors?---Yes, I would say that was the Liberal councillors and, but - - -

40

MR RANKEN: But not the other councillors?---Well, there was a history of the other councillors being just opposed.

So only sympathetic councillors were the kinds of persons who would receive this recommendation?---Well, those with an open mind to consider policy, yes, on this matter, yes.

THE COMMISSIONER: Why wouldn't that include the Labor Party councillors and the Green councillor?---Because there has been a history of those councillors opposing land-use changes in this area. So - - -

But their opposition was firmly and solidly based upon, was it not, expert opinion, being the opinion of Studio GL and HillPDA?---I can't say what was in the minds of the, those elected officials as to why they made certain decisions.

10 But you see, earlier on, the first three occasions this came before the council, the Liberal councillors were on the same page as the Labor councillors and the Greens, that is to say they were all supportive, at that earlier stage, of what Studio GL had recommended in clear terms to the council. Did you know that?---Okay, yes.

And at some later point of time that unanimity of opinion fractured. Do you agree?---Yes.

20 Why would, against that history, it be in the interests of everyone for the material that Mr Matthews had primarily worked upon to be sent to all councillors and not a select group?---Because they, because these are the councillors I understood, or other councillors had a history of, of opposing it, so we're trying to discuss with councillors we think may be of a mind to consider an addition study to this, to this land. That's - - -

Just lest that we're across purposes, the Labor councillors did not oppose what had been recommended by Studio GL, they supported it, along with the Liberal councillors, in the first three council meetings that took place. Do you understand that to be the position?---Oh, sorry, yeah. I, I was confused, my apologies.

30 So they were not opposed at all, they were wholly supportive in those earlier council meetings, along with the Liberal councillors.---Yes.

But then things changed later, where there was a, as I put it, a fracture - - -?---Yes, sorry, yeah. My apologies. I see what you're saying.

40 So against that background, wouldn't it have been advisable, to say the least, to let all councillors know what Mr Matthews was proposing or had analysed or was saying, rather than just the Liberal councillors?---Well, I think we're trying to assist our, these landowners to establish a further study, so it was in the judgement of what was the best course of action for that to occur.

Yes, but there was certainly a large public interest associated with this project, wasn't it?---Yes.

That was really what Studio GL was saying. You probably have read in the Studio GL report, they repeatedly said there was no public benefit or no significant public benefit in extending the zoning, that is, the B4 mixed-use zoning, beyond what they had proposed.---Yeah, we, and we felt that was an incorrect consideration.

Yes, again, that was more of a feeling that it was an incorrect assessment.
---Based off - - -

But your firm, and this is no criticism - - -?---No, no.

- - - by 2 August, 2016 had simply not had the time to do the sort of analysis that would be required to challenge the Studio GL report or the HillPDA feasibility analysis. Is that a fair statement?---No.

10

You say you did have enough time to do a full analysis to challenge the validity of the consultants to council?---No, that's not what I said.

20

No, what are you saying?---Yeah, thank you. So what I'm saying is, there's some, there were some fundamental issues at, that we saw, that are pretty 101, if I can use that expression, in urban planning that were not being followed in those studies, and we couldn't understand why. So that raised, you know, flags to us. And so our preliminary view was that, hang on, this needs further study and interrogation, because we felt that having such low density and height land-use controls in a mixed-zone block like that prevents the strategic development of the properties on the high street properly to actually achieve the outcomes that the studies were started off in the first place. And that's, you don't need to do months of study to work that out. It was pretty obvious when you looked at the, at the mapping that council had brought forward and the lack of rigour that they'd put into the economic analysis. We felt there needed to be more on that, and therefore we're trying to promote a process so that could occur.

30

Did you, anybody in your firm ever arrange to speak to the authors of the Studio GL report?---No, we didn't.

And did your firm ever take any steps to confer with the representatives of HillPDA who did the feasibility study?---No, because their report was able to be read.

Their what?---Their report was there.

Their fault, did you say?---No, no, their report, sorry, was there.

40

Their report was there, yes.---Yeah.

But insofar as you suggested that the report contained questionable aspects, did you ever speak, you or Mr Matthews or anyone else in your firm, speak to the people who were involved in the HillPDA analysis?---I think we spoke to council staff.

No, but please just listen to the point of my question and we'll get through this much more quickly.---It, sorry, sorry, my apologies.

That's all right. I'll put it again.---Yep.

Did anyone in your firm discuss the feasibility analysis that had been undertaken by HillPDA for this town centre plan or study?---Did, did we talk to HillPDA directly?

Well, directly or indirectly, by correspondence, email, however.---No.

10 Okay, and do you think - - -?---Could, could I just add to that? It's - - -

Yes.---Sorry, Commissioner. It's, typically when a report's there, they would be only answerable to the council staff in that sort of a way. So we, we normally as a matter of course, you wouldn't necessarily go talk directly to those consultants unless you had an established relation with them or you had the permission of council to go and do that, because you want to be careful doing that, because it add more cost to the process for council in that sense, so - - -

20 But you were suggesting, or the email, I'm sorry, that we just saw a moment ago was suggesting a lack of rigour.---Yes.

By the feasibility analysis, anyway.---Yes.

In what respect?---Well, you're only studying up to certain densities, you're not studying the full range of densities. And we thought that was strange.

30 Having thought it was strange, did you then seek to explore with HillPDA what their methodology was to see whether or not what was strange was in fact not strange?---Well, I don't need to, because if it's only going to 1.2:1, the question begs, why aren't you studying this to the full range of densities to that that are across the street? I don't need to talk to people about that, it's just not in their report. So it's like, well, that needs to be studied.

So you're not interested to know what the methodology they employed as to how they got to their conclusion?---Well, their methodology was in their report.

40 But you only reached the conclusion that it was strange, you didn't reach the conclusion – when I say you, I'm talking about your firm.---Yeah.

You didn't reach a concluded final view that it was in any way wrong. ---Well, well, I'm not – sorry, what do you mean by wrong?

Incorrect, flawed, invalid.---Yes. To not study the full range of densities that may be available to it I think is incorrect.

But you didn't - - -?---You should do the - - -

But my point is - - -?--- - - - full range of studies.

