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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION WITNEY

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 16 APRIL, 2021

AT 10.00AM

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

THE COMMISSIONER: Mr Ranken, are you ready to proceed?

MR RANKEN: Yes, we are ready to proceed.

THE COMMISSIONER: I'll have the witness re-sworn. Yes, Mr Daniel, if you wouldn't mind standing, take the Bible and just have the oath administered.

THE COMMISSIONER: Thank you. Yes, Mr Ranken.

MR RANKEN: Yes, thank you, Commissioner. Mr Daniel - - -

10 THE COMMISSIONER: Perhaps, Mr Ranken, before you start. It may be that there's a need for the Commission to sit on a bit later today. I just raise it as a precautionary note in case people have other arrangements but at the moment it may be that be that we go on beyond 4 o'clock today. If there is any particular problem with that, anyone can raise the difficulty and I'll try and work around it as much as possible. Anyway, we'll just see how we go, however.

MR NEIL: Commissioner, just on that matter.

THE COMMISSIONER: Yes, Mr Neil.

20 MR NEIL: Could I foreshadow that I would ask if that we not go beyond 4.30?

THE COMMISSIONER: Yes, very well. Okay, Mr Neil

MR NEIL: Thank you.

30 MR RANKEN: Now, Mr Daniel, we got to the point at the end of yesterday's evidence where we had touched upon the meeting of the council on 21 February, 2017, when the rescission motion was defeated. Do you recall that?---Yes, yeah. I'm in agreement with that, yep.

And the effect of that was that the original resolution of 7 February, 2017, was maintained such that the planning proposal was then to be submitted to the department for a Gateway Determination, correct?---Yes.

And your firm continued to be engaged by Mr Sidoti, correct?---Yes.

40 And had some involvement, did it not, in relation to making representations to the Department during the course of the Gateway Determination, correct? ---Yes, that's correct. Yep.

And so insofar as the firm's involvement, that is Pacific Planning's involvement in the matter, it did continue and certain representations were made to the Gateway Determination but those representations ultimately weren't accepted by the Department, correct?---Yes, that's correct. Yep.

And the matter ultimately did come back to the council for further public exhibition and ultimately the planning proposal that had been submitted to the Gateway Determination eventually came into effect, correct?---Yes.

Without the further changes that you had been seeking to advance on behalf of Mr Sidoti and the other landowners on whose behalf Pacific Planning had been engaged, correct?---Yes.

10 Now, over that time, and I'm talking about the period from February 2017 and following, your firm was not only acting in relation to Mr Sidoti's interests in respect of the Waterview Street site but there was also this other site at Concord that you had some involvement in, correct?---Yes, that's right.

And was there some issue in relation to that Concord site concerning a laneway, in relation to - - -?---Yes, that's correct, yeah.

20 And that there were some changes that you wanted to the planning proposal that was going to be submitted to the Gateway Determination, that you wanted those changes made before it went to the Gateway Determination? ---Oh, I can't recall. Not if we wanted the changes, we possibly wanted it considered, I mean, because changes aren't made until obviously the end of the process, but we probably wanted it considered, but I don't, I can't recall the, the in-depth details of it.

And in relation to that matter, did you have some contact with Mr Megna from time to time?---Yeah, we, yeah, we had a, yes, yes, we did, yes, yeah.

30 That was not a matter in which Mr Megna had any pecuniary interest that would conflict him from having involvement in the decision-making. Correct?---I don't recall that's the case, no, he didn't, no.

Okay. Now - - -?---I don't think so, yeah.

I just want to bring up for you an exchange of messages between yourself and Mr Megna at page 1864. These are messages that I think have been extracted from your phone.---Yeah, yeah.

40 And do you see that the, on the right-hand side in the green dialogue box, if I could call it that, we have your messages, and the blue dialogue boxes on the left-hand side are Mr Megna's?---Yes.

And the first of the messages says, "Can you add that point to allow the Gateway to consider? M." That's from you. Then you say, "It is actually the secretary that deals with the issues, not council, the Department ask that to be included, a simple note."---Ah hmm.

Now, that would suggest that there's something in relation, well, firstly that suggests that there's something in relation to the Gateway or something that's going to the Gateway that you wanted done before it went to the Gateway. Correct?---Yeah, yeah, we probably anticipate we'd like certain aspects of the recommendation to the council to be considered for the Gateway to look at, yeah.

10 And then do you see here it says, "Mirjana and Helen aren't prepared to amend the recommendation. I have texted them both if they will. Labor won't amend, Labor's Fasanella may have supported if Libs were all on board. The recommendation will succeed as printed, Green will vote against anything." Do you see that?---Yeah, yes, yeah.

And these messages are being exchanged on 4 July, 2017.---Yes.

And around that time you may or may not recall, but things were starting to gear up for a local council election to be held in September 2017.---Okay, yeah.

20 And so what I want to suggest to you is, the fact that Mr Megna has referred to Labor's Fasanella as being someone who might have supported it, makes it quite clear that whatever this was about, it certainly wasn't about the Five Dock matter because Mr Fasanella was someone who had declared a pecuniary interest, like Mr Megna, in that matter and so was precluded from having any role in the decision-making. Correct?---Okay, yes, I follow the logic, yes.

30 So if it's not the Five Dock matter, then logically it must have been the Concord matter. Correct?---Yes.

That you're dealing with.---Yes.

And could we then go to 1865. You say, "That is disappointing. It is one line in addition. How does the council think they are going to get the laneway? M." Correct?---Yes, yeah.

So that's getting back to my questions about the laneway issue.---Yeah.

40 So it's something to do with the laneway issue that related to the Concord matter. Correct?---Yeah, that's right. There was – if you want me to expand on it, it's coming to my memory now.

I don't need you to expand. I just wanted to make, so we can distinguish it from the Five Dock matter.---Okay.

Now, but it's something though that you were hoping that the Liberal councillors would support before it went to the Gateway Determination. Is that the position? Some review of the, of what was going to the Department

for the Gateway Determination?---Yes, yeah. Yeah, we – if I recall, sir, we were, there was an issue of, you know, taking, the landowner had the ownership of the road and we, and it was good urban outcome we felt to continue that through, but there was a section of land there that was privately-owned that a negotiation issue of a trade-off could enable that to be gained. So on that, we were asking that to be considered at that stage.

10 Thank you. And your reference to, “That is disappointing,” that’s a reference to being disappointed that Mirjana Cestar and Helen McCaffrey would not support the change that you were hoping would be made, correct?---Yes, that’s, yeah, that’s right, yep.

And Mr Megna’s response is, “I know. Speak to Sidoti about Mirjana and Helen’s astuteness is planning matters and his moves to remedy this at the coming preselection.” Do you see that?---Oh, yeah, yes, I see that, yeah.

20 Do you know to what Mr Megna was referring to when he referred to Mr Sidoti’s “moves to remedy this at the coming preselection”?---Not directly, I wouldn’t have thought, I think it’s just a, I can’t recall, but it’s just sound, it seems like the usual frustrations that go on between ranks of the party in relation to policy matters.

But would you agree it appears that Mr Megna is indicating to you that he has some knowledge - - -?---Of course, yeah, that’s, well, that’s, yeah, that’s what it says, yeah. Sorry, yeah.

30 - - - that Mr Sidoti had some moves to remedy his, perhaps Mr Sidoti’s disappointment with Mirjana Cestar and Helen McCaffrey’s astuteness in planning matters, at least as Mr Sidoti perceived them.---Yes.

MR NEIL: Well, Commissioner, I’m going to object on the basis that that’s not what it says, and this witness is so remote from these matters. It could have been put to Mr Megna. This is just his speculation on dealings between other people.

THE COMMISSIONER: Yes, I think just perhaps refashion your question, Mr Ranken. I don’t see it as too remote, but it’s just perhaps the form of the questions.

40 MR RANKEN: Okay, yes. Well, would you agree that Mr Megna appears to be conveying to you that he has some knowledge that Mr Sidoti had some moves to remedy what he, what Mr Sidoti considered to be issues to do with Mirjana and Helen’s astuteness at the coming preselection?---I’d, I’d like to give you a little bit of background but, in relation to this, but yeah.

THE COMMISSIONER: No, just answer the question, please. Just answer the question, please.---Yeah. Sorry, would you just ask me that again, sorry?

MR RANKEN: Okay. Do you agree that Mr Megna is indicating to you that he has some knowledge that Mr Sidoti has some moves to remedy what Mr Sidoti perceived regarding Mirjana and Helen's astuteness in planning matters at the coming preselection?---Yes.

MR NEIL: Well, again, that's, I'd submit, not an accurate description. It asked him to speak to him.

10 THE COMMISSIONER: All right. Just – let me deal with it this way. You understood that this email from Mr Megna to you was putting forward a request to you.---Yeah.

And the request was for you to speak to Mr Sidoti.---Yeah.

And the subject matter about which he was asking you to speak to Mr Sidoti concerned Ms Cestar and Ms McCaffrey. Is that right?---Yes, yes, yeah, I see that, yep.

20 And their astuteness in planning matters.---Yes.

And further, moves he had to remedy this at the coming preselection.---Yes.

That was the request.---Yes.

I needn't deal with the balance of the email concerning Dr Tanveer Ahmed. So this request was being put to you at the time that you were seeking to pursue the changes concerning the laneway at Concord. Is that right?
---Yeah, yeah. That was a minor matter in a large proposal though, so - - -

30 Yes. And you understood from this request being made in the context of this email exchange that this request was to speak to them because, sorry, it was to speak to Mr Sidoti as to what he had in mind or what he had devised in terms of the moves to remedy this matter. That is, to say, their astuteness in planning matters. Is that right?---Yes. That's what it says, yeah.

And did you do that, that is speak to Mr Sidoti about those matters, that is firstly the astuteness in planning matters of Ms Cestar and McCaffrey, and secondly his moves to remedy that?---I had a number of discussions with
40 John on planning policy matters over a number of months and years actually on certain matters - - -

No, no, please. No, no, just stay with me.---But, yeah, no, I - - -

No, no, no, no.---Yeah, just did I specifically - - -

Just remember what I said yesterday.---Did I specifically speak to him about them, I - - -

Or did you – no, no, no, no – did you speak to him, did you communicate with him about the matters referred to in the, the two matters referred to in the email from Mr Megna?---I had spoken to, to, to John before about councillors’ understanding of the planning system. Whether or not I specifically spoke to him about these two councillors as a result of this text message I cannot remember but I would – I, I just cannot remember but I don’t think that’s something I would do but, as a specific thing because it’s not an area of the party I’m particularly involved in.

10

But that was Mr Megna’s request for you to do that, that is to speak to Mr Sidoti about those two matters?---Yeah, but I don’t see it as, really as an instruction. I, the way I interpret that is just like, oh yeah, speak to, speak to John about the way these councillors just don’t have an idea or an astuteness about something. That’s the way I’m perceiving at the moment but - - -

And doing the best you can, do you think you did just that soon after the email?---Sorry, did I do just - - -

20

Did you speak to Mr Sidoti about that?---I, I, I cannot remember if I did or not but, but, but I don’t think I would have directly, no. I can’t remember, sorry.

But is it likely that you would have followed through on what Mr Megna was suggesting as being relevant to trying to get this change through concerning the laneway at Concord? Is it likely, he having made that request to you that you would have followed through on, pursue his request?---I think it’s likely that I would be speaking to John about the planning matters. Whether I, I, whether or not I would speak to him because Michael asked me to, about internal party matters in this area, I doubt that completely.

30

But he was putting forward this request as a means of, as it were, facilitating the accomplishment of what you and he had been discussing about the Concord matter, is that right?---I’m sorry, Commissioner, I just don’t remember. I’m sorry, yeah. I, I wouldn’t have thought I would, but I did have general conversation with John about a number of matters but I can’t be specific and recall that I would have got off the, got off this text message and then rung John and go, “Hey, what’s going on, like, with these guys?”

40

And, but it doesn’t mean I haven’t spoke to him over the months about, well, I wouldn’t have used the word astuteness, but about the, the awareness of councillors because we, I rang, initially rang John to see if, who I needed to speak to and to, and to Michael, particularly Michael to get Helen’s number to organise a meeting with her with senior staff to talk about this particular project. So, maybe there was some discussion in that process about, “Look, how sharp are these people on these sort of matters or not?” But I can’t specifically point my finger to a date or a time or anything like

that but it, it's, I'm not a hundred per cent sure. Perhaps I'm just not a hundred per cent sure - - -

Are you finished?---Sorry, yes, sir, yeah.

10 In the context of this email chain, reading Mr Megna's email to you on 4 July, 2017, at 6.39, is it likely, given the text and given the words of the message, that you would have spoken to Mr Sidoti as Mr Megna had suggested?---I, I think it's likely I would have spoken to him about it, for sure, but whether or not as a result of this text message, I don't know. I can't be precise, I'm sorry, Commissioner.

I'm any event, I think you've answered my question, thank you.---Yeah. Yeah, sorry.

And what did Mr Sidoti say to you about those two matters raised by Mr Megna which he suggested you speak to Mr Sidoti about?

20 MR NEIL: Well, Commissioner, I object. He said enough about that he had no recall, so to ask him what was said is pointless.

THE COMMISSIONER: No, no. Yes. What did Mr Sidoti say?
---Commissioner, over the time I'd had discussions with John about planning matters and about how the councillors operated but he just said to me, "Look, yeah, no, it's, it's very difficult. They're very, they, they very much follow closely with the staff and they're, they're new to this sort of a thing." That was the general theme of the discussion but specific discussions on that, I, I'm sorry, I can't really recall. I'm sorry.

30 So your sworn evidence is this, is it, that you do not recall speaking to Mr Sidoti on the matters Mr Megna suggested you speak to him about, but you concede that it's more probable than not that you did?---Oh, yeah, absolutely, yeah, yeah, for sure, because - - -

But you just simply can't remember - - -?---Yeah, that's it.

- - - the actual words of the conversation.---Correct, yes.

40 And what did you understand were his moves, as referred to in the email?
---Oh, in the text message here?

Yes. What, on the probabilities, did you understand, or if you remember what he, the gist of what he was - - -?---Well, I could - - -

- - - proposing by way of moves, what were they?---Well, I'd assume that it, well, Michael's been in the party for a long time and I read that, I think, well, you know, maybe the, the branch structure down there is not

particularly happy or he's not keen and there's going to be a contest in the future. That's my assumption, but it's, that's what I would assume I guess.

So is this fair, that after this email exchange with Mr Megna, you understood that the alleged lack of astuteness, as asserted, in those two councillors would more than likely lead to them being moved on, as it were, from council, given or at the preselection that was due that month?---Oh - - -

10 MR NEIL: I object to that. That's far too remote, it's speculative and not within the knowledge or even speculation realm of this witness.

