

WITNEYPUB00999  
15/04/2021

WITNEY  
pp 00999-01056

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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 2.00PM

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

THE COMMISSIONER: Yes, Mr Ranken.

MR RANKEN: Thank you, Commissioner. Mr Daniel, prior to the luncheon adjournment, I was taking you through some messages between yourself and Mr Sidoti during the course of the meeting on 2 August, 2016. Do you recall?---(No Audible Reply)

10

We got to the end of page 1748, where there was a reference to the fact of eight councillors being there. If we could then go over to page 1749, Mr Sidoti has responded to your information by advising, "The two will declare interest," correct?---(No Audible Reply)

Do you see that?---(No Audible Reply)

You need to actually, for the transcript, Mr Daniel, you need to say yes or no.---Yes, I see it. Yeah.

20

And do you see the next message, Mr Sidoti says that, "There are six to vote," and your response is, "Ah, yes." Correct?---Yes.

And that was, wasn't it, effectively, the two of you ensuring that you had the right understanding as to what the voting lines were, effectively, that there would six councillors who would be able to vote because two would declare a pecuniary interest, correct, when it came to it?---Yes.

30

We then see, I don't need to take you to the detail of them, but between messages number 23, going down through to 28, is an exchange I would suggest, if you care to read them to yourself, about other matters that are occurring during the course of the council meeting before the particular item in respect of which you were interested in came up for discussion, correct? ---Yep.

And then at 28 we see the reference to the fact that, "Dealing with item 3 now." Do you see that?---Ah hmm.

40

And that's obviously a reference to the Five Dock Town Centre issue, correct?---Ah hmm.

That's a yes?---Yes.

Yes, thank you.---Sorry, yeah.

And Mr Sidoti says, "Great." And then you've responded to say, "Let's hope they move the new motion." Do you see that?---Yep.

“Seems to be support with the speakers, correct?---Ah hmm.

And those speakers included Mr Matthews.---Yep.

And you would have expected that Mr Matthews would be speaking in a manner that was supportive of the motion that you were hoping the councillors would move, because he was the person who drafted that motion, correct?---Yes.

10 The next message – sorry, that message though that you sent was at 7.15. Do you see that?---Yes.

And then there’s nothing between you and Mr Sidoti until Mr Sidoti asks at 7.49, bearing in mind that the next topic was discussed at 7.50, Mr Sidoti asks, “How’s it going?” Do you see that?---Yes.

And there is no response on 2 August, 2016 from you to Mr Sidoti’s message, at least not in a text form, correct?---Yes.

20 Is it likely that following the discussion of and the resolution of the matter on 2 August, 2016 that you absented yourself from the chamber and immediately telephoned Mr Sidoti, to let him know actually what had happened?---No, I think I had, I think one of our clients was there, and he had me in a conversation, if I recall. And, and it was difficult to leave in that context.

I understand. But of course, by 7.49, it would have been apparent that things hadn’t gone as had perhaps been planned for, correct?---Oh, yeah, I, yeah, they, because, well, we saw the minutes before and they, they had  
30 moved something alternate, yep.

Yes, what they moved was effectively the adoption of option 2 in the Studio GL report, correct?---Yeah. Yep.

Which would not involve, in particular, the rezoning of the Waterview Street site so it was entirely B4 mixed-use, correct?---Yes.

So I daresay that necessitated going back to the drawing board, as it were, to work out a proper, appropriate strategy to try and get this area looked at  
40 again?---Well, to commence a planning process that would study these issues, yes.

And it was necessary then, I suppose, to make arrangements for some meeting to occur, or - - -?---Yes, that’s correct.

What was the process from there, as far as you were concerned?---Well, because the policy position and platform hadn’t been established at that meeting to enable a, a planning proposal process to commence in a,

outlining certain studies, well, then we thought, well, we'd, we'd better go and, and just discuss what, what the framework of that could be and how we could work another way to make sure that what we felt was the study of these items was done.

10 So in terms of communicating the outcome of the meeting on 2 August, 2016 to Mr Sidoti, was that done by way of some telephone call or was it done by firstly arranging a meeting and then talking about it at that meeting? ---I honestly can't remember. I, I, I imagine I would have called him or talked to him about it or James would have, but I can't be sure.

And do you recall whether or not in the communication that you did have or any communication that you may have had with him whether he expressed a view about the decision that was made by council on 2 August?---Oh, look, I can't recall. I just, I don't know.

20 Well, what about did he say anything about the performance of the particular councillors? And when I say particular councillors I'm referring to the Liberal councillors in the course of that meeting.---Oh, look, I, I cannot remember.

Did he express any disappointment at the fact that they didn't move the motion that you apparently both hoped would be moved?---I can't remember.

You can't remember.---No.

30 THE COMMISSIONER: Do you remember whether he was happy?  
---Sorry?

Was he happy about the outcome?---I, I, I cannot remember. It was a, it was a start of a, you know, a long planning process that we were proposing to commence, so, I, I, I honestly can't remember his emotions or not or what his response was back - - -

40 But the strategy that had been worked out was a fairly significant one, wasn't it? If it came off, then Mr Sidoti or those who owned property in the area, perhaps his parents and others, might benefit if the strategy, the motion that was put up by Mr Matthews succeeded. It was fairly significant, is all I'm saying.---If a, if we were able to get a policy process at that stage moving, that would enable us to study the site of what we felt was appropriately, in accordance with the Environmental Planning and Assessment Act, commence a planning proposal study on those grounds that it then have a Gateway Determination to, so the minister could consider further study of what was appropriate to be studied, and if those controls could be supported in an environmental planning sense in relation to the objectives of the Act, and that went through that long process and those

studies found that it was beneficial to do that and it was in those areas of interest - - -

Yeah, yeah, yeah.--- - - - the answer to your question is, yes, if it was environmentally, economically and socially sustainable, I would assume the landowners would benefit.

10 So the short answer to my question is, yes, it would have been a significant development had it succeeded.---Not if the motion had succeeded, if the entire process had succeeded.

No, no, no. I'm just talking about the motion itself, I'm not going - - -?  
---Well, my answer to that question is, it's difficult to know because it's just the start of a process.

Well, it would have represented progress, wouldn't it?---A very minor step forward.

20 Right. And a lot of thought went into framing the motion and you liaising with Mr Sidoti by email, "How's it going?" and so on, indicates that there was real interest in getting that resolution up at that stage by you, by Mr Sidoti, no doubt by Mr Matthews.---Because our advice to Mr Sidoti was, if we want to study these things appropriately in the framework, we think that needs to be done - - -

Don't worry about the reasons - - -?--- - - - we need to start a planning process.

30 I'm saying don't – don't make speeches. Would you regard that it would have represented progress towards what Mr Sidoti or those other landowners were looking to achieve?---It would have established a policy direction to enable - - -

No, no, no, no, no, no. Just answer yes or no and we might get through this this afternoon much quicker. Would it have represented a significant development in terms of the advice that your firm was giving to Mr Sidoti? Now, please answer that as a yes or a no.---That requires me to - - -

40 No, no, no, no, no. You heard what I just said.---I did.

Is it a yes or a no?---I don't know. And the reason I don't know is - - -

No, no, no, no. Don't bother about that.---Is because - - -

Are you serious when you say on your oath that you don't know whether it would have represented a positive step towards achieving what Mr Sidoti or those he was representing was seeking to achieve?---If it was, it would have, it would have represented a positive step, yes.

Thank you. We got there.

MR HALE: Oh, with respect, with respect, Commissioner.

THE COMMISSIONER: Okay. That being a positive step, that being a positive step, when it didn't eventuate you must have recalled what Mr Sidoti's reaction to that was.---Not necessarily.

10 You don't recall at all, do you, is that what you're saying on your oath?  
---I, look, as, as sitting in this chair trying to recall a conversation from that long ago, I cannot be sure what emotions came out of that, no.

Well, what do you think probably was his reaction, as best you're able to say?---Um - - -

If you can't say it with certainty.---I imagine he said, I imagine his, his thing was, he was seeking us for advice and so he would have been, oh, okay.  
I'm, I'm worried, sir, because I don't want to, you to think that I'm trying to  
20 be coy, I'm not.

Yes, Mr Ranken.---I'm - - -

Next question, Mr Ranken, I don't think we'll waste any more time on this.  
---Yeah, thank you.

MR RANKEN: You did arrange though a meeting, did you not, with Mr Sidoti to occur shortly after the council meeting on 2 August, 2016?---Yeah, yes, yeah, I would have, yes.  
30

And prior to that meeting did you issue, that is your firm, issue an invoice in respect of the work that you had done to date?---Possibly. I mean you'd have it on your, on the record there so what does it say in my notes?

Well, perhaps if we could go to page 1173. Do you see that's an invoice that had been issued by Pacific Planning Pty Ltd to Deveme Pty Ltd?---Yes, I do.

40 And to the attention of Mr John Sidoti?---Yes, I do.

And in respect of site Five Dock Town Centre. Do you see that?---Yes. Yeah, of course. Yep.

And do you see that it refers to, "Client meeting, investigate and research planning reports and history. Prepare presentation for council and address." Do you see that?---Yes, that's correct. Yep.

And you would agree that there is no reference in that invoice to preparing a submission in the sense of a formal written submission to council as opposed to a presentation to council, the presentation that Mr Matthews gave, correct?---Oh, yeah. It says what the invoice says.

And for an amount of \$3,000 plus GST, correct?---Yes.

10 And who was it who told you that Deveme Pty Ltd was the entity to whom the invoice should be issued?---I can't specifically recall but I would have asked the question, "Who are we issuing this invoice to?" But I can't specifically remember but I, if, I mean, it's, it was, I mean, it would have been either John or, or Sandra or, I'm, I'm not a hundred per cent sure which, who was giving us the clear advice about anything. But we would have asked.

So perhaps if we could go to page 1949. If we could go down to the bottom of that page, just the second-last message, which is message number 38. That's from you to Mr Sidoti.---Oh, well, there you go.

20 It's on 4 August, 2016, and you said, "Hi John. When can you come to discuss next steps? Are you free tomorrow? Also which entity do we send the invoice to? Matty." Correct?---Yes.

So that accords with what your recollection is? Do you see that?---Yeah, well, that's what, that's what it says from that date.

And Mr Sidoti has told you to issue it to, effectively, to Deveme Pty Ltd and then suggested Monday afternoon because Friday was no good, correct? ---Yes.

30 And then did you meet with Mr Sidoti on 8 August, 2016, or you don't recall?---I can't recall. I'm sorry. Like, yeah.

If we go to 1175, that would appear to be a calendar entry from your calendar, indicating a meeting to take place at Pacific Planning's offices in Alfred Street, Sydney.---Yes, that's correct.

Regarding the Five Dock Town Centre. Do you see that?---Yes, yes.

40 And who attended that meeting?---(No Audible Reply)

You don't know.---I couldn't tell you.

Well, is it likely that the only persons who attended that meeting were yourself, Mr Matthews, and Mr Sidoti?---Yeah, that sounds about, probably, well that's probably correct, yeah. But I'm not a hundred per cent sure, no, but, yeah.

At this stage of the life of Pacific Planning, apart from yourself and Mr Matthews, who else was either employed or participated or was part of the business?---Well, it was basically James and myself. We keep a pretty lean operation that way but we'll bring, we'll bring on other colleagues to assist us as our work expands and decreases and, depending on our needs.

10 Does that mean, in a sense, you get external consultants to assist you with particular projects rather than employing people or are you suggesting something else?---Yeah. Oh, we, we, yeah, we subcontract off things and stuff like that. That's the idea. That's the business model we use, yeah.

So if the position that even as at today's date, Pacific Planning is effectively just you and Mr Matthews?---Pretty much, yeah. Although we get – yeah.

And if we could then go to 1176. This is an email chain, the first of which is, you can see, is an email from Mr Matthews to yourself and Mr Sidoti, well, an address which is sandrasidoti@[REDACTED]?---Ah hmm.

20 Sorry, I beg your pardon, .com. Do you see that?---Yes.

That was an address that you associated with Mr John Sidoti, is that correct?---Yes, that's right. Yep, that's the - - -

His personal, home email address?---Yeah, that's the, that's the family's personal email address, yes.

30 And that was used by not only other members of Mr Sidoti's family, his wife for example, but also him, correct?---Yeah, I, yeah, yes. I think that's that the case, yeah.

And in fact, Mr Matthews has – the salutation is addressed to “Matt and John.” Do you see that?---Yes.

And just so that you can see, if we could go to 1177, you can see that the email below it, because it was sent as a reply email, was in fact the email issuing the invoice that I took you to. Do you see that?---Yeah. Yes.

40 Now, going back to 1176, that email – if you just take the time to read it to yourself, then I will ask you some questions about it, and let me know when you've finished reading it.---Yes, yeah, okay, yeah. Yeah, okay.