Yes.---I'm not saying that HillPDA are wrong for doing that, it depends on what they were asked to study.

My point is the highest analysis your firm reached about the feasibility study was you thought there was something strange there. Correct?---Well, we thought it was - - -

10

No, no. Is that correct, firstly? Let's take it a step at a time. Is that correct? ---Well, in the context of how you're meant to assess these things under the objectives of the Act, yes.

Right. So that being strange would then warrant close investigation to see if HillPDA had got it wrong in some way.---Well, that's what we were asking to do, is to propose a process to study that further.

20

But you never got to that stage, as I understand it, by 2 August, 2016, to establish that what appeared strange was in fact wrong.---Well, can I just put it in this context - - -

No, no, no. You just answer my question, please.---I, I, I'm trying to, Commissioner.

I'm just trying to get the facts, as I explained before.---Yes.

30

By 2 August, 2016, had your firm undertaken any analysis that enabled it to reach a firm final conclusion that the HillPDA analysis was flawed in some respect?---So when we looked at the - - -

No, would you answer the question. Did you or didn't you? When I say you, I'm talking about your firm of course.---Our analysis consisted of looking at the densities that council had promoted - - -

40

Please, please. You explained that before. Answer my question now. Did your firm undertake an analysis to reach any final concluded view that indeed what appeared to you to be strange in the HillPDA analysis was in fact flawed or invalid, by 2 August, 2016?---I want to be really clear - - -

Please answer my question, sir. You are seeking to evade the point.---I'm not seeking to evade, sir.

MR HALE: Well, I do object. I do object.

THE WITNESS: I'm sorry.

THE COMMISSIONER: Yes, Mr Hale.

MR HALE: In our respectful submission it is not a question that is answerable yes or no, he is trying to give it content, and that I apprehend is what the witness is saying, he can't answer it yes or no and that's the - - -

THE COMMISSIONER: Well, you and I beg to differ, I'm sorry, Mr Hale, on this one.

MR HALE: Yes, well, we, we differ from time to time.

10

THE COMMISSIONER: Yes. Are you able to assist me in ascertaining the facts on that question, please, Mr Daniel. It's an easy question. Did you, your firm, by 2 August, undertake an analysis that enabled you to reach a firm and final conclusion that there was something wrong in the PDA analysis? The answer is, "yes, we did", "no, we didn't", "I can't remember", "I don't know". Which of those or any other answers is appropriate to the question I've just put to you?---It's all about a matter of context, sir.

20 You're refusing to answer my question, aren't you?---I'm not refusing to answer your question, not at all.

Do you know?---I'm trying - - -

Do you know?---Yeah, well, yes, I do know, but I'm trying to give you an answer.

Then did you, by 2 August – this is the fourth time - - -?---Unless you let – sir, Mr Commissioner - - -

30 Mr Daniel - - -?---Yes.

- - - you're not running this inquiry.---I understand.

Do you understand that?---I understand that.

And you understand that it is your firm duty, having taken an oath, to assist this Commission by answering questions truthfully.---Absolutely.

40 And I've been trying to emphasise to you to focus on the point of questions so that they don't have to keep being repeated. Now, I'll put it a fifth time, and I don't want you to engage in speechmaking, I want you to listen to the point of the question - - -?---I'm trying to.

- - - and I want you to answer it.---Yes.

You might be listening but you're not answering it.---Yeah.

The question is, and I'll put it again, did you by 2 August or your firm undertake an analysis and reach any final conclusion that there was a flaw or error in the HillPDA feasibility analysis?---It was our opinion that to not study the range of densities to provide advice to a plan-making process was not appropriate.

Now answer my question.---I have, I think, sir.

10 You have not, I'm telling you. I want to know as a fact, and the public are entitled to know, sir, what are the facts?---I, I, I - - -

Did your firm do the analysis and come to a conclusion that PDA had in fact erred and their analysis was wrong at any time?---We're not saying that HillPDA's advice was wrong. It studied a range of densities. We thought it was incorrect for them not to – and it's not, maybe not their fault, they may have been asked just to study a certain range of densities up to 1.2:1 - - -

20 Yes, stop there, please. Stop there. No, I'm not allowing you have any engagement in speech making. Now, Mr Ranken - - -?---I'm not trying to, sir. I'm not trying to make a speech.

Next question, please. I think in that last answer, in effect, we can ascertain what the position was.---Oh, this is - - -

30 MR RANKEN: If the defects in the process were so fundamental, or such planning 101, then why would it not have been appropriate to draw that fact to the attention of not just the Liberal councillors but all councillors?---So, I, I, am unable to say what I, fully explain what I mean as the, as the, as the incorrect things but to - - -

I wasn't asking you to elucidate those incorrect things.---But you made a statement about what I was saying.

40 No, you said in answer to one of the questions from the Commissioner that the problems with the way that HillPDA had gone about their feasibility analysis, as you saw them, were fairly fundamental and planning 101, correct? If that was the case, then it would have been something that would have been worth bringing to the attention of all councillors, not just the Liberal councillors, correct?---I am not saying that HillPDA didn't do it right. They didn't do, they, they did a, they did their analysis on a certain range of densities. Our concern was they didn't do it to a full range of densities.

I understand that's your concern.

THE COMMISSIONER: Mr Ranken, I'll just intervene.

THE WITNESS: Oh, no, but, look, but - - -

THE COMMISSIONER: Mr Daniel, I just want to say something that might be in your interests.---Thank you, sir.

10 The last question put to you was not being answered by you. I have to make, at the end of the day, factual findings that are relevant to the public inquiry. In order to do that, I not only need to receive material in the form of documents and items, but I need to receive oral evidence from those who can contribute to the public inquiry. The assessment of witnesses has to take into account that both the demeanour of the witness and whether the conduct of the witness is consistent with the witness seeking to assist the Commission or is seeking to obstruct the Commission. Now, that has to be taken into account at the end of the day in determining what is the truthful position about any particular relevant matter.---Yes.