THE COMMISSIONER: Mr Neil, I'm going to insist on the witness answering that question.---Sorry, Commissioner.

Okay, I'll put it again.---Thank you.

Perhaps in a slightly different form. Doing the best you can, do you have a recollection of the gist of what, what are referred to as Mr Sidoti's moves in relation to the alleged lack of astuteness in the councillors?---I, I just
20 assumed that from my knowledge of politics, and especially when it comes to local preselections, they're very competitive, different sides or different entities form, you know, they like to wedge negative issue against them and so I'm thinking, well, okay, something's come up here, there might be a preselection in the future, but that would be, that would be my view in that sense.

Did you then know at the time of this email there was a preselection coming up? Do you know or don't you remember?---I probably at the time was
30 aware that there, because, you know, if council elections are coming up, you know, the, the party runs preselections, right, so in that knowledge I would know, but was there, you know, and so I'd just, I'd have, I'd know that these things were occurring but there's, it's always a competitive environment that's going on leading up to elections in that sort of sense, yeah. The party has their processes, but I wouldn't have normally been, I wouldn't have thought I'd be specifically focussed on this preselection, but only for, only as a bystander going, oh, that's interesting, but um, that's it.

MR RANKEN: This time though you were still, and your firm was still
40 acting in relation to the Concord matter that was before the council. Correct?---Yeah, this is as a result of state strategy, this one, yeah.

And the Concord matter was likely to go over on its way to a Gateway Determination shortly, or was, and would then have to come back to the council. Correct?---Yeah.

In due course?---Yeah.

And equally the Five Dock matter had gone to a Gateway Determination at this point as a result of the meeting on 21 February, 2017. Correct?---Yeah, it progressed on, yes.

And you were still acting in relation to that matter. Correct?---Oh, by that stage we were dealing with state I think, yeah.

I understand that.---Yeah.

10 But you appreciated that after the Gateway Determination it was going to come back to council again.---Um - - -

That's the usual course, is it not?---Yeah, yeah, it is, it is, yeah, yeah.

So you appreciated that you were going to be having to continue to deal with the City of Canada Bay Council in relation to at least one or possibly both of these matters, past September 2017, bearing in mind that this exchange is in July of 2017?---Yes, in that way, yeah, yeah.

20 So it would have been a matter of some interest to you to know whether there might be a change in the personnel who might be making up the councillors on the City of Canada Bay Council. Correct?---It would be an interest, yeah, I mean, but - - -

Particularly in so - - -?---But there's - - -

Sorry.---Sorry.

30 No, I interrupted you.---No, I'll just say, but there's, there's a lot of other planning issues at that level there besides that too you know.

I understand that.---The Concord one was - - -

But you knew a part of the work that Pacific Planning does is to engage with council and councillors in relation to planning issues, correct?---Yeah, at, at, from time to time, yep.

40 And we've seen some of the engagement with councillors that Pacific Planning has been involved in in relation to the Five Dock matter, correct?---Yes, that's right, yeah.

And in fact, this text message is an example of you engaging with Mr Megna, a Liberal councillor, in relation to the Concord matter, correct?---Yes, that's correct, yes.

So you would have been interested to know as to the prospect that there might be a change in the Liberal Party personnel who might be councillors

following the council elections in September of 2017, correct?---Oh, interested, but not in any - - -

Yes, interested. That's all I've asked. Interested.---Not in any controlling interest, if, if you get my, my drift (not transcribable) yeah.

I didn't say that.---Yeah, sorry.

10 But you'd want to know who you'd have to speak with, who you'd need to make any representations to if you were making representations to Liberal councillors, wouldn't you?---Oh, honestly, not, not, not – it wouldn't be in the forefront of mind, is what I'd say, because it's a, it's a way off, and these things are uncertain. Yeah.

20 But in the very context of a matter that you're involved in, Mr Megna has suggested that you actually speak to Mr Sidoti about, amongst other things, his moves to remedy this at the coming preselection. Now, that must have triggered in you the possibility that Mr Sidoti might have, might be looking at having some influence over who might be the likely Liberal councillors following the upcoming local council elections.---Sorry, I've, I missed your question, just, sorry.

Okay. Well, it must have occurred to you, reading this text message from Mr Megna, that Mr Sidoti had some plans or something in train - - -?---Oh, sorry, (not transcribable)

- - - in relation to the preselection of persons who might be running for the local council elections in September of 2017, correct?---Yes.

30 And that that could well mean that there would be a change in the Liberal councillors who might be elected at that council election, correct?---Yes, yeah, there might be, yeah, absolutely.

And particularly in respect of the possibility that at least Mirjana Cestar and Helen McCaffrey might be, as it were, removed from the Liberal ticket. That must have been something that you contemplated from reading this text message?---Yes, yes. Yeah, oh, yep, okay, it's on. Something might change, yeah.

40 But that must have been a matter of interest to you, knowing that you were going to have to deal with the council after the September election, correct?---Not, not at forefront of mind. I, I can assure you that.

But it's in the context of this exchange regarding Concord.---Yes, because we were, I, we were seeking to get them to support a certain line of, line of request for certain matters to be studied and for that matter to be progressed. This is the Concord project, is, is relevant to a state strategy.

I understand that, but - - -?---And there's specific matters there, and so - - -

I understand that, but please stop, just listen to my question.---Sorry. Sorry.

My question was directed, though, to you being interested, knowing that you were going to have to deal with a council after September 2017, interested to know what it was that Mr Sidoti had in train in relation to the preselection.---I, I don't, it's, again, it's, I have, have an interest, but not a great interest in that way, because my experience in, in, in, in the party over
10 years is that local MPs are always very interested in, in local council matters and, and all those sort of things, and preselections going on, they're always a, a hot, a hot issue leading up to elections.

But this particular - - -?---But was – oh, sorry.

This particular interest of Mr Sidoti's, in terms of his moves, seems to be linked to issues concerning Mirjana and Helen's astuteness in planning matters.---Yes.

20 Now, planning matters is a matter that's squarely within your area of interest, correct?---Yes. Yeah, that's right.

Because that's exactly what your firm does. It represents people in relation to planning matters, correct?---That's right.

Including engaging with council and councillors in relation to planning matters, correct?---Yes.

30 So you must have been interested, mustn't you, to know who was it that Mr Sidoti might have had in mind to replace Mirjana and Helen at the preselection?---Oh, again, it wasn't a strong interest, but it's like, okay, there's going to, may be some changes here. That's, oh, honestly, I, I wouldn't have a, a driving thought of it, but it, it was, it would be part of a number of issues. Oh, okay, that's interesting, we, there may be a change of councillors here. But, yeah, but the, yes, that's all.

Weren't you interested to know what their particular views on planning might be?---What, future candidates?

40 Yes. These are the people who are going to be put up by the Liberal Party in respect of council positions and I'm going to have to deal with that council and I'm a member of the Liberal Party, they're members of the Liberal Party, I might wish to liaise with them and make representations to them. I would like to know what their position on planning matters is.

MR NEIL: I object. This is a suggestion that this witness would have wanted to, somehow or another, canvas potential, possible future councillors. I submit it's remote beyond all measure, Commissioner.

THE COMMISSIONER: But Mr Neil, you've got to look at the context. The specific context is, here, how do we get something across the line, I'm talking now about the laneway at Concord, and Megna's intervened into this and said, "Well, on this very topic speak to Mr Sidoti." So, if the moves, as it's referred to as related in some way to the preselection, then the preselection becomes immediately relevant to determining whether or not these moves could eventually facilitate getting that across the line. So I think you've got to look at the question in its context.

10

MR NEIL: Well, could I submit this? Firstly, it assumes that this witness spoke to Mr Sidoti. I submit his evidence doesn't go that far.

THE COMMISSIONER: Well, he says that it's probable that he did.

MR NEIL: But secondly, this question – our note is he said it's not something he would think he would do, he didn't think he would follow it through but that's perhaps for argument later. But secondly, this question has gone much further than the proposition that you have put to me, Commissioner. This question is asking this witness about whether or not he thought about finding future potential councillors, replacements for the present two, and in some way or another canvassing their views on planning matters.

20

THE COMMISSIONER: No, no, no.

MR NEIL: Well, that's what I thought the question went to.

THE COMMISSIONER: As I understand it, the suggestion is that the change of councillors, specifically the removal – well, I won't say the removal. If the problem that was flagged with the planning astuteness of those two councillors could be remedied, in effect, by replacements coming in, if I can use that term, as a result of the election, then that starts to open up, it may be thought, the gateway to getting through what it was that they, I'm talking about Mr Sidoti and the witness working together, could achieve. So there is a nexus, there is a relationship between the two councillors named, whether or not waiting until they no longer held office would facilitate, in other words, help greenlight the proposal. That's really the relevance, isn't it?

30

40

MR NEIL: Well, I understood the question to go further than that and to be asking whether or not this witness considered trying to find out what the planning attitudes were of future potential preselected, then elected councillors.

THE COMMISSIONER: Oh yes, I agree. I wouldn't permit it for that purpose because that's really trying to speculate as to the qualities the

candidates might possess and their abilities. I agree, that's going too far but I don't think that was what Mr Ranken was seeking, was it, Mr Ranken?

MR RANKEN: Well, I was seeking to test the witness's evidence that he wasn't particularly interested to find out who it might be that Mr Sidoti had in mind to replace Ms Cestar and Ms McCaffrey and part of that was on the basis that he would be interested to know at least where they stood on planning matters, that that's a reason why he would have some interest to know who was involved, or who was to be a replacement.

10

THE COMMISSIONER: Well, that does, does it not though, possibly involve the question of his foreseeing who might be better suited from Mr Sidoti's point of view as councillors?

MR RANKEN: Yes.

20

THE COMMISSIONER: But isn't there another way around, which is more or less what I put to Mr Neil, that if Mr Sidoti and the witness discussed these matters, well, what was that discussion directed towards, so far as this proposal concerning Concord was concerned, and I think it's permissible to explore that area. So perhaps if you could narrow down the question to deal specifically with that area.

30

MR RANKEN: Yes, yes. Well, did you have any discussions with Mr Sidoti about how his moves to remedy things at the coming preselection might assist in relation to the particular issue concerning Concord?---Look, I, I, I cannot remember if I would or not. I, but, I could recall, I could imagine me saying that, "These guys are not understanding some certain matters, this is quite frustrating because we've got a state strategy here that's got certain matters to be implemented." And as a state member I would be talking to him because he is a state parliamentarian and saying they, "This is your council, why, why don't they do, what's, what's the issue here in understanding those matters?" But as for, as for specifically seeking, like, me seeking out who is this person going to be, who is that person going to be in a factional sense for some sort of set up, I, that's, that's, that's, I don't think that would be something that I would be particularly pursuing in that way. It's, yeah, I just thought - - -

40

So you didn't go to Mr Sidoti and say, "Look, John, Michael Megna seems to suggest that there's something that's going to happen at the preselection and you've got something in mind. How is that going to impact on the council?"---I, I, I, I, it doesn't seem like the sort of thing I would ask, I mean, but, I mean, it would be general political discussion about, "Oh right, who's going to be councillors," and, and this and that but not specifically for, for specific planning matters or anything like that, I wouldn't have thought, you know? It would just be, it would just be general interests to, as goes on in, in, in politics but, because with this project here, we're, we're seeking to move it on to Gateway but there's a whole merit process that

needs to go on that's, that's outside the realm of council to consider this.
So, yeah.

I understand that but you did agree that the matters, both the Concord matter and the Five Dock matter, still did have to come back to council after September 2017, correct?---Yes.

10 And it was likely that you would have to engage with council after the elections in September 2017, correct?---Yeah, yeah. That's right, yeah.
Yes, that's correct, yep.

So would it would have been at least of some interest to you to get a sense of who might be elected at the council elections in 2017?---It, look, I can see that it may be of interest but, but a part interest but yeah.

And Mr Sidoti being the local member - - -

20 THE COMMISSIONER: Sorry. You can see that it might be of interests but what?---Oh, just not a, not a primary interest. As in, yeah, like, yes, it's an interest but, like, it's not like a driving interest in that sense, yeah,

MR RANKEN: But Mr Megna's in effect letting you know that, you know, "John Sidoti can let you know what's going to happen. Why don't you speak to him?" And you say you didn't speak to him?---I'm, I'm not saying I, I, I'm not saying - - -

30 So you probably spoke to him but you can't remember what you spoke to him about?---Yeah, yeah. What I'm saying, I don't know if I, I saw this text message from Michael and went, okay, better ring John and find out what are the factional play is in the local branches of Canada Bay, no. I, I, that doesn't seem logical for me to do. But would I have had over the months general conversations about councillors and who they were and what they were, more than likely. And that's discussion that goes on, yeah. So - - -

Well, in those discussions did you come to learn that there had been an alternative ticket put together that included Stephanie Di Pasqua and Nick Yap prior to them being preselected?---No, I was not party to, in forming of tickets or anything like that.

40 I'm not suggesting that you were involved in forming it, but did you become aware that such a ticket had been worked out, as it were?---I can't recall knowing that, no.

So it's possible that you did?---No, oh, well, it's possible because of discussion around the party widely of these sort of matters that goes on but - - -

But this was not in your electorate where you're a member of the party, correct?---No, that's right.

No. This is within the Drummoyne electorate and within the City of Canada Bay, correct?---It was general chatter amongst politics and that sort of framework a lot, so, for those sort of things but, yeah, that's, so I might have known about it in that way, I guess, or might have been informed or, but

10 Would that have been in discussions - - -?---I just, I can't recall, sir, I just, yeah.

Well, who were the kind of persons who you would have been discussing particularly the preselection and what possible tickets there might be in respect of the City of Canada Bay?---I doubt I'd be talking to anybody about specific tickets and things like that, it's just - - -

20 Well, what about John Sidoti, would you have spoken to him about it? ---I, I imagine – look, as I said, over the months we would have talked about what's going on in his local area with councillors and things like that, but I can't say it was a specific time, date or, and was I involved or had, you know, good knowledge of tickets being formed, not really, no.

And at that time in 2017 you didn't occupy any position within the, any particular position within the Liberal Party other than being a member of the Caringbah branch?---Well, I mean - - -

30 Sorry, 2017?---Oh, gee. Like, you know, I've been, you know, branch secretary, I've been a, now and then I've been like a delegate from the, a delegate from the branch to certain bodies, but you know, that's, but look, I'd have to go back and check my records to know what I was doing in 2017 in the party, yeah.

You weren't a delegate at the election for the councillors - - -?---No.