And essentially this was the position, Mr Matthews was summarising the effect of what had been discussed in the meeting between yourselves that morning, correct?---Yes.

And then setting out the next steps, as it were, that each of you would do, correct?---Yes.

And one of the matters – and various items are assigned to various of you. For example, “MD to contact Tom to arrange time to meet and discuss concepts for the site that have been prepared already.” Do you see that?  
---Yep, yes, I do.

The reference to Tom there is a reference to Tom Kudinar, is that correct?  
---Yep.

10 He was the architect who had originally reached out to you because he was doing some work for Mr Sidoti at the time, is that right?---I think that’s the case, yeah, that’s if I recall, the initial discussions, yeah. Yeah.

And the reference in that dot point is, “To discuss concepts for the site that have been prepared already.” Do you see that?---Yeah. Yep.

20 So there seems to be an understanding at least as a result of this meeting that Tom Kudinar had already done some work on concepts for developing the properties that the Sidoti family owned in the Five Dock area. Is that - - -?  
---Yeah, well, some urban studies going on here, yep, that’s what, Tom’s an architect, yeah.

He’s an architect.---That’s right.

Yes, so in terms of the concepts, we’re talking about architectural concepts, are we not?---Yeah, that, we’re, architectural or urban design concepts, that’s correct, yeah.

30 THE COMMISSIONER: What was the concept? Just in the broad, I mean.  
---Oh, I can’t be precise, so, you know.

No, well, just in general terms.---Oh, it’d be urban designs, massing schemes, what would be working, what sort of development would fit on the site, those sort of things. Where you’d lay buildings, setbacks you’d have. The, the normal things you consider in urban form. That’s, you know. I can’t be exactly precise, but that’s the usual thing that would happen in that sense.

40 MR RANKEN: But the position though is this, is that at least at the date of this email, it was apparent to you, was it not, and as a result of the meeting that you had with Mr Sidoti, that the Sidoti family were already looking at possible concepts for the development of the properties they had in that block, that Waterview Street site block. Correct?---Yeah, because there’s been this planning process has been going on for quite a while, so - - -

But that’s - - -?---Yeah, so, that’s, oh - - -

But that’s (not transcribable) so that’s correct?---Yeah, yeah.

Yes. Thank you.---Yeah, sorry, yeah.

And the next point, it refers to something that Mr Matthews was to do, which was to “Arrange a meeting with Tony McNamara following meeting with Tom”?---Yeah. Yep.

And Tony McNamara you understood was the executive director of the planning department at the City of Canada Bay Council, correct?---Yep. Yeah, that’s right, yep.

10

Mr Matthews was also to “Document more concisely the planning argument for a floor space ratio of closer to 2.5:1.” You see that?---Yes, I do, yeah.

And then there is a task that seems to have been allocated to each of you, that is, JS – that’s Mr Sidoti, is it not?---Yep.

Yourself, and Mr Matthews, to “Search for council’s parking policy as discussed in meeting.” What was that about?---I, finding out what council’s parking policy was?

20

But what was the significance of that to the strategy?---I’m, I’d, I’d imagine because parking is an issue in a, in a town centre study and things like that, so we’re trying to look for rates, we’re trying to look for how they, how the, the overall planning process is in relation to how that would work and, and more fine-grain detail in relation to what considerations have gone into the DCP. How it’s integrated with the Transport for NSW Guide to Traffic Generating Developments. These are usual things that we’d go on and, when we’re doing these sort of studies.

30 Thank you.

THE COMMISSIONER: The reference there in that dot point to GL planners, to arrange a meeting with the GL planners, is that a reference to Studio GL or somebody else, some other entity?---Look, I’m not the author of this email, so - - -

You don’t know?---I, I, I’m, I don’t know precisely but I, GL, it could, sounds like Studio GL, yep.

40 And when it says, “On testing higher densities, why this didn’t occur.” ---Yeah, that’s right. Yep. I’d say that would be the GL, the GL, Studio GL, Commissioner, yeah.

So that suggests that it is Studio GL?---Yeah, yeah.

And that is to query, in effect, the possibility or potential for higher densities relevant to any redevelopment of the properties in question?---Yeah, it’s

just, yeah, so this looks like concerned about why this didn't occur and, and, and just trying to understand why that didn't occur.

And just turning then to the third dot point, that is jumping over a dot point, that commences, "The timing of progressing greater density controls." But the final dot point says, "The inclusion of other landholders and testing controls over a greater range of allotments." Do you see that? "Such as the strata block on the corner of Second Avenue and Great North Road." Do you see that?---Yes.

10

MR RANKEN: So, what you were looking to consider is bringing more landholders into the tent, as it were? Is that what that was directed to? ---Yeah. Because, yes, that's correct, yeah. We, because there was some other residents there that had an interest in things happening. So yeah.

20

And you can see after that dot point Mr Matthews has said, "From memory, these were the key matters discussed." So it's quite apparent from that email that he was summarising the key things that were discussed and things that were going to be done as a result of the meeting that you had had with Mr Sidoti on the morning of 8 August?---Yes.

Now, going back to the issue about concepts that Mr Kudinar had been working on for the Sidoti family's sites, if I could use that as a generic term. You no doubt leased with Mr Kudinar to obtain those concepts and drawings and - - -?---I can't specifically recall.

30

Perhaps if we could go to page 1183. Now, can you see, this is an email chain and the top email is effectively Mr Kudinar-Kwee, that's Tom Kudinar, he's actually got a double barrel surname, is that the position, but everyone just calls him Tom Kudinar, is that right?---Yes.

He has forwarded this email that he had received and it's to, he's forwarded it to James Matthews and MD Matt. That's you, isn't it?---Oh, I assume so, yes, yeah.

And it's got some attachments and you can see that the original message was something from, a message from an architectural technician with Zhinar Architects, is that right?---Yep.

40

And is Zhinar Architects the name of Mr Kudinar-Kwee's firm that he worked for?---Yes. I understand it is, yep.

So this is obviously someone who works with Mr Kudinar, correct?---Yes, yep.

And if we go to the next page, it's the rest of the email, and then go to page 1185.---Yep.

Are these the kinds – you can see there’s Zhinar Architects name in the border at the top. Do you see that?---Yes.

Are these the kinds of concept information that you were seeking from Mr Kudinar?---Yeah. These are, these look like preliminary Urban Design Studies and massing diagrams, yes.

10 We can see this one appears to be a kind of 3D diagram, almost, superimposed over an aerial photograph, possibly something obtained from Google Earth or similar kind of application, and we can see Great North Road and Second Avenue indicated, and Waterview Street, correct?---Yes.

And we can see, effectively, a split between the two sides of the block between Great North Road and Waterview Street?---Yes.

If we move to the next page, page 1186, this shows the various lots and properties that were then existing in that block. Correct?---Yes.

20 And you can see there’s an area that’s shaded, I might call it aqua, other people may have different description of the colour, but that appears to cover, would you agree, the properties at 120, 122 and 2 Second Avenue? ---Yes.

And that’s to indicate, you understood, did you not, the particular property that was being or properties that were being considered for development as part of the concepts that were being developed at this time?---Well, that’s indicating perhaps what a certain landholding was in there, yeah, yeah.

30 The landholding of the Sidoti family. Correct?---That’s, yeah, that’s what it seems to indicate, yeah.

And there’s a very narrow strip between 41 and 39 which may be some kind of easement or something of that nature?---Looks like part of the landholding, yeah.

And if we go to the next page - - -

40 THE COMMISSIONER: Mr Ranken, is there a date on the plan? I see it’s styled - - -

THE WITNESS: It’s hard to read.

THE COMMISSIONER: - - - “Development Application, Preliminary.” I can read that, “Proposed building envelopes, option 3.”

THE WITNESS: What does it say? Yeah, no.

MR RANKEN: I can’t see oh - - -

THE WITNESS: If you scale it out, you will.

MR RANKEN: If one goes to - - -

THE WITNESS: Usually there's a title block on those, yeah.

MR RANKEN: If one goes to the left-hand side of the page and focuses in on the bottom left-hand corner - - -

10

THE COMMISSIONER: It says, "Date," "Date drawn."

THE WITNESS: Yeah, no one's filled out this title block.

MR RANKEN: No, no. What you may see, Commissioner, you can see, it may be necessary to rotate the image, but you can see a date of 28 September, 2016, 12.45.23pm.

THE COMMISSIONER: Oh, I see. 28 September, 2016. All right.

20

THE WITNESS: That was just probably the print date, isn't it, or something?

MR RANKEN: If, if, if, if - - -

THE WITNESS: I don't know, it was - - -

MR RANKEN: If I could just then draw your attention - - -

30

THE COMMISSIONER: It's got a precise time as well.

THE WITNESS: Ah hmm.

THE COMMISSIONER: 12.45.

MR RANKEN: And perhaps if I could draw your attention back to page 1183, you see the email, original email to which it appears to have been attached was sent by Mr Lopez Peña at 12.48 on 28 September, 2016. ---Yeah.

40

So that's the date we're talking about as far as the concept designs here. Does that assist you, Commissioner, in terms of that query? And again, moving to 1188, this is a kind of concept drawing in respect of the site. Correct?---Yeah, I'd say yeah.

And it indicates a proposed laneway that there might be.---Mmm.

Do you see that?---Yeah.

And then - - -?---It's unique for it to be hand-drawn.

Sorry?---You don't get that much these days, when it's hand-drawn.  
Beautiful.

And then if we go to 1189 there's a side profile, hand-drawn. Do you see that?---Yeah, terrific, yeah.

10 And then going to page 1190, these appear to be three-dimensional representations of the kind of development that's being looked at.  
---Yeah, yep, that's - - -

And it would appear that it's looking at developing the whole of the block from that - - -?---Yeah, it's a study of the entire block, yeah, yeah, in a (not transcribable) or sketch-up model I'd say.

20 THE COMMISSIONER: One block seems to be depicted as higher than the other. Is that the impression you get from that or - - -?---Yeah, it seems to be the high-density's on Great North Road there.

MR RANKEN: And that's to reflect, is it not, the existing limitations under the plan that was submitted to the Department to be finalised in November of 2011? Sorry, 2015?---Um, ah, I, if I didn't – its, I'm assuming that is the case but I'd need to look at the mathematics behind it to know if it's exact, but yeah, but these are just conceptualls, yeah, but that sounds about right.

30 And if we move to the next page, which is 1191, can you see there's a somewhat different concept that's being sketched out there by this three-dimensional - - -?---Yes, I can see that, yeah.

And that appears to have a particular development that would seem to be on 120 and 122 Great North Road.---Yeah.

THE COMMISSIONER: Well, could it also include 124 (not transcribable) - - -?---Do you know? Sorry, sir?

I'm sorry, you may not know.---Yeah.

40 Do you know what other properties were in the Sidoti family property holding besides the 120 Great North Road, the other properties in that road or don't you?---The, not the, is it not the site on the corner as well? I'm not 100 per cent sure sorry, off the top of my head.

There's been some evidence about number 122, 124 - - -?---Yeah, that's right.

- - - at different stages came into the ownership of the Sidoti family.---Yeah. I'm sorry, Commissioner, I can't precisely say.

You can't. That's okay.---I'm sorry.

MR RANKEN: And if we just, just to complete it, go through to the next page there are some suggested plans for particular floors.---Mmm.

And the next page various views of the concept. Correct?---Yep.

10

And then moving to page 1194, this is a further email, can you see, that Mr Kudinar-Kwee has forwarded to you, Mr Matthews and also Mr Sidoti? ---Yes.

And can you see that this was forwarded a couple of days later on 30 September, 2016. Correct?---Okay, yeah. I can see that.

20

And it's forwarding an email that had some 3D views as discussed in the PDF format, presumably discussed between Mr Andre Mulder and Mr Kudinar. Do you see that?---Yes, I do.

And do you recall what the purpose of obtaining these concept designs and 3D diagrams was?---Not precisely, no.

30

Was it not to include in some submission that you might make to council following the further public exhibition of the planning proposals as a result of the 2 August, 2016 meeting?---It seems like part of the research, additional research that we've asked for and they've been supplied some additional drawings, yeah.

There must have been a purpose behind it. I mean there must have been - - - ?---Yeah, I'm sure there was, yeah.

- - - in order for you to make some kind of approach to council about something to do with the planning controls that were going to apply to the planning proposal that would give effect to option 2.---Well, preliminary, yeah, these are preliminary massing documents and study documents, yeah.

40

But possibly looking at such things as perhaps tweaking with the height limits and such?---Well, these are, yeah, these are just massing models, yeah. That's right.

And floor space ratio. Correct?---Yeah, that's right. Just seeing what built form outcomes may or may not be appropriate onsite.

THE COMMISSIONER: At the top of that email is the words "possibility of John (not transcribable) ste". Do you know what that's a reference to? ---The ste?

It just says - - -?---I don't.

- - - "possibility of John" then says "ste". Do you know what that means?  
---No, I don't.