20 A witness who keeps avoiding the question and not answering the question is not doing him or herself any good at all in the ultimate fact-finding that has to be undertaken in this public inquiry. I am saying this for your benefit as well as for the Commission's, and for the public interest in getting to the bottom of the relevant matters in this public inquiry. I emphasise I am now explaining the process for your benefit- - -?---Yes. And I - - -

30 - - - as well as for the Commission's, so that at the end of the day, when the report of this Commission is delivered, and findings are made, which has regard to the truthfulness or the untruthfulness of witnesses, the demeanour, the conduct of witnesses, are some of the factors that go into the mix in making findings. Now, I'm going to ask Mr Ranken to put the last question to you again and I'm going to ask you to listen to the point of the question and I'm going to ask you to answer it.---Sir, may I just ask to explain why I'm confused?

No, no, no, please.---Sorry. No, I'm not - - -

A witness doesn't make speeches. All a witness does is - - -?---I'm, I'm trying to ask a question.

- - - make answer to questions. Don't interrupt me.---Sorry, sir.

40 I'm going to ask that that question be put.---Yes, yes.

And I want you, from this point forward, not only to listen to the point of the questions that are going to be put to you, I am going to ask you to listen to the point of every question that is put to you and I am going to ask you to answer directly, not indirectly, not making speeches, directly the questions put. Do you understand? Do you understand what I'm saying?---Yes, yes.

Because that is, whether you like it or not, the process that has to be followed in this Commission. Do you understand that?---Yes.

All right. Now you just listen from this point forward, please.---Okay.

MR RANKEN: If the concerns that you and your firm had in respect of the process by which HillPDA had conducted their feasibility analysis were so fundamental so as to be planning 101, then they're matters that ought to have been brought to the attention of all councillors, not just the Liberal councillors. Correct?---Well, we just, we wanted them to come to the point of - - -

10

Well, but answer my question, please.---We needed to - - -

Correct?---We needed to be considered by the political process.

THE COMMISSIONER: I'm taking that answer - - -?---Yes.

- - - as a deliberate obstruction of this Commission.---No, oh, oh, so, but I'm, I'm, sir - - -

20 I just want to let you know.---Sir, I'm trying to, I'm, I'm not trying to, but I'm trying to be really truthful here.

Please don't make speeches.---Sir - - -

Just answer the question.---Okay, certainly. Okay, sorry, I'm, I'm not, I'm probably not hearing something right.

MR HALE: Could I perhaps object to the form of question?

30 THE WITNESS: Yeah.

MR HALE: "It should have been sent to all of the councillors." The fundamental – the premise upon which that question is put has not made clear why.

THE COMMISSIONER: No, Mr Hale. I'll allow the question. Put it again, one last time.

40 MR RANKEN: If your concerns concerning the process by which HillPDA had conducted its feasibility analysis were so fundamental as to be planning 101, as you have said - - -?---No, no.

- - - that was a matter that ought to be have drawn to the attention of all councillors, not just the Liberal councillors, correct?---I don't know. I, I, I don't know what to say, I'm sorry, I, because there's - - -

Well, you were representing the interests of landowners, correct?---Yes.

And you wanted to ensure that their interests were served by any submissions that you might make to council, correct?---Yes.

And you had come to an opinion that there were some concerns – let’s just put it as high as concerns – about the process by which HillPDA had conducted its feasibility analysis, correct?---Yes. Thank you, yes.

And that those concerns, to you and your firm, were so fundamental as to be planning 101, correct?---(No Audible Reply)

10

They were obvious to you.---Yes. Yes, sorry.

And by obvious, you mean because they were so fundamental as to be planning 101. They were the words that you used.---I used that, I thought I’d used that in the context of the, the road where, where you would delineate the boundaries of the town centre in those type of matters, sir. That’s, that’s why I was confused. I’m very sorry. Yep.

20

Well, let’s just stick with your concerns.---Mmm, and, and also the feasibility matters to study the range of it, so yes. Yes, sorry. Yep.

You considered all of that to be planning 101.---Yes, and that it needed to be done, yes.

Yes. So if that was so - - -?---Sorry. I now understand. I’m very sorry. I tripped up, yep.

30

If that was so, then it ought to be brought to the attention of all councillors, not just the Liberal councillors. Correct?---Not, no, not necessarily.

Well, wouldn’t all councillors, if they were presented with something that was just such a fundamental, basic aspect of planning, that here is a rational reason why this needs to be looked at further, then that would be in the interests of the people who you were presenting, because then all of the councillors would have before them this information?---But they would have that if we raised it to the council meeting, through a representative councillor, we would it bring it for them. That’d be tantamount to me saying I need to talk to 93 state MPs to bring one matter before the state parliament. I would talk to one. This - - -

40

There were eight members of the City of Canada Bay Council.---Yes. Who all sit on a council meeting and we would bring it to the particular councillors that would bring that then forward to the council meeting to consider - - -

In the form of a resolution.--- - - - and they would all consider it. Yes.

In the form of a resolution.---Yes.

Is that – that’s the appropriate way to do that?---Yes.

Wouldn’t the appropriate way to do it - - -?---It’s a democratic way to do it.

Listen to my question. Wouldn’t the appropriate way to do it would be to present the arguments in a submission to the council? Rather than by way of some proposed resolution to be moved by a Liberal councillor?---Yeah, but this is, we’re trying to assist the council to think about it making a
10 policy decision to start a process of a planning proposal and a detailed study process. We would talk to some elected representatives, for them to take that policy position to the political body which is the group of councillors to make a decision. So my answer is, no, it is appropriate just for us to target those councillors that we would think would be submissive to look at that in a fair way, to then bring it forward in their democratic way to the political body of the council. And - - -

Why the Liberal councillors? Why not the Labor councillors?---Sorry?

20 Why not the Labor councillors?---Well, because I have a connection to the Liberal Party and I understand how they would think about these sort of things and we would bring it forward in that way and, and our client had a connection to them and so please, can you consider this.

So that’s how your firm works, is it, it’s about making connections with Liberal councillors, people who are from the same political persuasion as your
- - -?---Not at all.

- - - as you and your firm?

30 MR HALE: I object to that question.

THE WITNESS: Not at all.

MR HALE: That question shouldn’t be asked.