- - - for the ticket at City of Canada Bay?---No, not, no, no, no, no.

40 Because there are delegates from the various branches within the City of Canada Bay local government area and there are some delegates that are appointed by the state executive. Correct?---Yeah, I think, well, as I understood council elections at that stage were, it was either a random selection of state executive and branch members, I wasn't sure if there were plebiscites by that stage. Sorry, I wasn't party to - - -

THE COMMISSIONER: You were not involved at all - - -?---No, I wasn't involved.

- - - in the elections September 2017 for the Canada Bay Council?---No.

Is that right?---No, that's right, not me.

Would you bring up on the screen again 1865, please. After Mr Megna's email – are you coming to this?

MR RANKEN: Just to finish off that, yes.---Sorry.

You do respond to Mr Megna's message by saying, "Noted. Thanks for assistance." Do you see that?---Yeah, yep.

10

That would suggest that you're acknowledging what he has told you and the suggestion to speak to Mr Sidoti about the matters that he's raised. Do you see that?---Oh, possibly, but a lot of it is also too for us to understand that we may need to consider progressing, if council's not going to go in a certain way with it, we may need to lodge a Gateway review on the project because the politics is not supportive of the position that we're wanting to pursue against the state strategy.

That was a - - -?---That could be it too.

20

That was a site - - -?---So we don't waste our time.

The Concord matter was a site-specific matter, correct?---Yeah, but it's against the state strategy so it's a little, it's a bit different in that sort of sense.

But ordinarily if it's in that kind of a planning matter that's going for a Gateway Determination, it's not usually the case that anybody other than council can ask for a review of the Gateway Determination, isn't it?---Oh, no, if we've, if we've, if we're the applicants for it we can ask for a Gateway review, absolutely.

30

So you were the applicants in respect of that?---Oh, I'm pretty sure we were, yeah.

So it was a little bit different, it was different to the situation in respect of the Five Dock Town Centre Study and those LEPS.---Yeah. There's nothing in legislation that stops us from asking for a review, but the policy framework around it that the Department puts out is that - - -

40

The Department wouldn't - - -?---The Department would go, look, yes, the Minister can do this, but, you know, but really it's up to the, it's the parties that are there, so in this case, yeah, we have a Gateway review right I'd assume on this one, yeah.

So do you say that your reference to thanking Mr Megna for his assistance was not effectively you acknowledging that he's made that suggestion and you would follow up with that suggestion to speak with Mr Sidoti. Is that

your evidence?---Well, I'm – it may, but look, I'm unclear. I guess it would be both of those things, like yep, okay, maybe understand from John that these people are not really supportive of supporting projects against the state strategy, and also it would be, and so the councillors are not looking to do it that way because Canada Bay, whereas we had other projects in the, in the, in this corridor strategy that had been progressed and quite substantially moved and, in other areas of the strategy because it straddled a lot of LGA, so there would be that context, an also, okay, fine, well, maybe in this situation we need to, we'll go request and maybe talk to him, is there a - - -

10

We just – sorry, could I just hold you there?---?- - - are these, what, what is the issue with these councillors.

Mr Daniel, could I just hold you, could I just hold you?---So I said probably – sorry.

We're just talking about City of Canada Bay Council and the issues that you are raising in the City of Canada Bay Council.---Yes.

20

And it was in the context of in particular one of those matters, which was Concord, that you had this exchange with Mr Megna. Correct?---Yes, that's right.

And Mr Megna has made a suggestion, having conveyed to you that Mirjana Cestar and Helen McCaffrey were not going to support the particular change that you wanted made in respect of that which was going to go to the Gateway Determination - - -?---Yes, yeah.

30

He's expressed to you certain aspects about that, and then he's suggested that you speak with Mr Sidoti about his views, that is, Mr Sidoti's views on Mirjana Cestar and Helen McCaffrey.---Yes, yeah.

And also Mr Sidoti's moves to remedy it at the preselection, correct?---Yes.

And you've noted that and you've said, "Thanks for your assistance."---Yes.

Now, what I'm suggesting to you is that what you were intending to convey, was it not, was that we'll take that from there and follow-up with Mr Sidoti. ---Yeah, yeah, because this council had a policy position - - -

40

No, do you agree with that that's what you were conveying in that - - -? ---Sorry.

Do you agree or do you disagree that that is what you were intending to convey to Mr Megna in your response to his text message?---Sorry, you're going to have to say what you thought I was maybe conveying, sorry, again?

You were conveying that, “Thank you, we will follow up with your suggestion to speak with Mr Sidoti,” about the matter that he had suggested you speak Mr Sidoti about.---Yeah, yes, okay, yep, that could be part of it, and it could be that I wanted to speak to John about state matters of the strategy too, and about these councillors, yes, I can see that may be the case. Sorry to take, take that so long to get there, yeah.

Just one moment.---Yes, yeah, I see.

10

Thank you, they’re my questions of Mr Daniel.---Thank you.

THE COMMISSIONER: Mr Neil, do you wish to cross-examine the witness?

MR NEIL: Yes, thank you, Commissioner.

THE COMMISSIONER: Yes, I grant leave.

20

MR NEIL: Thank you. I act for Mr Sidoti. Do you understand that, please?---Yes, sir.

Thank you. You acted for Mr Sidoti’s parents in relation to some planning matters in the Five Dock Town Centre. Correct?---Yes, sir.

And did you issue invoices to Mr Sidoti’s parents’ company or companies? ---I, yes, I, I asked which company we were meant to be issuing an invoice, and we issued an invoice to that company, which is in the evidence.

30

And I think you’ve told us the company was Deveme Pty Ltd, is that right? ---I recall that is right, yes, sir.

And was your firm paid by cheques drawn on a bank account of Deveme Pty Ltd Superannuation Fund?---I’m unsure, but I’d – I, I’m, I’m unsure. Sorry, it’s a while ago, sir.

Was your work in relation to these planning matters also involving some clients who were residents of Waterview Street?---Yes.

40

THE COMMISSIONER: Just on that again, I think we’ve been over it, but I just want to be sure about it – were there, apart from members of the Sidoti family, other landowners who became clients of Pacific Planning?---Mmm, yeah, as you recall yesterday, sir, I was (not transcribable)

A simple question.---We were representing their interests on advice of their
- - -

No, no, no. Please.---But we felt, they probably weren't clients in that way, because we weren't charging them invoices.

You might have been indirectly - - -?---Yes, that's how (not transcribable)

- - - or even representing their interests.---Yes.

10 But they were not clients.---No. Sorry, that's the, that's the delineation.

No. The clients were corporations and perhaps members of the Sidoti family, the corporations being Deveme in particular.---Correct. Correct, yes. Yes, that's correct.

All right, thank you.---Sorry for - - -

MR NEIL: Now, did Mr Sidoti indicate to you that he had received from residents of the Waterview Street between Barnstaple and Second Avenue complains or concerns that their street had not been part of the extension of the B4 zone that had occurred to Waterview Street further to the south?
20 ---Yes.

THE COMMISSIONER: Which residents did he indicate?---If I recall, it's, it's, it's in our letter, sir. It's, if I recall, it was, yeah, it, I think it was numbers [REDACTED] was Mr Durkin and we had 37 and, and 41.

No, but you were asked about residents.---Yep.

30 The question was, did Mr Sidoti indicate to you - - -?---Oh, we had - - -
- - - from residents in that area complaints and concerns about their properties not having been part of the extended B4 zoning mixed-uses.
---Yes, yes, yes.

And my question to you is, which residents did he name?---I, he may have named more to me, but I don't recall them completely, but, at this time, but I do recall Mr Tannous, and I'm sorry, I, my memory's not helping me.

40 Okay. Yes, Mr Neil.

MR NEIL: Thank you, Commissioner. Now, did you become aware that on 2 August, 2016, the council had endorsed what was called option 2 arising out of a set of recommendations that had been the subject of a minute from council staff?---Yes.

The council staff putting to the councillors that it was a matter for the councillors to determine between option 1 and 2, correct?---Yes.

And might the witness, Commissioner, be shown page 1258?

THE COMMISSIONER: Yes.

MR NEIL: Now, would it be correct to say that from the point of view of Mr Sidoti or residents of Waterview Street that option 2, firstly, did not involve changing the zoning to B4, correct?---Sir, I'd have to have the, the report in front of me. I just don't recall off the top of my head, I'm sorry.

10 Do you recall that it involved removing the heritage listing on number 39 Waterview Street?---Yes.

And that opened the way also for – I'll keep it compact – a laneway at the rear of those residences with some various advantages flowing from that?
---Yes.

And were you aware, can we take it, from the email chain at 1258, looking at the one to the bottom of the page, that Mr Matthews informs Mr Sidoti, with a copy to you, that he was looking at a submission and he proposing
20 two key points, one being that council be commended for endorsing option 2. Do you see that?---Yes, I do, sir.

And might the witness, Commissioner, be shown page 1263? Were you made aware of a letter which commences at 1262 from Mr Matthews to Mr Dewar?---Yes. Yes.

And at 1263, Mr Matthews informs Mr Dewar that the decision to endorse option 2, including the removal of the heritage listing over 39 Waterview Street, is supported. Do you see that?---Yes, I do.
30

And then there are some dot points which set out some additional what's called testing and feasibility than the writer considers had previously existed, correct?---Yes.

And they seem to dot point, do they not, with a little more detail, point number 2? If the witness might be shown page 1258, Commissioner?

THE COMMISSIONER: Yes.

40 MR NEIL: Do you see there Mr Matthews is saying two key points he's going to make in the submission, one, council commended for endorsing option 2 and then, two, council omitted to investigate other alternative outcomes. I'm asking you, does that point 2 on page 1258 become more specifically dot pointed at 1263?---Yes, it does.

Thank you. Now, from the point of view of Mr Sidoti and residents of Waterview, would you agree that option 2 was an advance, as far as they

were concerned, on the status quo, although it did not go as far as zoning B4?---Yes.

Now, might the witness – so I want to ask you this. Is it correct to say that as of 12 October, 2016, Mr Sidoti accepted the council’s position of endorsing option 2?---Yes, I, yes.

10 And indeed Mr Matthews, at 1258, considered that council should be commended for endorsing option 2, correct?---Yes, that’s right. Yep. That was the outcome.

Now, could I ask if the witness be shown page 1414? This is a date, 20 February, 2017, apparently an email from Mr Matthews to you and Mr Sidoti, care of his wife’s email. Is that as you understood it?---Yes, sir.

20 And that firstly sets out the 7 February resolution which consisted of six recommendations of the council staff, including number 6, that if owners thought there was a better outcome, they could lodge a proposal correct? ---Yes.

Now, what was being suggested there was that the motion – firstly, if you look at the page just below the number 6, there are two matters that Mr Matthews wants to put forward. Do you see that?---Yes.

One is that the motion of 7 February be carried, right?---Yes.

In accordance with the staff recommendations, correct?---Yes.

30 And in effect a confirmation of the option 2?---Yes.

And then he adds two other things. “To apply the bonus site provision to land that fronts Great North Road, bounded by Second Avenue and Barnstaple Road, to permit a maximum building height of 24 metres and a maximum floor space ratio of 2.7:1, where land has a site area of 1,000 square metres and a street frontage of at least 20 metres.” And then number 2 is an amendment accordingly. Do you see that?---Yes, I do.

40 And might the witness then be shown 1428? And do you see there that Mr Matthews has sent to Liberal councillors an email that goes through to, in fact, 1430?---Yes.

But if you look at 1428, in bold towards the middle part of the, upper part of the page, he says, “It is my strong planning opinion that the rescission motion is not supported. I encourage you to consider moving the motion in the attached document.” And did you understand him to be saying that his recommendation was that council should stand firm on its decision of 7 February?---Yes, by, well, that is the result of not supporting the rescission motion.

But then he adds on, might the witness be shown 1430, Commissioner, he adds on the two points that I've just read from the previous document, one is to apply the bonus height provisions et cetera and the other is a consequential provision. Correct?---Yes.

Now, would you agree that that proposal, number 1, to apply the bonus height provisions, relates to Great North Road?---Yes.

10 It does not relate to the Waterview Street properties between Barnstaple Road and Second Avenue. Do you agree?---Yes.

And it appears to be seeking to reapply some bonus provisions that had once been in force but had been removed. Is that right?---Yes, that's correct, sir.

And might the witness be shown page 1420, Commissioner. Is that a request to address a council meeting application form?---Yes, it is, sir.

And is the applicant Mr Matthews?---Yes, it is, sir.

20

And does he set out in the first box under Applicant Details, in answer to a question, "If you are representing someone else or an organisation, state who are you representing," does he say, "Representing the landholders at 120 and 122 Great North Road, Second Avenue and 37 Waterview Street?" ---He does, sir.

And does he then under Details of Proposed Council Address, state that he wishes to speak at the meeting on 21 February, 2017?---Yes, he does, sir.

30 Does he say that he wants firstly to speak about item 12, notice of motion of rescission, and sets out the names of the councillors proposing the rescission?---Yes, he does.

And then sets out that it relates to changes to planning controls for land on Waterview Street, Five Dock.---Yes.

40 And does he then, there's a question that says, "Please give a brief outline of your planned address below." And does he say, "To support the council resolution of 7 February, 2017 and request council include the bonus provision to apply to land fronting Great North Road?"---Yes, it does.

Now, I just want to ask you this briefly. Might the – is the Gateway planning department procedure one by in effect the Department of Planning has the ultimate say on whether an LEP should be approved?---Yes, unless it gives its delegation to the council in certain situations.

And does it have the ultimate say on whether a planning proposal should be approved?---Oh, sorry, I misspoke there, sir. In relation to a Gateway, it is

the minister's or his delegates' decision. In relation to a planning proposal, yes, it is ultimately the minister or the department's decision, unless he does have provisions to delegate that to a council in certain circumstances.

And is the procedure one whereby the council requests a Gateway Determination under section 56 of the Environmental Planning and Assessment Act of 1979?---Yes.

10 And might the witness be shown page 438, Commissioner? Is that a copy of the letter from the director to Mr Sawyer writing in response to the council's request for a determination involving a planning proposal to expand the B4 mixed-use zone, and to amend height and FSR controls and other matters set out there?---Yes.

And at page 440 – might the witness be shown 440 – is that a copy of the relevant Gateway Determination?---Yes, it is.

20 And it's the minister or the delegate who makes the ultimate decision, not the council, correct?---Yes.

And does the minister or the delegate make decisions in accordance with good planning principles and in the public interest?---Yes. That's, that's the objectives of the Act.

Thank you. Now, you gave some evidence that, I think it was, the HillPDA study, in your view, did not address a sufficient range of floor space ratios. Was that your view?---Yes, that's correct.

