

WITNEYPUB01123
16/04/2021

WITNEY
pp 01123-01198

PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION WITNEY

Reference: Operation E19/1452

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 16 APRIL, 2021

AT 2.00PM

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THE COMMISSIONER: Mr Ranken.

MR RANKEN: Thank you, Commissioner. Now, Mr Matthews, we were dealing with matters relating to the meeting on 2 August or leading up to the meeting of 2 August of 2016, which was the first time you I think presented to the council on behalf of Mr Sidoti's family's interests and I think possibly
10 other landholders. Is that right?---Well, yes, yes.

And up to that point, that is, prior to the actual meeting itself, had you had any contact with any other landholders other than Mr Sidoti?---Not to my recollection. For me, the landowners wasn't necessarily my key consideration. I don't think, you know, the, any decision was going to be about landowners, it was about the planning merit. But I think importantly I would have advised John that one of the things here is land fragmentation, as a hindrance to redevelopment, so you need to get the landowners working together. That would, that would have been my advice.
20

So your advice would be, you need to speak, as in Mr Sidoti would need to go and speak to other landowners to get them in the tent, as it were, on the same page, something along those lines.---Well, or, or, or, you know, Catherine and, and Richard or, yeah, Sidoti.

Well, you understood that – was it your understanding that when Mr Sidoti was speaking with you and Mr Daniel and providing the initial instructions that he was in fact doing so on behalf of his parents?---Yes, that's right.

30 That was your understanding. And did you have an understanding at that time that, having read the MG Planning reports, that his parents were associated with the two companies that had been, that were referred to as being the clients of MG Planning, Deveme Pty Ltd and Anderlis Pty Ltd? ---Not really. No, that's what, that may have been in the reports, but it wasn't something that I, I would have glossed over.

But you did understand, though, that the Sidoti family, if I could use that as a broad term, be it through family companies or otherwise, they were the owners of 120 Great North Road and 2 Second Avenue?---And I thought
40 122 as well, is that - - -

I was going to – and 122 Great North Road.---Yeah. Yes, those, those three, three lots.

They were the three properties that you were aware of were linked to the Sidoti family.---Yes.

But other than Mr John Sidoti, you didn't speak to either Richard or Catherine Sidoti at any time?---No. No.

And you didn't speak with any landholders, at least prior to the meeting of 2 August, you - - -?---Not to my recollection. Sorry.

Did you subsequently speak with any of the other landholders in that block?
---Look, I can't recall speaking to any of the landholders outside of a council meeting. So obviously I spoke at council meetings in addition to
10 other land, landowners.

And that included some landowners within that block?---Yep. And I would have spoken to them then.

But other than that informal, as it were, happenstance of speaking with them, there were no formal, arranged meetings with them?---There may have been, but I can't recall any.

You don't recall that point.---Mmm.
20

So as far as you were concerned, all of your instructions in relation to the work that you did in respect of this Waterview Street site came from either John Sidoti or Mr Daniel.---Yeah. Yep.

And insofar as they were coming from Mr Daniel, you understood you that was Mr Daniel conveying to him what Mr Sidoti had instructed him to do?
---Yeah, and our, our advice back. And this is prior to the 2 August.

I'm talking about the 2 August.---Yep.
30

And were you a party to any discussions prior to 2 August with Mr Daniel and Mr Sidoti about the approach to that meeting, that is, the meeting of 2 August?---I, I, well, I can't really, I can't recall. But we would have, we would have discussed an approach to it, yes, of course. Because, you know, I had to write a, some speaking notes, to speak at the meeting, and justification for, for what I was putting forward.

And if we could go back to then page 1132, I took you before the luncheon adjournment to the email that commences about halfway down the page,
40 and I took you over the page to 1133, which I don't necessarily need to be done now, where the recommendation is further spelt out.---Ah hmm.

But that's on 1 August. Above that email is a further email from yourself to Mr Sidoti and Mr Daniel of 2 August, do you see that, at 12.45, which is the afternoon of the meeting itself, correct?---Yes.

And essentially you've added a point to the recommendation that you had previously put forward in your earlier email. Correct?---The, yes.

And the point you've added is that council prepare a planning proposal to implement a proposed change to the Canada Bay LEP and that the planning proposal be forwarding to the Department of Planning and Environment seeking a Gateway Determination for the community consultation. Correct?
---Yes.

10 And that would incorporate the planning proposal that you contemplated by that third dot point, would incorporate the second dot point, which would involve the expanding of the B4 mixed-use zone to include the entirety of the Waterview Street site. Correct?---Yes.

And what you've said in your email above – sorry, before I go to that, the point of having that additional part to the recommendation was to see it progress out of council to the Gateway Determination.---Well, yes, that's right, but it needed the preparation obviously of a planning proposal, which would incorporate supporting - - -

20 Yes, but then that would go to the Gateway Determination.---That would go to the Department for further consideration and conditions, yeah.

And then come back for further consultation, community consultation, that's what you had anticipated.---Yep, as per the process. Yep.

So if this recommendation had been adopted by the council on 2 August, 2016, you would have anticipated that council staff would prepare the relevant planning proposal that would give effect to this and these points, correct?---Yes.

30 And then that would go to the Department for Gateway Determination?
---For, for assessment, yeah.

Yes, as part of the Gateway Determination?---Yep.

40 And then the Gateway Determination would be made, which would most likely include a requirement that there be a further public exhibition and public consultation?---Well, a Gateway, you know, under the Act, has a number of components. So it would either be approved, refused or items deferred or conditions for further study and reporting back to the department. So there's, it would have, there's a number of layers to that under the Act.

So there were a number of vicissitudes, as it were, but if all things going well, it would be, a determination by the Department might be to simply ask the planning proposal be publicly exhibited again so that there can be further public consultation and then the council could resolve to get it finalised and gazetted?

MS KING: I object. The question is that, all things going well, that the matter would go back to the council for the determination. There's an additional step in the legislative process that's required, which would involve a delegation of the final decision back to the council. So I just don't want to get the process confused.

MR RANKEN: Sorry, I thought it was clear that I was suggesting that the Gateway Determination - - -

10 THE COMMISSIONER: You continue, Mr Ranken.

MR RANKEN: Yes, so if all things going well in the Gateway Determination, the matter would come back from the Department and there would be a requirement for there to be public exhibition of the planning proposal?---Sorry, just to comment on that, you said further exhibition. This site obviously hasn't been exhibited.

20 THE COMMISSIONER: Sorry, I can't hear you.---Sorry, this site hasn't been exhibited yet, so you say further exhibition - - -

There had been at least two before.---But not including this site, not including this block.

MR RANKEN: So there would, in terms of the planning proposal, there would be a public exhibition, is that sufficient?---Yeah, yeah, yep.

A public exhibition following the Gateway Determination, correct?---Yes.

30 That's what was - - -?---The Gateway would likely require that, yes.

And then the matter would ordinarily, possibly as part of the Gateway Determination, there is likely to be a decision as to whether or not the council could make the final decision about the planning proposal. Is that - - -?---Yes. There would, there would have been a - well, I think that's part of the letter, yeah, the, the delegation.

40 So, then following the further public consultation - or following the public exhibition of the planning proposal then the council could determine to finalise the LEP?---Yes, yes. That's - - -

And then forward it to the Department to be gazetted, is that how it works? ---Sorry, there's a bit of, yeah, so just to clarify. So when the Department issue a Gateway Determination, depending on the scale of the proposal, they can delegate plan-making functions to the local council, which is what they did in this case, or it has to be returned to the minister to be made by the Department or the relevant officer within the Department as the minister's delegate, yep. So, it's just, yeah, it's just a step at the end.

And all of those questions were based on the hypothetical situation which obviously didn't occur, that is that your recommendation was to be, if it was adopted by the council, correct?---Yep, that's right.

Now, just going back to page 1132, the email above it says, "Please see additional recommendation below. Matt, any thoughts/views?" And then, "Otherwise please feel free to make any changes and forward to the necessary recipients." Do you see that?---Yep.

10 Now, your email is actually addressed, in the main part, to Mr Sidoti.
---John, yep.

Yes, the salutation is, "John."---Yep

And was it your anticipation then that Mr Sidoti would be the person who would forward the recommendation to the necessary recipients that you've referred to in that email?---Yes, that's the way it reads. That's, yeah.

20 And that's what you had intended to convey? So, "John, if you're happy with it and there's no comments from Matt, you can forward it to the next recipients"?---Based, based on – well, I can't remember what I was thinking when I wrote it, it was a long time ago, but based on that, that would appear the case, yes.

But it would follow, would it not, then that you anticipated – or that this was part of some understanding that you had with Mr Daniel and Mr Sidoti that the recommendation that you had formulated would be forwarded by Mr Sidoti to some other persons who were the necessary recipients?---Yes.

30 And can I suggest to you that the relevant necessary recipients were the Liberal councillors on the City of Canada Bay Council who were eligible to vote in respect of the matter.---It could have been.

But was that your understanding at the time?

THE COMMISSIONER: What did you understand by the reference to the "necessary recipients"?---Yeah, well, I can - - -

40 I'm sorry, what did you mean to convey?---Well, I can't recall but it could have been Richard and Catherine Sidoti who, who we were acting for, 120 and 122, or it could have, could have been the other landowners, or it could have been all the councillors or it could have been the Liberal councillors.

I know it could have been, but what did you have in mind?---Sorry, I can't recall.

MR RANKEN: You just can't recall.---Specifically, no. I, I, I hadn't sat down and had a specific strategy and, and I know what happened but I can't

recall sitting down and, and having that conversation. And just to add to that, when I've, when I've drafted clearly three bullet points there, that's part of anything, you know, I do to simplify a justification to make it really clear about what we're seeking.

I understand, that's the recommendation that you're seeking.---Yeah, yeah, yeah.

10 I understand that. You were expecting that to be sent to the necessary recipients but you have no recollection as to exactly who that was intended to be.---No, no.

But do you say that you, at the time there was some discussion between yourself and Mr Sidoti and Mr Daniel as to who the intended recipients would be but you just don't recall what the substance of that conversation was or something else?---Well, there must have been because I've said in an email, "Forward to the necessary recipients."

20 Yes.---So we must have, so we must have talked about, you know, who, who we we'd be sending it to, I assume.

You are aware though that it was in fact sent to the three Liberal councillors who were entitled to vote on the matter.---Yes, I have seen that, yeah.