THE WITNESS: Not at all. It’s, it’s just that we knew that they were of a mind to do that. I think we’d had meetings with the mayor at that stage, who was a Liberal mayor and so therefore we were bringing forward policy for
40 them to consider at a council meeting that may or may not be accepted.

MR RANKEN: So you had a meeting - - -?---That’s the political process.

So you had had meetings with Helen McCaffrey, who by that stage was the Mayor of City of Canada Bay prior to the - - -?---Oh, look, I, I - - -

- - - prior to the meeting of council on - - -?---I, I know that - - -

- - - 2 August, 2016. Is that correct?---I do not know. I cannot recall.

Might that meeting have occurred at a later date?---I don't know. I can't recall. I know that we had a meeting with the mayor on a couple of projects and we went, we, we asked them and staff there. What day it was I couldn't tell you off the top of my head, although if I had my notes I could tell you that. But it's in the evidence there when we met with them.

10 So wasn't this the case, that the reason you targeted the Liberal councillors was because Mr Sidoti wanted you to target the Liberal councillors?---Well, yes, because we were trying – so “target” is a very emotive word, we were trying to, in a political process, to get into establish policy that could then be enacted appropriately. That's why I'm confused because these are very standard processes in a democratic process.

20 Well, what was the basis of your conclusion that the Labor councillors would not be receptive to the representations that you might make?---Because there was a consistent theme that they weren't, they weren't, as I can recall at the time or, that they weren't open to, to further study of this area. That's all I can - - -

THE COMMISSIONER: What did you base that on?---Well, my own opinion of thinking that way.

30 What's your opinion based on?---Oh, I do not know, but I think, I think the main thing is that what we were trying to do is insert policy discussion into the council political body and they were the councillors that we thought were appropriate to take that message through as public representatives and they'd take that and then through that, Green councillors, Labor councillors, Independent councillors would, would have that before them in a meeting. That's the process so - - -

MR RANKEN: But through the Liberal councillors, not through the Labor councillors.---Well, yes, well, in this case, yes, through the Liberal councillors.

40 And what about the answer to the Commissioner's question as to the basis of your believe that there had been a consistent pattern whereby the Labor councillors were not in favour of looking at this issue?---Yeah, so as, so it's gone through over the last few days, I've gone through all the exhibits and I'm just making myself familiar because it's a long time ago. There is a history I can see in the voting patterns of the Labor councillors consistently opposing, lodging rescission motions and, and not supporting an expansion or not supporting what we were putting for at the time. Where in the timeline that was occurring, I'm sorry I can't be precise.

Are you aware that on 3 November, 2015, when the resolution was passed in order for these three additional sites, including the Waterview Street site, to

be looked at, that the councillors that voted in favour of that resolution included the two Labor councillors who were entitled to vote on the matter?
---No, but if that's what the history shows, well, that's what it is.

So that there wasn't any opposition from the Labor councillors at that stage to looking at the matter.---Yeah, if that - - -

Correct?---If that's what the evidence says, that is the case, but as I say, later on, and so I'm getting confused about time, time lines so - - -

10

The events of later on would have played no part in your thinking around the time of 2 August, 2016. Correct?---Yes, that's correct. It's, it's - - -

Up to that point - - -?---It's the case, yeah. But you can see I'm, I'm struggling here with the time frames, I'm sorry.

Well, up to that point though there was no basis for you to assume that Labor councillors were going to be opposed to, as you say it was, a suggestion that it be looked at further.---Yeah, with that sort of context, that's correct, yes.

20

So there must have been some other reason why you were not seeking to put this information before the Labor councillors prior to the meeting on 2 August, 2016.---Prior to the meeting?

Yes.---No, well, we'd put it, but they would, but they would, by in the meeting they would get that put, put to them.

Yes, but - - -

30 THE COMMISSIONER: Wouldn't they be entitled to notice before the meeting that a particular motion was going to be, or resolution was going to be put?---They'd consider it in debate or in the process.

No, no. No, no.---Yes, it would be good for them to consider it but this - - -

Well, it gives them notice, for a start, doesn't it?---But - - -

No, no. Just stay with me.---Sorry, sir.

40 If you let the Labor councillors and the Green councillor in on the matter, that is to say, "Tomorrow or today we're going to move a resolution," it would not only be desirable, it would be essential, wouldn't it, to give the Labor councillors and the Green councillor advance warning or notice that this was proposed to happen? Isn't that a common fairness, amongst other things?---Common fairness, they, I would judge that, that if this policy was progressed, they would have more than enough time, through this plan-making process, to have their input into it. At this stage of the process, we were seeking to just get a process started under a certain sort of study

regime to consider the further work. Those councillors, by that, would be, obviously through that, involved in that. That's, that's, that's how the planning process works. This is the initial stage and then it would go forward. So I wouldn't necessarily see it as fair, you know, either way. That was put forward for certain councillors to commence that policy process and, and then they be involved in that, the, the full council would be involved in that as it progressed.

10 So you think the fair thing to do would be to give the Liberal councillors notice but to give none of the other councillors advance notice before the meeting takes place?---Well, I think that's probably the, the sensible way to get the policy commences.

That's the sensible way of doing it, is it?---Yes because those other councillors that you mentioned - - -

Why sensible?---Sorry?

20 Why sensible?---Because this is the start of the process. They, they were of a, the mayor was a Liberal, they typically, if you have a leading group in a council, they're the group that forms the policy of the day, so you want that policy established through that process. Very similar to how state governments work, very similar to how the council works. And then once that policy gets established, then the, the appropriate statutory process continues.

30 MR RANKEN: So this is the position, is it not, Mr Daniel, that as at 2 August, 2016, the City of Canada Bay Council was dominated by the Liberal side of politics, correct?---I, I think so, yes.

Insofar as there were eight members, four of which were Liberal?---And they had the mayoralty too.

And they had the mayoralty, correct?---Yes, yes.

So their number, the four Liberals included the mayor, correct?---That's correct.

40 So provided they all attended and were able to vote on a matter, if there was to be a split in the vote, the mayor would most likely have the casting vote and the Liberal side would win the day, correct?---Yeah, yeah. That's, yeah, that's, that's the way the numbers worked in the council at that time.