30 Are you able to recall what range it addressed?---I think it went from, I think it went from 0.88 to 1.25, I believe.

And what range did you consider it should have addressed?---I, well, I think a more comprehensive review should have gone to densities likely up to 2.5:1 on that Waterview Street site, not that that suggests that we think that's appropriate, but to enable a, an appropriate economic analysis of sustainability on that level of assessment to see what was appropriate and what could be, would actually promote orderly economic development of land.

40 And to the extent that you and/or to your knowledge, Mr Matthews, wrote emails or other communications to the council or councillors, do you consider that you acted in accordance with appropriate procedures?
---Absolutely.

Were the procedures you adopted procedures that you had adopted in other planning matters?---Yes.

And could you give any estimate as to the range or numbers of local government councils, other than Canada Bay, that you had used the same type of procedures with?---That's, that's, I, I, difficult to be specific off the top of my head, but many in the Sydney area, is all I could say.

Are you able to give an estimate of the number of such matters that you had undertaken with councils using those procedures?---Yes, oh, oh, if you just bear with me, I'll just have to think that through. At least a dozen.

- 10 THE COMMISSIONER: And just on that, just again, if you would outline precisely what procedures you say you used on that one dozen occasions?
---Oh, the Department has a document that's called a Guide to Plan Making and, and just the relevant, and it basically assists with the application at part 3 of the Act for plan-making processes.

But what, in relation to procedures involving the communication directly with councillors, if any, did you use or follow in relation to that one dozen cases?---Sorry, sorry, I, I missed your question.

- 20 What procedures were you referring to when you said you had followed them in 12 or a dozen cases?---Oh well, the application of the guide, part 3 of the Act and of, of using, and, and, and implementing the guide to making planning proposals and progressing planning proposals that the Department issues.

- That's fairly general. Can you be more specific than that?---Yeah. Well, maybe if you, I'm just, well, they're the policy procedures that we would follow, part 3 of the Act, in relation to the way you'd lodge an application, guide to making planning proposals and then in cases where you needed to
30 make a review, there's policies and guidelines the department has in relation of those processes as well that we would do. They're the, they're the, they're the, they're the procedures that we would follow, the statutory processes outlined in obviously the Act and the regulation, but those policies are there to assist those to carry through.

Can I just take you back to the previous point you were dealing with?---Yes.

- That is that you thought that rather than the range for FSR that HillPDA adopted, you would consider that a range up to 2.5:1 would be appropriate
40 to promote orderly development of land.---No, I don't - I, I think that I - - -

I thought you said that.---No, could I, if I can clarify?

Yes.---What I'm saying is that I think it should be tested up to that range.

Tested up to that.---I don't think it means that that's appropriate. I couldn't say if it was but - - -

Yes, well, you did make that point, you weren't saying it was appropriate.
---No, I just think it would be better to have a wider range to fully
comprehend the economic viability of development.

And upon what matters would you rely to suggest that it would be better to
test up to 2.5:1 in this particular matter?---Oh, in this particular case?

Ah hmm.---When you say matter, sir, do you mean what policies or - - -

10 No, no, no. I'm just addressing, you were taken by Mr Neil to the HillPDA
range of FSR, which was, I think, 0.8 to 1.25 and my understanding of your
evidence is that you did not think that was adequate and that you would
consider they should test up to 2.5:1?---Yes.

Am I accurately stating your evidence?---Yeah, that's, that's right.

And my question to you on that point is what matters of you rely upon to
suggest that it would be better test up to 2.5:1, that is to a higher range than
HillPDA did?---Yeah, well part 3 of the Act obviously requires to, is to be
20 put in place to fulfil the objections of the Act and one of the objective of the
Act is the orderly economic development of land. It's also the, you know,
it's also when you're doing land use changes, it suggests you need to
consider social, environment and economic sustainability ground in relation
to the orderly development of land and there's a number of conditions there
that precede the EP&A Act in relation to the objectives of it and then
obviously the rest of it is how it's implemented. I guess now on the specific
level in relation to Five Dock, as I was indicating, the thing that raised our
interest was that there was a study that preceded that came to a conclusion
30 that these densities of up to 1.2:1 were not viable and said they would not
promote development. And we thought, well, that's not really ticking, that's
not really enabling a proper assessment under economic sustainability
grounds. You would want to see what level was of a quantum of
economically sustainable to promote economic development and the, the
good things that come from that increased housing jobs, things that the state
always very keen to see implemented, and our preliminary analysis, as I was
indicating yesterday, was that on the land opposite on Waterview Street to
the north of that Second Avenue area, on land that council owned and other
landholding there, they were able to give that a higher density in their
planning proposal and actually admit that that was a viable outcome for
40 them and a good community benefit outcome to promote that increased
economic outcome for that land for the benefit of the community and for the
benefit of council, which we don't dispute, but yet we felt why wasn't that
tested on this land and we felt that was not appropriate and we thought that
should have been done and we wanted the Gateway to enable a process to
do that. But normally when we do these things, and each council is
different - - -

I think you've given me enough in your answer.---Oh, sorry, sir, yeah, okay.

That's all right. I'm sorry, Mr Neil, I'm sorry, Mr Neil, I interrupted.

MR NEIL: Thank you, thank you, Commissioner. In substance, what you were seeking from the council and/or Gateway, tell me if I'm right, was further studies.---Yeah, that's correct, Mr Neil, yeah.

Thank you. You weren't actually urging any concrete provision. Is that right?---No, that's right.

10

You gave an answer about three or four questions ago, setting out the procedures that you've adopted in other areas and on other occasions. Did you adopt those procedures in respect of this question of the town centre at Five Dock?---That was a council-led process, so we were trying to implement and encourage the council to implement policy to bring forward questions to the Gateway process so those items could be studied, yes, and, and the only way that we can do that obviously in the process, or not just us, or anybody in the community wanting a council-led process is through the political body of putting that policy position forward.

20

Have you on other occasions, on any of the occasions that you've mentioned in evidence in other applications or with other councils, communicated directly with councillors?---Yes.

And do you see anything wrong about that?---Not if it's appropriately about planning merit and proper planning process, no, I don't, in fact I think my, my opinion is that those things should be encouraged. I mean being a politician or being a local representative is a difficult job and the more input you get to your decision-making process, likely the better, as long as it's in a managed environment in that sort of sense.

30

Is it within your knowledge that review of an LEP can involve a number of stages and it coming before council on a number of occasions?---Yes, it does.

Can the process take a long time, could be measured in months or even years?---I'm yet to see one in months, but usually years.

40

Thank you. And was your task or the task of your firm in relation to the Sidoti family client, to advise them as to planning procedures?---Yes.

Was it to advise them on ways to have further studies pursued?---Yes.

And did you tender at least some of that advice to the Sidoti family clients through Mr Sidoti?---Yes.

Do you recall the extent to which you might have tendered the advice either in writing to the Sidoti family members or their companies, have you any recollection of doing that?---Yes, via email and also verbally.

And of the Mr and Mrs Sidoti senior, can you recall giving them verbal advice, either or both?---No, it was, our discussions were via John, John and Sandra.

10 Thank you. And I think you said you continued to act for the Sidoti family pursuing some aspects with the Gateway, even after February 2017. Is that correct?---Yes, that's correct, sir.

What were those aspects?---We made, we made submissions to, to the Department in relation to the Gateway process and seeking for the Department to consider those, those additional studies and items that we were seeking to be done.

20 Thank you. Those are my questions. Thank you, Commissioner.

THE COMMISSIONER: Yes, thank you, Mr Neil. Mr Hale, do you wish to raise some matters?

MR HALE: Yes, I wish to ask some questions.

THE COMMISSIONER: Yes, then I grant you leave to do so.

30 MR HALE: Thank you. Firstly, Mr Daniel, if I could deal with your involvement in the Liberal Party. I think you've told us that you've lived most of your life in the Shire, Sutherland Shire. What is your present involvement in the Liberal Party?---I'm just a member again of the Caringbah branch, I'm, and I'm the branch secretary in that sense and I, and I have a, and through that I have a delegateships to certain bodies in the party.

And what bodies are those?---The, the local state and federal council I think includes the local council and the, and a state council delegate, of which each branch has, you know, around the state, has two members.

40 And to what extent when you're at state council do you interact with other members of the Liberal Party?---Oh, yeah, well, when you, if you go to a state council meeting, you're, you're there for most of the day, so you're discussing and talking to individual people regularly and through lunch and breaks and different things like that, and - - -

Outside of attending state council, has your involvement in the Liberal Party been essentially centred on Sutherland Shire?---Pretty much of late, yes, that's right, the last year.

And when you say of late, over how many years?---Oh, probably the last, you know, I'd imagine the last eight or nine years I'd say, in that sense, yep.

And you have had no involvement in the Liberal Party in the Drummoyne or Canada Bay area?---No.

And you told us that – oh, and in your political career, I think you were for a period of time a councillor on Sutherland Shire Council, were you not?
10 ---Yes, that's correct.

And when was that?---From 1999 to 2005, I can recall, or maybe '04.

You've told us that it was through the Liberal Party that you met Mr Sidoti.
---Yeah.

Can you remember – and you might have given some evidence of this – approximately when it was that you met Mr Sidoti?---Yeah, I think it was around when John became elected to the Burwood Council area through,
20 you know, two or three degrees of separation got to know John, I think that was after about 2009 or around that sort of time, '08, '09.

With what regularity do you meet with or speak with Mr Sidoti?---And just, sorry, at, at this time, or during those - - -

Yes, well, over the last, over the period from 2015 to date.---(not transcribable) yeah, well, when we were, as, in a professional capacity, we spoke to him reasonably regularly as we required to do on it, and so, that's, it was just in that capacity, and also maybe in the odd social occasion during
30 the, the party and the branch and, you know, more wider matters, we would, we would see each other.

But your social connection is not one which has led you to go to Mr Sidoti's house or Mr Sidoti to come to your house?---No.

Could I now turn to the question of your experience in planning. Now, you've told us that you were at one stage a councillor on Sutherland Shire Council, and you've also told us that you worked in the Department for a period of time.---Yes.
40

Then perhaps you might remind us the years you worked in the Department?---Yeah, from, oh, just in April 2009 and to, I think it was around about mid to, mid, mid of, mid 2013, about five years.

And could you explain to the Commission the nature of the work that you did while you were with the Department?---Yeah, I was involved in a, a team called the Project Delivery Unit, which was in the Major Projects area of the, of the Department, I, and is in the office of the director-general. So I

reported to the director-general and I was, and that would involve assisting that office and assisting the Major Projects Teams with the coordination and progression of state-significant applications. We had a, we had a, a team there that I managed to assist in that function. We also did, assisted the Department widely with different sort of matters that were, needed to be, needed resources for assistance and project management matters to assist the outcomes that the government was seeking to achieve and I was also, the director-general also asked me for a period of time to be his, his, to be appointed to the Gateway Review Panel.

10

Well, before we come to that, the Gateway Review Panel, the director-general was Mr Sam Haddad, was that not?---Yes, Sam was DG at that time, yes.

And I think to some degree you came under his wing, as it were, he gave you some assistance and training?---Yes. He was my direct report.

And you mentioned the Gateway Panel – I think I’ve got the expression wrong – but if you can explain how that worked and what it was?---Yeah. So the, the Gateway Panel, sorry, incorrectly, I misspoke, I said the Review Panel, it wasn’t, it did review – what its involvement was, we had, the director-general had set that up to assist in a collaborative approach to the assessment of Gateway applications that came in from across the state in relation to part 3 of the Act, planning matters where they were seeking changes to land use controls and zoning controls and we were in the Planning Operations Team and the regional teams would put forward those requests to that panel and we, as collaborative way, we reviewed those different sections of the department and that also, from time to time, had a permanent, from time to time, different councils represented but it had a permanent local government member on that panel as well and the result was that we would review those applications and make recommendations for the director-general’s consideration.

20

30

And did you have interaction with local councils while on that panel?---Yes, regularly.

And were you conscious of a division or different philosophy that you experienced between, on the one hand, the state government dealing with state and regional matters, and local councils on the other, dealing with local matters?---Yes, yes, we did. And, yes, we did. Yes, there was, there was, the state obviously has a, an approach that’s very key on the matters of environment sustainability but also an economic growth and, and housing growth particularly and housing affordability to make sure those significant state objectives are being achieved through the, through the matters that the panel was dealing with and sometimes they clashed against some of the, the local political objectives or the underlying issues that a council may have if those sort of polices were progressed in their LGAs.

40

And is your approach to town planning, to some degree, informed by your experience in acting, or being employed with the Department and being on those panels?---I would say it's, yeah, primarily, absolutely, primarily, that's the approach that I have been taking and the, and the training that I was, I was provided in that way.

And in dealing with the planning proposal the subject of this Commission's consideration, when you express your views are those views which come from the background to which you have just referred?---Yes, they do.

10

And now, you have expressed your concerns, amongst other things, about the Studio GL report and the town planning philosophy in that report. Does that, to some degree, reflect the division to which you have previously mentioned between the local view and the state and regional view?---Yes, it does.

Now, although the reports and representations concerning the planning proposal that were prepared by your organisation were largely written by Mr Matthews, did those views also represent your own professional views as a town planner?---Yes.

20

And that was your professional views as a town planner formed, as they were, in the way that you have just been describing?---Yes.

There was also reference to feasibility and you were talking about 1.2:1 being insufficient to be feasible. Perhaps you just might explain what you mean by that.---Yeah, so when we're talking about a number 1.2:1, we're talking about a density control which is commonly termed as a floor space ratio control. So if you have one square metre of land and it's 1.2:1, you get 1.2 square metres of land to build on that and the mathematics applies as it goes. The economic – so, so the generalised rule of thumb is that obviously the more density you can put on a site, the more development that can be achieved, and therefore, you know, more housing it creates or the more employment floor space it creates, and therefore the more economic outcome that, that, that, that density control can promote. And that's, so that's the context there. So if you apply a certain density, it's, your able to, within reason, provide preliminary and then later on more substantial testing in relation to what density control is considered in the market environments to be viable to promote orderly economic development within a sensible period of time that would encourage landowners to either engage with the development industry to sell their land or to develop is themselves.

30

40

And to be an incentive to development there needs to be - - -?---Absolutely.

- - - a feasible FSR.---That's correct. And date I say, it's actually a requirement of the objective of the Act to do that as well.

Now, in terms of that division of approach between the government background that informed you and the local approach, I think you have observed an incident or an example of that in the minutes of the Canada Bay of 3 November, 2015. Perhaps I can make some copies available.

THE COMMISSIONER: Yes. My associate there will distribute those.