And you are aware that it was not sent to any other of the councillors, that is the non-Liberal councillors, prior to the meeting of 2 August.---Yeah, yeah.

And - - -

30 MR NEIL: Can I just take this objection because as I understand it, it was sent by Mr Sidoti to the one person on page 1138.

MR RANKEN: Well, I can take him to the other emails.

MR NEIL: I'm happy to be subject - - -

THE COMMISSIONER: 1138.

40 MR NEIL: I'm happy to be subject to correction, but I was just looking at 1138.

THE COMMISSIONER: All right. We'll go to that in a moment.

MR RANKEN: So just in that regard, if you go to 1138 you can see here's an email from Mr Sidoti forwarding your email to Dr T Ahmed, which I would suggest to you was a Councillor Tanveer Ahmed, and forwarding with an additional point for the resolution planning proposal. Do you see that?---Yes.

And if we then go to, if we go then to page 1145, he's actually made it a little bit more explicit for Mr Ahmed or Dr Ahmed, to say, "I hope this helps. I move that." He's put the 1, 2, 3 instead of the dot points.---Ah
hmm. Yes.

And then if we could then go to 1146, he's forwarded that email effectively to Ms McCaffrey with the added words, "Tanveer is moving." Do you see that?---Yes.

10

So she was in fact the mayor at the time. Correct?---Yes.

And then if we could go to 1147, Mr Sidoti appears to have also forwarded it to Ms Cestar.---Yes.

Yes, the other – so that means all three councillors, that is Liberal councillors who were entitled to vote on the matter, had been provided with the form of resolution that Mr Sidoti was suggesting that Dr Ahmed should move.---Yes.

20

Yes. So, and that's something that you at least as at today's date is that you are aware of.---Yes.

Yes. So my original question then was whether or not you were aware of that, and the answer is yes.---Yes.

So were you aware of the fact that it had been provided to the Liberal councillors but not to the other councillors, prior to speaking at the meeting?---Well, I, I note that the time of those emails is about two hours before the meeting at about 4 o'clock, so I, I can't, I can't recall. I mean that's quite close to the start time, I would have been there or thereabouts at council chambers already by then to speak, so I can't recall is the answer.

30

As to whether or not you were made privy to the fact that the Liberal councillors have the proposed recommendation or the proposed resolution, you can't say whether or not - - -?---I can't recall.

- - - that information came back to you.---Yeah, I can't remember, I'm sorry.

40

Now, you weren't the only member of Pacific Planning who attended that meeting though, were you, Mr Daniel was also in attendance. Correct?
--- I don't think he spoke but he - - -

I didn't ask that.---Sorry, no.

I just said he was in attendance.---Well, yeah, I can't remember him speaking but so I take your word for it that he was there.

But you spoke, he didn't speak at the actual meeting. That's the position?
---I honestly don't remember if he was there or not. I'll take your word for it.

If you could take it from me, we've seen some emails, sorry, not emails, some messages that were sent between Mr Daniel and Mr Sidoti which would indicate that he was present while the matter was being discussed on 2 August.---Okay.

10

And just briefly going to the minutes of that meeting, if we could go to page 1168. Do you see down the bottom it refers to item 3?---Yes.

Which is the Five Dock Town Centre additional sites, and it indicates that effectively the matter commenced a consideration at about 6.54pm when those two councillors who had pecuniary interests declared those pecuniary interests and left the meeting. Going over to page 1169, you are listed as one of the persons who spoke and it indicates that you were representing various landholders. Correct?---Yes.

20

THE COMMISSIONER: Do you know whether you identified who the landowners were that you - - -?---I would have identified the properties I would have thought in, in, in - - -

I'm sorry?---Sorry. I would have, I would have identified the properties, possibly not the, you know, the persons that owned them.

30

And you don't remember now which ones you mentioned?---Oh, well, over a period of time I spoke at quite, I spoke at multiple meetings of course and made multiple submissions.

Mmm, but at this meeting?---But I can't, I would have thought 37 and 39 Waterview Street as a minimum.

MR RANKEN: Do you see Mr Durkin is listed there, Mr S Durkin?
---Yeah.

40

He is actually the, he was actually the owner of [REDACTED] Waterview Street.---Yep, yep, that's right.

So you spoke on his behalf as well as - - -?---As him speaking as well, yeah.

But prior to this meeting you hadn't spoken to him?---Not, no, not that I'm aware of, but I mean we're coming from different angles in terms of I'm a town planner and this is my professional advice and, and he's speaking as a landowner.

Now, in the event, if we could, you can see that there is a motion that was moved by Councillors Kenzler and Tyrrell which in the first instance, well, which effectively was to not make any changes to the LEP, but if we move over to the next page you can see that that motion was put and lost on the casting vote of the deputy mayor at the time, which was Ms McCaffrey.

---Yes.

10 And were you aware or had it been communicated to you that by this time on the council there had been a bit of a change in the balance of power in the sense that the previous Labor mayor had resigned in June of 2016 and that meant that there were only eight councillors on the council?---That, no, that doesn't strike me as something that - - -

That's not something that was ever told to you?---No. My interest in the, in the, in councillors and landowners is, is very small in the context, yeah, yeah.

20 Just asking whether or not that was information that was to your knowledge or ever conveyed to you.---Sorry, no, I don't recall.

Okay. Now, if we move to the next page, 1171, you can see that an alternative motion that was moved by Councillors Cestar and Ahmed was one that effectively adopted option 2 in respect of the Waterview Street site? ---Yes.

And in respect of the two other sites that were subject of the Studio GL report following the resolution of council on 3 November, 2015, nothing was to happen in respect of those.---Yeah, yes.

30 And the recommendations was effectively that there be a planning proposal and draft Development Control Plan that would be prepared, and then publicly exhibited, and then the matter could go to a Gateway Determination following a period of public exhibition. That was what was contemplated?---Yeah, and further consideration by council.

So it would come back and then go to Gateway Determination. Correct? ---Yes.

40 Now, the public exhibition took place over August and September of 2016, and there was an opportunity for interested parties to put submissions to council about the planning proposal that was publicly exhibited.--- Yes.

And you, that is Pacific Planning, were engaged to put in a submission on behalf of at least the Sidoti family's properties interests and possibly other landowners.---Well, yeah, well, yeah, well, yes. But in – yeah, yes.

You seemed to have some difficulty with that. You weren't engaged to put in a submission, or - - -?---Well, it's, oh, I guess it's the, the, the language and the wording of "you engaged" – can, can you repeat your question?

No, "you were engaged". That is, Pacific Planning was engaged - - -?
---Well, but, but in relation to property interests and, what was the rest of the question?

10 No, to make a submission in respect of the planning proposals that have been publicly exhibited, on behalf of the Sidoti family's interests, property interests - - -

MS KING: I object. It's a compound question. Could it be broken up? So was he engaged to prepare a submission, and on whose behalf was it? At the moment he's struggling with the compound nature of the question.

20 MR RANKEN: Well, was Pacific Planning engaged to put in a submission to council in respect of the planning proposals that had been publicly exhibited in August and September of 2016?---Yes.

And on whose behalf were you engaged to do that?---Catherine and Richard Sidoti.

And did you speak to Catherine and Richard Sidoti?---No.

Did you speak to John Sidoti?---Yes.

30 Did you speak to any other landowners in the area in respect of that submission?---I, I can't recall. I can't recall.

40 But the submission was to be put on behalf of Richard and Catherine Sidoti, to your knowledge?---They were, they were who we were engaged by, through John. But as I've mentioned previously, one of the, this, it's a planning proposal that covers all the land between Barnstaple, Second Avenue, Waterview. So it's not – which includes more than 37 and 39, for example, Waterview Street. So from, from my point of view, I wouldn't necessarily need to represent any landowner in making a submission to the council. This is a Part 3 process, you don't need landowners' consent. It's not a DA. This is my professional, as a planner - - -

I understand.---Yeah. Sorry.

I'm just trying to work out who's providing you with the instructions.
---Well, yeah, through John.

And as part of the preparation of that submission, did you have some contact with a firm of architects who had been, to your knowledge, doing some work for the Sidoti family?---Likely, yes.

Are you familiar with a firm of architects or an architect by the name of Tom Kudinar?---Yes.

And are you – I think his firm is called Zhinar Architects?---Zhinar, yeah, I'm not, yeah.

Zhinar. Is that how - - -?---I struggle, I struggle with the pronunciations of – Zhinar, we'll call it.

10

And could we go to then page 1183? This is a chain of emails, in a sense, but the top email is from Mr – I think he's referred to as Kudinar, but his surname is actually Kudinar-Kwee, correct?---Yes.

But it's an email from him to yourself and I would suggest MD is Mr Daniel. MD Matt is Mr Daniel?---Yes.

And he's forwarding effectively an email that came from one of his architectural technicians, a Ramiro Lopez Peña, correct?---Yes.

20

And if we go to the next, if we just go through pages 184 through to – 185 through to, sorry, 193, just briefly going through, they're various drawings and plans relating to the Waterview Street site, correct?---Yes, and Great North Road.

And – sorry, yes, when I talk about the Waterview Street site, I'm actually talking about that whole block at this point.---With Great North Road frontage.

30

With the Great North Road frontage as well. Yes, including that as well. So, and what was the purpose of obtaining these kinds of plans and drawings from Mr Kudinar?---I, I would suggest that this is likely to demonstrate a potential development outcome on the site when those, the controls that I felt were appropriate for the site were put into, you know, urban form.

So what you were asking for is some concept designs that were being considered at that time to put forward or to form the basis of, what, your own feasibility analysis in respect of floor space ratio, or to suggest that here are some designs that can facilitate, would show, would demonstrate a different outcome than that which council was proposing can work? ---That's exactly it, yes.

40

And is it also to show why it is that there would need to be a different outcome in order to achieve these kinds of concepts?---Yes, so, so what was on exhibition was one-to-one, which I previously mentioned I didn't support. And this is an illustration of the 2.5:1 in terms of massing, which is what we were seeking, so yes, yes (not transcribable)

And did you understand that these were concepts that had already been prepared by Mr Kudinar for Mr Sidoti and his family?---I'm not, I'm not entirely sure. The date of that email was 28 September and I know I was in Europe then, and I didn't get back until early October.