MR RANKEN: Could I suggest to you that that would appear most likely to be a typographical error in that the letters "ste" should in fact read "site", so "possibility of" - - -?---Or "set".

10

- - - "John site"?---Or "set".

Or "set".---"Set" or "site". I don't know. Like set of drawings, the site. I don't know. It could be either of those but, yeah, it's definitely, I'd agree with you it's a typo of some sort, "site", "set".

So either "site" or "set" is - - -?---Yeah. You know, you have a drawing set. You know, we have a site. Could be any of those.

20 But in either case something to do with Mr Sidoti's family's properties?  
---Yeah.

And you can see attached to that email if we move to 196 we start seeing the three-dimensional plans that were referred to.---Yep.

We can go through until 1198. Do you see that?---Ah hmm.

30 So how, if you could just explain to us, how was it that you anticipated this material and this information might be used in order to advance the interests of Mr Sidoti's family and the other landowners in the area?---Oh, well, these are just a, a preliminary, it'd seem, there seems to be a drawing of a urban, a very, a preliminary urban design study to, was testing massing models on, on, on the entire block.

And is the purpose of that to demonstrate why greater floor space ratio and height might be appropriate over the entire frontage to Waterview Street?  
---Yeah, it's one of the inputs you, you'd start on, yeah. There'd be more that'd come, I'd imagine you'd want to do, but that's a good start, yeah. It's urban design documentation.

40

And so you would then, in the ordinary course, have received this material, and would you then include it in a submission to council in support of having a look at greater heights and greater floor space ratio?---Yeah, maybe one of the inputs that we'd look at, sure.

Well, but if you were to make a submission – you've obtained this material for a reason, correct?---Yes.

And the reason is so that you, to advance the interests of Mr Sidoti's family and the other landowners, you can approach council with a formal submission in order to get them to look at the issue of heights and floor space ratio, correct?---Yeah, that would be a good input document, yep.

And one of the things you would need to provide council with is these kinds of concept drawings, correct? So that there's an idea, that the council can have an idea about the massing diagrams, as you've referred to.---For this particular site?

10

Yes.---Yeah. Yeah, that's right.

So you would expect then that you might then take this information, prepare a submission to council, and as part of the submission, there'd be whatever you had to say about the matter, but you would say, "And also, here is some supporting diagrams that support the position that we are advocating for." Correct?---Yeah, these would be preliminary documents you'd, you'd want to start looking at, yeah, that'd, that'd assist, that, this would assist this, these early discussions, for sure.

20

But also to provide to council, so that council has the information.---Well, the officers.

Yes, not to keep it to yourself, but it would both inform your submission and support your submission, correct? That's the idea?---Yeah, sure.

To show why it is necessary to look at greater floor space ratio and greater heights, correct?---Yeah, but that's, that's exactly right, yeah. You what you'd want, you'd, you'd put these things together, there's one thing.

30

And no doubt you had discussions with Mr Matthews upon receipt of this material about how you might be able to use it in the course of making a submission to council.---Yes.

And the extent to which these concepts actually were of assistance to you, and assistance to the submission that you might make.---Sorry, can you just repeat that again, sorry?

40

You'd discuss with Mr Matthews the extent to which these concepts would be useful to use in a submission to council.---Well, they were, yes, they were a drawing set that had been done, and we wanted to, we were obviously looking for more information that we could that was site-specific, yes. Because, you know, we're looking for what controls, we knew the controls in the rest of the town centre were being advanced, so we were trying to see, okay, what's happening on this side, and what's some ideas and concepts and how they would work.

Now, I just briefly want to go back to 1183.---Yeah. Sorry.

That's okay. This is the first of the emails that I took you to that have these various concepts as attachments, the one of 28 September, 2016, and you can see that, "Hello Tom, I hope I made it on time, kind regards"? Do you see that?---Yeah, sure, I see it, yep, yep.

10 If we could then go to page 1199, can I direct your attention first to the email at the bottom of that page, and just so that you can satisfy yourself that effectively what we see is that that was the first email in this chain, and you can see that James Matthews at the top of the page has sent an email to you, and it's in relation to the information that had been received as a result of that email. Do you see that?---Yeah. Yeah.

And he says, "Matty, any views on this before I make some formal comments?" Do you see that?---Yeah, yeah, I see it.

20 And can I draw your attention to the fourth line, or the fifth line down if you include the top line which commences, "Matthew," where it says, "I have had a quick look at the attached and think it's pretty, it's generally pretty good." Do you see that?---Yep.

"The real purpose of this though is to demonstrate why greater FSR and height is appropriate over the entire frontage to Waterview. I am not convinced of that. The concept seemed to show how the frontage to Great North can be developed but we already have the controls for that land." Do you see that?---Yeah.

30 And what Mr Matthews is expressing to you is the fact that, having considered the various concepts that were being developed at that time by Mr Kudinar, that there is no, there doesn't seem to be any difficulty with the existing controls, correct?---Yeah. Yep.

So effectively, these don't provide a great support for advocating for a change, correct?---Well, well, these don't, no. Well, these may not, in James' opinion and so he's, we testing it out, yeah.

40 And then if I draw your attention a little bit further down the page, about four lines down where it says, "We need to demonstrate that the two work together." That's a reference to floor space ratio and height. "But this will only work because of the laneway and that is the product of greater density. This should probably show numbers of units and how this would deliver the laneway and resolve many of the parking issues. I don't think it does this at the moment and I don't think council will be convinced that these demonstrate adequate justification of the greater controls." Do you see that?---Yeah, of course.

So the effect of that is, that having made the enquiry to look at the concepts that Mr Kudinar was developing for the Sidoti family site, and in fact the block per se?---Yes.

10 Those concepts did not provide any information that would justify the council to change the existing controls over the area, correct?---Well, not those plans from an urban design sense. There's more input that needs to go into it because they're not conclusive. They need more work. That's what that's saying. I mean, but it's, so we need to test certain matters and look at more things and get that in more detail. It's not - - -

But the plans - - -?---It's just that these, these – sorry. It's just saying these aren't conclusive and they need, need more work, this is what we need to do.

20 It doesn't say these aren't conclusive it says that, effectively, "I don't think it does this," that is it does not justify - - -?---Yeah, well, those plans don't. But it doesn't mean other plans won't. That's, that's the process that we were going through.

But these were the plans that Mr Kudinar was developing in respect of the development of the block, correct?---Sure.

30 And that was one of the inputs that you were looking to obtain in order to support your advocacy on behalf of the Sidoti family interests and other landowners to change the development controls, correct?---Well, not, well, but not to change them at day one, but we're starting to gather further, more evidence. It was obvious at the time, at the early, start of the process, that if load, if densities next door could be quite high, on council owned land and on the front, and that would enable appropriate development, why wasn't it right here? And we knew that high densities, from a preliminary feasibility sense, would need to be done and now we're going, now we're going down the pack of, track of, right, let's, let's understand what some of the more urban design testing is there. So there's, there's all these inputs that need to come into this sort of process but those plans there aren't showing this particular item. So we want more, we want more interrogation, rigour eventually put into a set, then we'd bring it forward. So - - -

40 But what these designs were showing was that there was no justification in order to achieve these kinds of concepts for any change to the development controls.---No. I, I, I disagree of your assumption and the way you're coming to a conclusion on this because that's not how we, we would work in these sort of processes. There is lots of testing and lots of things, preliminary plans that come in. So one part, economically, we might see something's not going to work, we're got to find a way to make it happen, does the urban design – my assumption is, because we go through this a lot when we're doing urban renewal projects, things like this, these preliminary designs need to show more, they need to show this, they're not showing the

appropriate things to make things work. We've got some concerns, we need some further testing to get them to work. This is the iterative process that occurs as we start moving down a process of further and more precise study. That's the, that's the process that we do.

Is that, "Let's try and see if we can come up," - - -?---But it's not black and white in that sense.

10 So are you saying, having gone to see what kind of concepts were being developed by Tom Kudinar, you decided, "Oh, this is actually not going to justify getting the kinds of changes that Mr Sidoti wants us to try and get, so let's see if we can go and get some other designs that would justify it." Is that it?---Not other designs but we just more refinement of, of designs and more interrogation of the urban forms and studies. That's what we're wanting to do.

20 And did you ever get such designs?---I, well, look, top of my head I'm not sure how - I'm unsure, I can't know, but I would assume that we started asking for further testing and just more density testings of things and seeing what setbacks should be - - -

By who?--- - - - in a preliminary sense.

By who?---Sorry?

By who did you - - -?---Oh, I imagine we would have reverted back to Tom on a couple of matters and said, "What's going on here, can you further test these items there?" That was the, that was what we would have done.

30 And did you obtain further designs from Mr Kudinar?---I, look, I recall that we had some further advanced and refined sort of massing scenarios that were, that were done in that sort of sense.

But you can't actually - - -?---Well, I've got them in my notes here, I just had to look at what the date was because I recall in one of our submissions we, we, we were showing how these things, these, these sort of densities could be, could be done in that sort of a way.

40 Well, let's just deal with the time period that we are - - -?---Some setbacks. - - - the time period that we are dealing with, which is in the latter half of 2016.---Ah hmm.

The matter having been decided at the meeting of 2 August, 2016, for option 2 to be endorsed and a planning proposal to be publicly exhibited that reflected that. It was then to come back before the council, was it not, in December of 2016?---I'm, I'm not, I don't know, I haven't got the dates in my head.

But there was a period in which you could make submissions to council?  
---Yes, there's, it's a plan-making process.

And what I want to ask you then though is, apart from, just confining yourself to that period, the period between August 2016 and December 2016, did you obtain some different plans or concepts to support the kinds of changes that you were wishing to advance on behalf of Mr Sidoti and the other landowners in the Waterview Street site, other than the ones I've just taken you to?---Oh, I think there were some ones that were slightly more refined in relation to setbacks and massing, testing the location of the laneway and those type of matters, but, certain aspects of it, but - - -

You think there were but you can't be sure?---Oh, well, yeah, I'm not 100 per cent sure where they – because I wasn't running this project in that sort of a way so I can't be precise.

But you were kept in the loop at all points, weren't you?---Not at all points.

20 Well, so far in all of the correspondence that I've taken you to, you were one of the recipients of the relevant correspondence. Correct?---Yes.

And so you were being kept in the loop at least insofar as the particular matters I've taken to you thus far. Correct?---Yes.

And can I then take you to another email commencing at page 1201. This is a chain of emails that as is often the case, it's in reverse chronological order. So if we could go to the next page, 1202, the first email is from Mr Matthews to Mr Dewar, who was a person who worked as a strategic planning coordinator at the City of Canada Bay Council. Correct?---Yes.

30 And essentially that first email was, "Just wondering if there was any time proposed for the exhibition of the Five Dock Town Centre additional sites planning proposal?"---Ah hmm.

See that?---Yes.

And that was on 28 September, 2016. Do you see that?---Ah hmm.

40 And immediately above you can see the email from Mr Dewar that was sent on the same day, commences on the bottom of page 1201, that was sent on 28 September, and it says, if we could go over to page 1202, "The Waterview Street rezoning in Five Dock was notified to affected adjoining properties on 30 August, 2016 and comments are to be receive by tomorrow."---Yes.

So indicating that the cut-off date for submissions would need to be the next day, that is 30 September, 2016, "But that's a non-statutory exhibition so if

you have comments you are welcome to submit them.” And in due course, if we go over to page 1201, Mr Matthews has forwarded that on to you on 29 September. Do you see that?---Yes.

“And just for your information,” and has indicated that he needs to speak with Mr Dewar the next week when he gets back, regarding Five Dock. ---Yes.

10 “Important we put a case forward.” And then you’ve asked, so then he’s asked a further question – sorry, I withdraw that. You’ve responded to say, “Mate, that is a good thing if it is going in November. We may be able to get the numbers for it if the council is still in place.” Do you see that?---Yes.

And the reference to “if the council is still in place” is because at this time the New South Wales State Government was looking at amalgamating a number of councils, correct?---Yeah, I recall that, yeah, that’s right, the amalgamation process, yeah.

20 Yes, and what you were referring to was, “Well, there may be a chance that by November 2016 the council doesn’t even exist as the City of Canada Bay Council.” Correct?---Yeah, that’s a good point, yeah, yes.

Well, if you’re in any doubt about that, if you look at the email immediately above from Mr Matthews, he actually asks, “Is there any timing on the council amalgamation?” Correct?---Yeah.

So he’s picked up on your final comment, correct?---Yeah, yeah. Yeah, we had another project going on and I think it was impacted too by that, so - - -

30 Yes, that’s the project at Concord, correct?---Yeah, yeah, it was just, we’re trying to understand what was going on.

That was a project that had absolutely nothing to do with Mr Sidoti, of course, correct?---Yeah, yeah, that’s right, yeah.