Yes. So, was this the strategy then, that without any notice being given to the other councillors, that is the non-Liberal councillors, that a Liberal councillor could move the motion that was being proposed in the email that had been drafted by Mr Matthews?---Yes.

And essentially by reason of the casting vote of the mayor, the other councillors would be caught on the hop, as it were, and the motion could pass?---Caught on the hop?

Caught on the hop, because they wouldn't have had prior notice of the - - -?---Oh, sorry, okay, sorry, okay, yeah,

They wouldn't have had prior notice of the notice of motion, correct?
---Well, we're trying to get policy progressed. Yes.

10

They wouldn't have had prior notice of that, correct?---Unless their other colleagues spoke to them.

THE COMMISSIONER: In any event, that was the strategy?---Oh, I don't know what the strategy was. The strategy was to – oh look, I, I, I, I do not know what the political strategy was in that way.

MR RANKEN: Well, you were part of the political strategy, were you not?
---No. I was giving advice, I was copied in on email and understanding that
20 but the strategy was to, the strategy, the political strategy on this was to get the council to adopt a policy to commence a planning proposal for this land. That's, that's what we were doing. So that's, that's the strategy.

If you were not part of that political strategy, was that the strategy that you understood Mr Sidoti to be pursuing?---To, a strategy, yes. We gave advice, so, and this is, sorry to be confused – but we gave advice that if the land needs to be considered for a change of use or change of densities or additional studies done, then the council needs to start a process, and they've already got this additional land study done, it needs to start a
30 process in a certain policy framework. So, yes, we were suggesting that if you want this to happen, we're giving, we're giving Mr Sidoti and the other landowners advice about what's the appropriate way the planning system works when it comes to doing these things under part 3 of the Act, the best and most efficient way of doing it is – there's other ways, but the council forms a policy position and then that policy gets established and it's, and it's moved forward in a statutory process and guided by part 3. That's, that's, that's what we were trying to do.

The advice you and your firm was giving in this email, 1132, was advice
40 about a recommendation to put before the council in the form of a resolution to put before the council, correct?---Yes. Yeah, that's right. This is the policy-forming part of it, yeah.

Yes. To be put forward, you understood, by a Liberal councillor, correct?
---Yes.

That was your understanding at the time, correct?---Yeah, course, yeah.

In circumstances where the other councillors would have no prior notice – that is, no notice prior to the meeting – that a motion of this kind was going to be presented, correct?---Well, I don't know if they would get prior notice or not in this. I mean, typically what would occur is, when you send an email like this to a councillor or a controlling body, they would not just put it up. What we found in the past, what traditionally happens is they would take that and go "I have a mind to set a policy setting like this," and they would go to staff and say, "Can you please put this on the agenda and please look at the wording to make sure it's appropriate and put it into a
10 recommendation that I can move on the council floor." That occurs very regularly and that's something that the bureaucracy would assist the council with, typically, and therefore, and that gets up on the paper in that sort of a way.

THE COMMISSIONER: All right. Now, just pause there.

THE WITNESS: That's, that's, that's usually what occurs, so - - -

THE COMMISSIONER: Now, after that long speech - - -?---Sorry. Sorry,
20 Commissioner.

After you have given that long speech - - -?---Sorry.

- - - now answer the question, please. Do you remember what the question was?---Well, was it, sorry, just ask it again because – my apologies.

MR RANKEN: No, if I might, I might take you up on what you've just said.---Yeah. Yes.

30 And the process you have described is a process whereby the, a proposed notice of motion or resolution could be fed back to council staff, so that could be included in their report to the councillors, correct?---No, that's not what it's saying.

Well, that's what you spoke about in your longwinded answer. You referred to a process by which if a councillor had been provided with a proposed form of a notice of motion, they could then go back to the council staff, feed it back into the reports and the recommendations that would come from council staff. That was the process that you described, correct?---No,
40 it's not. Sorry, maybe I'll clarify.

Well, no, what we are dealing with here - - -?---Yeah, no, I can - - -

- - - is a recommendation that your firm had drafted - - -?---Yes.

- - - the day, and finalised the day of the meeting - - -?---Yes.

- - - that was to take place in respect of it, correct?---Yes.

And having discussed it amongst yourselves – that is, between yourself, Mr Matthews and Mr Sidoti - - -?---Yes.

- - - there was a strategy, wasn't there?---Of course.

And the strategy was to provide it to the Liberal councillors and the Liberal councillors only, correct?---Ah, yes.

10 And that the Liberal councillors, one or other of the Liberal councillors would then move that motion at the meeting that day, correct, 2 August? ---Yes. Yes.

Yes. And it follows that the Labor councillors and the Greens councillor would not have had prior notice of the resolution that was being proposed, correct?---Yes, that's right.

Yes. And so they would necessarily be caught on the hop because they were unaware that anybody was going to be moving a motion of this kind, correct?---Yes, but - - -

And then, of course, you have the fact of the mayor having the casting vote in any split vote, correct?---Yes. Yes.

So this was a way to effectively have the element of surprise and seize the day in order to get through an expansion of the B4 mixed-use zone to include the entirety of that Waterview Street site block, correct?---It, it was a political - - -

30 Correct?---Sorry?

This was an attempt to use the element of surprise in order to push through an expansion of the B4 mixed-use zone to include the entirety of the Waterview Street site block, correct?---No, it was not an element of surprise.

Well, where in the council recommendations, in their report to council in respect of 2 August, 2015, is there any reference to a suggestion that the B4 mixed-use zone be extended to include the Waterview Street site block?---I, I, I don't have the report in front of me, but what - - -

Well, let's go to the report.---Yeah.

We can look at the recommendations and you can point it out to us perhaps. ---But - - -

If we could go to page 1163. Do you see the recommendation there that “council considers its preferred planning option for the additional sites in the Five Dock Town Centre”? Do you see that?---Yes.

And if we go to – that was a reference to the various options that had been considered by Studio GL and been the subject of the HillPDA feasibility analysis, correct?---Yeah, yeah.

10 So the sole recommendation was, you pick which option to go, correct?
---Sure.

And I think you agreed with me earlier that it was no part of either of the two options that had been proposed in respect of the Waterview Street site, that there be any extension of the B4 mixed-use zone to include that Waterview Street site block, correct?---Yeah, that was the staff’s advice.