Right, yes.---So I, I, while I do work while I'm overseas, I may not have been integrally involved in what was with this - - -

10 And in fact it was the case, was it not, that it was the submission that Pacific Planning put in to council was a little late in that the actual - - -?---Which is while, yeah, while I was away.

The actual date for the close of submissions had passed, correct?---Yes.

But because it was a non-statutory exhibition process that had been engaged in by council, there was no difficulty putting a late submission?---No, I mean, I could write to council at any time with, you know, with something like this.

20

And council accepted the submission - - -?---Mr Dewar, yes.

- - - on that basis? Yes. So could I then go to – could we just go to 1186 in particular. Do you see that there on that plan you can see there's an area that's shaded in, I call it green, other people may call it a different colour, or aqua possibly?---Yes.

That represents 120, 122 and 2 Second Avenue, correct?---Yes.

30 Which is the Sidoti family interest properties, if I could use that term.---Yes.

And could we then go to page 1194. There then appears to be a further email and it's been forwarded by Mr Kudinar to yourself and Mr Sidoti and Mr Daniel on 30 September, 2016. Again, you were still overseas, is that correct?---Yes, that's right.

And these were some 3-D reviews, as discussed, that were being sent through, correct?---Um - - -

40 And we can go through the pages up to 1198. These seem to be some 3-D ideas of concepts, again relating to the particular site, effectively.---Yeah, yeah.

Now, could we then go to page 1199? This is an email from yourself to Mr Daniel dated 29 September. It's likely that you were still overseas at this time?---Yes, I would have been.

And you can see that the email chain down the bottom is effectively firstly that very first email that I took you to which has Mr Ramiro Lopez Peña's email at the bottom, Mr Kudinar-Kwee's email forwarding that to you and Mr Daniel.---Yes.

And then your email is effectively a comment on what was attached to Mr Peña's original email, that is his plans, correct?---Yes.

10 And one of the things you say is, "I've had a quick look at the attached and think it's generally pretty good. The real purpose of this though is to demonstrate why greater FSR and height is appropriate over the entire frontage to Waterview. I'm not convinced of that." What you're saying is, you're not convinced that these demonstrate why greater FSR and height is appropriate over the entire frontage of Waterview, correct?---Yeah, that's, yes, I, I agree.

20 And you go on to say, "The concept seems to show how the frontage of Great North can be developed but we already have the controls for that land," correct?---Yes.

So what you're saying is, these concepts don't actually provide a basis for saying that you need to have greater FSR and height on Waterview Street? ---I'm not, well, I'm not sure on exactly what I'm saying. Can I read on?

Sure, if you read the whole of that email then.---It's, it's a bit of a clumsy email of a man that's on holiday but I, I - - -

30 No doubt. But do you see that you say, "We need to demonstrate that the two work together," that is the height and the FSR?---Of course, yes.

"Work together but this will only work because of the laneway and that is the product of greater density. This should probably show numbers of units and how this will deliver the laneway and resolve many of the parking issues. I don't think it does this at the moment and I don't know council will be convinced that these demonstrate adequate justification of the greater controls." Do you see that?---Yes.

40 So, the effect of that is, is that, well, we've gone and we've obtained these concepts that are being developed and they don't actually provide any reason why you need to have greater controls, those concepts?---No, I don't think that's what it's saying. I'm, I'm, I'm saying it need further work to align the FSR and the height.

"I don't think council will be convinced that these demonstrate adequate justification of the greater controls."---Yeah, so, so what he's provided I don't think, I don't - - -

Yes, that was my question.---Sorry

These concept designs that you've obtained, they don't provide adequate justification of the greater controls?---Were those, those my words, sorry?

THE COMMISSIONER: I think that's what you say, isn't it?

MR RANKEN: "I don't think council will be convinced that these demonstrate adequate justification of the greater controls."---Okay, yep,

10 And ultimately, in the submission that was put to the council by Pacific Planning, it did not include any of those concepts?---It may have included a floor plan, did it?

It included a floor plan.---But no massing?

No, massing, no.---Yeah, that's, that's correct.

And then if we could then go to page 1209. Sorry, 1201, I apologise.

20 MS KING: I have some difficulty reading the way that that's represented on the screen.

MR RANKEN: 1201. 1201, I apologise. Now, that's a chain of emails involving yourself and Mr Daniel. And if I just could take you to the email towards the bottom of that first page. Do you see that you have forwarded, effectively, on to Mr Daniel, an email you received from Mr Dewar, who was one of the council town planners, just to let him know that you need to talk to Paul – that is, Paul Dewar – when you get back, regarding Five Dock, and that it would be important for you to put a case forward. So this is because
30 you were outside of the period when you were – you were likely not to be able to put in a submission by the cut-off date for submissions.---Yes. Yeah, that (not transcribable)

And then there's a response from Mr Daniel. "Mate, that is a good thing. If it is going in November, we may be able to get the numbers for it if the council is still in place." Do you see that?---Yes.

Now, that suggests that there was some consideration about the numbers in terms of voting on the council in respect of the matter, correct?---Yes.

40

And so was there some strategy that you were pursuing or considering with Mr Daniel about making representations to particular councillors in order to get the numbers?---Well, I can't, I can't recall, but based on this email, that would appear that way, and based on the fact that Councillors Parnaby, Kenzler and Tyrrell had voted for nothing to happen here.

So there was some consideration to how do we do things so that we can get the proposals that we want through council, and we need to try and see,

work out if we can get the numbers?---Well, no, this is to talk to Paul, this, this, firstly this was to discuss with Paul Dewar at council.

It's important we put a case forward. I can understand that.---Yep.

Then his response to you is, "Mate, that is a good thing if it is going in November." That is, the matter's going to be before the council in November. "We may be able to get the numbers for it if the council is still in place." Do you see that?---Yes.

10

So the reference to numbers in that email, did you understand to be in relation to the numbers of the councillors? That is, that you might be able to get enough councillors onside to pass a resolution that would meet what you were wanting to put forward?---Well, ultimately what we put forward is subject to consideration by all of the council.

THE COMMISSIONER: No, but don't worry about that. Just concentrate on the question.---Can you - - -

20 MR RANKEN: Which is directed to the - - -

THE COMMISSIONER: Do you want it put again?---Yes, please. Sorry.

MR RANKEN: Okay, that there was at that – just considering the words in that email from Mr Daniel to you, and I was asking you about whether or not there was some strategy that you had in mind about getting the numbers in terms of councillors to vote in favour of the proposal that you wanted to advance.---No, I don't think there was.

30 THE COMMISSIONER: Well, what's it mean, then?---Well, I'm overseas – sorry.

It says, he's saying, "We may be able to get the numbers for it if the council is still in place." What did you think? How did you read that? What meaning did you ascribe to that?---Well, I think I read that as enough votes on the council to support a proposal, yes. But the question was, was there a strategy, and, and I'm, well, I was overseas at this time and, so I'm not aware of a strategy.

40 You're not aware of any strategy that - - -?---I'm aware of putting forward a planning merit-based argument to get enough favourable votes on the council, like any, any policy process through elected officials.

But when you read that email, you were unaware of any particular strategy that he was referring to?---That's correct.

MR RANKEN: Because do you see the email above, you asked Mr Daniel, "Is there any timing on the council amalgamation." Do you see that?---Yes.

And that's because the reference, Mr Daniel's reference to if the council is still in place is because at that time there was some uncertainty as to whether or not councils such as City of Canada Bay Council would be continuing to exist as they were.---Yeah, exactly, yeah.

10 And then Mr Daniel has responded to say, "Very up in the air at the moment due to the court process and the court granting some opportunities to appeal." And your response is, "Okay. Well, this may work in our favour on this occasion." Do you see that?---Yes.

And then you follow that up with, "Yes, we will need to make representations and briefings to the elected councillors."---Yes.

That suggests that there was some strategy about making representations and briefings to the elected councillors.---That could be truthful, yeah.

20 Now, do you say, is it your evidence that your regulatory framework to briefing for the elected councillors was all of the elected councillors or - - -

MS KING: I object. That's an email from Mr Daniel to my client, not from my client to Mr Daniel.

MR RANKEN: Sorry, no, no.

THE COMMISSIONER: Yes.

30 MR RANKEN: That's quite, that's quite so. Sorry, did you understand Mr Daniel to be referring to, in terms of his reference to elected councillors, all elected councillors or only a certain select few elected councillors?---I can't remember how I would have received that email at the time, but - - -

You would have probably received it by email.---No, and I appreciate that. I, I, I can't recall when receiving it how I would have felt or interpreted that, but like I said, given the three Labor councillors had voted for nothing to happen on this site, this, this may relate to just Liberal councillors potentially.

40 THE COMMISSIONER: How did you take that, did you take it as a statement that meant that that, we, meaning the clients and owners, would need to make representations and briefings to the elected councillors before the formal meeting of council, did you take that meaning?---Sorry, I'm just going to read the context of the email.

Sure.---This is 29 September and I think at this stage it's still on public exhibition.

MR RANKEN: Public exhibition is about to close the following day.---
Yeah.

That is the 30th.---So at this stage it's still on exhibition, so, so I haven't even prepared my report to the exhibition yet. So that's likely my immediate thinking about, well, what's my submission going to contain, dealing with Paul, as you can see from 29 September and requesting an extension, so I think that those, these are obviously an email discussion that's further down the track because particularly considering that there's no
10 certainty around the council amalgamations and what's going to happen. So while again I'm trying to remember and think back quite a few number of years while I was on holiday.

THE COMMISSIONER: You see Mr Daniel's referring to both representation as well as briefings of the elected councillors. So the normal course in your experience when you're having a proposal put to council which will be dealt with in a formal meeting, had you addressed the council?---Yes.

20 And others do too. You wouldn't describe that process I've just described as being a briefing?---Not at the formal meeting of council, no.

No, not representations to elected councillors.---No, that would, this would seem separate to the council meeting.

Yes.---Yep.

That would suggest briefings, representations and briefings prior to - - -?
---Yeah.

30 - - - the formal session of council when the matter comes before them, the proposal in question.---Yeah.

Is that right?---Yep.

Thank you. And you had many discussions with Mr Daniel about this project about this time I take it in September 2016, about this project - - -?
---Did I have - - -

40 - - - for the Sidoti interests?---Sorry, did I have many?

Many, many discussions with him going forward. You did the report writing I understand but - - -?---That's correct.