40 And was not a matter that he had any contact with you about or shown any interest in, correct?---Oh, I might have discussed it with him or talked to him about it, because it, it, that was specific to a state, you know, a state policy and the implementation of it. So I probably would have discussed it with him.

And in respect of that matter, you were acting on behalf of a developer, is that the position?---Yeah, the landowners, yeah.

The landowners.---There were a couple of landowners there, yeah.

Now, your response to Mr Matthews is, “Very up in the air at the moment due to the court process and the court granting some opportunities to appeal.

Matty.” Now that’s a reference to the fact that there were some court challenges to the whole process of amalgamation that was being proposed in relation to a couple of the particular councils?---Yeah. I, I assume that’s the case, yeah, I think that was going on from the history of it, yeah.

I mean, that’s something that you would have been across because of the nature of the work that you do often involves you having to engage with councils, correct?---Yes.

10 So the issue of amalgamation of councils is something that would have been an issue of some interest to you, in terms of your professional life.---Yeah, well, you don’t know who you’re dealing with, that’s right.

Exactly.---That’s right. If, if a council ends, it was like, who’s, what’s the new process, that’s right, so trying to get that timing advice right, yeah.

And then Mr Matthews responds to say, “Okay, well, this may work in our favour on this occasion.”---Yeah, okay.

20 Now that seems to be a reference to the idea of there being some delay caused by the amalgamation, the court process relating to amalgamation could be something that works in your favour in respect of the Five Dock matter, is that right?---Yeah, yeah, absolutely, yeah, for sure.

And is that because it would delay, could well result in a delay in the proposal as it was currently endorsed by the council being finalised, correct? ---Oh, no, just, I think that would more be about, like, if the council dissolve and administrators were formed, and everything just slows down drastically, right? And then you got to, then you got to find out, okay, what’s the new  
30 regime? What are we, who are we talking to? Who’s the administrator, how are these things happening, I, I would anticipate that’s the case, yeah.

But that would allow you greater time in order to prepare your case for the changes that you wished to advance on behalf of Mr Sidoti’s family’s interests and the other landowners.---Oh, more time?

Yes.---Well, we’d, if this is going through a, a longer process, there’d be (not transcribable) yeah, I mean, more, it’s always nice to have more time,  
40 yeah.

And Mr Matthews – sorry, and then you’ve indicated to Mr Matthews, “Yes, we will need to make representations and briefings to the elected councillors.” Do you see that?---Yes, I see it, yeah.

That’s suggesting that you could then make representations and briefings of specific councillors that might be elected if there was some amalgamation of councils, et cetera.---No.

No, what is that then? Is that referring to actually making - - ?---The existing councillors.

The existing councillors.---I'd imagine so, yeah. Well, you don't know who the next council's going to be, because you'd have to go through selection process. So I'm assuming this is, we're going to try to get meetings and talk to the elected councillors, to brief them.

10 So by the elected councillors, you meant the elected Liberal councillors, is that correct?---I'm unsure in this context, but (not transcribable)

Oh, so it might have been the Labor councillors as well?---It may have been, yeah. I can't be absolutely sure on, on this occasion.

Now, in due course, Pacific Planning did put forward a submission to the council in October of 2016. If we could go to page 1258. Do you see that there's an email from Mr Matthews that's copied to you but sent to the sandrasidoti@[REDACTED] email address?---Yes.

20 And it says, "John, please find attached the submission sent to council today on Canada Bay." Do you see that?---Yes.

And you've been copied into that obviously.---Yes.

And it appears that the Sandra Sidoti email address has forwarded it on to Mr Sidoti's parliamentary address.---Yes.

30 And Mr Sidoti also appears to have forwarded it on to what I would suggest to you is Mr Megna, Mr Michael Megna's personal email address.---Okay. Yeah.

Do you see that?---Yes, I do.

40 And going to the original email from Mr Matthews which was copied to you you'll see that he effectively is summarising the guts of the submission by saying, "You'll note there are two key points that he's made. Firstly that council is commended for endorsing option 2 in the removal of the heritage listing of 29 Waterview is supported," and that I would suggest to you is a typographical error which was subsequently clarified that in fact, and in the report in fact referred to 39 Waterview Street which is the correct address. ---Yes.

"Number 2, that the council omitted to investigate other alternative development outcomes where basement parking and greater FSR could be achieved. This in turn was not considered as part of the feasibility analysis by HillPDA therefore council is requested to investigate alternative schemes with suggestions enclosed that may facilitate a laneway and a more desirable build outcome." Do you see that?---Yeah, of course, yeah.

Now, can you see that there's then a paragraph but the paragraph after that commencing "Also". Do you see that?---Um - - -

"Also you will note that I did not specifically state who I was representing. However, we can state this when we speak at the council meeting if required." Do you see that?---Yeah. Yeah, sure.

10 So was this a deliberate decision taken to not make it explicit on the face of the submission on whose behalf Pacific Planning were acting when they made the submission and to seek to delay disclosing that until absolutely necessary?---No.

Well it said, "However, we can state this when we speak at the council if required."---Yes.

20 So that would suggest that the intention is not to necessarily make it known on whose behalf Pacific Planning were acting unless required to do so at the council meeting.---Yeah. It's because it's a plan maybe.

That's the plain inference and plain interpretation of those words, isn't it? ---Because as I understood at this time there was a, we were unclear about the entirety of the landowners that were, that, that are going to be basically involved in this submission. But the other issue is that when we do a strategic planning process we like to think of it in a holistic approach of the, of how we're progressing it forward. It's not in some sort of way to disclose who we're, who we're representing in some way. It'd be a matter of clarity of how many of those land owners are because it was a little bit unclear but also from the perspective we're studying the entire area in that sort of way but it's my understanding it was pretty obvious that Mr Sidoti and some of the other neighbours were, were, you know, we were, we were assisting. So I don't think that was, I don't think it was a great secret or anything so I don't think therefore that we were, had something of hiding anything.

40 So that would be plain on the face of the submission, would it, that there'd be sufficient information to be able to know well, everybody knows that that property is owned by the Sidoti family so it must be the Sidoti family on whose behalf you're acting?---No, I don't, that's not the assumption we're making that way. I think, from the best of my memory I think it was because we were unclear about, I think it was known that we were representing those, those, those properties but also about if there was other properties were to be included as well and so we were trying to understand what that was and then, so that's what we were doing at that stage. So that's, that's the best of my recollection.

You think it's well known to anybody who – certainly council staff who you were representing at that stage, is that - - -?---Yeah, I'm pretty sure the, the

staff would be aware of who we're representing in that way, yeah. But not the entirety though, that was the issue because there, I think, if I recall, there were different landowning parties that, that, that we were discussing things with but I can't be a hundred per cent sure - - -

10 So you didn't even know yourselves – sorry, could I just hold you there. You didn't even know yourself exactly who you were putting the submission into council for?---Not in its entirety because the landowners were going and talking to adjoining landowners and discussing the matters with them. For example, Mr Durkin, his property at [REDACTED], which is the heritage matter. We were commenting on that and I know there was not, not that it included us, but meetings going on if they wanted to be included and those sort of things, and they were representing him that sort of way. So, those general sort of discussions were going on, and so it was a, it was a little unclear at that time.

20 Well, the one person, or the one family you did know you were representing was the Sidoti family and their property interests in the areas, correct? ---Yeah, yeah. Sure. Yes, that's right, yeah, yeah.

And there was no reason why that couldn't be made apparent on the face of the face of the submission?---Oh, yeah, of course. Yeah, yeah. Well, yeah, that's right but I think it was pretty well known but, as such, yeah.

30 Pretty well known so that there would be no need for council staff to query you as to on whose behalf the submission was being submitted, is that what you're suggesting?---Yeah, well, prior to the council meeting we know that we'd need to just have that finalised and let them know usually. That's, but I can't, that's the usual process, yeah.

If I could just take you to - - -?---Because if I recall back, I mean, I'm asking John, "Okay, what's the entities," and those sort of things as well, so - - -

40 If we could go back to 1258, which was that email. It attaches the submission, and if we could go to the submission, particularly at page 1262. I want to suggest to you that it's not apparent on the face of that page, not only whose behalf you represent but even the particular property. There's no reference to the number of the property. I'm happy - - -?---I think later submissions though, we're, we're very, very clear.

I'm not asking about later submissions, I'm asking about this submission to the council made on 12 October, 2016.---Yeah, well, yeah, I mean, it's, it's not in that opening statement. That's correct.

And, if you go to the next page, you might cast your eye over that and satisfy yourself that there is no reference to any particular property owners or particular property sites on whose behalf you are acting, correct?---Yeah,

because we're talking about – yeah, we're, yeah, we're talking about a, an entire area.

And just at 1263, just in relation to development testing and feasibility analysis, do you see that you raise the – well, you raise the issues of development testing and feasibility analysis but you do not yourself provide any alternative feasibility analysis with this submission, correct?---That's right. We were - - -

- 10 And if I could go to page 1265. On 1265, do you see that – sorry, 1264. I apologise. Under Recommendations, do you see that you say that, “Pacific Planning has undertaken its own preliminary development testing across the block for that considers” - - -?---Yeah, that's right. Yeah. We've, so these are a little more refined than those hand drawing ones, yeah.

You say you've done some feasibility testing as well or just - - -?---Yep. Oh, yeah, we would have, we would have done some preliminary feasibility testing and those sort of things, yeah.

- 20 You didn't provide the details of that feasibility testing to council so they could see it?---No because this is the start of the process.

- Yes, but wouldn't it be – if you had done some genuine feasibility testing, wouldn't it be appropriate to provide that to council and say, “Look, this is the feasibility testing we've done that suggests that it's possible. You would look at that”?---No, we'd do that, no, we would do that later on in the process, sir, in more detail when we knew there was a process going on. These are, they're expensive things to do and so we're wanting to make sure, if we're perusing down a pathway, we want to get the established  
30 process going forward in the planning process. We have our own preliminary advice that we'd gone through, some preliminary testing. This is based also off not only what (not transcribable) here, but seeing what council has done on opposite sites. We test those things. We do our own internal feasibility testing 'cause we understand (not transcribable) cost of land and what things to be done. The genuine (not transcribable) about how you're going to incentivise people to give their land up for public purpose and mixing those things through. And then we would then go forward and say to council, “Can you please consider these items? We want to work with you because we want these studies to – we think you should be  
40 studying these things in more detail.”

Can I just hold you there.---That's what we would do.

I don't need to hear your speech. Can I just hold you there.---Oh, no, but I'm trying to give a - - -

I just - - -?---But that's why we wouldn't do those things at the start, that's all.

Can I just ask you this?---Because there's more to come. Sorry.

Mr Daniel, can I ask you this?---Yes.

10 And suggest to you that you do not even provide any information as to what the outcome of the preliminary testing you have conducted is in terms of saying what kind of returns might be available if the site was to be developed in the way that you are suggesting there, correct?---Well, we, we  
- - -

From your, even from the results of your preliminary feasibility analysis. ---So I, we wouldn't give ever a report that talks about returns and things like that. They'd be quite, quite – they wouldn't be in a development detail in relation to specific costings and those sort of things in this sort of a process. There would just be like, it'd be some preliminary assumptions on density and floor-space returns in relation to what would be in the market in that sense. That's, that's what it would be.

20 So effectively all you were doing - - -?---That would be tested, that would be tested later. But this is not an unusual process.

30 So effectively what you're saying is, all you're saying is it's enough for you to simply make the assertion that our preliminary development testing suggests that it can be done and you sort that out.---No. Well, let's, well, look, that's emotive language, dare I say. There's, the guide to planning proposals talks about a process at the start – and this is issued from the department – that talks about giving preliminary work and consideration but then later on more work is done in detail, and that's the process. So we're  
40 appropriately going at this stage, we've internally worked this through and we've gone next door has these sort of densities and heights. This sort of area here we're applying some urban design principles, some general massing. We've done our own internal work that we feel it's, that we feel that (not transcribable) more sustainable. Council themselves have worked that out on their own land that it's more feasible for them to have high densities. And then we've worked that through to have more of a, more studies done through a collaborative approach with council. I think that's, that's what we would try to do. And then as it goes off to a Gateway, those sort of additional studies would be done. That's the general idea.

40 Now, could I go to page 1278. Could I draw your attention to the email at the bottom of that page from Mr Dewar to Mr Matthews.---Mmm.

Of 7 November, 2016. Do you see that?---Yeah.

And Mr Dewar, as you know, was someone who was intimately involved with the whole process of the Five Dock Town Centre.---Mmm.

Correct?---Yeah.

And the various reports that had come back and forth to council about the matter, and the various submissions that had been made on behalf of interested parties, correct?---Yes.

And he said to Mr Matthews, “Hi, James. We are currently reviewing the submissions that were received following the exhibition of the draft controls for land in the Five Dock Town Centre. We have your submission dated 12  
10 October, 2016 and would like to confirm who you are acting on behalf of and which property we can attribute your submission to. I look forward to hearing from you.” Do you see that?---Yeah.