20 Not only the staff’s advice, that was also the position of Studio GL, correct?
---Who were engaged by staff, yeah, that’s right, just Studio GL, yeah, well, that’s, that’s, sorry, that’s what I meant, yeah.

So none of the other councillors other than the Liberal councillors would have had any notice of a recommendation of a proposed resolution that sought the extension of the B4 mixed-use zone to include the entirety of the Waterview Street site prior to a Liberal councillor moving the notice of motion that your firm had prepared?---But the motion that we were preparing - - -

30 THE COMMISSIONER: No. Just answer the question.--- - - - was to start a planning proposal process - - -

Would you answer the – I direct you - - -?---Yes, we were asking the councillors to - - -

MR RANKEN: No, please, Mr Daniel.

THE COMMISSIONER: Mr Daniel.---Sorry.

MR RANKEN: My question was directed - - -

40 THE COMMISSIONER: I don’t know how many times I have to keep repeating this.---

MR HALE: Sir, Commissioner, can I - - -

THE COMMISSIONER: Would you listen – no, no. No speeches, no speeches.---Can I just ask a question, or just - - -

You've got a, Mr Hale's here looking after your interests.---Sorry, Mr Hale.
Yeah, sorry, yeah.

Now, would you – do you recall the question? Put it again, would you?

MR RANKEN: Okay.---Thank you.

THE COMMISSIONER: Now would you please answer this question?
Don't go off on speechmaking.---Oh - - -

10

Just answer the question.

MR RANKEN: I've taken you to the report that was prepared by council
staff. There's no recommendation there or anything that would suggest a
resolution proposing an extension of the B4 mixed-use zone to include the
entirety of the Waterview Street site block, correct?---Yes, no, that's
correct, yep. Yes.

20

And so it's the case, is it not, that none of the non-Liberal councillors would
have any prior notice of the fact of a resolution seeking an extension of the
B4 mixed-use zone until such a time as a Liberal councillor moved for the
motion that your firm had drafted?---Yes, to extend a further study.

Now - - -?---But can I just say - - -

No.

THE COMMISSIONER: No, no, no speeches.---Could I just, could I - - -

30

MR RANKEN: No, I've asked you the questions and you've answered it.
---Okay.

And now, did you attend the meeting of the council on 2 August of 2016?
---I may have, I am not 100 per cent sure, there was a couple of council
meetings, but I think I might have.

This would have been - - -?---I'm sorry, I, yeah, I cannot remember
completely.

40

Well, this was the first occasion the matter was before the council following
your engagement or the engagement of your firm.---I cannot, I, I cannot, I
cannot recall completely, but it more than likely sound – I may have been,
but I'm not 100 per cent sure.

And on the occasions when you did attend, did you ever present to the
council, or did you attend with Mr Matthews and he presented to the
council?---I can recall me presenting to the council on another matter, but
not on this matter, I think.

I'm just asking you about the Five Dock matter.---Yeah, oh, sorry, just going through my brain, but it's, yeah. I, I, I attended with James, but he was making, making the presentation.

And was one of the reasons why you were in attendance as well was so that you could perhaps report back to Mr Sidoti as to what was happening during the course of the council meeting?---Oh, part of it.

10 And you would do that by way of text messages or messages of that kind, is that right?---Yes, yes. Yes. I also remember one of the meetings one of our other clients was there as well, so that was a bit of a challenge as well, so it was kind of like a dual role, yeah.

But that client was there in relation to that was unrelated to Five Dock, correct?---Yes, yeah, that's right. Yes, sir, yep.

I think your firm was engaged in relation to another development that was occurring in Concord, is that right?---Yeah, that's correct, yep.
20

Is that the matter that you're referring to at the time?---I think so, yeah, yep.

Well, we might come to touch upon that a little bit later. But at the meeting of 2 August, 2016, Mr Matthews did address the council. Or you don't recall?---I know he addressed the council meeting. I'm sorry, I can't be precise on the dates.

I will just perhaps assist you.---Thank you.

30 But if we could go to the meeting, the minutes of the meeting at page 1169. ---Thank you.

Can you see there there's the – we might need to start at 1168. This is a mistake I make commonly. At the bottom you can see that we're talking about item 3, which is Five Dock Town Centre additional sites.---Yes, got that, yep.

And it commenced at 6.54pm. See that?---Yes. Yes, got that.

40 And Councillors Fasanella and Megna each had a, a pecuniary interest, so they left the meeting.---Okay.

Is that something you were aware of, the fact – Councillor Fasanella was a Labor councillor and Councillor Megna was a Liberal councillor?---Yeah, I know Michael had a, a property interest in Five Dock, so it was something like that, yeah (not transcribable) described it to me.

And whenever this topic came up, those two councillors left the meeting, correct?---If the minutes show that, I, you know, I can't distinctly remember, personally, but, yeah.

And that effectively meant, though, that the balance of power, as it were, at the meeting, in terms of voting power, remained the same as between the right side of politics and the left side of politics, correct?---Oh, right, yes, okay, I see. Yep, I see your point, yep.

10 Moving to the next page, we then see the persons who spoke.---Yes.

And do you see that it says, "Mr J Matthews, Pacific Planning, representing various landholders." Do you see that?---Yes.

It doesn't actually identify which landholders or on whose behalf Mr Matthews was presenting.---Yes.

20 Do you see that? Do you recall whether or not that was made apparent at the meeting by Mr Matthews, that we represent Deveme Pty Ltd and Anderlis Pty Ltd or even we represent the owners of 120 Great North Road and 2 Second Avenue and possibly some other property?---Yeah, I, look, I, I can't recall the time, but I can recall trying to get, to be very clear on this point about who we were representing. But at some stage, I can't remember if it was before, after or during, I'm sorry, I can't be precise, but I know that was something we were trying to clarify, clearly.

30 THE COMMISSIONER: Did you ever get to a point where you did identify who the firm was acting for? That is - - -?---Yeah, I think in, I think in later submissions we solidified that quite clearly in our submissions, I think, yeah.