- - - you would have had many discussions with him about it. Would that be generally true?---Sorry, can you - sorry. Did, would I have had - - -

Many - - -?---Many, okay.

- - - discussions, talks, you know?---Yeah.

With Mr Daniel about the Five Dock Town Centre Study?---It's, likely that we would have, but again there's about four weeks here when I was overseas, I can't confirm when, exactly when I was back, so that would have made things a little bit more - - -

10 But did you become aware as at 29 September, through discussions with Mr Daniel, what he had in mind in terms of making representations and briefings to the elected councillors?---No, I can't - - -

He never sort of indicated what he had in mind at that stage?---No. Not that I can remember.

But did you come to understand it somewhat later as to what he was there referring to?---Well, I, no, I don't think – no, I don't think I did, because we, nothing was, nothing occurred.

20 Yes, Mr Ranken.

MR RANKEN: So just to assist you, from the email about two thirds down the page, it would appear that you were due to be back in the country the following week, the week after 29 September.---Yes. Yes, yeah.

So at least by about 6 or 7 October you would have been back in the country?---Yeah, I, I'd have to - - -

30 So you then worked upon and prepared a submission to the council that in fact was dated I think 12 October of 2016.---Yes.

Does that ring a bell with you?---Yes, it does.

40 And if we could just go to that submission at 1258. The first is an email, I think. That's the email, down the bottom of the page is the substantive email, really, from yourself and it's addressed to I think a home email address for Mr Sidoti, sandrasidoti@[REDACTED] and copied to Mr Daniel. You say, "John, please find attached the submission sent to council today on Canada Bay," and just so we can see it, if we go to page 1259. And sorry, a bit further, and keep on going, keep on going. That's the first page of the submission, and it goes on for another three or so pages, I think. Just go to 364 and 65. And that's your signature on the bottom of that page. Correct?---Yes, that's right.

Now, just going back to page 1262, do you see that you refer to Waterview Street's rezoning as the subject matter, and it's addressed to Mr Dewar? ---Yes. Yes.

You don't actually identify exactly which properties or persons Pacific Planning are acting on behalf of in that submission. Correct?---I, I see that, yes.

And up to this point, you were aware that you were acting on behalf of at least the owners of the properties at 120, 122 and 2 Second Avenue, correct?---In, in, at council meetings and the like?

10 Yes. And in relation to the preparation of this submission.---I'm not sure if I, I, I don't, I'm not sure if I've, had I made a submission, a formal submission prior to this.

No - - -

THE COMMISSIONER: As at 12 October, who were your clients?
---Oh, just, just Catherine and Richard Sidoti.

I'm sorry?---Catherine, Catherine and Richard Sidoti.

20 Thank you.

MR RANKEN: And they were the owners, through their companies, of 120, 122 Great North Road and 2 Second Avenue.---Yes, yep.

You don't identify either the properties or the persons on whose behalf this submission is being made in this document, do you?---No, that, no, I don't.

And was that a deliberate decision?---Oh, likely, yes, but I think - - -

30 And what was the reason for deliberately omitting from the report, the body of the report, the identity of the clients on whose behalf - - -

MS KING: I object. It's a submission, it's not a report.

40 THE COMMISSIONER: Yes, I think, assuming that you might have been aware of the reason why the people you're acting for was not disclosed, can you envisage what the reason might have been for that?---I think, I think there's a couple of things, but one, the landowners were never that important to, to me in terms of planning. Like I previously said, it's a Part 3 process, and it's dealing with a, a, a block bound – you know, the R3-zone block. So it's, there's a lot of landowners now and a strata building. But secondly, I've also said, you know, advised John previously that, you need to go and talk to landowners to overcome the issues previously raised in relation to land fragmentation. So I may have, you know, said to John, let's get as many landowners we can, so I can represent more, because that overcomes some of the issues that council's previously raised.

Yes, but as at the date of the submission, 12 October, 2016, you had no instructions that you were to act on behalf of anybody other than Mr and Mrs Sidoti, is that right?---I believe that previously had a council meeting I had represented the landowners through their agreement - - -

10 No, no. Just stay with me, please. As at 12 October, 2016, when this written submission was put to council, to Mr Dewar, you had no instructions, neither you nor the firm, had instructions to act for anyone other than, as clients, Mr and Mrs Sidoti, is that right?---That's right, yes.

And would there be a reason why you didn't either disclose that that's who you're acting for that you can now remember?---Not that I can think of, other, other than it wasn't important.

And was there a reason as to why the particular properties were not identified in the submission?---Again, it wasn't, it wasn't important. I, I can make a submission without - - -

20 It's fairly common though, isn't it, in dealing with council, especially if you're making a submission, to identify who you're acting for because they sometimes want to know?---Well, well, it's common for - - -

30 Or if they don't want to know that, they might want to know what particular properties the submitter is representing?---Yeah, of course. I mean, the only, I mean, there, there is, I wasn't trying to hide anything here, that wasn't the intend of that, it just, it, it was, this was a submission about the planning merit of the entire block and that was the focus of this submission and as I had said to John previously, we needed to get the landowners working together. So without being very clear on, you know, the, what happened five years ago, I would likely have, if, if, one, it wasn't important or, two, how many, who, who are we, who else can we represent so that we're working with as many people in this block as possible. That would have been my advice.

MR RANKEN: Would you not want to know exactly who you were representing before you actually put in the submission?---No, I don't see it as important.

40 You don't see it as important at all?---This is, this is about the planning merit of the block, so that's, yeah.

But it was, was it not, a deliberate decision on your part not to include any details about the property or the persons upon whose behalf you were making the submission?---Likely. I, I didn't include them.

I know you didn't include them but that was actually a deliberate decision on your part not to include them.---Well, I - - -

Do you understand what I mean by “deliberate decision”?---When writing to, to leave those, any property holders out?

Yes.---Well, I, I can't - - -

Do you understand what I mean?---I can't recall.

10 Do you understand what I mean is that you turned your mind as to whether to include the details of those property owners or properties and you determined, decided, not to include them?---I can't recall. I don't know.

Perhaps if we go back to that email, the first page of the email which is at page 1258. You see in that bottom email where you say, “Please find attached the submission sent to council today on Canada Bay,” and then you refer to two keys points made in the submission. There's then a paragraph after those two numbered paragraphs, but then the second-last paragraph commences, “Also,” do you see that? “Also, you will note that I did not specifically state who I was representing. However, we can state this when we speak at the council meeting if required.”---Yes.

20

So it's plain from this email that you - - -?---I turned my mind to it.

- - - had turned your mind to it and deliberately not included that information?---Yep, yes.

And was there a particular reason why you deliberately did not include that information?---Well, I, I think I've answered that question.

30 Well, you say, “We can state this when we speak at the council meeting, if required.” So, that would suggest that you were only proposing to make it known who you were going to be acting for if you were required to do so at the meeting.---If required, yes. Sometimes you, you need to represent specific people when you're speaking at council meetings, but again it wasn't, this isn't something that was important to me because it was the entire block.

Well, did Mr Sidoti ask that his name – that is the Sidoti name – be left out of the submission?---Not as far as I'm aware. To my recollection.

40 But you don't actually have a recollection, is that it? He may have but you just don't recall, is that it?---Well, I, well, you've just pointed me to the email, so I've turned my mind to it and have left it out, so that's – yeah.

But you've also felt it necessary to let Mr Sidoti know of that fact or to draw his attention to the fact that you did not specifically state who you are representing.---Yes.

Yes, well, can I suggest that one possibility might be because that's something that he asked you to do and you just wanted to say, "John, effectively as requested, kept the name out."---I, pretty sure that wouldn't have happened. It would have been me dealing with the land fragmentation issue and asking John for how many can we get in terms of me representing. And I believe we got 41 and maybe even 43 at one point.

10 In due course, in fact, the council staff did request some information about that as to who you were representing or on whose behalf the submission had been put in. And if I could just draw your attention to page 1280, and specifically down the bottom of 1280, you can see the top of an email from Mr Dewar to you, dated 7 November.---Ah hmm.

You go over to 1281, you can see that Mr Dewar is referring to the fact that he was reviewing the submissions following the exhibition, and has the submission that you had put in and would like to confirm who you were acting on behalf of. Do you see that?---Yes, yes.

20 If we go back to page 1280, we can see that you've initially responded to say that you had been engaged by a number of landowners in the area, but you needed to confirm the names and addresses for you. Do you see that? ---Yes.

There was nothing to prevent you from saying in that email, "Look, we actually act on behalf of the Sidoti family insofar as those properties are concerned, but we also act for other landowners. I'll have to come back to you about that."---I could, I could have said that.

30 Was that because you needed to go back and confirm with Mr Daniel and Mr Sidoti whether, you know, that, look, they're asking for the detail. We need to – you know, are you comfortable with me letting them know that it's you or who we are actually acting on behalf of?---No. I don't believe that would have been the case. It would have been the quantum of landowners.

40 So is this the case, that even as at 7 November, 2016, you were unsure as to exactly on whose behalf that submission was being made?---Yes, that's, that's probably – well, that's probably accurate in terms of the quantum, yes. So I wanted to ultimately provide them with the, with the total number to deal with the land fragmentation issue.

THE COMMISSIONER: But there is a difference, isn't there, if you're acting on clients who have retained your firm and they're going to pay your invoices in due course from others who might be other landowners who have been spoken to to get their support?---Ah hmm.

But the fact that they support the client doesn't mean you're representing those other landowners, does it? Gathering support doesn't place them in the basket of becoming a client.---Well, they would, not, not as a client, no.

No, well, and you wouldn't be acting on behalf, would you, of people who say, landowners who say, oh, yeah, okay, I'll support that?---Yeah, well, yeah, in this case - - -

10 But you wouldn't regard them as clients, I think you've already acknowledged that.---No, not as clients.

And you wouldn't say you were acting on their behalf either, would you?
---Depend - - -

The fact that they agreed to sort of speak up and say, "Yeah, we'll support that." But you don't necessarily represent them at all, do you?---Represent, represent them?

20 You're not representing them.---Well, yes, I would say I am.

Are you seriously saying that if you've got clients A and B who are going to pay your bills, you'll truthfully get up in front of council and say, "I represent Mr and Mrs," in this case, "Sidoti"? But if Mr Sidoti, Mr John Sidoti, followed your advice and drummed up support from nearby property owners, when you speak to council, either by putting forward a submission, you are not speaking on behalf of the other landowners who are prepared to say, yep, we'll support that?---Well, I would say that I am representing their views, yes, I would.