MR HALE: And one for the witness.---Thank you.

10 THE COMMISSIONER: Thank you.

MR HALE: I've got more I can make available, but if you see here, this is in fact that minutes of the meeting of the meeting of the council of 3 November, 2015, in which I think, although it's not relevant for present purposes, the very first item, item 1, is in, does in fact deal with the Five Dock Town Centre, which is on page 4. Is that correct?---Yes, that's correct.

20 Now, the example to which I wish to draw your attention, is on page 7, item 3, as an example of the difference of approach between state on the one hand and local on the other. If you look at item 1, it refers to in the resolution, refers to the fact that the planning proposal of the council had been refused, and then if we drop down to item 4, the council is expressing great concern in the last three lines on that page, that the Department has considered the request for a pre-Gateway review and determined that there may be merit in the proposal proceedings. I'm told it's page 787 of the exhibits, but I'll keep going with this copy.

30 THE COMMISSIONER: Sorry, what page were you just on then?

MR HALE: Page 7.

THE COMMISSIONER: 7.

MR HALE: If you look in the bottom left-hand side, page 7 of the minutes.

THE COMMISSIONER: Yes. Yes.

40 MR HALE: And then going over the page, having expressed the concern at resolution 5 or paragraph 5 the council is very much critical of the approach of the government. Paragraph 6 again taking issue with the government's approach or the Department's approach to the public interest. And paragraph 9 or resolution 9 seeking to write to the Minister and the Premier and the Minister for Planning and Environment to express the concerns that the council has about the approach of the Department. Now, would that be fairly common so far as a division of approach between local council and government is concerned?---Yes, not every local council but a number of them, yes.

Now, if I can also, you were taken – we can put that to one side. I don't know how we should deal with that, and I'm told it is in the exhibit, so perhaps we can check that.

THE COMMISSIONER: It's already in the exhibit.

MR HALE: That's what I'm told, I hadn't appreciated that.

10 THE COMMISSIONER: All right. We'll check that out.

MR RANKEN: I think, not the entirety of, I think page 7 is, but page, I'm not sure, page 8 (not transcribable)

THE COMMISSIONER: Page 8 is not part of the exhibit? Is that what you're saying?

MR RANKEN: No, is not currently part of - - -

20 THE COMMISSIONER: Well, perhaps it could be added to the exhibit.

MR RANKEN: Maybe I would do that, yes.

THE COMMISSIONER: So just so it's clear, page 8 of the minutes of the meeting of council, 3 November, 2015, in relation to item 3, which commences on page 7 of the copy of the minutes, will be added to Exhibit 24. Yes, thank you, Mr Hale.

30 MR HALE: Now, if I can now turn to a different matter, and you were asked this morning about text messages of 4 July, 2017, which I think were at pages 1864, 1865. Perhaps they could be brought up. Now, the first question I'd ask, do you have any recollection of actually receiving those text messages?---Now that I see them, I do, yes.

You do. And do you have any direct recollection of your thought processes at the time, or in answering the questions of Counsel Assisting, was that more a matter of reconstruction?---I think it's a matter of reconstruction, doing my best to recall the events.

40 Thank you. And if I could now turn to another matter, which is evidence yesterday, could I ask be brought up page 974 of the transcript?

MR RANKEN: Commissioner, it appears we're having some difficulty bringing up that particular page of the transcript.

THE COMMISSIONER: Perhaps if you could try and put what you want to, Mr Hale, if that's possible.

MR HALE: It might be a little bit difficult, but I will attempt to do it. On page 974, you are asked by Counsel Assisting about what you considered strange in the HillPDA approach, and I think you answered, "It was because if it's only going to 1.2:1, it should have studied a full range of densities," about which you spoke yesterday.---Yes.

10 And you then went on to say, at the bottom of the page, 974, when it was suggested to you, your conclusion was that the report was incorrect, flawed, and invalid, and you said, "Yes, to not study the full range of densities that may be available to it, I think is incorrect." Now, was it apparent on the face of looking at the report that the report did not study FSRs greater than 1.2:1?---Yes.

And by observing the report and reading the report, you recognised that it did not in fact give rise to studies for a greater range of FSRs for 1.2:1? ---That's correct, yes.

20 And then you were asked a question, and this is at page 975, at about line 28. "By 2 August, 2016, had your firm undertaken any analysis that enabled it to reach a firm final conclusion of the HillPDA analysis was flawed in some respect?" So you were being asked a question as to whether there was a further study in that respect. Did you have any difficulty in understanding that question in the context - - -?---Yes.

And then if we also – further questions were asked at line 39 on 975. You were asked a question to similar effect and you said, "I want to really, I want to be really clear." Can you remember that?---Yes, I can.

30 What did you want to be really clear about?---It would be very helpful if I had the question in front of me to read but - - -

I think we might have it now.

THE COMMISSIONER: So drawing the witnesses attention to about line 34 or 5?

MR HALE: Yes, yes, yes. It should about 39 he needs to read.

40 THE COMMISSIONER: "Please (not transcribable) did your firm undertake." Have you got that?---Yes.

MR HALE: Yes. You can see the words, "I want to be really clear." You started to answer the question by asking, I think, for more details. And if you can just read it and I'll ask the question again. What did you want to be really clear about?---What I wanted to be clear about that I'm not making a criticism at HillPDA that was doing this, their interrogation of those densities was incorrect or wrong in any way and I just wanted to make sure that I wasn't saying that firm, that, you know, that weren't doing that. What

I'm saying is it was wrong that, and it may not be their doing, that it was that they weren't studying the full range and it may be that's the way they were directed, to only study a certain range in that sort of a way. That's one aspect I was trying to be clear of.

THE COMMISSIONER: And was that the range you mentioned this morning, testing up to 2.5:1?---Yes, yeah, at about that range, yeah.

10 MR HALE: And if I might also go to page 976. The Commissioner asked you a question which followed on from Counsel Assisting from about line 11. "Are you able to assist me in ascertaining the facts on the question? It's an easy question, did you, your firm by 2 August, undertake an analysis that enabled you to reach a firm and final conclusion that there was something wrong in the PDA analysis? The answer is, "Yes, we did," or, "No, we didn't." "I can't remember." Now, did you have any difficulty with that question?---Yes, I, I did. I was, I was confused.

Why was that?---Why was I confused?

20 Yes.---Because I wasn't sure what I, what, what I was being asked at that stage.

I understand. Now, if we can move onto 977 from about line 33. You said in answer one of the questions from the Commissioner that the problems with the way HillPDA had gone about their feasibility analysis, as you saw them, were fairly fundamental and planning 101, correct?---Yes.

30 "If that was the case, then it would have been something that would have been worth bring to the attention of all the councillors, not just the Liberal councillors, correct?" And then you say, "I'm not saying that HillPDA didn't do right." Why did you answer that way?---Oh, because, I answered that way because I'm not saying that the range of studies that Hill PDA, the, the methodology of the study that HillPDA applied to the densities that I assume they were asked to study was wrong. What I was trying to be clear about, that they needed to study a wider range but that may not be in their scope of works to do that.

40 Now, if I can also – this follows onto the next page, 978, when the Commissioner spoke to you, he wanted something to say, and if we look at line 29, you say, "Sir, may I just ask to explain why I'm confused?", and I think that opportunity was not given to you. What was it that you wanted to explain as to why you were confused?---I, I, yes, I was, I was confused, I think in this case I was confused about what I was being asked, in relation to the reasons why we were seeking to put a motion forward to the council in relation to seeking additional study, and what my logic was in relation to why we needed that to be, to be done. And I, I, I, I was clearly flustered at this stage, and I was – and it was just unclear.

Right. Now, if I can - - -

THE COMMISSIONER: Just a moment, Mr Hale. Is there something you wish to now add in relation to the matter you've just raised? That is, in reference to page 978, the passage that you were taken to, is there something else you want to say about it, or anything further you want to say about it? ---Yes, I would, but I'd need to, if I could just go to the following page, because it's the last question put to you, I just want to get that in my brain.

10

What page? 97 - - -?---7.

977. All right.---Yeah, so you were, this is where you were asking me about whether or not we'd put a detailed analysis in place or not, and what I was seeking to explain was the process that we were applying to the way that we would think the study should go forward to enable further study in consideration of the Gateway. Our preliminary assessment was that there wasn't the appropriate range of studies undertaken of densities to bring a viable conclusion as to what the number would be, in relation to a viable FSR control that could be considered or a range of viable FSRs that could be considered. And we at this stage – and I was confused also because subsequently, and I'm not sure in the timing in relation to our evidence, well, that's there, that we had then gone off and done, and got independent – well, not – expert advice of, of a, of a, a, quite a respected economics firm to give that advice in relation to what the appropriate densities were. So I was confused about whether that was, had been one at that stage or not at that stage, but I know that we had done a certain amount of interrogation in-house at that time, and therefore we were trying to insert that into the process so that could be considered by the Gateway as well, so the appropriate land studies could be done, and therefore subsequently we were seeking to make sure that the appropriate land use controls could be done that would promote orderly economic development that's, that's sustainable environmentally and as socially sustainable as well.

20

30

And just on that, what was the firm that undertook that examination of what you've referred to as the appropriate range of densities?---PPM Economics.

Which one?---PPM Economics.

40 PPN, is it?---Oh, M, sorry, M.

M Economics?---Yeah.

MR HALE: It's in evidence.

THE COMMISSIONER: And did they give you a report on that?---Yes, they did, sir.

Do we have that, it's in the - - -

MR HALE: Yes, you will find it amongst other things at page - - -

THE COMMISSIONER: Page what?

MR HALE: 1568.

THE COMMISSIONER: All right. Thank you.

10

MR HALE: It appears a couple of times in that bundle.

THE COMMISSIONER: Yes, Mr Hale, I just see the time, we haven't had a break, but I know the witness is probably keen to get away. How much longer do you – should we take the break now or do you - - -

MR HALE: No, I was going to take the witness to page 979, and that was going to be the end.

20 THE COMMISSIONER: All right.

MR HALE: Yes.

THE COMMISSIONER: Just – I'm sorry.

MR HALE: Yes.

THE COMMISSIONER: Yes, Mr Ranken?

30 MR RANKEN: I do have a couple of matters that I hope can be very briefly dealt with.

THE COMMISSIONER: Yes, well, let's finish the witness before we take a break.

MR HALE: Now, if I could take you now to the transcript 979, and Counsel Assisting in his first question says, "If the concerns that you and your firm had in respect of the process by which HillPDA had conducted their feasibility - - -"

40

THE COMMISSIONER: Mr Hale, I can't hear you.

MR HALE: I'm sorry.

THE COMMISSIONER: You need to talk closer to the microphone.

MR HALE: Yes.

THE COMMISSIONER: So what are you reading from?

MR HALE: Yes, I'm reading page 979 from the first question Mr Ranken asks.

THE COMMISSIONER: All right. And - - -

MR HALE: So if you look at that, Mr Ranken asks you a question, "If the concerns that you and your firm had in respect of the process by which HillPDA had conducted their feasibility analysis were so fundamental as to be planning 101, then they're matters that ought to have been brought to the attention of all councillors, not just Liberal councillors. Correct?"

10 And now did you have any difficulty with that question?---I, I had difficulty understanding because I, I felt that there seemed to be an, there seemed to be an inference that any decision that was made at that council meeting would be the planning proposal and they would be the land use controls and I was confused at thinking that that concept was considered because that is obviously not the process. What I was trying, what I was trying to understand was that this was, we were trying to put forward a policy

20 position that the council could consider to adopt as policy to then carry that through to the state so those things could be considered, but during this questioning I was a bit flustered and again confused, possibly a little bit stressed, but that because I was confused in relation to that there seemed to be a thought that we were trying to move some agenda to get the land use changed without any proper consideration or proper detailed merit assessment, and I found that quite troubling because there's one thing James and I always do and, and dare I say it's in evidence that we always apply merit in relation to these proposals in that sort of a way and we seek to do that appropriately. So that just got me a bit flustered and confused in that

30 context when we were being asked that.

Well, this leads to my last question which you might well have already answered this. If you go to about line 27, you will see, "Just answer the question." "Okay, certain, okay, I'm, I'm not, I'm probably not hearing something right." What were you referring to there?---Yeah, sorry, just which line is that, sir?

Immediately above Mr Hale.

40 THE COMMISSIONER: Just between 20 and 30.

MR HALE: Yes.---Yeah. I just want to know – yeah. So this is, this is where I'm confused in my mind because at one stage I'm trying to understand the context that's being put to me that this could be a final decision of the council and we had some agenda in that sort of a way, and it

was so foreign to me in my mind that we would, we would progress a process that would even contemplate that because in our mind it actually doesn't exist, and therefore we, I thought we're, we're trying to do the appropriate thing and I, I was feeling quite pressured that, that the, the, the alternate situation that we weren't trying to be appropriate was being put to me and so therefore I was not understanding the question and hence why I was confused and I was trying to be very, very straightforward as best as I possibly could, but then doing that with a level of context as to why I was making that statement and not understanding things.

10

They were the questions I have.

THE COMMISSIONER: Thank you, Mr Hale. Yes, Mr Ranken.

MR RANKEN: Just a few matters, Mr Daniel. Firstly, I wonder if we could bring up page 1430. You were asked some questions, Mr Daniel, by Mr Neil on behalf of Mr Sidoti, in respect of this - - -?---Yes, sir.

20

- - - proposed recommendation, and it was suggested to you that paragraph 1 was essentially a recommendation to reinstate the bonus provision that had once been in force but had been removed. Correct?---Yes, I recall that question, yeah.

30

In fact your understanding though, is it not, is that there had never been such a bonus provision in force in respect of that part of this block on the Waterview Street site, it was just that it had previously been contemplated to be included in the planning proposal. Correct?---So the way that I understood it was that this was a bonus provision that was generally applied to the town centre study. That's how I understood it.

40

In terms of the proposal that was going to be put forward, that was going to be a bonus provision that would be inserted into it but it was not something that was previously enforced prior to the Town Study, correct?---No. It was, no, that's right. But as I said this at the time, and I think councillor had already, as I understood it, but I would need to be clear – these are not my reports of course – is that, that there was a general understanding to apply a bonus provision to the town centre on the main street, yeah. But not on this, but you're saying not on this site though, is that - - -

In terms of that's what was being contemplated at one point.---Yes. Yes, that's right.

But it was never something that actually was in force in the sense that it had come into, had the force of being part of a formally finalised, gazetted LEP? Do you understand the difference between - - -?---I understand what you're saying, yes. Okay. Thank you. Yep, I, I understand – yeah, no. I, I understand your clarification. I'm sorry.