So it's not apparent to Mr Dewar on whose behalf Pacific Planning were acting.---Oh, he's playing, you know what I mean, it's, at that stage that's right, but - - -

At that - - -?---Yeah.

20 And he's someone who's intimately involved with the whole process.---Oh, I think he would, he was, he would be aware of, that, that, of certain landowners in this area, but he wants something formal from us about who we're representing. That's fine.

THE COMMISSIONER: He's asking you - - -?---Yes.

- - - to identify - - -?---Yeah.

- - - who you claim to be representing.---That's correct. Yeah.  
30

Well - - -?---Well, he's asking James that. Whose, who are you doing?

He's demonstrating that the submission that's been lodged does not identify particular land or landowners - - -?---Yes.

- - - for whom you are making the submission.---That's, that's correct, so - - -

40 That is an obvious omission, if I may say so. And he's now positively putting it to you, well, who do you act for?---We're not trying to hide that. It's, he's asking us the question. We're going to put it forward. It's, it's - - -

Well, what explanation can you provide as to why you didn't reveal it in the submission.---Reveal it? Because we were seeking clarity about the total group of landowners that we may be representing here on this case.

I'm sorry, that doesn't answer my question. What would be the reason why there was no disclosure of who you were representing? There might be some explanation known to you but known to no one else.---Because we were unsure of the quantum of those landowners yet, and our submission was basically about the, about the wider study that the council was continuing with.

10 But why didn't you identify who you were acting for, leaving for further advice if more came onboard later?---Oh, I'm not sure why in that, in that case.

That's fine.---I think it's because we weren't sure of the entirety, that's all. But - - -

That doesn't make much sense, with respect. You were acting, you did have clients. You were acting obviously in the Sidoti interests. Why wouldn't you reveal that?---I, there's no, I, I can't think of a reason why apart - - -

20 All right, thank you.--- - - - apart from the fact that we had I think, I think there was a history (not transcribable) we were talking to other landowners. But I'm, I'm sorry, it's a long time ago. I know that later on we were very, very clear with what we were doing, but this is again preliminary stage, and we're saying to council we want to work with you, and these sort of things we would progress forward. But, yeah, it's like - - -

30 MR RANKEN: But you'd already put forward a submission on behalf of various landowners and you hadn't identified before you put in that submission who it was that you were speaking for. Is that the position?---I, look, this is, we're talking November 2016, and I've written all my notes down, but you're flashing things up in front of me and I'm doing my best to remember, but I'm finding it very difficult about the time frame there. So I, I'm trying to - - -

40 Now, Mr Daniel, you said – Mr Daniel, you've given evidence that you, the reason why it wasn't made specific as to who it was the submission was being advance on behalf of was because you weren't sure at the time who you were acting for, correct?---Oh, look, I'm finding this very difficult with the time frame. I'm trying my best to answer your questions. But that is the best of my recollection. We weren't entirely sure of the entirety of who we were doing, who we were representing, and therefore we needed to clarify that as we continued down a process.

Then if we go to page - - -?---I mean - - -

- - - back to page 1278. We can see Mr Matthews' response, where he says, "Trust you are well and thank you for the email and for the consideration of our submission. We have been engaged by a number of landowners in the

area and I need to confirm the names and addresses for you.” Do you see that?---Yeah, course.

Yes. But even in that instance there’s been no further information provided, correct?---Yeah, but he’s, yeah, because we’re trying to collect it together to know, to give him an inclusive list.

Well, he could have said, “Well, we are acting for 120 and 2 Second Avenue, that’s the Sidoti family interests, and I’ll get back to you about other landowners in the area on whose behalf we’re acting,” correct?  
10 ---Yeah, sorry, I, I, he could have said that but he’s trying to make a more complete answer in that way, I’d assume.

THE COMMISSIONER: Is that an accurate statement that he makes?  
---What’s that?

We’re reading on the second line, he says, “We have been engaged by a number of landowners in the area.” Was that an accurate statement?  
---Yeah, I’m, I, I think that ‘cause we were, at the time (not transcribable)  
20 reasonably accurate that we’ve had - - -

Who were the landowners then as at the date of this email 7 November, 2016 - - -?---We, we’ve got - - -

- - - That your company or firm had been engaged by?---Well, there’s two companies there that are, that, that are, that we’re making submission on behalf of for those landowning entities.

Well, who were they? Who were the ones who had actually engaged your firm - - -?---Oh, Commissioner - - -  
30

- - - as at 7 November, 2016?---I, I, I couldn’t precisely tell you. It’s so long ago.

Well, if you can’t tell me precisely, tell me as best you’re able to.---Yeah.

Who had been engaged, who had engaged your firm as at 7 November, 2016?---I know the Sidoti family had.

Right.---And I’m, I’m, I’m guessing, I think it was Mr Tannous by that stage as well. And, but of course there were two or three landowners in that, in the Sidoti family, and different addresses there, so, that’s, that’s, that’s how I take that to be referenced in that way.  
40

Well, if you assume – and it’s only an assumption, it may not be right - - -?  
--Yeah, I’m sorry.

- - - that Mr Tannous had not engaged your firm as at this date - - -?---Yeah.

- - - then the only clients being represented by your firm were the Sidoti family, is that right?---Yeah, that's right, but we felt that, we understood that the other landowners through John were being part of this process to do this additional, put forward this additional study. So that's why we were unclear.

10 But they had not in fact engaged your firm as at 7 November through, either through Mr Sidoti or otherwise?---I'm unclear of what the timing, Commissioner, I'm sorry.

MR RANKEN: And is that in part because you have no written documentation recording the engagement or the terms of your engagement? ---Yeah, yeah, that's, that's, that's, that's, that was, that's unhelpful at this stage and it's unusual. At that stage it was unhelpful, yeah (not transcribable)

20 THE COMMISSIONER: If it was put to you, if it was put to you, that statement, "We have been engaged by a number of landowners in the area," was completely wrong, what would you say?---I'd say it's not Mr Matthews' fault, I'd say it's my fault for not being clear to James about who, who was completely, who we were completely engaged by. That's, yeah.

30 MR RANKEN: I just want to take you to page 1279, in fairness to Mr Daniel. Do you see that that's the previous, that's a further response at the bottom of that page to Mr Dewar the following day, on 8 November, where he advises that, "Pacific Planning have been engaged by the owners of 120, 122 and 2 Second Avenue and 37 Waterview Street." See that?---Yes. "Being Richard and Catherine Sidoti and Charlie Tannous?---Yes, there you go, yes, there you go, mmm.

40 And then insofar as Mr Matthews goes on to say, "Further these landowners have been engaging with the owners of 39, 41 and 43 Waterview Street," is that a reference to the fact that Mr Sidoti had been, to your knowledge, liaising with them, that is Mr John Sidoti, and then communicating back to you the position that they held?---Yeah. So he was, the, the, the landowners were getting together as a group, we thought that was an important aspect for them to have, have, you know, a understanding between them about the process moving forward, we thought that was important, so that's confirmation of that.

But that was Mr Sidoti's role in a sense was to marshal the other landowners to bring them within the tent. Is that right?---Not the words I'd use, but to understand and be included in the process, yes.

Now, so a submission had been put forward as part of the public exhibition process, which I've taken you to, on 12 October, 2016, and - - -?---This is council's process, isn't it?

Yes, it's council's process.---Yes.

You will recall that it was a non-statutory exhibition process. Correct?  
---Yeah, yeah, that's right.

10 Yes.---Some councils do this, yeah.

But that was because of the decision of the council on 2 August, 2016 which effectively adopted option 2 and then provided that there should be some planning proposals developed and exhibited. Correct?---Yes.

So that submissions such as the one that Pacific Planning put forward could be considered by council and recommendation could be made to the councillors by council staff. Correct?---Yeah, yeah, that's part of the process, yeah.

20

So when it came to dealing with the matter in December of 2016, the council had the benefit of the submission made by Pacific Planning on behalf of Richard and Catherine Sidoti and Mr Tannous. Correct?  
---Yes.

And insofar as that was said to involve some liaising with the other landowners of 39 and 41 and 43 Waterview Street. Correct?---Yes.

30

And in fact that submission was provided to the external consultant, Studio GL, for Studio GL to consider as part of its exhibitions outcomes report. Correct?---Yes.

And that outcomes report is what ultimately synthesised some of the information and then council staff prepared a report as to, to the councillors recommending a particular course be followed to further progress the planning proposal that had been resolved on 2 August, 2016.---No, I don't think the planning proposal had been resolved, all that's been resolved is a process to move forward to Gateway and to, to, in that sort of a way. So it's about the submission to get sent to the Department, as I understand it.

40

Yes, well, that's what I'm saying. In terms of to give effect to the planning proposal that was adopted, well, the option that was adopted on 2 August, 2016.---Yes.

Which was option 2, correct? There was then a planning proposal that was publicly exhibited and there were submissions received, and they were considered and a report prepared for council about this is the next step forward, correct?---Yes, but that's not a statutory process in that way, but,

yes, so it's, and this is the unfortunate thing that confuses the community. So it hasn't yet got to the Department yet for them to assess and do their determination on the conditions.

I understand that. I understand that. We're getting to the Gateway Determination.---Yeah. But that's why, that's why I'm just trying to clarify what stage in the process, 'cause it was a long time ago.

10 So, but in any event, both Studio GL and the council staff themselves had the benefit of being able to consider the report or the submission that had been made by Pacific Planning on behalf of the persons on whose behalf you were acting. Correct?---That's the process that's in the documents, yes.

Now, in due course a report was prepared by the council staff and I want to suggest – I'm just going to take you to that report briefly. I'm sorry, I apologise. If we could go to page 1371. That's the first page of the report that Mr Dewar prepared for the council meeting on 7 February, 2017. Sorry, that's the subsequent meeting. I meant to go to an earlier meeting. Sorry, 1327. That's the report that Mr Dewar prepared, do you see that?  
20 And it talks about the fact that the draft planning controls for the land on Waterview Street and the Five Dock Town Centre were exhibited in August/September '16. And refers to the exhibition, the submissions that were received.---Yeah.

The primary issue raised relating to the height facilitated by the proposed building controls and the impact of the additional development on the established community. And it refers to the fact of an exhibition outcomes report having been prepared recommending a planning proposal which would proceed subject to the maximum height of development on  
30 Waterview Street being limited to three to four storeys, and the building height for land with a frontage to Great North Road remaining five storeys. Do you see that?---Yeah, I do.

And the recommendation was that the planning proposal and draft DCP be prepared to reflect that recommendation of the exhibitions outcomes report and that they then be submitted to the Department of Planning and Environment for a Gateway Determination, correct? Which is the next stage that you're referring to, correct?---Although I, I, this, this preliminary stage doesn't really follow the, the guide to plan-making proposals. So  
40 going out to the community early before you had - - -

I didn't ask you that question.---Well, okay. There's no, there's no oversight from the state in this process is what I'm saying.

THE COMMISSIONER: No, please, please, please, just wait for the next question.

MR RANKEN: The oversight from the state comes at the point at which it's submitted to the Department for a Gateway Determination, correct?  
---That's correct.

Yes, but it needs to go through council before it gets to a Gateway Determination, doesn't it?---Yes, but - - -

10 Yes, so council needs to make a resolution to send a particular planning proposal to the Department for a Gateway Determination, correct?---The statutory process requires - - -

Correct?

THE COMMISSIONER: Please, please. Is it correct or not?---I, I, if you know the statutory process - - -

Is it correct or not?---You're going to have to ask me the question again because I'm confused.

20 MR RANKEN: Does the statutory process require that council makes a determination to forward a planning proposal to the Department for a Gateway Determination?---Yes. And then - - -

Thank you.---But, sir, can I, this is - - -

THE COMMISSIONER: No, no, no.

MR RANKEN: No. Thank you.

30 THE COMMISSIONER: Please, no statements or speeches.---Okay, I'll - - -

Next question.---Okay.

MR RANKEN: Now, could I take your attention to 1335?---What is the point?

Do you see there's a recommendation on that page?---Yeah, I see it.

40 Four paragraphs to the recommendation, do you see that?---Yeah, I do.

And do you see that it recommends that a planning proposal and associated Development Control Plan be prepared to implement the recommendations of the exhibition outcomes report that was prepared by Studio GL, dated 26 November, 2016?---Yes, I see all this.

And that it be submitted to the Department of Planning and Environment for a Gateway Determination, correct?---Yes.

And those recommendations followed the period of consideration of submissions in respect of the planning proposal that had been exhibited, and in respect of which you, that is, your firm, Pacific Planning, had made a submission to council so that that could be taken into account. Correct? ---I'm really trying to help the Commission here, but I know if I expand on my questions, you, I'm, I'm, I'm running a risk of you getting annoyed.