30 But they don't give you instructions, do they?---No, they gave John instructions.

I said they, the landowners, the other landowners who say, "Yeah, we'll support it," they don't give you instructions?---Not directly, no.

And in fact, did you obtain instructions from any of the landowners that you recall, that is up to the time of 12 October, 2016, which is the date of the written submission?---Not directly.

40 Hmm?---Not directly.

Yes, thank you.

MR RANKEN: If we could go then to page 1279, on 8 November, 2016, towards the bottom of that page, towards the bottom of that page, do you see you sent an email in which you indicated that you had been engaged by 120 Great North Road and 2 Second Avenue. Do you see that?---Yes?

And 37 Waterview Street, being Richard and Catherine Sidoti and Charlie Tannous. Did you ever meet Charlie Tannous?---I can't recall. Possibly but I can't recall. It's not something that jumps to mind, I'm sorry.

Well, is it then likely the case that you cannot recall ever receiving instructions from him?---Well, I, I haven't but the email does say Pacific Planning.

10 I understand that. I'm just asking you.---Yeah. I, I, personally, no.

So if there were any instructions that were received from Mr Tannous, they were instructions that were provided by him to Mr Daniel?---Possibly but I, look, I can't, I can't, I can't remember.

And then you go on to say, "Further, these landowners have been engaging with the owners of 39, 41, and 43 Waterview Street." Do you see that? ---Yes.

20 So it's plain from that, that whilst those landowners had been engaging with 39, 41 and 43 Waterview Street, Pacific Planning did not act for those property owners or those properties?---We weren't, well, we weren't directly - - -

You weren't engaged by - - -?---Exactly.

So there's a clear delineation there, isn't there?---Yeah. It doesn't mean I can't represent their views but we weren't engaged by them.

30 Now, up to this point, and indeed from the very early point in your engagement to act in the matter, that is Pacific Planning's engagement to act in the matter, there were concerns that you had, were there not, about the process by which Studio GL and HillPDA had prepared their analyses and particularly feasibility analysis, correct?---Yes, yeah.

And in fact at a reasonably early stage had you contemplated engaging with Studio GL or HillPDA to discuss your concerns about their approach? ---Yes, yeah.

40 And it would have been available to approach the council at any point to seek their consent for you to be able to confer with Studio GL and/or HillPDA so that you could discuss those concerns with them, correct? ---Correct, yep.

And you hadn't done so at least prior to putting in the submission of 12 October, 2016?---We hadn't done before then, no.

And in fact, did you ever engage with Studio GL and/or HillPDA?---I can't recall meeting with, with either, no.

So is it likely then that you did not meeting with either of them?---That's correct.

And you did not engage in any correspondence with them to get a better understanding as to what the basis of their, or the reasons why they did it the way they did it?---The answer to that question is, is no.

10 And when we come to the submission that you did put forward, you did not put in that – or for the purposes of that submission, you did not conduct your own feasibility analysis of the kinds of floor space ratios that you thought would be considered?---No, I don't believe so.

And you – and by “you” I mean Pacific Planning as well – did not engage any expert economic consultants who could do a feasibility analysis of that kind, correct?---Well, I don't think we needed to because - - -

No, not whether you needed to.---Sorry, okay.

20 Just asking whether you did or didn't.---No.

No, you didn't. And in fact is it not the case that you did not engage any economic consultants to conduct a feasibility analysis till about September 2017?---That's correct, yes.

30 Can I draw your attention, then, to an email that you sent to the council on 5 December, 2016, at page 1313. You may or may not recall sending this email, which starts about a third of the way down the page. Do you see that?---Yes.

MS KING: Could I object? Could the witness be given an opportunity to read this email? It's quite a long email.

THE COMMISSIONER: Yes.

MR RANKEN: Yes, I'm happy for him to do so. Could you perhaps read the email and let us know when you get to the bottom of that page, and we can show you the following page.---Thank you. Yep.

40 If we could go to 1314.---Yep, okay.

THE COMMISSIONER: Just go back to 1313, please. Yes.

MR RANKEN: Now, do you see that that email was addressed to – the salutation is to “Hi, Paul” but the intended recipients were Yolanna Boyle and Mr Dewar.---Yes.

And it was also copied to Helen McCaffrey, Michael Megna and Matthew Daniel, correct?---Yes.

Now, by that stage Helen McCaffrey was the Mayor of the City of Canada Bay, correct?---Yes.

10 And that's why you included her on that email, is that right?---Well, I think we'd also met with her and maybe Paul and Tony – well, one or the other – in November, I think. So we'd already, sorry, we'd already approached her, yeah.

But she was the mayor as well.---And the mayor, yep.

Understand. Mr Megna was just a Liberal councillor, wasn't he?---Mmm, yes.

Why did you include him on that email?---I'm, I'm not sure.

20 Was that at the request of Mr Daniel or Mr Dewar?---I, I - - -

Sorry, Mr Daniel or Mr Sidoti.---I wouldn't have thought so. I mean, as you're aware, Michael, Councillor Megna is conflicted anyway.

Exactly. That's why I'm asking about his inclusion on this email.---Yes, I'm not sure. He was president of the Drummoyne branch, which I was by then a member of. Yep.

So why would you include him - - -?---Yes, I'm, I - - -

30 - - - on this email if he was the president of the Drummoyne branch of the Liberal Party in relation to something that had nothing to do with the Liberal Party?---Nothing to do – I don't know.

There must have been some reason why you thought to include his name as being someone to be copied in on this email.---Yes.

What was it?---I don't know.

40 THE COMMISSIONER: Could I just draw your attention to the third sentence in which you state, "I am representing the views of Second Avenue and 37, 39, 41 and 43 Water Street." Is there an error in that statement? ---Yeah, there's - - -

What's the error?---120 and 122 are omitted.

Sorry, you need to speak up a bit.---Sorry. I note that 120 and 122 aren't there.

You were – so it should read “I am representing the views of”. Of what?
---I’m sorry - - -

120.---Yes, I, I, yeah.

120, 122.---Yes.

2 Second Avenue.---Yes.

10 But not the others?---Well, still representing their views. I just wasn’t engaged by - - -

I’m sorry?---Sorry. I’m still representing their views but I just wasn’t engaged by them.

No, but you weren’t – oh, I see. So you say that because you understood that the owners of the other properties mentioned there are going to lend their support - - -?---Yes.

20 - - - that you are representing their views.---Yes. So - - -

Did you know at the time of this email whether the owners of those other properties – 37, 39, 41 and 43 Waterview Street – had in fact informed your firm, or you in particular, that they wanted you to represent their views as distinct from perhaps them saying, yeah, we’ll put our hand up and support?---Again, it’s a long time ago. I can’t, I can’t specifically remember but I doubt I would have put this in without that approval, and I’d been obviously advocating quite, you know, hard that we needed to include as many as possible.

30

MR RANKEN: Now, can I just draw your attention to the fact that you respectfully request – this is after the sentence that the Commissioner drew your attention to – it goes on to say that “These lots form more than half of the block the subject of the planning proposal. I therefore respectfully request that the matter be deferred due to a number of concerns with the content and the level of analysis of the recommended controls, particularly with regard to feasibility and amalgamation.” Do you see that?---Yes.

40 And it says, “This will enable us to meet with council’s consultants.” By that do you mean Studio GL and HillPDA, correct?---Yes. Yep.

To discuss their findings and the level of feasibility analysis to enable any development here in the future. See that?---Yes.

And then if we go down the page, do you see that there’s a paragraph commencing “Therefore”?---Yes.

“Therefore, as mentioned above, it is requested that the matter be deferred for further consideration at the next council meeting to allow us to meet with council’s planning consultant.” Again, that would be Studio GL, correct?---Yes.

“On behalf of the landowners to understand the level of analysis undertaken to inform recommendations that will have a significant impact on the type and level of development that may occur across the block in the future,” correct?---Yes.

10

So effectively what you were asking was for council not to make a decision on 6 December, 2016, but rather defer it to the next council meeting. That’s what it said in your email, correct?---Yes.

“Be deferred for further consideration at the next council meeting.”---Yes.

So you anticipated that it would then be deferred to a council meeting, most probably in the early part of February of 2017, correct?---Yes.

20

And if that deferral took place, you would then – that is, Pacific Planning – would then be able to engage with or at least approach council with a view to be, to engaging with the planning consultants, Studio GL.---Well, yeah, this is kind of what that directly, that request is directly to Yolanna and, and Paul.

Yes. Now, you are aware, are you not, that actually at the meeting of the council on 6 December, 2016, the matter was deferred?---Yes.

30

And you and Pacific Planning more generally did not take any steps following the deferral of the matter to approach council or their external consultants?---Well, I, I, I think they specifically resolved for a councillor workshop.

They resolved for it to be deferred for a councillor workshop.---Councillor workshop.

But the fact of the deferral meant that there was an opportunity for you and Pacific Planning to do that which you had actually wanted to do.---Yes, that’s right.

40

You didn’t do that, though, did you?---Well, we didn’t, no.

THE COMMISSIONER: But that was the very basis upon which you were asking for a deferral, so that you could do it.---I, yes.

So was that some sort of a ruse?---No, no.

That you weren’t really intending to - - -?---Not at all, I - - -

Just let me finish.---Sorry, Commissioner.

Was that a ruse or a pretence, putting forward as a basis to get a deferral when you really didn't have that in mind at all?---No. Not at all. I think we did want to - - -

10 Well, did you discuss it and decide, oh, no, on reflection, we won't go and see the council to get consent to confer with their consultants?---No.

Or did it just disappear as a thought?---Well, no, there was, there was intent, otherwise wouldn't have asked for a deferral for these reasons. So we definitely did.

That's right. Well, it's a, it was a significant request, wasn't it?---Yes.

To defer a matter until early the next year.---Yes.

20 So the basis was articulated, but there was no thought given to actually doing it. That's what it comes to, doesn't it?---Well, no, I think there was, but I think from my memory it was just because it straddled the, the Christmas and New Year break, so I remember, I recall not realising that the matter had been reported to that February meeting even and I'd been away since late January, not, not, you know, locally and, and so with the lockdown that you get over, at the start of January I hadn't taken that action to, to approach council who also hadn't come back to me and said, hey, did you want to meet.