So just clarifying that, because it was suggested to you that, in fact, it was reinstating something that had previously been enforced but that is actually technically not correct. Correct?---No, it's not. It's the old timeline question about when it's actually finally made and all considered, yes.

And I don't believe you were meaning to suggest that. It was more in the question that that was what was suggested.---No. Thank you. Yes, thank you very much.

10

And you were asked some questions by Mr Hale in respect the issue of floor space ratio and why it was significant to be looking at other floor space ratios rather than the range that had concerned you about the HillPDA analysis and I think your evidence was that greater floor space ratios would provide a greater incentive to development, correct?---As a general rule of thumb, yes.

20

But that is, would you agree, a slightly crude way of looking at it, in the sense that whilst a greater floor space ratio may create greater incentive to development, an increase floor space ratio for a particular block of land could increase the land value such that it would be a disincentive to development?---These are, look, as you say, these are complex matters and there's, there's other issues that come into, into the play in relation to it. But, sorry, is your proposition that increased density doesn't increase value?

30

Well, the effect of increasing a floor space ratio can have the effect of increasing the value of the land, that is the dollar value of the land, which can then, in turn, have a negative impact in terms of investment and development. So it's about getting the balance right. You can't have too much floor space ratio because that might lead to an overvaluation of the land which makes it difficult to develop.---Well, not, I wouldn't necessarily say that's, that's a general rule because in (not transcribable) of development feasibility, there are, as anything in a supply chain model, in relation to what suppliers are forming parts of the production supply, there is a set profit that the developer or the construction, the construction team needs to make to make it viable, otherwise they won't get their finance and all those sort of things in relation to it. And then, so the land value is typically set by those, those set costs in the supply chain that are usually known by the industry and therefore it's there. So, typically though that wouldn't be the situation. Like, an increased density in a certain areas where there is a significant demand on housing and employment floor space which obviously, anywhere in Sydney, but particularly Five Dock, I, I wouldn't necessarily think that's the, that's the outcome.

40

But it can have that – I'm not saying it necessarily would, I'm saying it can have that impact?---It would be very, very unusual in Sydney.

For an increase floor space ratio to have the effect that it could lead to an increase in the dollar value of land, which might have a negative impact in terms of investment and development?---yeah, that's, that would be highly unusual, I would say.

10 THE COMMISSIONER: But it is possible?---I'm trying to, I'm not an economist so to speak in that way and I'm sure there would inputs in the supply chain (not transcribable) could do that, if there were provisions such as, you know, a significant – if the, if the increased density triggered extra taxes or land charges or those sort of things, that that could occur but there's so many inputs into that scenario that I, you'd need a detailed analysis but as a rule of thumb, and as you say, a crude scenario, an increase of density on land that's serviced will raise its value considerably because it's going to create more yield.

MR RANKEN: Now, you were – sorry. Just to the last matter I wish to ask you some questions about, and it's about the engagement of PPM Economics, which Mr Hale asked you some questions about.---Yeah.

20 They were the economics firm that you ultimately engaged in order to conduct the feasibility analysis, correct?---Yes, that's right.

Prior to engaging PPM, the position is that you might have done a quick desktop, internal desktop analysis, but you never engaged any other external consultants to provide more detailed economic - - -?---Yeah, look, I've studied economics, but I don't call myself an economist, right, so I need - - -

30 THE COMMISSIONER: Sorry, you're talking over the question.---Oh, I'm sorry, I didn't mean to do that. My apologies. Yeah.

MR RANKEN: Prior to the engagement of PPM, you hadn't engaged any other external consultants to do that work.---No.

Or done that detailed work within house?---No. We, we might, I may have had, as happened, sir, we may have had some preliminary discussions with the economist and just talked him through it, but we hadn't ordered a formal report in that way, but we would do our own analysis to start with.

40 Yes, and we were directed, I think, to a report that ultimately was obtained from PPM Economics. But before I go to that report, I wonder if we could go to page 1531, sorry, 1530. Do you recognise this to be an email from Mr Matthews to yourself and also a martin@ [REDACTED] ?---I recognise it, yeah.

And do you see it refers to the "Gateway review request, Five Dock, July 2017"?---I see that, sir.

And the date is 7 September, 2017.---Yes.

And Martin is a person at PPM who you engaged in order to do the feasibility analysis for the higher floor space ratio, is that correct?---Yeah, Martin's the economist, yes.

Yes, he's the economist. And essentially that email sets out some background to the issue.---Yes.

10 And the history of the matter, correct?---Yes, that's so. I can see that from James, yes.

With a view to engaging Mr – well, Martin. What was his surname?
---Musgrave.

Martin Musgrave. In order to perform this economic analysis. Do you see that?---Yeah, that's right.

20 Yes, so can I suggest, would you agree, then, that it wasn't until September 2017 that your firm – that is, Pacific Planning – took steps to engage Mr Musgrave and PPM Consulting or any other economics expert to do this feasibility analysis?---Yeah, but we would have had discussions with Martin, I'd say, previously, earlier.

If I could go then, sorry, if I could then go, take you to page 1531. That's the next page. You can see that Mr Matthews' email seems to follow from yours.---Yes.

30 And your email to him, which also is to Mr Musgrave, says, "Hi, James. I spoke to Martin and, within reason, he is prepared to assist with an economics assessment on the submission for John's family at Five Dock." Do you see that?---Yes, I do.

So that would suggest that, essentially, it was only in relatively short compass in terms of time between when you had those initial discussions with Martin and engaging – Martin Musgrave, that is – and engaging PPM Consulting.---Initial email, yes, but it's likely.

40 Are you saying there are earlier emails?---I don't know if there are emails, but I, I'm very close to Martin. We'd have, we'd have, during this time we've had regular discussions and – I used to work, Martin, I used to work with Martin.

THE COMMISSIONER: Sorry to interrupt you, but - - -

THE WITNESS: So I would have had, I would have had discussions – sorry.

THE COMMISSIONER: Just clarifying.---Sorry, sir.

Had Mr Musgrave done any feasibility analysis, or any other expert in the field, prior to September 2017?---Not in a formal sense, no. Sorry.

Well, not at all?---Oh, well, so (not transcribable) - - -

Well, well – sorry. You say not in a - - -?---A formal sense.

Formal sense.---Like, to be, here’s, here’s the submitted report.

10

So was there an informal assessment done of the feasibility study prior to September 2017? And, if so, by whom?---Yes, well, I would suggest that, because I have numerous discussions with Martin on a range of things, that it wouldn’t surprise me – and I’m just trying to remember because this is a while ago – that I would have discussed these sort of things and, and tested some of the logic I was applying against him in relation to our preliminary assessments and also to moving forward. And then happens a lot on our projects as we’re progressing, but when it comes to the time of doing the report, then we go, okay, mate, can you please give us a formal report. So I would, there would be, we would have a lot of discussion with him on certain matters, and it wouldn’t surprise me if we had on this one.

20

And when was that?---Well, when we were doing – I probably would have, I imagine I would have had some discussions on it as I was making my own preliminary assessments beforehand with James.

When was that?---Oh, in 2016, most of the times, yeah.

30

And did you take some notes, keep notes of the discussions you had with Mr Musgrave and any work you then did following up or with the benefit of those discussions with Mr Musgrave?---No, no, because it’s, we just felt that – and on, in this situation, we didn’t, and the reason being is because is the, across the street the council had zoned their land adjacent to a certain density on, and they felt that that was promoting an economic outcome. So therefore we’re thinking, well, these sort of things, and it was a very, very similar circumstance, would more likely be the same, and so we were talking, we would have been assessing it in that way and then running our own numbers and figures. And I’m suggesting that during that time, I would have more than likely spoken to Martin, but do I have any minutes or notes on that? I’m very sorry, I don’t.

40

MR RANKEN: And do you say that you would have also continued to speak with Martin so he was generally across the issues that you were trying to deal with, and the kind of floor space ratios that you were looking at analysing or having being the subject of some feasibility analysis, et cetera?---Oh, I, I probably, I – not, not regularly. I would have said to him, “Well, we might likely need a report,” you know, I’d spoken to him about it before, but that regularly happens with our projects.

But he would be aware from those discussions, would he not, about the range of floor space ratios in respect of which you were wanting some feasibility analysis, correct?---Yeah, yeah, from – because we had that relevant, that relevant density across the road.

So he would have to be aware of that through the course of these informal discussions you have with him in order to provide you with any sensible information, correct?---Oh, yeah, but I, I'm, to be, I, I can - - -

10

Sorry, was that a yes to my answer or - - -?---Well, I came up with the preliminary information first in, in, from my mind from that, and if I'd, if, I'm assuming that I would have had discussions with him, so if I had, he would, he, he'd, he'd probably aware of that.

He'd be aware of that.---Yeah, so, but I can't be precise, sir, I'm sorry.

Could we go to page 1533, then.---Yeah.

20

Can you see that there's the email that Mr Matthews sent to Mr Musgrave on 7 September?---Yes, mmm.

Which is the email, if I could suggest, formally engaging Mr Musgrave. Do you see that?---Yes.

And it would appear that it's part of a chain to which, in the sense that Mr Musgrave has subsequently responded, because we can see Mr Musgrave's signature block at the top of that page.---Yes.

30

If we could go to 1532, down the bottom of that page, you can see Mr Musgrave's email of 24 September. Do you see that?---Yeah.

And he says, "Hi James, as I said on Friday, I have not been able to finalise this as I have wanted to due to Jess going to hospital. Upon reading your request in the Gateway review request you attached, I am just wondering what it is that you want from me. Do you want a comparison of 2:1 and 1:1? I'll get the net development area and the gross floor area." Do you see that?---Yes, I do.

40

So it appears that he doesn't really understand exactly what it is, what floor space ratios you were asking him to compare, et cetera. Do you see that? ---Oh, well, no, he's trying to understand what the scope of his report that we're going to submit is going to be. That's right, yep. That's, that's – so he's asking for more specificity, in that way.

So what I want to suggest to you is that you've got no earlier record of any contact with Mr Musgrave concerning the issue of any feasibility analysis in

relation to this particular issue, that is, the Waterview Street site.---Oh, not, no, not that I can provide you, but - - -

Yes, thank you.---Yeah. But it doesn't mean I haven't spoken to him.

Prior to September 2017.---Not written documentation, no.

So it's all in your head?---Sorry?

10 It's all in your head, the information.---Oh, just from memories, because I did speak to, I do, I, we – during this time, I've spoken to Martin regularly about a number of, a, a number of projects.

You can't recall any particular conversation?---Not off the top of my head.

You couldn't tell us a particular date for any such conversation, correct?
---Not off the top of my head. No.

20 Or the substance of what was actually said either by you or by Mr Musgrave in such a conversation, correct?---I'd, I'd, I'd have to think about it. I'm sorry, sir. Yeah.

But the answer is you don't actually have any independent recollection, without any documentation, of any conversation that you had with Mr Musgrave prior to September 2017, concerning the Waterview Street site?
---No, only an, yeah, only an assumption that I would have had discussions. That's all, sir. Yeah. Sorry.

30 Yes, they're my only further questions, Commissioner.

THE COMMISSIONER: Yes, thank you, Mr Daniel, you're excused.
---Thank you.

THE WITNESS EXCUSED

[12.15pm]

40 THE COMMISSIONER: Now, Mr Ranken, we probably should take a short break.

MR RANKEN: I think that would be appropriate.

THE COMMISSIONER: So we'll resume and we'll go through to 1.15 and then I'll adjourn for lunch at 1.15.

MR RANKEN: Thank you, Commissioner.

THE COMMISSIONER: I'll adjourn now.

SHORT ADJOURNMENT

[12.15pm]

THE COMMISSIONER: Yes.

10 MR RANKEN: Commissioner, just briefly before I call the next witness, in the course of the cross-examination of Mr Daniel by Mr Hale, there was the reference to the minutes of the council meeting of the City of Canada Bay Council held on 3 November, 2015, and it was, Commissioner, you agreed that perhaps page 8 of those minutes could be incorporated into Exhibit 24. On further reviewing what is already in Exhibit 24, it appears that page 7 is in fact not in Exhibit 24, and also reviewing the minutes it appears that the item continues up to and includes the top of page 9. So what I would propose is that pages 7, 8 and 9 be included in Exhibit 24 so that the Commission has the full record of the minutes in respect of that item, which is item 3, even though it is not the item of particular interest to the Commission.

20

THE COMMISSIONER: Yes. What's the date of the minutes again?

MR RANKEN: Sorry, the minutes of the meeting held on 3 November, 2015.

THE COMMISSIONER: Yes. All right. Pages 7, 8 and 9 are to be added to Exhibit 24 to complete the minutes of 3 November, 2015.

30 MR RANKEN: Yes, thank you.

THE COMMISSIONER: Thank you.

MR RANKEN: And then, Commissioner, I call James Matthews.

THE COMMISSIONER: Yes, thank you.

MS KING: Commissioner, I seek leave to appear on behalf of Mr Matthews. King.

40 THE COMMISSIONER: Yes, I grant leave for you to appear for Mr Matthews. Mr Matthews, do you wish to take an oath or an affirmation?

MR MATTHEWS: Oath, please.

THE COMMISSIONER: An oath?

MR MATTHEWS: Yes, please.

THE COMMISSIONER: I'll ask you to stand. If you could take the Bible,
and I'll have my associate administer the oath.

THE COMMISSIONER: Yes, take a seat. Yes.

MS KING: Mr Matthews takes the objection to appearing.

THE COMMISSIONER: Yes, very good. So, Mr Daniel [sic], the
10 provisions of the Act have been explained to you, that you're entitled to
object to giving evidence.---Yes.

And that's what you wish to do, is that right?---Yes.

You understand, of course, that you must answer all the questions truthfully,
notwithstanding that a declaration will be made. You understand that?---
Yes, of course.

Yes. The evidence on objection means that the evidence can't be used
20 against you in other proceedings. But there is an exception, and that is it
does not prevent your evidence from being used against you in a
prosecution for an offence under the Independent Commission Against
Corruption Act such as an offence of giving false or misleading evidence.
You understand that's the exception?---Yes, I do.

Pursuant to section 38 of the Independent Commission Against Corruption
Act, I declare that all answers given by the witness, Mr Matthews, during
the course of his evidence in this public inquiry, and any documents or
items that may be produced during the course of his evidence. That being
30 the case, it is not necessary for Mr Matthews to take individual objection to
particular answers or documents or items produced.