Sorry, did you - - -

10

THE COMMISSIONER: Please don't, no running commentary, Mr Daniel. ---I, I'm, I'm trying to assist, because we've put a, we've put a - - -

No, no, don't, don't, don't. That's all right. Put the question again. ---We've put a preliminary submission - - -

Please, please.

20

MR RANKEN: So these recommendations followed a consideration of the submissions that had been forward in response to the public exhibition of the planning proposals, correct?---Of the preliminary, the items - - -

Of the planning proposals that had been publicly exhibited.---No.

Correct?---Of those, of those documents, yes.

Yes, and your firm, Pacific Planning, had put a submission into council in respect of those documents, to use your words. Correct?---To the, to the, a, a preliminary - - -

30

Correct? Correct?---Okay.

THE COMMISSIONER: Is that correct?---We put a preliminary submission in that recommended, that - - -

MR RANKEN: In relation to the public exhibition of those documents, to use your words.---And that, that, that recommended more study.

40

I'm not asking what your submission recommended.---But to - - -

But what I'm asking to you is a submission - - -?---Sir - - -

- - - was put into council as part of the public exhibition that was done in respect of the planning proposals. Correct?---(No Audible Reply)

MR HALE: I do object. There can't be a planning proposal at this point.

THE WITNESS: Oh, this is ridiculous.

MR HALE: I think that is some of the confusion.

THE WITNESS: This is like, it's not - - -

MR HALE: The planning proposal that ultimately leads to, under section 55 - - -

10 THE COMMISSIONER: Yes, okay, Mr Hale, just wait a minute. The question can be formulated as necessary.

MR RANKEN: I'll put it in a different way. There were draft planning controls that were prepared as a result of the decision of the council on 2 August of 2016, correct?---Yes, there were, very preliminary.

Yes, thank you. And those draft planning controls were put out for public exhibition in August and September of 2016. Correct?---In a non-statutory process, yes.

20 THE COMMISSIONER: Oh, please, don't - - -

MR RANKEN: I didn't ask about whether it was statutory or non-statutory. ---Well, sir, you should, because that's an important part of the planning process. It is vital. I need to say this.

THE COMMISSIONER: Please, no statements.

MR RANKEN: Mr Daniel, I'm asking the questions.

30 MR HALE: Look, I do object to the question. I do object to the - - -

THE WITNESS: Well, I'm trying to give you an answer.

THE COMMISSIONER: No, you're - - -

THE WITNESS: Because you're asking about a process that doesn't, that, that is, that is not, there is all these other steps in the process. I'm trying to explain the context of how we're putting these reports in.

40 THE COMMISSIONER: Mr - - -

THE WITNESS: The state has not yet considered these controls or issues.

MR RANKEN: Mr Daniel.

THE COMMISSIONER: Mr Daniel, would you cease talking?---Well - - -

MR HALE: I do object to the question, and I must appreciate, I do appreciate that - - -

THE COMMISSIONER: Mr Hale, it's obvious what Counsel Assisting is putting. There's no room for misunderstanding as to what he's referring to. We've been over it ad nauseam during the course of the afternoon.

10 MR HALE: If we can avoid a term of art, a planning proposal which has a statutory function, where there is not at this stage any document which meets that description, that clearly is the concern the witness has.

THE WITNESS: Yeah.

MR RANKEN: I thought I'd made it clear from my last questions that I referred to it as "draft planning controls", which is not a planning proposal using a term of art.

THE COMMISSIONER: You proceed.

20 MR RANKEN: I'll start again. There were draft planning controls that were prepared following the decision of the council on 2 August, 2016. Correct?---Yes.

Those draft planning controls were put on public exhibition by the council in August and September of 2016, correct?---Yes.

30 In response to those draft planning controls, members of the public and other interested parties were invited to make submissions to council concerning those draft planning controls, correct?---Yes.

And in fact Pacific Planning, your company or your firm, put in a submission in relation to those draft planning controls as part of that public exhibition process, correct?---Part of the council's exhibition process, yes.

Yes, the council's exhibition process, correct?---Yes.

40 And those submissions were one of a number of submissions that were taken into account, not only by council staff but also by external experts engaged by council, namely Studio GL, correct?---Yes.

And taken into account and considered for the purposes of an exhibition outcome report that Studio GL prepared, correct?---Yes.

And that was to assist the councillors when it came to the meeting in December of 2012 to make an appropriate decision on the next steps for the matter to proceed by way of a planning proposal possibly, correct?---Yes.

Down at the statutory part that you're talking about, which would involve a Gateway Determination, correct?---Yes.

And so when we go to then page 1335, you can see the recommendation that's been made by the council staff, having considered the Studio GL exhibition outcome report, correct?---Yes.

And also your submission, amongst others?---Yes, yes.

10 And the suggestion was, or the recommendation was that, "A planning proposal and associated Development Control Plan be prepared to implement the recommendations of the outcomes report." Correct?---Yes.

And that, "That planning proposal be submitted to the Department of Planning and Environment for a Gateway Determination." Correct?---Yes.

Thank you. And so I understand that the submission that was being put forward was to suggest to that there needed to be further study to be done, correct?---And appropriate things to study.

20

And you understand that that was something that council staff had had regard to when they made this recommendation?---No, I don't think they had properly. I don't think they had.

So, you read the council staff report prior to the meeting in 6 December, 2016?---A long, a long time ago.

I understand that. But you would have read it, correct?---Yeah.

30 It would have been made available on the council's website the Thursday or Friday before the meeting, correct?---Yes.

So if the meeting was on 6 December, you could expect that you would have seen it on 2 or 3 December at the latest?---Yes.

And no doubt it would have been of some concern or perhaps disappointment on your part to see that council staff were not recommending that there be some further study done or further consideration of the matter that you were advocating for in your submission?---Of course.

40

And did you then seek to have council defer its consideration of the matter? ---Possibly.

Now, up to that point, your firm had not engaged with Studio GL or HillPDA, is that correct?---Yes.

And had not in fact taken any active steps to do so, is that right?---I think, I can't recall precisely but we hadn't, I think we'd had a meeting with staff, or discussions with staff about these studies but, no, we hadn't had a, we hadn't had a meeting with them, no.

When you say discussions with staff, you mean discussions with council staff?---Yeah, yeah.

10 And was one of those meetings a meeting between yourself and Mr Dewar?  
---I can't recall.

Did you attend a meeting with Mr Dewar where you discussed not only Five Dock but you also had a discussion about some issues associated with the Concord matter?---Yeah, yes, yes. I'm sure, I'm, I'm, I'm not sure on the date but, yes, we, he was at that meeting, yes. There was a meeting.

And that meeting was primarily concerned with the Five Dock issues, is that - - -?---Oh no, I think it was to do with the Concord matters as well.

20 Sorry, sorry.---Yeah.

I misspoke.---That's okay.

The main focus of that meeting was in fact Concord. That was the case?  
---Oh, more than likely, yeah.

But there was some discussion, albeit briefly, about Five Dock.---Yeah, I'd say that's probably right, yeah.

30 And are you able to recall the detail of the conversation you had with Mr Dewar about Five Dock?---No, not that long ago. No, I'm sorry.

So moving towards the meeting of December 2016, you are aware, are you not, that Mr Matthews sent an email to Mr Dewar which was copied to Councillors McCaffrey and Megna, seeking that council defer consideration of the issue?---Yes, I'm aware of that.

40 And that's something that he did in consultation with you?---Yes, if you could show me the email I - - -

If we bring up 1313.---Thank you.

Can you see the email is the second on the page?---Yeah.

And do you see that in that email Mr Matthews indicates that he's actually representing the views of 2 Second Avenue and 37 and 39 and 41 and 43 Waterview Street?---Yeah, seems like by that time we'd obviously got those, those people to come together, yeah, okay.

So you've expanded the people within the tent, as it were?---Oh, that's what seems to be done, yeah.

And he'd made a reference to the fact that these lots form more than half of the block the subject of the planning proposal.---Yes.

10 And he says, "I therefore respectfully request that the matter be deferred due to a number of concerns with the content and level of analysis of the recommended controls, particularly with regard to feasibility and lot amalgamation." Correct?---Yes.

And they're concerns that had already been raised by Pacific Planning in its submission of 12 October, 2016. Correct?---Yes.

So the council was already well aware of the concerns that had been raised. ---Yes.

20 So what you were seeking was to try and defer it again so that you might be able to again press the case for further changes. Is that right? Or a further study to be done at least?---Yes. Well, we were very keen to make sure that the study be appropriate. We got into the process, the appropriate testing and feasibilities and amalgamation, I think both of us were a bit surprised by this detailed process was happening before the item went off to the Gateway  
- - -

Can I draw your - - -?--- - - - which was, which was unusual for us to experience that, but maybe this is something that Canada Bay typically did.

30 But of course if it was to go off, you would have ordinarily expected it to simply have gone off to a Gateway Determination at an earlier stage. Is that what you're saying or - - -?---Not, not, not simply but the, the council, if they came to a decision it would have gone to the state to then get the items to be further studied and interrogated prior and the conditions of what the, of what agencies need to be consulted during that process and then, and then what exhibition process needed to be followed to meet the state's requirements.

40 So in the ordinary case that's the point at which you'd start making a lot more submissions about what should be done as far as the study?---Well, not we would, the council would, then the, or it may be us, it may be the council that does these more detailed studies and things like that.

So wouldn't you then be keen to see it actually go to the Gateway Determination so that then - - -?---Well, with the, with the right, with the appropriate recommendations in relation to the studies, but I think our concern at this stage was that we didn't feel council was appropriately testing all the, the, or opposing to test all the items that need to be done.

They seemed to have come up with a position of, we only think this site can take this much density and I can recall that we thought that that, that was a bit restrictive and they should be studying further densities and further outcomes in relation to the site because - - -

10 Yes, but you provided, but you had provided no actual substantive information to support the assertions that you were making about the flawed process. Correct?---Well, we would do that, we would do that post-Gateway more and, more in, more in detailed studies in that way, if they were enabled to be studied, that's what we'd do in that sense, or the council would do them.

20 Well, that would suggest that you would not be interested in delaying the matter but rather you would prefer to see it go to Gateway so that you could then be in a position to present the further information.---Not if the briefing to the Gateway was not enabling. If the advice from the council was not enabling, to the minister, was not enabling a broader range of study to make sure there was an appropriate environmental – in our opinion – assessment of a range of land-use controls and certain development outcomes that were environmentally, socially and economically sustainable to promote orderly development, well, we wanted to make sure that was put in there. But the premise it was putting forward, we felt, at this time, seemed to be that they weren't studying those, those range of densities appropriately and we didn't think that was a good outcome, so we wanted to - - -

THE COMMISSIONER: You did not identify any flaws at all or even suggest what they were in this letter. Isn't that right?---Well – sorry?

30 Sorry, this letter does not at all identify the flaws that your firm had discovered.---Well, our submission was suggesting different densities and, and was indicating that there needed to be additional study done.

Yes, and that had been already considered.---Well, we didn't think it had been considered.

So how many, how many times would you expect it to be considered?---I expect it to - - -

40 If you fail the first time - - -?---Well, if you're studying things at 1.2:1 and not at 2.5:1 or 2:1, or those range of densities to make sure that you're bringing forward an outcome that actually will promote redevelopment of the site, we would say that that's not, that's not good, good assessment processes. And we felt that that was being restricted. So it's not a matter of the times, of many times, we, we just want the right studies done once and for that to be interrogated. And we felt that that wasn't being done. It was being done across the road on council-owned land but not on this land, and we couldn't understand why.

I know you felt it and you couldn't understand it, but you had not identified any flaws in the methodology or the application of the methodologies in dealing with the feasibility or any of the other matters referred to in this email - - -?---I think I recall.

No, just don't talk over me.---Sorry, sir.

10 - - - you refer to in this email at all, did you?---I think at our earlier submission that we'd put forward, that sort of higher densities and controls that would, that would be, that needed to be studied to promote the public benefits and the outcomes in relation to laneways and better built form and, and higher housing numbers, and, and, you know, increased, increased economic output in relation to this land, and we didn't think that that was being considered.

But you didn't - - -?---And that's what our submission said.

20 Yes.---But that was a very preliminary submission. And now we're asking and we're trying to understand "Why didn't that occur?"

It was a preliminary submission by way of assertion, whereas HillPDA had done an actual exercise – which is an extensive one – to identify the matters it did report on.---Yeah, no, I'm not, I'm not saying that HillPDA's work wasn't.

No.---But they didn't study anything over a certain density, and we felt that was not sensible and that it should be tested further.

30 I think we've been over this ground before. Yes.---Well, but, but - - -

Yes, next question.

MR RANKEN: Now, yes, just - - -

THE WITNESS: Well, okay, but I can't understand why they didn't.

THE COMMISSIONER: No, just – next question.