30 I hear what you say, Mr Matthews, but it doesn't seem to me to clarify why you taking what was a significant step as I sort of think you'd agree, to have the council defer dealing with it on 6 December because you wanted the opportunity to sit down and talk to the council's consultants, particularly on matters such as feasibility and other matters that Studio GL considered, council seems to acquiesced, that's what happened, it was deferred, and yet you, when I say you, I'm not just saying you alone, Pacific Partners took no steps to actually display any interest in making arrangements to go and talk to the council's consultants with the consent of council. That's right, isn't it, as a factual matter?---As a fact, yes.

40 So it raises the question as to whether you seriously really did have any contemplation that you needed to have an opportunity to meet with consultants when you requested deferral. I put it to you, what do you say? ---Oh, no, it was.

Well, can you explain why then the opportunity that you were given through the deferral seemed to have just evaporated and nothing came of it?---Well, I don't think it - - -

There must be a logical reason.---Well, again, we're going back a few years, but I can, one, I didn't know the date of the February meeting, which I should have researched and looked up so I knew when that deadline was going to be, but two, I was away in January and I drove back on the day to speak at the council meeting.

10 Well, you'd go back to the council, wouldn't you, and say, look, I've made a mistake, I didn't realise that I'd be away in the Christmas period or the January period, we want it deferred sufficiently long to enable us to take this opportunity because they are significant matters we've raised in that last email that we need to confer with council's consultants. You could have done that, couldn't you?---Like I said, it's - - -

You could have done that, couldn't you?---(No Audible Reply)

Is the answer yes or no to that?---Yes.

20 All right. So there's either an explanation as to why it wasn't followed up and you'd confer with consultants, or it raises the other possibility that there was no serious intention at all when the deferral was asked for to do it.

MS KING: I object. The witness has already given evidence that he does not recall and that's a third possibility. You have presented him with two possibilities.

THE COMMISSIONER: Yes, thank you, Ms King. I want you to answer that question.---When I wrote that email it was my intent to meet with Studio GL.

30 You were serious.---Yes.

You really meant it.---Yes.

Okay. Then provide an explanation if you can as to why no steps were taken to actually do that, to consult?---All, all I've got is that I was away.

Sorry?---I didn't know the date of the council meeting.

40 I'm sorry, I can't hear you.---I was away and I did not know the date of the council meeting. Well I put that to the council and - - -

But when you got back and realised that the meeting was going to be in early February, why did you not then indicate to council, well, look, this is, as we've said in our letter, very significant. We want to confirm with the consultants, we need more time, and press for the opportunity to have the time extended?---Well - - -

That would be the logical thing to do, wouldn't it?---Yes. I think I spoke at the, I think I drove back, I can't remember exactly - - -

That would have been the logical thing to do. Correct?---Well, yes, and I think I did that.

When did you do that?---Well, I think, I believe I drove, drove back from, I think I drove back from my holiday on the day of the council meeting to try and speak and, speak to the, speak at the meeting.

10

And did you advise those either at the meeting or did you otherwise inform council that you wanted the opportunity to have an extension of time so that you could confer with the consultants to the council?---I can't recall that.

Do you believe you did, or don't you know?---I, I can't recall, no, I don't know.

20

Would you have done it in writing, or would you have raised it at the council meeting in February?---I know that I, I know that I spoke at the meeting. I can't recall if I put anything in writing.

You don't recall if you made such a request?---No, I can't recall.

Did you ever write seeking such a request or making such a request to get time to confer with the consultants?---No (not transcribable) I did, I did write after the meeting about the councillor workshop.

Okay, yes.

30

MR RANKEN: But you didn't send an email of a similar nature as the email we saw just now at page 1313 - - -?---No.

- - - which was sent the day before the December meeting.---Ah hmm.

You could have done that, sent an email, rather than - - -?---I don't think I was aware of the meeting – sorry, I don't think I was aware of the meeting until the, until the day of it.

40

Now, at the meeting, you did address the council at the meeting on 7 February, 2017, correct?---Yes, yeah.

And you're aware that on that date, the council ultimately adopted the planning proposal in the sense that to determine to proceed with that planning proposal that gave effect to option 2?---Yes.

And for it to be submitted to the Department for a Gateway Determination, correct?---Yes.

But there was also foreshadowed a rescission motion by Councillor Kenzler and which rescission motion was then to come before the council on 21 February of 2017, that's two weeks henceforth.---Yep, yeah.

And in advance of that meeting, you took instructions or did you liaise with Mr Sidoti amongst other persons about what approach you would take to it? ---I would have thought so.

10 And essentially though, the matter having passed, having the support of the three Liberal councillors, what basis was there, if any, for you to request any further changes to that which was going to go to the Gateway Determination, as part of that rescission motion?

MS KING: I object. The question begins, "Having the support of the three Liberal councillors, what was the basis for the view that you put forward." I don't understand the question. Could it be rephrased?

THE COMMISSIONER: Yes.

20 MR RANKEN: Okay, I'll remove the reference to-- forget about the fact that it had the support of the Liberal councillors. Given that what was going to be determined at the meeting of the council on 21 February of 2017 was a rescission motion, on what basis did you see it as being appropriate to recommend that there be some further changes to the planning proposal?---I think the basis for that, well, I'm just thinking back, but I think the basis would likely have been that I still believed that the right outcome for the site was the, was B4 and 2.5:1, and that the, what was the value of sending a planning proposal to the Department for a Gateway at 1:1, when there's also
30 a report next to it that says development isn't viable at 1:1? I think that just sends out a false message to the community that this, you're, you're changing the controls, but no development's going to occur, because council's consultant says that it's not viable.

Did you think that that might be something that you should put in some written submission to the council in advance of 21 February, 2017?---Well, I think, I think I did in October.

40 So you think it was sufficient to rely on what had gone on before, in October?---Well, it, it, they just seemed to be not giving due regard to, to my submissions, I think they, the, over the preceding years, a number of issues had been raised about why the B5 shouldn't be extended across Second Avenue - - -

B4, I think B4.---Sorry, sorry, sorry. Not business development. Why it should not be, why the B4 should not be extended north, and those were related to, you know, the heritage, the strata, and land fragmentation and, and so on. And we, we'd addressed them all. We kept dealing with them all, and yet there is no consideration to what the planning controls should

be. So for me, I, I still stood by the controls that I felt were appropriate for this site, and we'd resolved all the issues that council had raised, and I'm, I wasn't getting a reason as to why it shouldn't be extended.

Did you speak at the meeting on 21 February, 2017, to put your case in favour of some further changes to the planning proposal?---I'm sorry, I can't remember that.

10 THE COMMISSIONER: Sorry, I couldn't hear your answer.---I'm sorry, I can't remember if I spoke at that meeting.

MR RANKEN: Could be go then to page, I think it's 1421? That's the first page of the minutes. If we could go through to 1425, I think. And you can see there's the notice of motion of rescission. Do you see that?---Yes.

And we see that you actually did appear on that occasion.---Okay.

And you made representations, did you?---Yeah. But I can't recall it, yes.

20 And you spoke in favour of, did you, a proposal to include, within the planning proposal, the bonus height provision to land that fronted Great North Road, of a building height of 14 metres and a maximum floor space of 2.7:1, that's floor space ratio of - - -?---The bonus provisions.

The bonus provision, yes.---Oh, okay, yeah. Well - - -

Do you recall that?---Not really.

30 How did that come about? I mean, after the meeting of 6 December, when the matter had been deferred, the matter then came back on 7 February, at which time the council adopted the planning proposal, which gave effect to option 2.---Yep.

40 How did it come about that there was a suggestion of, or any drafting of some resolution by you to apply the bonus height provision to the land that fronts Great North Road?---I'm not sure but what I, what, what I think would have occurred is we then looked more holistically at the entire, entire block to potentially some of the plans that Mr Kudinar had been working on and that, then looking at the laneway, you know, basement parking and then having regard for the sites that are around us, one of them as being the Waterview Street, extending the B4 land further north and also looking at the site to the north and to the south and the bonus provisions that apply to them. Now, obviously this is predicated on a minimum site area, I believe, of 1,000 square metres and a, is it a frontage of 20, a frontage of 20?

Yes.---So, so I think on, on reflection, on review, we felt it, that, well, those controls can't be achieved unless those, those, the 1,000 square metres and 20 metres can be provided. So - - -

Could we go then to page 1428? This is an email that was sent by you and it was sent to Ms Cestar, Ms McCaffrey and copied to Dr Ahmed and also Michael Megna, correct?---Yes.

And they were the four Liberal councillors, correct?---Yes.

This email was not sent to any of the other councillors?---That's right.

10 Mr Megna was someone who was actually not able to vote on the matter, correct?---Yes, that's correct. Yes.

Why did you include Mr Megna on this?---I'm not sure.

THE COMMISSIONER: Why did you not include the non-Liberal councillors?---Because they were the authors of the rescission motion, all three of them, Councillors Kenzler, Parnaby and Tyrrell, and then I felt - - -

20 But you were seeking to have a resolution dealt with, leaving aside the rescission motion as such, you had sought to add to the business of council that day, a proposal, the details of which you addressed a moment ago. Is that right?---Yes, yeah.

This was a new proposal by you in its terms?---Ah hmm.

Why would you not include the non-Liberal councillors who served on council?

30 MS KING: Might the witness be given an opportunity to read the whole of the email?

THE COMMISSIONER: Yes.

MR RANKEN: Are you ready to go to the next page.---Yes, please, thanks.

THE COMMISSIONER: Page 1429.

40 MR RANKEN: And perhaps if we then go to 1430, just so that you can see the attachment. Yes, now, that's reflected in the body.

THE COMMISSIONER: Then the question I put to you is why was the proposal, the two points you now see on the screen, 1430, not also sent to the non-Liberal councillors?---Mmm. Yes. That, that would have required a second email. I, I, and - - -

MR RANKEN: Why?

THE COMMISSIONER: No, but why were they not included on the mailing list, as it were?---I think, I think because the focus of this email was
- - -

Sorry, I'm still having - - -?---I'm sorry, Commissioner. I believe because the focus of this email was in relation to the rescission motion.

10 The purpose – I'm sorry, I'm still having trouble hearing you.---Sorry. The – sorry, Commissioner. The focus of the email was in relation to the rescission motion, and that's why I'd only sent it to the Liberal councillors.