And who were they?---Oh, I'd need to read our submissions, sir, to show those property numbers, but - - -

And don't you remember now who you concluded were the persons you were representing as the landowners?---It's in the documents in our submissions. Off the top of my head, I'm sorry, I can't completely remember, to be precise. But it's signed off there.

40 MR RANKEN: Did you ever get formal instructions from those persons or did all your instructions effectively come through Mr Sidoti?---I think we got, yeah, as I said earlier this morning, it was Mr Tannous gave us some instructions and, and I think the rest of it came through John and his connections to the landowners, if I can recall, but I'm not completely precise. It's a while ago. Sorry about that.

Is it possible that, at least at this stage, as in 2 August, 2016, you and your firm were only representing the interests of the Sidoti family? That is, the

properties of 120 Great North Road and 122 Great North Road and 2 Second Avenue?---It's, it's possible but I thought, you know, that there was Mr Tannous involved in there as well, but I'm not (not transcribable) I'm very sorry, yeah.

10 Is there a possibility that, in fact, initially it was Mr Sidoti engaging you in respect of the Sidoti family interests and then there might have been some discussion amongst yourselves – that is, you, Mr Sidoti and Mr Matthews – about the prospect of essentially bringing in other landowners into the tent, as it were?---Yeah, well, that was a strategic matter that there were additional landowners now, you know, that had an interest in, in the, in the, in the further study of this site, so, yes.

20 But that was a strategy that the three of you discussed, about let's look and see if we can bring the other landowners within the umbrella of us, as it were?---Well, well, we thought that it would be, because – there were other landowners that had, that were concerned, as I understood from the historical process of the town centre study. And so it was thought if we could include those into our submissions, that would be helpful because then we could consider a holistic approach in that sort of a way.

THE COMMISSIONER: That was part of the strategy, is what's being asked.---Yeah, sorry, yeah.

MR RANKEN: Yes, yes.---Sorry, sir, I'm not trying to - - -

But as to contact with those landowners, you had one meeting with Mr Tannous, correct?---One or two, I, yes.

30 But no meetings with any of the other landowners.---I think later on we met with Mr Durkin, I think he's at 39, and had some discussions with him, but it wasn't me personally, I don't recall, but I'm very sorry, I'm very rusty on that one, and, and yeah, there was a number 37 I think, I'm not sure at that stage, yeah.

Well, number 37 was Mr Tannous.---Mmm.

40 But is this the case, that in terms of other landowners being brought into the tent as it were, Mr Tannous was the first one to be brought into the tent? ---I think so. Look, I'm very sorry, I'm not very clear on this history.

And insofar as others were brought into the tent, that was something that was done by Mr Sidoti, to your knowledge, he was the one who made the approach to them or at least communicated to you about their willingness to be brought into it.---Yes, that's, yes, correct, yes.

And you didn't have, apart from a meeting with Mr Durkin that came about later on in the piece, you didn't get any direct communications with those other landowners?---No.

Insofar as any information was coming from them, it was coming via Mr Sidoti.---Yes, that's correct.

10 Now, we're going back to the meeting. We were on page 1169 and I directed your attention to the reference to Mr Matthews as being someone who presented.---Yeah.

Can you see there that Mr Durkin is also identified as being someone who presented to the meeting?---Yes, yes.

So it's unlikely that at that stage Mr Durkin was someone who was within the tent because he was obviously addressing council himself.---Correct, yeah, yeah, no, that's right.

20 But as to whether or not Mr Tannous was already in the tent, as it were, you can't say one way or the other at this point. Correct?---Yeah, just, that's something I'm just not clear on, sorry.

You can see that what follows then is the recording of a motion that was moved by Councillors Kenzler and Tyrrell, Councillor Kenzler being a Liberal, sorry, a Labor councillor and Councillor Tyrrell being the Greens councillor.---Ah hmm.

30 And if we go over the page you can see that ultimately, particularly at 1.b), they endorse the proposed resolution or the motion that was moved effectively endorse the conclusions of HillPDA in respect of the feasibility analysis for site B, which was the Waterview Street site.---Ah hmm.

And the recommendation was that effectively nothing be done to change the planning controls. Correct?---Yeah.

That was ultimately defeated by the casting vote of the mayor.---Ah hmm.

40 And along party lines. Do you see that? And then if we go over to page 1171, you can see an alternative motion that was put which effectively was to adopt option 2 in the additional sites report for the land between Second Avenue and Barnstaple Road on the Waterview Street site.---Ah hmm.

Do you see that?---Yes.

And ultimately the recommendation that had been drafted by James Matthews and yourself does not appear to have been put at that meeting. Correct? ---Yeah.

And do you have a recollection as to what transpired in that regard at the meeting? It appears that it wasn't even put by the Liberal councillors.
---Yeah, I can't, I can't recall why.

Was that something that was a bit of a surprise to you, weren't you expecting that a Liberal councillor would move the motion that had been drafted?---I had no expectations either way because I hadn't had any real experience with Canada Bay Council and how they operated.

10 Did you have some hope that that's what would occur?---Well, of course. I wouldn't have put it forward I guess, but it's not, it's not surprising either way that they do or don't. A council makes policy decisions as it sees fit.

And if - - -?---I guess you know.

If I could direct your attention then to some messages between yourself and Mr Sidoti.---Yes.

20 Sorry but before I do, if we could just go back to page 1171, I think it was. Do you see that the item that was discussed after item 3 commenced at about 7.50pm when Councillors Fasanella and Megna returned to the meeting?
---I see that, yes.

So that would suggest that having taken you to the time at which they actually left, which was 6.54pm, that between 6.54pm and 7.50pm the issue that was being discussed and considered by council was item 3.---Yeah.

30 So just with that time frame in mind, if we could go to page 1748. This is a list of instant messages between yourself and Mr Sidoti over a reasonably lengthy period. You can see the first in time, message number 1, the time that was sent was at 2.43pm on 23 April, 2015, so well over a year prior to the particular events I'm going to take you to.---Yep.

And can you see, if I draw your attention to message number 4, can you see that that's a message that was sent on 1 May, 2015, at 9.57am?---Yes.