40 MR RANKEN: I just want to draw your attention to an aspect of this email. Do you see towards the bottom of the page there's a paragraph that commences, "Therefore, as mentioned above, it is requested that the matter be deferred for further consideration at the next council meeting to allow us to meet with the council's planning consultant on behalf of the landowners to understand the level of analysis undertaken to inform recommendations that will have a significant impact on the type and level of development that may occur across the block in the future." Do you see that?---Yeah, yeah, we're trying to work with council on it.

Yes, you want to get a deferral of the matter so that you could engage in some consultation with Studio GL and HillPDA, for example, correct?  
---Yeah, that's right.

That's the reference there.---We're trying to, or via staff - - -

THE COMMISSIONER: Why hadn't you done that before? Why hadn't you done that in October? You had the opportunity.---Did we? I don't recall that we were given the opportunity to meet with - - -

10

Why didn't you go and knock on the door of Studio GL and the other consultants and kind of say, "We'd like to talk to you because it's necessary we understand how you've put together your reports so that we can advise our clients." Why didn't you do that?---Because they're council's consultants, and to go talk to council's consultants, you'd have to go via the council. And that's, that's what this, that's what this email - - -

Of course. Well, you'd need to, of course, have their client's consent to that course.---Well, that's what their, this email - - -

20

Why didn't you ask the council, "Do you mind if we speak to Studio GL?"  
---Well, that's what we're doing here.

Why didn't you, in October, say - - -?---Oh, oh, sorry, I get your point now, sorry, yeah.

- - - "Do you mind if we speak to Studio GL?"---Yeah.

"Do you mind whether we speak to" - - -?---Well - - -

30

Just hold your fire. Hold your fire.---Yep. Yep.

"Do you mind if we speak to HillPDA because we'd like to understand more about their analysis and conclusions."---Because the way that the process - I think we were a little bit surprised that council were progressing a process to study an exhibition prior to actually sending it to the Gateway. Typically what would occur is - - -

40

No, please, just could you focus on my question? I'm searching for an answer. I think you know what I'm after.---Well, no, I, I don't. Please - - -

I want an explanation, why did you not take the opportunity in October to sit down with Studio GL and HillPDA, with the consent of course of the council, and work this through?---Because you would typically do that once you've got the conditions study through a Gateway process and not, and, and we wouldn't have thought that that sort of study would be done early in the piece. We assumed that it would have been done one the Gateway conditions were done and we could have had the full remit of doing that - - -

But you didn't check that though with council, did you?--- - - - and so therefore we would then, therefore we would then do that process then and because we weren't given that opportunity and they went on a process of exhibition and study at that stage (not transcribable) we need to meet with them before they send this report off to the Gateway because - - -

Yes, Mr Ranken. Next question, please.

10 THE WITNESS: Yeah, that's, that's what it was.

MR RANKEN: You were aware of the fact of the public exhibition process from at least 2 August, 2016, when the council resolved to that, correct?  
---We, we were aware they were going a process, yeah.

So you were aware of that. That hadn't caught you by surprise in October/November 2016, it was something you were aware of at least as far back as 2 August, 2016?---We were surprised that - - -

20 Correct, correct?

THE COMMISSIONER: Is that correct?---You're going to have to ask me the question again.

MR RANKEN: Well, you were aware of the fact that council was going through this exhibition process as far back as 2 August, 2016, when it resolved to do so, correct?---Yes.

30 And in fact when you met with Mr Sidoti, that is you and Mr Matthews, met with Mr Sidoti on 8 August, 2016, one of the very things you thought you were going to consider was the potential to arrange a meeting the GL planners on testing higher densities and why that didn't occur.---Yes.

But you didn't take any steps in order to try and do that before it came before the council again in December 2016, correct?---That's correct.

And you didn't seek to do so before you actually put in your submission to the council in October 2016, correct?---Yes.

40 And as it happens, on 6 December, 2016, the matter was deferred, correct?  
---Yes.

And it was deferred essentially so that it could be the subject of a councillors workshop in early 2017, and then the matter came back before the council on 7 February, 2017, correct?---Yes.

And in the interim you didn't take any steps to engage with Studio GL or HillPDA, did you?---I, I think, if I recall, this happened over the Christmas

period. We, we wrote to council to seek if we could get that and we hadn't had a response and we would have assumed as we came back in the new year that that would have been done but the council had moved towards getting into a council meeting without that meeting being set up. So that was disappointing.

Oh, so there was some correspondence between you and the council, do you say, your firm and the council, requesting the opportunity to meet with Studio GL and HillPDA prior to the matter coming again before the council on 7 February, 2017?---But that's the email we just looked at there. That was James' email that said to them, "We, we would like to, staff do that."

Oh, that involved the request, that was the very request?---Well, well, that's what it seems, that's what the email was saying.

And do you say that because you didn't receive a specific response to that email saying, "Oh, yes, we'll arrange a time, this is the time," did you follow up - - -?---Well, this was - - -

20 THE COMMISSIONER: No wait, just hold your horses.

MR RANKEN: Did you follow up at any time?---Yeah, I, I, I didn't personally.

Did Mr Matthews, to your knowledge, follow up to see if he could arrange a meeting with Studio GL?---I do not know. It's, it's - - -

At the time this point it's just request for a deferral, correct, so that that could occur?---It, it was a request for a deferral so we could ask for those things to do, we, we would have assumed that the, that as the council had made a certain decision that way, that then during that process, that then we would be given the opportunity to meet with them but then before we could meet with them, before the opportunity was given, the matter was reported back to council because the council closes down at later December all the way through to January and we, we would be during that period on extended leave as well.

So I just want to be clear in terms of what you're suggesting, Mr Daniel. ---And so, so, see, the first - sorry, yeah.

40 Just if I could hold you there.---Yeah, I, I, I - - -

Are you suggesting that having raised the prospect of meeting with Studio GL, or the council's consultants as it's expressed in that email, in the event that the decision was to be deferred, that you then expected the council to come to you to make those arrangements, rather than you follow up with the council following the decision to defer it, to say, "Okay, it's been deferred now, we want to meet with Studio GL, when can we do so?"---I'm, we

made the, we made that email inquiry. The decision of the council was made. I'm unsure, I mean, I wasn't managing that part of it. I would have assumed they would have come back to us and arranged a meeting as part of their, prior to them reporting it to the council.

Did you do anything to arrange a meeting?---I didn't personally. I think - - -

Did Mr Matthews do anything to arrange a meeting?---No. It's five years ago. I can't be precise, I can't - - -

10

If you don't know, say you don't know.---I don't know, but I - - -

Okay.---As I'm saying, I think that we would have taken the assumption that council would have arranged that meeting for us.

With respect, that - - -?---That's what typically would happen.

With respect, can I suggest to you that that would be quite an arrogant approach for you to take in respect of this matter.---What, when the decision of a council is move to defer a matter, and we've put this forward as to one of the reasons why, and the council's made a decision that way, it would be arrogant for us not to expect the council officers to then arrange a meeting? I don't think that's arrogant, sir.

20

I'll repeat - - -?---I think that's process.

No, can I hold you there, can I hold you there.

THE COMMISSIONER: I think if you put the question – yes, just a moment.

30

THE WITNESS: I'm just trying to – that's, that's the way that I'm seeing the process.

THE COMMISSIONER: Please stop talking. Stop talking.---Sorry, sir.

Put the question again.

MR RANKEN: I'll take you to the minutes of the meeting of 6 December, 2016. And if we could go to page 1363. Can you see there, firstly, item 5, there's a reference to item 5 and declarations of pecuniary interest by Councillors Fasanella and Megna.---Yes.

40

If you go to 1364.---Yes.

You can see there that there is the reference to the item 5 being discussed or being dealt with.---Yes.

Do you see that?---Yes, I do.

And do you see that the resolution, in fact, it was a matter that was moved by Kenzler and seconded by Parnaby.---Yes.

Was that the item be deferred for consideration at the first councillor workshop in 2017. Do you see that?---Yes, I do.

10 And do you see that the resolution, in fact, it was a matter that was moved by Kenzler and seconded by Parnaby.---Yes.

Was that the item be deferred for consideration at the first councillor workshop in 2017, do you see that?---Yes.

Do you see that it doesn't say that the item be deferred so that Pacific Planning have an opportunity to meet with Studio GL? Do you see that? ---Yes. I see that. But that's - - -

20 So there's nothing, there's nothing in the resolution that would suggest that the reason for the deferral was to allow you the opportunity to meet with Studio GL, correct?---But that was the reason why we'd put the request forward to the council.

I understand that's the reason why you put the request forward.---So – sorry, sir.

But that's not the reason why the resolution was passed in the form it was, correct?---Well, it's, I, I, I can't be sure what was in the mind of the councillors.

30 But the deferral of the matter did provide you with an opportunity to seek a meeting with Studio GL or, for that matter, HillPDA, correct?---That would normally be arranged by the staff.

40 And the fact of the matter is, is it not, that neither you nor Mr Matthews took any steps, following the meeting of 6 December, 2016, to arrange such a meeting or contact council with a view to getting their permission to arrange such a meeting or anything of that nature, correct?---I imagine, not until the date of the meeting, but we would have found it strange that this came up to the council meeting straight away in February. We would have thought something would have been arranged prior to that, and imagine – we were away overseas, I imagine, or on holidays and, during this time, and so this was in our mind and we would have addressed it and come back. But the very first meeting of council in February, it seems to me that they're, they're dealing with the matter. That's unfortunate. But I don't see it's arrogant in that way. I just see it as – because when we deal with other councils and decisions are made, staff will go, we'll, we'll cause meetings to occur and we will, they would do that and then we would attend. They

would run the process. I don't see that as arrogant. I just see that in that way.

Yes, but do you see that the resolution was for it to be deferred for consideration at the first councillor workshop in 2017?---Yes, I see that, yes.

10 So then it would have been reasonable to expect that it might come back before the council relatively soon after the first councillor workshop in 2017, wouldn't it?---Oh, not necessarily, no. Usually these things would take some time to come back, yeah.

After a councillor workshop?---Yes, yeah, that's right, to get onto agenda, those sort of things, because there's lead times with meetings and things like that, so you know, usually there's a two or three-week lead time, those sort of things, but yeah.

So it came back before the council on 7 February.---Yeah.

20 Correct?---Yeah. So I assume the reporting deadlines for that would have been sometime in January which, you know, would be difficult for us to deal with.

I'm sorry – can I just hold you there.---Yeah.

Wait till I ask the question.---I'm just going with the timing, sorry, sir.

Just wait till I ask the question.

30 THE COMMISSIONER: Just wait a minute, wait for the question.---Yeah, sorry.

MR RANKEN: If we could go to the minutes of the meeting of 7 February, 2017, at page 1409. Your Honour, I do note the time, but I don't – I wonder if it might be possible to - - -

THE COMMISSIONER: Finish this, finish this segment and then - - -

40 MR RANKEN: Can you see that there is a reference there to the item, item 2, and there's a list of persons who presented? Do you see that?---Yes.

And one of the persons who presented was Ms M Cassisi. Do you see that? ---Yeah, yes.

Do you know who that is?---Not 100 per cent sure, no, off the top of my head, no.

Do you see there is Mr J Matthews obviously, Pacific Planning representing residents?---Yes, yes.

And Mr S Durkin as a resident.---Yes.

It would appear that then Mr Matthews was not actually speaking on behalf of Mr Durkin at the meeting. Correct?---Or he may be as well but Mr Durkin's wanting to have his own say at that stage as well.

And Ms Cassisi wanting to have her own say as well.---Yeah, possibly.

10 Do you see that?---Yeah, those people - - -

Did you know that she was one of the owners of 41 Waterview Street?  
---I can't recall off the top of my head.

Now, do you see that the resolution that was passed on that occasion effectively was consistent with what had been recommended by council in December of 2016, at least as far as the first two paragraphs are concerned?  
---Yes, I see that.

20 If we go over the page, do you see that again a further three paragraphs that were, if I might suggest to you, mainly mechanical in terms of facilitating things going through to the Gateway Determination?---Yes.

And then there's a final paragraph saying that, "If the owners of property in the area believe there is a better planning outcome to be achieved than the recommendation they lodge a planning proposal in the normal way." Do you see that?---Yes.

30 And you would agree that that is a paragraph that really doesn't have any practical work to do insofar as requiring anything to be done by council staff or the council?---Not unless the landowners lodge their own independent planning application for the study that's already been done.

Exactly. It's a message effectively to the landowners who might disagree with the course that's been taken by council that if you want a different outcome, put in your own planning proposal. Correct?---Yeah. It's a unique – I've never – I've, that's a unique point. I've never – that's unusual.

40 Yes, but that's the effect, that is the effect of it, it's just a message, if you want something different, put in your own planning proposal. Correct?  
---Mmm. Yes.

And there was nothing that presented, there was nothing that prevented the landowners in that block of Waterview Street to put in their own planning proposal. Correct?---Oh, the significant cost of doing it is.

Sure, it would be a significant cost.---Yes.