But that's really not a satisfactory explanation, is it? Because the email had, in effect, two matters of business. One was the rescission motion, which was already on the program, as it were. It was coming up.---That's right, ah
hmm.

20 But you sought to add something which didn't relate to the rescission motion or is quite a different motion or proposal, was it not?---Yeah. That's right, yes.

And do you accept now that it should not have been this email sent to a mere selection of councillors, but to all of them?---Well, not, not necessarily. Because, partly because I would have been making these points at the council meeting where I would have addressed all of the councillors, not just the Liberal councillors, and raised this recommendation. And so wasn't hiding anything.

30 But it's normally a good idea, isn't it, that if a resolution is going to be dealt with by council, that people have time, firstly, to be informed about what it's going to be and, secondly, giving some thought or perhaps do some work in relation to the proposal before it comes up before council, so that the councillors can - - -

MS KING: I object.

THE COMMISSIONER: So that the councillors can do what they're required to do in the performance of their official functions.---Well, that's -
-

40 MS KING: I object. That's a compound question. Could it be broken up so each proposition could be put to the witness?

THE COMMISSIONER: No, Ms King. You understood the question?
---Can you repeat it, please?

I said if – as a matter of general practice, I'm talking about – somebody in your position of planner wanted to put a proposal on behalf of a client before council, normally notice is given sufficient for any person affected,

or perhaps somebody on council who needs to deal with it, to be told in advance as to what it's going to be, so that they can give it some thought.
---In a uncomplicated context, yes.

And also to – perhaps they might not need to – do some research or take advice. The councillors, I'm talking about.---In an, an uncomplicated context, yes.

10 Well, that would equally apply to this proposal of yours referred to in the email at page 1428, would it not? That it's not a straightforward matter, it's a substantive matter. Would you not agree?---Oh, we, we do have the benefit of knowing how three of the councillors have voted on part of this block recently, previously. And in the context of - - -

But do you accept this – sorry.---And in the context of the rescission motion.

20 Do you accept it might, in retrospect at least, have been a good idea, so that all councillors were informed before the meeting and not after the meeting started?---A good idea, well, in, like I said, in normal contexts, yes, absolutely.

No, just answer my question. Would you say it would have been a good idea in retrospect that this email was sent to all councillors so that they'd have time to firstly be informed about it, and secondly to give it some thought?---On this subject, possibly not.

But why not?---Well, I mean - - -

30 What detriment or disadvantage would be occasioned by letting all the councillors in on the proposal?---Well, I, I'm, I feel that potentially, I don't know, but as the three councillors that had previously voted for no change to planning controls for the waterfront, Waterview Street site, and, and the rescission motion, may then find reasons not to support this. But that, but this is for a debate at a council meeting in chamber where, well, you know, this is all presented to them anyway.

40 You see, but this approach of just informing the Liberal councillors was a discriminatory approach, wasn't it? Because they were being favoured by advance information and the other councillors were not.---I, I don't see it as that.

You may not see it, but when you think about it as a matter of, firstly as a matter of fairness, would you not agree it would have been appropriate to have done so?---Not - - -

MS KING: I object. This is a submission. I don't think that there's any suggestion that Mr Matthews was obliged to give the council members procedural fairness.

THE COMMISSIONER: Oh, really, Ms King? Do you not think it would have been appropriate as a matter of fairness to let all councillors and not just a select few know what you were going to propose?---Not, not in this, not necessarily in this case. This, this, this was in the context of a rescission motion, and of how councillors had previously voted on the matter.

10

It had nothing to do with the rescission motion, did it, your proposal?---That element, no.

Well, why did you just then say - - -?---Because it's still inherently linked to the block.

Yes.

MR RANKEN: Well, do you accept, though, that you made a deliberate decision to only provide it to the Liberal councillors?---Yes.

20

Do you accept, though, then that the reason why you, one of the reasons why you selected them was because they were Liberal councillors?---I would have provided it to anyone that had not put, in the rescission motion, and they just happened to be Liberal councillors.

Just happened to be Liberal councillors.---Yes.

30

But you also included Mr Megna, and he wasn't, had nothing to do with the rescission motion, or the original motion, correct?---Yes, that's true. That's correct.

He was a Liberal councillor, correct?---Correct.

So I'm putting to you there was a deliberate decision to only provide this to the Liberal councillors because they were Liberal councillors. Correct? ---Well, that's what occurred, yes.

40

And that was a deliberate decision to treat the Liberal councillors differently to the other councillors, correct?---Well, they were the authors of the rescission motion, so yes.

Yes, deliberately treating the Liberal councillors differently to the other councillors, correct?---Because - - -

Yes, is that right?---In this context, yes.

Yes. And so that was discriminating between the councillors, correct?---No.

Now, ultimately, sorry, what I want to suggest to you, though, is that that was part of a strategy that sought to take the other councillors by surprise and gain advantage through the use of the fact of the balance of power being in favour of the Liberal councillors.---Not by surprise. I was speaking at the council meeting. I don't think that's a surprise.

So they would only find out at the council meeting, correct?---Yes, yep.

10 And they would have no prior notice that the Liberal councillors were aware of the resolution that you were going to propose?---Well, it would have been for discussion at the council meeting.

They would have had no prior notice to the council meeting, until they got into the council meeting.---I, I assume not. Unless they spoke to Labor councillors or if, which, you know, generally happens. The recommendation or my email was taken to Tony McNamara or Paul Dewar and it was discussed, "What do you think about this?"

20 Do you say anywhere in that email, "Take this to Tony McNamara and Paul Dewar"?---No.

"Let them know. Discuss it with them," or anything of that nature?---Not from my recollection.

No. Now, the position – sorry, I withdraw that. Did you discuss the sending of this email with Mr Daniel before you sent it?---I can't recall.

30 Did you discuss the sending of this email with Mr Sidoti before you sent it?
---I can't recall, but - - -

Did you discuss the terms of the proposed recommendation with either Mr Daniel or Mr Sidoti before you sent it to the Liberal councillors?---I, I can't recall, but it's, given that Mr Daniel is my business partner and Mr Sidoti's my client, then likely.

It's likely. And do I take it, then, that you would have most likely discussed with them the persons to whom you were proposing to send it?---Possibly.

40 So was it your decision, and your decision alone, to send it to the Liberal councillors only? Or is that something that you discuss with each of Mr Sidoti - - -

MS KING: I object.

THE COMMISSIONER: He hasn't finished the question. Hasn't finished the question, Ms King. Just hold your horses.

MR RANKEN: Or is that something you discussed with either or both of Mr Daniel and Mr Sidoti?

THE COMMISSIONER: Just pause there. Yes?

MS KING: That question is so complicated. Could it be broken up into several propositions? “Did you speak to one person?” “Did you speak to another person?”

10 THE COMMISSIONER: No, Ms King. Yes. Put it again.

THE WITNESS: Sorry.

MR RANKEN: Did you discuss with either or both of Mr Sidoti and/or Mr Daniel your decision to send this email to the Liberal councillors only?---I, I can't recall that.

Is it likely that you did?---Yes. Likely.

20 You wouldn't have just done this as a flight of fancy on your own.---No, probably, probably would have recommended, given the context of how I'd written the email in relation to the rescission motion.

So the recommendation was your recommendation to Mr Sidoti, was it?---I can't, I, look, look - - -

“I recommend we only send it to the Liberal councillors”?---I can't, look, I can't recall.

30 So that's your strategy that you were - - -?---I can't remember, I'm sorry.

Well, which one is it?---I don't know.

Did you – or did Mr Sidoti suggest it to you?---I don't know.

THE COMMISSIONER: Was the purpose of this email, so far as your proposal was concerned, to not only inform the Liberal councillors about the proposal, but also to exercise influence over them as to what they should do with the proposal when it came before council?---No, I think it was
40 primarily to not support the rescission motion. And - - -

I'm not talking about the rescission motion.---Oh, sorry.

I'm talking about your motion. Your draft motion.---Yes.

Which we've discussed before. You know the one I'm talking about?
---Yes.

Was the purpose, the design or the objective to send it to the Liberal councillors only not only to inform them about the proposed motion but to influence them in supporting it?---No, I don't think it would have been in terms of influencing - - -

Is that - - -?---But – sorry, sorry, Commissioner.

10 I'm sorry, you go on.---I don't think it would have been in terms of influencing them but it would have been in relation to what my speaking notes for the, the meeting that, that night.

Well, what was the objective of sending it to the Liberal councillors only? ---Well, I think, I, I, I don't know. I think it was part of the email that was in relation to the rescission. So I just haven't separated the two issues.

Now, Mr Ranken, how are we going for time with this witness?

MR RANKEN: I'm almost at the end of my examination.

20 THE COMMISSIONER: All right. Now, well then you're ready – so how much longer do you think? And I'm not pressing you, I just want to know because we've got another witness to take.

MR RANKEN: Yes. I am basically finished with my examination.

THE COMMISSIONER: Hmm?

MR RANKEN: I am basically finished with my examination.

30 THE COMMISSIONER: Okay, well you finish it, if there's anything further you want to - - -

MR RANKEN: Only just to round out the matter, you're aware of course, obviously that the rescission motion was defeated on 21 February, 2017, correct?---Yes.

But your proposed resolution was not passed?---Yes, that's right.

40 And Pacific Planning did though continue to be engaged in the matter as it went to the Gateway Determination, correct?---Yes.

And made further representations to the Department on behalf of the Sidoti family's interests and the other property owners, is that right?---Yes, yes. I think we lodged a – yes, yeah.

But ultimately those representations were also not successful insofar as the Department was concerned?---That's correct, yes.

Yes, thank you. They're my only questions.

THE COMMISSIONER: Thank you, Mr Ranken. Now, Mr Neil, can you help me? Firstly, of you want to cross-examine?

MR NEIL: I do, Mr Commissioner.

10 THE COMMISSIONER: And how much time, and again I'm not pressing you but I need to know so that we can determine when the next witness is to be called.

MR NEIL: Of course. Oh, about 10 minutes.

THE COMMISSIONER: Sorry?

MR NEIL: About 10 minutes.

20 THE COMMISSIONER: Yes, thank you. Is anybody else, Ms King, do you envisage you want to ask your client anything?

MS KING: Yes. I have a couple of questions. I think I'll be about five minutes.