**DIRECTION AS TO OBJECTIONS BY WITNESS: PURSUANT TO
SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST
CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN
BY THE WITNESS, MR MATTHEWS, DURING THE COURSE OF
HIS EVIDENCE IN THIS PUBLIC INQUIRY, AND ANY
DOCUMENTS OR ITEMS THAT MAY BE PRODUCED DURING
THE COURSE OF HIS EVIDENCE. THAT BEING THE CASE, IT
40 IS NOT NECESSARY FOR MR MATTHEWS TO TAKE
INDIVIDUAL OBJECTION TO PARTICULAR ANSWERS OR
DOCUMENTS OR ITEMS PRODUCED.**

THE COMMISSIONER: Yes, Mr Ranken.

MR RANKEN: Thank you, Commissioner. What is your full name?
---James Matthews.

And what is your occupation?---I'm a town planner.

And from where or as part of what organisation do you practice as a town planner?---Pacific Planning.

When did you join Pacific Planning?---Late 2015, early 2016, so between December and January.

10 THE COMMISSIONER: Sorry, late what year?---Sorry, late 2015.

MR RANKEN: Early 2016, is that right?---Yep, yep, yep.

And was Pacific Planning already an ongoing concern when you joined it or were you one of the founders of that firm?---I believe I started it with Mr Daniel, together.

So it was you Mr Matthew Daniel were the founders of that company and that business, is that correct?---Yes, that's right.

20

Prior to founding Pacific Planning in December 2015/January 2016, where were you employed?---I was employed at the Department of Planning.

And for how long had you been employed at the Department of Planning? ---It would have been just over five years.

So does that mean you commenced possibly at the beginning of 2010 or thereabouts?---Yeah, it would have been October 2010 and then that ran through until December 2015.

30

Prior to – sorry, what was your initial role at the Department of Planning? ---I worked within a team which is effectively a planning coordination team, so it's responsible for the entire state. And they had a number of facets to it, one including the rollout of the standard instrument LEP, which was the, you know, the standard instrument across all, all the councils in the state, and amendments to Local Environmental Plans, again, to LEPs across the state.

40 That's where you started at the Department of Planning. Did you progress through to different positions whilst you were there, over the five years that you were there?---It was generally along the same lines, dealing with part 3. We had a team that was, dealt with anonymous things, where, you know, people didn't know where else they would go. And we, we also included the map, the mapping, we had GIS staff, and as Mr Daniel has already mentioned, we were the Gateway review, the LEP review panel, also formed part of that team.

And do you have any tertiary or other qualifications in respect of town planning?---Yeah, I've got an undergraduate in city and regional planning and - - -

When did you get that?---That was Cardiff University in the UK.

And what year did you obtain that?---It would, I think that, those three years were 1999 to, yeah, 2002.

10 And do you have some other qualifications in relation to town planning as well?---Yes, and then there's a Post-Graduate Diploma in Town Planning, which included a placement year.

Which included a placement year, did you say?---Yeah, yeah.

A placement with what, a firm or the Department or - - -?---No, it was with, it with a local council. This was again in the UK, so it was with the local council in Buckinghamshire, Wickham District Council was the name.

20 And when did you do that?---That was 2002.

And then between 2002 and joining the Department of Planning in 2010 or thereabouts, where did you work, or did you work as a town planner in that time?---Yeah, yes. Well, I, I came here travelling and partly to have a break from five years of study in planning, and within about three months I was working at Blacktown Council and they were responsible for sponsoring me.

30 So you worked at Blacktown Council for a period. Did you go from Blacktown Council to the Department of Planning, is that right?---Yes, that's right.

So there were a number of years at Blacktown Council then, is that correct? ---Yes, about five years.

About five years in their planning department?---That's correct, yes.

40 Thank you. Now, you are aware, are you not, that this Commission is looking into, amongst other things, planning decisions that were made in respect of the Five Dock Town Centre Study?---Yes.

And Pacific Planning came to be involved in relation to acting on behalf of certain landholders who had an interest in that matter, correct?---Yes.

And do you have a recollection as to when it was that Pacific Planning was first engaged to do any work in respect of the Five Dock matter?---It would have been just before the council meeting. So again, this is, from my recollection, obviously five years ago, around June or July 2016.

So, when you say just before the council meeting you were aware that there was a meeting of the council on 2 August of 2016, correct?---Yes.

And so only shortly before the council meeting was Pacific Planning engaged to do anything, is that right?---From my recollection.

And is this the case, that the initial engagement came through Mr Daniel?
---Yeah, well, came through a, a client but, yeah, yes.

10

But the initial contact was made with Mr Daniel and then you were brought into it, is that correct?---Yes, yes.

But the two of you generally worked together?---Yep.

Of the two of you, you are the one with the greater experience in town planning, is that correct?---Yes, correct.

And did you understand who the client was that was engaging Pacific Planning at that time?---Not, not particularly. I, I did, yeah, not particularly.

20

What do you mean by not particularly?---Well, I, you know, I think, probably the name would have been mentioned to me but it didn't strike me as, you know, there was nothing, it was just a client.

So when you say the name, was it the name of Mr Sidoti, that was the name?---Yes.

And did you know Mr Sidoti at that time?---No.

30

You hadn't met him yet?---No.

At that time, that is in 2016, shortly prior to the meeting on 2 August, were you a member of the Liberal Party?---No.

Have you subsequently become a member of the Liberal Party?---Yes.

And when did you join the Liberal Party?---Late 2016. I, I can't, maybe November, around that time.

40

Late 2016?---Yeah.

And did you join a particular branch of the Liberal Party?---Yes, Drummoyne.

Is that Mr Sidoti's branch?---I believe so.

But in any event, prior to Pacific Planning being engaged, as you understood it, by Mr Sidoti, you had not met him, is that correct?---No.

But were you aware of his name in the sense that he was local member for the seat of Drummoyne?---Not really, no.

Were you at that time a resident within the seat of Drummoyne?---No.

10 So at some point in 2016, did you become a resident within the seat of Drummoyne?---Yes, yes, I did.

As part of the initial engagement of Pacific Planning, was there a meeting that you attended with Mr Sidoti and Mr Daniel?---I, I can't recall but apparently there was, so yes.

Is that likely to be – so you don't have any independent recollection but you - - -?---Yeah, that's right

20 It's likely that there was such a meeting?---Yes. And that would be standard to occur when we're, when we're starting a new project anyway.

Well, do you recall, was it in the context of doing work for Mr Sidoti in respect of the Five Dock Town Centre issues, was it in that context that you first were introduced to Mr Sidoti?---Yeah, yeah.

And was it Mr Daniel who introduced you to him?---Yes.

30 And that's likely to have been at a meeting shortly prior to the council meeting on 2 August, 2016?---Yes.

And if I could ask you this. At that meeting presumably there was some information provided that gave you some background to what had happened up to that point, as it were?---Yeah, of course.

Correct?---Yeah.

40 And if you could assist us with the extent of the understanding that you had at that point. Firstly did you understand that there had been a process whereby some external experts had been engaged by the City of Canada Bay Council to undertake a detailed urban design study and review?---I wouldn't have been aware of that before our meeting, but obviously I would have been - - -

No, no.---Yeah.

I'm talking about, is this the information that kind of came out that you would have been aware of as a result of the initial meeting?---Yes, absolutely, yeah.

And that resulted in, that included not only urban design consultants, particularly a firm called Studio GL, but also some feasibility analysis that had been done by a firm called HillPDA?---Yes.

And were you also informed that there had been a process of public exhibition of the design study and then there had been a proposal that had been sent to a Gateway Determination?---Yes.

10 And that there had been a number of occasions where submissions had been received by the public and were you aware that one of the submissions that had been received had sought to have the study look at the possibility of rezoning a block of land between Barnstaple Road and Second Avenue and along Waterview Street so that it was rezoned to be B4 mixed-use?---Yes.

And was it explained to you that prior to the Urban Design Study that block was split zoned in the sense that the Great North Road side of the block had a B4 mixed-use but the Waterview Street side had an R3 medium-density zoning?---Sorry, was I, was that brought to my attention or did my review
20 discover that?

Yes, or did you become – you discovered that on your review, did you?
---Yeah, mmm.

So did you go back and read the original Urban Design Study report that Studio GL had prepared?---I would have at the time, yes.

The original report?---Yes. I would have – sorry, I would have looked at the history of, of, of that planning proposal and the process that started in
30 2013, you know, yeah.

So does that mean you would have looked at the original Studio GL report, the minutes of the relevant council meetings where it was dealt with?---Yes.

Council staff's reports prepared for council for those meetings?---Yes.

And then presumably you would have looked at the Gateway Determination insofar as that might assist you to understand.---Yeah, yeah.

40 And then subsequent exhibition outcomes reports and council staff reports following further exhibition of the planning proposals. Correct?---Yes.

And so did you become aware that in November 2015, matters had got to a point where there was in a sense a bifurcation that the LEP that had been progressing along or the planning proposal that had been progressing along was sent off to be finalised and gazetted but the council had requested that there be a further study in relation to three particular sites?---Yes, that was in November 2015 resolution I believe, yeah.

In November of 2015, yes. And that Studio GL then went and prepared a report that looked at those three sites, and HillPDA did a feasibility analysis based on the report that Studio GL had done. Correct?---Yes, yep.

And were you aware that in respect of the Waterview Street site, Studio GL had identified two options?---Yes.

10 One option involved the removal of a heritage listing for a particular property, being number 39 Waterview Street, correct?---Yep. Yep.

And the other option involved retaining that heritage listing, correct?---Yes.

And both of those options, though, had proposed that the zoning of the block would remain as it was. That is, it would remain split-zoned between R3 on the Waterview Street site and B4 on the Great North Road site, correct?---Yes.

20 And when you had your initial meeting with Mr Sidoti, do you have any recollection as to what he was seeking to achieve by engaging Pacific Planning?---I don't have any particular recollection, but it would certainly have been planning advice and our views of "What's going on with the block?" and, you know, "What do you think?"

30 And what does that mean in terms of seeking your views, seeking planning advice and your views?---Yeah, so, so, I mean, look at, look at the controls, look at the, the history of the previous planning proposal, and do you think there is any, I guess, potential, you know, in terms of there's a report coming to the council for this additional block, what are the appropriate controls for that block.

So does that mean that you would consider the options that Studio GL had put forward? Is that what was part of the engagement to - - -?---Yes. And - sorry, and, and the previous reports, planning reports that, from John's previous planners as well.

40 But from having looked at those, having looked at those previous reports, you would have seen that, in particular, the previous planners, being MG Planning, had in a number of reports sought to advocate for the extension of the B4 mixed-use zone to include the entirety of that block. And I might refer to that as the Waterview Street site.---Yep, okay, yep.

Yes. So you understood that, correct?---Yes.

And you would have also understood and appreciated that on each occasion that that had been considered by the council and the external experts engaged by the council, there was a strong view put forward not to extend

the B4 mixed-use zone to include that area, correct?---I, I'm not sure about strong view, but certainly view, yes.

Would you accept that it was a repeated position that was, on each occasion, notwithstanding the representations that were made, the ultimate recommendation of both the external experts and council staff was that the R3 residential, medium residential zoning should be retained?---Yes, because - - -

10 Because of some reasons?---Yeah.

Yes. And those reasons principally included the heritage listing, correct?---Yes, yep.

Also the existence of the strata development that already existed on that block, correct?---Yep.

20 And also, there was also the fact that the block was considered to be outside of what was considered to be the central core of the town centre, correct?---Yes.

And that was in the context where the council had already come to a view about extending the core of the town centre, correct?---Yes.

Up to Second Avenue, effectively.---Yes, the block to the south, yep.

So there was already, within the Urban Design Study, a move towards an expansion of the town centre, correct?---Yes.

30 But the view that appeared to be prevailing was that the limits of that expansion should be only up to Second Avenue, not further beyond?---At that stage, yes.

And was this the case, that Mr Sidoti was seeking advice from Pacific Planning – that is, yourself and Mr Daniel – as to, firstly, why the council might have come to that view?---Ah hmm.

40 And how or what could be done in order to advocate for or argue for a different result. That is, one in which the B4 mixed-use would be extended to include that block.---Yeah.

So he was quite clear with you, was he, and Mr Daniel, that that's what he wanted to achieve, a rezoning of that block so it was entirely B4?---Well, I guess one of the key, critical points is review the MG Planning report and see if you, see if you agree with what their recommendations were, which I did.

Yes, you agreed with MG Planning's recommendation.---Yes, yeah.

And effectively, the point that MG Planning had got to was that insofar as council were relying on the heritage listing and also the existing strata development that they were not sufficient arguments against extending the B4 mixed-use zone. Correct?---Sorry, was, was that my view that they weren't sufficient against - - -

No, that that was the point that MG Planning had got to.---Yes, yeah. Or, or resolve them.

10

And MG Planning had suggested that essentially it would be a logical extension of the town centre to include that block as well, correct?---Yes, I agreed, yep.

20

And you may have agreed with that, but it was quite clear, was it not, that on the repeated occasions on which the council had considered it, it was not considered that that was necessarily a logical extension of the town centre, given the various other considerations that had been taken into account as part of the design study conducted by Studio GL?---Well, yes, they came to that conclusion, but you know, they're, they, the, maybe some of the constraints hadn't been fully explored and resolved, hence why they came to a different conclusion to extend it.

30

And the constraints you're referring to, are they the constraints insofar as the likelihood of there being able to be any real development of that Waterview Street site, given the kinds of floor space ratios and height limits that were being proposed? Is that - - -?---Sorry, the, the Waterview Street block, which was 0.5:1 and 8.5:1 would unlikely develop, redevelop under those controls if they were just dwelling houses again, and that interface with the seven, six storeys at Great North Road wasn't a great outcome. And you wouldn't, like, you know, the – if there's a desire for a, for a real laneway system, then you know, those things just wouldn't occur. So under the existing controls, I don't think that was a great outcome, hence why I supported that being included as part of the town centre, and I thought, felt it was, the majority of that block is 200 metres from, within 200 metres of the centre, so, yeah.

40

THE COMMISSIONER: Mr Matthews, could I ask you just to keep your voice up a bit and just speak a little closer to the microphone?---My apologies, can I move that up is all right?

That's all right. Thank you.---Yep.

MR RANKEN: Now, do I take it then that given the proximity of – sorry, I withdraw that. Ordinarily when Pacific Planning is engaged by a client, is there usually some contract that's drawn up to set out, well, this is what you're asking us to do, and these are what our rates are, and this is what we will do, so that you know the bounds of what your instructions are and what

it is that you are to do?---On, on most, most occasions – well, it, it depends on the, on the nature of, of, of the work. A number of clients have multiple jobs, so, you know, we might have one client with four projects or five projects, so, there, you know, there would be a defined scope inside a broader agreement, I guess.

Well, let's just deal with a project of the kind that you're being engaged to do in respect of Five Dock by Mr Sidoti.---Yeah. Yep.