And a significant cost upon them, correct?---That's right.

If they wished to develop the land, if that's what they wanted to pursue, then that might be a cost that they would have to bear. Correct?---But it's - - -

Correct?---In this context when there's already a planning proposal on foot, that would be unusual to run another planning proposal behind it.

10 But in this context there is a planning proposal that has already bifurcated into two different processes. Correct?---Sorry?

Well, in 2015 it bifurcated - - -?---Yes, there's the Town Centre Study. Sorry, I get your point.

There's the Town Centre Study.---Yeah, and then there's the additional sites planning proposal.

20 Yes.---That's right. And they're going on and saying if you don't like the way that we're not studying these high-densities, lodge your own. Yeah, I could see them saying that.

Yes.---I think it's a poor process though.

I didn't ask you about your opinion about it. I'll just, could I go to page 1414. You see this is an email from Mr Matthews to you and Mr Sidoti that's dated 20 February, 2017?---Yes.

30 And effectively, the situation was this – do you recall that actually at the meeting of 7 February, 2015, in addition to the resolution that I took you to, there was a foreshadowed rescission motion.---Okay.

Is that correct, or you don't remember that?---Oh, not completely, but - - -

You did refer earlier in your evidence to the fact that there had been rescission motions.---Yes, there had been, yeah, so - - -

40 I want to suggest to you that the rescission motion that you had in mind was in fact the rescission motion that had been foreshadowed on 7 February, 2017 and was due to be determined at the meeting of the council on 21 February, 2017.---Mmm. Okay.

Do you agree with that?---Yeah, well, I knew the rescission motions had occurred, yes.

And do you see that effectively this is an email that's being sent to you and Mr Sidoti the day before the rescission motion was to be heard.---Yes. Yes.

And it's suggesting a possible approach in respect of the determination of the rescission motion that would see the 7 February, 2017 motion be carried, but with a particular amendment being suggested there.---Yes. Yes.

Which was to apply a bonus height provision to land that fronts Great North Road bound by Second Avenue and Barnstaple Road to permit a maximum building height of 24 metres and a maximum floor space ratio of 2.7:1 where land has a site area of 1,000 square metres and a street frontage of at least 20 metres. Correct?---Yes.

10

Now, that was not consistent with what had in fact been passed on 7 February, 2017. Correct?---Yes, that's right, yeah.

It was seeking additional uplift for the Great North Road fronting properties, correct?---That's right, additional – well, well, well, it's seeking to enable an, additional consideration by the Gateway.

But an additional consideration in terms of the height being up to 24 metres, correct?---Yes.

20

That would be about, what, seven storeys?---Oh, depending on, yeah, oh, give or take, yeah, could be.

Rather than the five storeys that was - - -?---Yes, well, we're trying to enter this into the study process. Yeah, that's right.

You were trying to enter this into that which is going to the Gateway - - -? ---Yeah, these are not the final land controls that may come out, yeah.

30 Sorry, could I just hold you there?---Sorry.

You're trying to enter this into that which would go to the Department for the Gateway Determination. Correct?---Well, yeah, for the Gateway - - -

Correct? Yes, thank you.---Well, the, yeah, that's right, and (not transcribable) - - -

For the Gateway, that's all I'm asking.---Yeah.

40 For this to go into that which would go to the Department for the Gateway Determination. Correct?---Yeah, for, yeah, for their assessment and consideration, yeah.

Yes. And not only an increase to a height of seven storeys, but also an increase in the maximum floor space ratio beyond that which already existed for B4 mixed-use, which was 2.5:1, to 2.7:1. Do you see that? ---Yeah, we're asking for these to be studied, yeah, that's right.

So this was a suggested recommendation - - -?---Yes.

- - - that you were hoping that the Liberal councillors would move at the time of dealing with the rescission motion. Correct?---Yeah, so it could be forwarded to the Gateway for consideration, yeah, that's right. But it, but this is a consistent theme, we're seeking for the studies and the advice to the Department to enable us to include additional study on these items, this is right, yeah.

10 THE COMMISSIONER: Why were you seeking to have the Liberal councillors involved in this?---So they could vote on it.

What, hopefully vote in favour - - -?---And, well, it's just, well, it's a democratic process again. It's like - - -

Oh, I think I understand now.---Yeah, sorry, I, yeah.

With a view to them voting in favour of the amendment or amended proposal.---Yeah, so, we're seeking for them to, to - - -

20

Sorry, with a view to them voting in favour of the amendment suggested by Mr Matthews to the rescission motion.---Yep, yeah, that's right. We're very keen to make sure that, as best as possible, that these could be considered by the Gateway process, these additional items, yeah.

And non-Liberal councillors (not transcribable) going to just be sort of left out of the picture at this stage.---Oh, well, at, at this decision, but they will get opportunities as they move on, but I've, I've already answered my questions in relation to - - -

30

But no notice to them that this motion, this amendment suggested, would be advanced before the council.---Well, the, not, okay, well, again, it comes down to the - - -

No, but that was the effect of it, was it not - - -?---Yeah, well, to be considered at, well, considered at the meeting.

- - - to not give them any forewarning, that they would turn up at the council meeting and then they would be told this is on?---Yeah, but this is a, yeah, it's for them to consider and debate at the meeting, that's right, yeah. That's right.

40

So this might be another, what was earlier referred to as a, sort of, a surprise attack, as it were?---No. They're not surprise attacks. I, I don't know why there is that theme. These are not surprise attacks, sir. I don't - - -

Well, perhaps this is another attempt to inform the Liberal councillors but not to inform the non-Liberal councillor, the latter group, they can wait until

they get to the council to learn about it, is that right, that's the strategy?  
---Yeah, so we could get a Gateway process considered in there, yeah.

Thank you.

MR RANKEN: But not just to not inform - - -?---This is, but this is politics  
(not transcribable) decision - - -

10 THE COMMISSIONER: I'm sorry, you say this is politics?---Well, that's,  
well, it's a political process, so - - -

Yes, yes.---That's, I'm, I'm trying to - - -

You keep saying it's a political process, but it's not only a political process,  
is it?---No, not at all.

Because the public interest is right at the heard of everything the council  
does.---Yeah, but that's what we're asking to be tested.

20 Oh, I see.---But that's what we're asking to be tested.

Thank you. I think Counsel Assisting has got another - - -?---But, but we  
want that public interest tested by the Gateway process.

Counsel Assisting has got another question for you.---Sorry, sorry, sir, yeah.

MR RANKEN: It's not only the non-Liberal councillors that would not be  
informed of this proposed resolution prior to the meeting on 21 February,  
2017, but also the council staff would not have been forewarned of this?  
30 ---Not necessarily.

Well, did you provide it to the council staff?---No, but I, well, I, I didn't  
send this email forward I think in the end but, but typically we found in the  
past that councillors would then go, this is what I was trying to explain  
probably very poorly before, I'm sorry about that, that they would then say,  
"Hey, I've got this recommended motion that I, that I considered," and if  
they're convinced and they want to bring that forward into the political body  
to move forward, they may - and we've found this in other council  
situations where they bring that forward, they give it to the bureaucrats and  
40 they would check it, the wording and things like this, I've, I've done this  
myself in that sort of a way and, and then you would say, "Thank you,  
Councillor," and they would put that, "If you want to move that policy, you  
probably need to change this and that and make a few changes here" - - -

THE COMMISSIONER: All right, I think we'll stop you, stop you there,  
stop you there.--- - - - but we get the intent and they put it forward. So  
that's, that's the point I'm making.

MR RANKEN: I think we get the idea.

THE COMMISSIONER: Would you please stop talking.---Yeah.  
Certainly, sir, sorry, yeah.

MR RANKEN: That would require at least sufficient time for the council staff to be able to take on that information and then be able to provide the advice that you're suggesting that council staff could provide.---Oh, in the appropriate wording, is what I'm saying, yeah.

10

Now, if I could take you to - - -?---They may pick up knicks and knacks of the wording.

Hold you there.---Yeah.

Could I take you to page 1428.---Sure.

You see this is an email from Mr Matthews to Ms Cestar, Ms McCaffrey, Dr Ahmed and Michael Megna. Do you see that?---Yeah, I see that, yep.

20

And it's – they are the four Liberal councillors - - -?---Yes.

- - - correct?---Yes, that's right.

And in fact Mr Megna, whilst he was a Liberal councillor, he was not entitled to vote or have any participation in the decision about Five Dock, correct?---Ah, yes, okay, yeah, I see that, yeah.

30

THE COMMISSIONER: So it's quite improper to be writing to him about the matter, wasn't it?---Oh, don't know if it's improper. It's, it's, he would, he would declare himself in that sort of process.

Improper to be addressing this matter to him when he had made his position time and time again clear that he had a pecuniary interest.---Well, I don't – the matter of the pecuniary interest is up to the councillor to declare.

Do you agree with me? Improper for him to be being an addressee, as it were, or copied into this?---Well, I'm not, not, I wouldn't, no, I don't think so because the legal requirements - - -

40

All right, you don't think so. Thank you. Next question.---Well, the legal requirement's up to the councillor. That's my point, sir, sorry.

Yes, thank you.

MR RANKEN: Can I just draw your attention - - -?---Yeah, we're not, we're not trying to be inappropriate here.

Can I draw your attention - - -?---Yeah.

- - - to the date and time of this email?---Yeah, yes.

Tuesday, the 21<sup>st</sup> of February, 2017, at 3.14pm, correct?---Yes. Yes.

Less than three hours in advance of the commencement of the meeting at which the rescission motion was to be determined?---Yes.

10 Not a lot of time, is there, for that to be considered, conveyed to the council staff for their input?---Prior to a council meeting?

Yes.---What, to, for them to get, for an elected official to get assistance with wording for a motion?

It's not a lot of time, would you agree it's not a lot of time?---No, I wouldn't agree with that, it's - - -

20 Okay, no, that's fine.---It's - - -

You don't agree with it, that's fine.---Well, I just - - -

No, we've got your evidence on that, you don't agree.

THE COMMISSIONER: We don't want your statement, thank you.  
---Okay.

MR RANKEN: I haven't asked for your reasons.

30 THE COMMISSIONER: You've answered the question.---Okay, yeah.

MR RANKEN: Do you see that in the email Mr Matthews, and it's in bold, he states, "It is my strong planning opinion the rescission motion is not supported. I encourage you to consider moving the motion in the attached document. I have addressed the reasons below."---Yeah.

See that?---Yes, I do, yeah.

40 If we go to the attached document which we can find at page 1430, that's a proposed resolution that is being suggested to the councillors.---Yes.

And what essentially Mr Matthews was doing was providing the Liberal councillors with a suggested wording of a proposed resolution to amend the decision of the council of 7 February, 2016. Correct?---Yes.

Without any prior notice being given to council staff or the other councillors on the council. Correct?---Well, yes.

Correct. Yes, thank you.---At 3 o'clock, yeah, it's like, yes.

Yes. And in the expectation I suggest that if the motion were to be moved in those terms, that the casting vote of the major would see it succeed.--- Yes, yeah, that's right. I mean that's the idea of bringing it forward, to try to set a policy framework so the study process in relation to the planning proposal can proceed - - -

10 And that was something - - -?--- - - - to the Gateway.

And that was something that you and Mr Matthews or Pacific Planning, your firm, were to put forward on the instructions of Mr Sidoti, is that correct?---I think it was, well, we were seeking his advice, if he's happy for this motion to be put forward.

THE COMMISSIONER: And was he happy?---I - - -

I mean, was he aggrieved?---Yes, yeah.

20 He's in agreement?---Yeah, that's right, yeah. That's right. So - - -

MR RANKEN: Now, can I then take you to some events after the meeting of the council on 21 February, 2017.---Yes.

THE COMMISSIONER: Now, Mr Ranken, are we moving onto a different topic? We are, I suspect.

MR RANKEN: We are. It's my final topic.---Thank you.

30 THE COMMISSIONER: Yes. And how long is it going to take? That's the question.

MR RANKEN: I expect it will, it may only take 10 minutes. I don't know whether anybody has questions for cross-examination.

THE COMMISSIONER: Yes. Mr Neil, do you want to ask this witness any questions?

40 MR NEIL: Yes, I do, Commissioner. But I'd probably be 10 or 15 minutes or so. I'd have a preference for going over, quite frankly.

THE COMMISSIONER: Yes. And Mr Hale, do you have any?

MR HALE: I'll have some questions. I'll be probably be 15 minutes or so.

THE COMMISSIONER: You will. All right. I think we should draw stumps, Mr Ranken, given that there's - given what's been said, then you

will need to return tomorrow, Mr Daniel. We'll resume at 10 o'clock in the morning. I'll adjourn until 10.00am tomorrow.

**THE WITNESS STOOD DOWN** [4.23pm]

**AT 4.23PM THE MATTER WAS ADJOURNED ACCORDINGLY**  
[4.23pm]

10