40 And then the next message appears to have been sent, and it's from you to Mr Sidoti, at 10.04am on 20 November, 2015. So there seems to be a big gap between the two of you at least exchanging instant messages.---Yes.
Yeah, I see that, yes.

That may reflect the fact that you weren't having that much to do with Mr Sidoti, other than through your usual Liberal Party association, correct?
---Yes, yes.

And after 20 November, 2015, the next contact is on 7 April, 2016, and then there's some contact in April of 2016.---Yep.

And then you might see that, of those messages, do you see that there's a message, number 8, which was sent on 13 April, 2016, at 10.34am, in which you have said, "Hi John. Just following up to see if you had any progress in that?" Does that assist you, or are you able to tell us what that was in relation to, what progress this - -?---I'm not sure, I'm not sure, no. I can, I can surmise but I, you know, but sorry.

10 On 31 July, 2016, that is two days before the meeting of the council, we can see that there are a number of messages, three messages. Firstly, Mr Sidoti apparently enquiring as to the office address and the time in the morning.
---Ah hmm.

THE COMMISSIONER: It was a meeting between you and – I'm sorry. Between Mr Matthews, is that right, and Mr Sidoti?---Ah hmm.

MR RANKEN: And you.

20 THE COMMISSIONER: That was at 8.00am, 1 Alfred Street, Sydney.
---Sorry, which number. Number 10, is that it?

10.---Yeah, great.

MR RANKEN: So you see that?---Yep.

8.00am.---Ah hmm.

And then Mr Sidoti has responded at message number 11 to say, "See you then." Do you see that?---Yes.

30 THE COMMISSIONER: See the day before the – sorry.

MR RANKEN: So the meeting was on 1 August, 2016, correct?---Yes, yep.

And in the morning of 1 August, correct?---Yes.

And then we see the first of those emails that I took you to previously was later that day, presumably after that meeting?---Ah hmm.

40 So it's likely that at that meeting, you and Mr Matthews had discussed with Mr Sidoti the approach you would take to the meeting of 2 August, 2016. Is that correct?---Yeah. I would imagine so, yeah.

And it's from that meeting, or out of that meeting came, amongst other things, the proposed recommendation as far as a resolution that could be put before council, correct?---Yes, yep.

And then on 2 August, there was some further change to add that additional point that I took you to about making changes to the planning proposal and

submitting it to a Gateway Determination. Remember that?---Yeah, that's right. Yep.

And that was then to be forwarded onto the necessary recipients, which I think you've accepted included the Liberal councillors?---Yeah.

Now, if we go further down the page, can you see that there are some messages on 2 August? Firstly, there is a message at 4.20pm, which is message number, I think it's 15?---Yep, yep.

10

You're asking, "Can you please explain further the reason for the removal of the heritage house. You mentioned the importance of the laneway. However, doesn't the options in the report provide for a laneway?---Yeah, that's right, yeah. Yeah.

So what you were saying is, oh, hang on, you were questioning the basis on which he was suggesting that what was in the report was flawed, correct? ---No, not necessarily. I'm just asking for his opinions.

20

But one of the things that you've asked specifically about is, you know, the importance of the laneway, correct?---That's right, absolutely.

And that was, the importance of a laneway was one of the aspects about why it was that you considered it necessary for the zoning to be looked at further, correct?---That's right.

30

And what you're expressing there, I suggest, is you're querying whether or not that really was a proper basis for suggesting it was flawed, because the options in the report already provided for a laneway.---Yeah, but the options wouldn't bring it. 'Cause if you don't have high enough density, it's very difficult to get those sort of public benefits.

But that's the question you're asking.---That's right.

You're asking, you mentioned the importance of a laneway.---Yeah.

However, doesn't the options in the report provide for a laneway?---That's right.

40

So what I'm suggesting to you is that you were, you had a doubt in your mind as to whether the point about the importance of the laneway was really a valid point that suggested that the process had been flawed as far as the options that had been arrived at, correct?---Yeah, in relation to how you're going to get the laneway, yes.

So, and then there's a message where you're asking him to call you. ---Mmm.

And there's a further message from Mr Sidoti, and that's at 5.01pm. Message number 17 where he has indicated, "Just for the record, the owners are Richard and Catherine Sidoti. I don't own property, my parents do. Cheers, John."---Yes.

10 Now, are you able to assist us in the context of why it was that Mr Sidoti was sending a message of that nature? Were you querying, asking him who it was, in fact, you were representing?---Yeah, well, we just wanted to understand who the landowners were of this one, yeah.

And the only landowners he's referred to there are his parents.---That's correct, yeah.

He hasn't suggested anybody else, correct?---No, that's right.

And then you've sent what is effectively an emoji.---Yeah, I, I, yes.

20 We might need to enlarge it so that you can see it.---(not transcribable) okay, yep.

THE COMMISSIONER: What were you seeking to convey by that? ---"Okay, got your message." Sorry, I, yeah.

MR RANKEN: That's fine.---Okay, yep.

And then the next message is at 6.30pm and you're conveying to Mr Sidoti that eight councillors were present, correct?---Yeah.

30 Effectively reporting to him, look, all eight councillors are present, correct? ---Sure. Yeah.

And this was part of the process of you keeping Mr Sidoti in the loop. ---Yeah.

And he was very interested, wasn't he, to know about what was going on during the course of the meeting whilst this issue was being discussed, correct?---Yeah. Yeah. We're trying to be responsible here and - - -

40 No, he - - -?--- - - - (not transcribable) because he couldn't attend the meeting.

He couldn't attend the meeting.---Mmm.

And you were effectively his eyes and ears, as it were, as to what was occurring, given that Mr Matthews was going to be presenting, correct? ---Speaking, that's right.

So - - -?---Yes, yeah, that's right.

THE COMMISSIONER: Mr Ranken, I see the time.

MR RANKEN: Yes, sorry, Commissioner.

THE COMMISSIONER: Is that a convenient point?

MR RANKEN: Yes, that is.

10 THE COMMISSIONER: Very well.

MR RANKEN: Thank you.

THE COMMISSIONER: We'll take the luncheon adjournment. I'll reconvene at 2.05.

LUNCHEON ADJOURNMENT

[1.08pm]