10 That's the kind of project where you would ordinarily have a contract of engagement that says, "Look, you have engaged us to provide you with planning advice on this, and this is the scope of what our retainer is"?
---Well, this is quite a small project, and my, our, and particularly me, though, because I do a lot of the writing, (not transcribable) involves writing planning proposals under part 3 or writing SECs under part 4. So something small which is just advice is more of a, well, let's, an hourly rate type thing, where you, you'd just see how much work's involved.

20 But wouldn't that of itself be required to be documented in some way?
Like, "This is the terms on which we're prepared to do the work that you're asking us to do"?---Not necessarily, because it wasn't clear about what the scope was going to be. This, you know, this is (not transcribable) this was a council meeting on 2 August, 2016, and we were just preparing to just speak at that meeting, and it depended what the outcome was. So, you know, if, that's unclear, whereas if you're writing a planning proposal, it's pretty clear what you're, what the scope is.

30 So I think you've assisted us though to tell us that the initial engagement was just to present to the council meeting on 2 August, 2016. Correct?---I, I believe so, yes.

Okay, and to - - -?---Oh, and provide, sorry, and to provide advice on, to, to, to John on, on what our views were.

And would you ordinarily provide that advice in a written form?
---Sometimes.

40 Were you asked to provide a formal written submission to the council or was it too late in the day, as it were, by the time you became engaged to be able to put in a formal written submission to council so that you were left with – the only option really was to register and speak at the council meeting?---Yeah. I can't specifically recall but given that I hadn't, I would, would have thought that that would be the case.

And essentially, would you agree, that what you would have been seeking, if I understand your evidence correctly, is for the matter not to necessarily proceed at that time in order for you to have an opportunity to put in a more fulsome submission about the issue?---I would have to have a look at what

am I speaking on, sort of, yeah. It, it, I mean, if there was a recommendation going out with the two options and I, on my review, while I supported the progressing of a planning proposal and removal of the heritage listing, I, you know, I, I felt it also didn't go far enough. So it was, I mean, there were bigger issues.

10 Yes but you would want to be able to provide the council, would you not, with proper information to inform the council, perhaps the council staff in the first instance, as to why any assumptions or any basis, for example, not extending the B4 mixed use zone, why that was flawed?---Oh, yes, yeah,

And that would require you, for example, I think one of the main issues, was it not, as far as you were concerned, was that the council had not explored a sufficient range of floor space ratios to consider the prospect of there being investment and development of the block, correct?---Yes.

20 And so you would have wanted the opportunity then to perhaps present an alternative analysis by economics, professionals or consultants who were able to do that work and demonstrate that other floor space ratios would actually yield a likelihood of development?---Not necessarily us undertaking that work. If, if we had lodged a planning proposal with council then absolutely it needed to be supported by the justification and those reports but council already undertaken some work that we felt didn't go far enough. So, you know, that's, at this stage, it's our role to raise that with council as a, a submission or observation, or speaking points.

30 So the submission would be, would it not, something along the lines of, "Look, you haven't looked at the right floor space ratios or you haven't done a sufficient job of analysis. We think the matter should go for further study and analysis, considering these sorts of floor space ratios"?---That would seem logical.

40 And that, from your experience in councils, having worked at Blacktown council as it were, and also your experience as a town planner, that would ordinarily be a recommendation of the kind that the matter be deferred for a further study of the, or feasibility analysis of floor space ratios of such and such to such and such, something of that kind, correct?---In a, in a normal context, yes, but this is slightly different because the resolution came out of a November 2015, council meeting to do that work, effectively do that work, to look at what's appropriate for this site and they've effectively ignored the finding of the reports in making a, a recommendation of 1:1.

Sorry, you're saying that the council ignored the advice of the report of Studio GL when it came to the resolution on 2 August, 2016, is that what you're saying, or are you saying something different?---Well, no, yes, from, from my understanding, there is two, there were two reports, HillPDA, which is the feasibility, which tested, as has been discussed, tested, I think scenarios between 0.8:1 and 1.5:1 in terms of feasibility and then the Studio

GL report just massed 1:1 up to, I think, 1.2:1 and the finding in the studies is that at 1:1 it's unviable. So therefore I would assume that they would go, well, when does it become viable? And let's test the massing and the urban design to inform that meeting to their elected representatives of what the best outcome for the site is as per the resolution in 2015.

10 Could you perhaps have it wrong in your mind in the sense that the HillPDA analysis was in fact conducted on the basis of the designs or the options that had been generated by Studio GL, not the other way around?---Okay, yes, that could be correct.

The Studio GL report was prepared in March 2016, and there followed a HillPDA analysis, feasibility analysis, in May of 2016 that was based on that Studio GL report, correct?---Yep, yep.

And then the recommendation of the council staff was that simply that the council make a decision as to which option to go with.---Well, yes, but I mean - - -

20 So then, so what was before the council on 2 August was "Which option do you want to go with? It's a matter for you." You recall that?---I, I, I recall that, yes, but - - -

30 So getting back to the original aspect of my questioning, which was that if the position and view that you had as an expert town planner was that there as a flaw in the manner in which the issue had been investigated insofar as the range of floor space ratios that had been the subject of feasibility analysis was concerned, then the appropriate recommendation would have been one that sought a deferral of the issue so that those matters could be further investigated.

MS KING: Can I object? That question talks about appropriate recommendations but doesn't identify for the witness whose recommendation it is.

40 MR RANKEN: Yes, sorry, I'm happy to – the appropriate recommendation that you might put forward. That you, as the person acting on behalf of Mr Sidoti and the person who has come to the opinion that there is a flaw in the approach as far as the feasibility analysis is concerned, the kind of recommendation that you might want to see come out of the council meeting would be one that says, "Don't make a decision now. You need to look further and conduct further feasibility analysis in relation to greater floor space ratios."---That could be one option, yeah.

So that then the council could be properly informed about that with that information to make a decision as to what controls it might put in place as far as the planning, any planning proposal.---Well, ultimately that's what,

that's what you'd want, yes. You'd want a body of work to be undertaken to, in terms of making decisions, yeah.

Because the council, you would have appreciated, would you not, that the council would not likely simply make some wholesale change to an LEP without having that properly investigated?

MS KING: I object. The council doesn't have the power to make a change to the LEP. All they can do is recommend it.

10

MR RANKEN: Okay, I'm happy to do it that way. You understood that a council was not likely to recommend or put forward a proposed change to an LEP unless that change had been properly investigated.---Any change to an LEP, yeah, has to have a sufficient level of justification under the Act.

And that would require there to be, for example, feasibility analysis in respect of these further floor space ratios.---Yeah.

20 Particularly if that was going to result in a change of the land-use zoning. ---So the, from R3 to B4?

Yes.---Yeah.

So was that a recommendation that you considered putting forward to council on behalf of Mr Sidoti, or Mr Sidoti's family, at the meeting on 2 August, 2016? That is, a recommendation that council defer the matter so that further floor space ratios could be investigated?---I can't recall but I don't think it was.

30 And why is that?---Well, I can't recall.

No, why is it that you don't think it was?---I, I think that I recommended that the, that the area be expanded to B4.

So you did that, though - - -?---With justification.

40 But without any feasibility analysis having been done in respect of those further floor space ratios, correct?---Well, it's clear that the floor space ratio is not feasible that was being proposed.

No, in respect of the floor space ratios that you were proposing to justify the expansion of the B4 mixed-use, you hadn't done any feasibility analysis on that yourself, had you?---No.

But you were proposing, were you not, in respect of the meeting on 2 August, 2016, that council ought to recommend such an expansion of the B4 mixed-use zoning without any feasibility analysis that would support that

change.---Well, considerable feasibility analysis had already been undertaken at 2.5:1 within – well, for example, to the site to the south.

Yes, but that was in the context of, was it not, the urban design plan that had been, and study that had been conducted over a long period of time in 2013.---Mmm.

And that had recommended only a limited expansion of the B4 mixed-use zone up to Second Avenue.---Yes, but it's still relevant.

10

But that doesn't apply. You can't simply apply it equally to the block above, can you?---Well, you can apply the principles in the investigation, yes, and this is just the start of a process when you can look at, look at that further, of course.

Exactly. Start of the process. So you would need to get some further feasibility analysis done in respect of the specific site before you could be in a position where council could responsibly recommend that such a change to the zoning use be made, correct?---Well, there's a number of ways you can do that. You can recommend a control and that further study be done to undertake that. That's not unusual, whether it comes from a council or the State Government as part of the Gateway. Because this process will go for a number of years.

20

In fact, it had already gone for a number of years, hadn't it?---Not the additional sites, no.

But the additional sites had been the subject of – well, at least the Waterview Street site had been the subject of consideration as far as expansion of the B4 mixed-use zone previously.---And that was, and it was left out, yes.

30

Yes. Yes, repeatedly. Considered and repeatedly determined not to extend.---For reasons that we're resolving.

Now, if you had flaws that you had identified in the feasibility analysis or in the process by which the feasibility analysis was conducted, that was a matter that ought to be taken and drawn to the attention of all of the councillors prior to the meeting, correct?---Sorry, drawn to the attention of councillors prior to the meeting?

40

Yes. Prior to the meeting.---I spoke at the meeting so I - - -

I understand you spoke at the meeting.---Yes.

You spoke at the meeting, and what you spoke in favour of, was it not, was a proposal or a recommendation that the whole of that Waterview Street site be rezoned as B4, correct?---Correct, yes, yep.

THE COMMISSIONER: What basis were you relying upon to seek an extension of the B4 mixed-use at that meeting?--I'd have to check my justification again, but I put forward a, some, some justification in writing. One of, one of the issues was that it's a logical extension north. Two, that it's, you know, and in association with a change to the floor space ratio, that it's much more viable, that there's improvements to parking by having underground parking and rear laneway access. So there were, there were a number of factors, from memory, that I would have put forward in my speaking, in my speech to the councillors that justified that.

As at the meeting, 3 August, 2016, you had not prepared a, put it in terms of
- - -

MS KING: Could I just object?

THE COMMISSIONER: Sorry?

MS KING: My understanding is that the meeting was 2 August, 2016.

THE COMMISSIONER: 2 August, '16?

MS KING: Yes.

THE COMMISSIONER: All right. I said the 3rd.

MS KING: Yes.

THE COMMISSIONER: At the meeting of 2 August, 2016 you, either through lack of time or for whatever other reason, had not prepared a case sufficient to establish that there had been error or perhaps a flaw in either the feasibility study or the analysis that had been undertaken by Studio GL on a number of occasions. Is that right?--Yeah.

And how then could you have been party to putting up a proposal firstly to the councillors for an extension of time as at August 2016?---Sorry, can you
- - -

Yes. On what basis could you possibly justify putting to councillors, that is the Liberal councillors, a proposal that a recommendation be put before council to extend the zoning, that is the B4 zoning in relation to the Waterview Street site?---Well, I'm not sure that I did. I think I spoke to, I think I wrote a brief, a short brief and then I spoke at the council meeting to all the councillors.

I'll leave it to Mr Ranken. He might be able to assist you along the way.

MR RANKEN: Perhaps if we could go to page 1132. If I could draw your attention to the email towards the bottom of that page, which is an email from yourself to both Mr Daniel and Mr Sidoti on 1 August, 2016. And you've - - -

THE COMMISSIONER: Is that on your screen, Mr Ranken? Is it on your screen?---Yes.

10 It looks like I'm the only one whose screen doesn't record it. Is there a problem? Anyway, you proceed.

MR RANKEN: Well, so in that email you are setting out, "Please see below my suggested outcome for future additional site B." And towards the bottom of that there's then a brief paragraph in which you refer to the fact that, "As far as I can tell a higher FSR was not tested in terms of viability." ---Ah hmm.

20 "Worst case scenario, surely this should be deferred while this is tested." See that?---Yep.

The next paragraph, there's some further detail in that paragraph, but the next paragraph says, "Anyway, please review. This is a first draft for discussion. I am working on the speaking notes which will develop these points. Your input and comments will be appreciated." And then after your sign-off there is, "It is recommended that."---Ah hmm.

30 And we see the first dot point starts, "Number 39 Waterview Street, Five Dock be removed as an item of heritage significance from council's heritage schedule." See that?---Ah hmm.

That's consistent with what was being proposed in option 2 by Studio GL. Correct?---Yeah, yeah.

But then you've added a point that, "Site B, being the land between Second Avenue and Barnstaple Road on the western side of Waterview Street, Five Dock, be rezoned by B4 mixed-use with a maximum building height of 17 metres and a maximum FSR of 2.5:1 consistent with controls adopted but not yet gazetted for the land immediately to the south." Correct?---Yes.

40 And the basis as far as feasibility analysis is concerned, the basis of your justification is that because there had been a feasibility analysis that had suggested that that was viable for the land immediately to the south, that was sufficient for you to put it forward in respect of this block. Is that the effect of your evidence?---Yes.

Yes, thank you. But you have - - -?---Sorry, but it would still be subject to further study going forward.

Well, that would depend, would it not, on whether or not, as at the date of this email, was that on the understanding that then there would be some further study, was it?---Well, there would have to be, yeah. You, you still -
- -

Well, why do you say there would have to be a further study?---We would still have to, there has to be a process, a part 3 process where certain justification occurs throughout that process.

10 Well, there had already been studies done, had there not?---For the 1:1, yes.

No, there had already been studies done in respect of this site as part of the original Urban Design Study.---Yeah, at different controls.

And that Urban Design Study and the associated planning proposal, in particular the associated planning proposals, had gone through a Gateway Determination in 2014, correct?---That's the, the town centre without this site.

20 Yes, I understand that.---Yeah, sorry, yeah.

I understand. And then that had come back to council in 2015, in June of 2015, and then it was publicly exhibited again because there were some changes to reduce the number of sites that might get bonus floor space ratio and height, correct?---Yes, I believe so, yep.

And it was only in November of 2015, as a result of part of the resolution that happened on 3 November of 2015, that there was then this hive-off, in a sense, for a further review of these sites, correct?---Yep, yeah, yes, that's
30 right, in November 2015, yes.

Even though there'd already been a lot of study and looking into those sites previously, correct?---Study, looking into the additional sites?

Yes, as part of the original Urban Design Study.

MS KING: I object. It's not clear what question my client is being asked to answer at this stage.

40 THE COMMISSIONER: Well, we'll see if we can clarify it. And I think we'll do that after lunch.

MR RANKEN: Yes.

THE COMMISSIONER: I'm going to take an adjournment and we'll resume at 2 o'clock. I'll adjourn.

LUNCHEON ADJOURNMENT

[1.21pm]