THE COMMISSIONER: Okay, thank you. Yes, Mr Neil. I grant you leave.

30 MR NEIL: Thank you, Commissioner. Mr Mathews, I act for Mr John Sidoti. Are you aware that not only at the meeting of council on 21 February was your proposal for bonus height provisions front Great North Road not only not passed but it was never even brought up for consideration by council? Are you aware of that?---I can't remember but I'll take your word for it.

40 All right, thank you. Now, I think just before lunch you were asked a question, or some questions, and you, in part, answered that you had reviewed the previous reports obtained by Mr Sidoti's family of MG Planning when you came into the matter. Is that right?---Yeah, that's right, yeah.

Might the witness, Commissioner, be shown page 491?

THE COMMISSIONER: Yes.

MR NEIL: That is a report of November 2014 of MG Planning. Do you recall having that?---I, I would have read it.

And did you agree with its conclusions and reasons?---Yes. I, I recall - - -

Thank you. Now, could the witness be shown page 641, please? Did you also have available to you the July report of MG Planning?---Yes, I would have.

Did you read it?---Yes, I would have.

Did you agree with its conclusions and reasons?---Yes, I would have.

10 Now, you were asked some questions, I think also before lunch, with a suggestion that the proposal for rezoning of Waterview block had been repeatedly refused. Could the witness be shown page 640, please? That is a note from a Ms Miller to Mr Thebridge of 3 June, 2015. If you would just familiarise yourself with that for a moment, would you?---Yes, thank you. Yes.

Did you understand that even if a proposal had been previously rejected, if there was to be an upcoming further re-exhibition, council would be, or council members would be prepared to receive further submissions?

20 ---I don't think I'd ever seen this email before.

No, but was it your understanding that even if a proposal had been rejected,, if there were to be a further re-exhibition, that council would receive further submissions?---Well, yeah, yes.

Thank you. Now, would you agree that in respect of any particular planning proposal, different planning experts might come to different conclusions about the merits of any particular planning proposal?---Yes.

30 And is that commonplace?---Yes.

And is it commonplace that different planning experts could come to different conclusions about a proposal, even based upon considering the same material?---Yes.

And you did make some reference before lunch to the Waterview Street block between Barnstaple Road and Second Avenue being within 200 metres of some position which I think you were meaning to say was the main part of the town centre. Is that what you meant?---Yeah, I think
40 Studio GL basically had a measurement from a park, and I can't remember the name of the park, and they used that as the basis for the core of the CBD. So when I say 200 metres I'm talking about from that park, which, which Studio GL used as a benchmark.

Could that benchmark be either or very close to a place called Fred Kelly Park? Place, Fred Kelly Place.---I can't remember the name but that sounds familiar. That might be the, the core.

And in your considerations, what was the significance of the 200 metres?
---Sorry, what do you, what do you mean in terms of significance?

Well, you said that one of the things you took into account in your conclusions or your opinions about the block that was between, on Waterview Street between Barnstaple Road and Second Avenue was that it was in about 200 metres of this area, this position. What was the significance of the 200 metres in your opinion?---Well, yeah, sorry, I understand the question now. Well, 200 metres isn't very far and there's
10 areas of the town centre that are much further away and this was not included in the town centre, so it just didn't seem logical to me.

All right. Thank you. Commissioner, could the witness be shown page 1055.

THE COMMISSIONER: Yes.

MR NEIL: Now, this is a reference to submission on behalf of the state member. It's in April 2016 and it includes a reference under Local Member
20 Interests, saying, "Council has advised that the State Member for Drummoyne, John Sidoti MP, owns property at 120 Great North Road and 2 Second Avenue, Five Dock, within the town centre area, subject to the planning proposal." Do you see that?---Ah hmm. Yes.

And if the witness might be shown 1056. Do you see there there's a notification from Mr Dewar to Mr Watkins of the Department, including, "Council received a submission from the properties known as 120 Great North Road and 2 Second Avenue. The owners of 120 Great North Road are Mr R. Sidoti, Mrs C. Sidoti, Mr J.A. Sidoti and Mrs S. Sidoti. The
30 owner of 2 Second Avenue is Anderlis Pty Ltd." Do you see that?---Yes, I do.

And I think I'll get the page out if necessary, but on your application to address the council, you gave page 1420 that you were representing the landholders at 120 and 122 Great North Road, 2 Second Avenue and 37 Waterview Street, correct?---Yes, that's right.

And you also said that one of the things you wanted to do was request council to include the bonus provision to apply to the land fronting Great
40 North Road. Is that right?---Yes, that's right.

And according to the form, you're supposed to put that in, albeit on the same day, you've got to get it in by 3.00pm. Is that right?---Yes, that's right, yep.

Would you have done that?---Oh, yeah, yes.

Now, the – I just want to ask you this. Might the witness be shown page 1199, Commissioner. This is an email from you to Mr Daniel of 29 September, 2016. You’ve read this previously, is that right?---Yes, I think we discussed this earlier today.

10 Yes. And I just want to draw to your attention the last four or five lines. You refer to – you say, “Amongst other things, that this should probably show numbers of units and how this will deliver the laneway and resolve many of the parking issues. I don’t think it does this at the moment and I don’t think council would be convinced that these demonstrate adequate justification for the greater controls. Let’s give it more thought – discuss – and I’ll also wait to hear council’s progress.” Were you meaning by that to include the proposition that you needed further work to be done on this proposal?---Absolutely. It needed a level of sophistication that dealt with all of the issues that I’ve just raised.

20 Yes. And might the witness be shown page 1258. I just want you to look at the portion on that page that says, “You will note there are two key points that I’ve made in the submission. One, council is commended for endorsing option 2.” Do you see that?---Yes, I do.

And it’s dated 13 October, 2016. Do you see that?---I see that as, yep.

And if the witness might be shown page 1263. Do you see there you say, in the letter to Mr Dewar, which commences at 1262, “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 thereafter the matters that came before council involved either deferral to a workshop, ultimately the meeting of 7 February, 2017, ultimately the meeting of 21 February, 2017, which involved the formalisation of the council’s recommendations to adopt option 2, correct?---That’s correct.

Now, could you just briefly tell us, what is a Part 3 process?---A Part 3 process is, when I refer to that is, I’m talking about plan making, which is to make it, to stop abbreviating and, and that kind of thing. There’s a section of the Act that deals with amending Local Environmental Plans and so - - -

40 And it – yeah, sorry, go on, yes.---So, and that has a number of stages to it and one of those is that council can prepare a planning proposal at any time, that a council can forward that to the Department at any time seeking a Gateway, a Gateway is issued, it, it provides for the requirements of a Gateway which include notification or exhibition, public agency referral, time frames within which to complete the application, whether a public hearing is to be carried out and all those kind of things, and then a council can change a planning proposal at any time and if it does so, it should forward it back to the minister.

THE COMMISSIONER: All right. Look, I think that's enough.

MR NEIL: Yes.

THE COMMISSIONER: We can read Part 3 to ourselves. Thank you, but I'm not - - -

10 MR NEIL: Thank you, Commissioner. One particular point, do I understand your evidence to be that if you're involved in a Part 3 process, you are allowed to put forward in effect views of residents in the area that is being considered, even though you don't, they don't actually retain you on a basis of them being your client?---That's right. I'm not aware of any legal requirement like you would have for a development application to have landowners' consent.

The development application is Part 4. Is that right?---That's correct, yes.

20 And is it because you're dealing with the land as such that you are able to do what you just described?---Yeah, exactly. We were applicants for this proposal and so as a planning professional I could put a submission in at any time.

And that's why at some stages you didn't include the names of persons for whom you were either acting or whose views you were putting forth.---Yes, that's right, and that's why I think I mentioned earlier today that the landowners, that wasn't necessarily an important component for me, it was the planning merit.

30 Would it be the case that at no time did you seek to in any way put any pressure on any councillors?---That's right.

They're my questions, thank you, Commissioner.

THE COMMISSIONER: Yes, thank you, Mr Neil. Now, Ms King, did you have some questions?

40 MS KING: Yes. I'll only address one topic. Before lunch today you were asked some questions about your professional experience with the Department.---Yes.

When you worked in the Department, were you asked to develop certain planning documents?---Yes.

Might the witness be approached and shown a document?

THE COMMISSIONER: Yes. Just hand it to my associate if you would.

MS KING: I'll distribute copies.

THE COMMISSIONER: Yes, Ms King.

MS KING: The document you have before you is a document titled Planning Proposals, A Guide to Preparing Planning Proposals, and I can't identify the date on it – sorry, on page 2 it bears the date August 2016.
---Yes.

10

Do you recognise that document?---Yes, I do.

And how do you recognise that document?---I was involved in its preparation.

So when did that start, the process start?---It would have been before I left the Department, which was obviously in December 2015, so before that time. Obviously I didn't, I wasn't there when a final version was finally endorsed, but I was involved with, with preparing it before that time.

20

Thank you. I tender that document.

THE COMMISSIONER: Yes, very well. Mr Ranken, I suggest the document be tendered. We can give it a - - -

MR RANKEN: Sorry, I don't mean to cut across, I'm just looking at the document now. Commissioner, I believe this is actually in Exhibit 25, which is the policies - - -

30 THE COMMISSIONER: 25?

MR RANKEN: Yes, I think it - - -

THE COMMISSIONER: Anyway, we're not going to waste time trying to work that out.

MR RANKEN: No, I believe it is in that exhibit.

THE COMMISSIONER: I suggest you tender it. If not today, tomorrow.

40

MR RANKEN: Yes, I'll double-check, Commissioner, but I expect that it is already in Exhibit 25.

THE COMMISSIONER: Very well. Do you have any other questions for the witness?

MR RANKEN: No, I don't.

THE COMMISSIONER: Thank you for your attendance, Mr Matthews.
You're excused.

THE WITNESS EXCUSED

[4.10pm]

THE COMMISSIONER: Now, Mr Ranken, next witness.

10 MR RANKEN: The next witness is Mr Yap, Nicholas Yap.

THE COMMISSIONER: Yes.

MR NEIL: Commissioner, could I just indicate that I will no longer ask for us not to go beyond 4.30 if it be for the benefit of the witnesses.

THE COMMISSIONER: Well, thank you for that, Mr Neil. We'll see how we go. Yes, Mr Robertson, do you - - -

20 MR ROBERTSON: I appear for Mr Yap. I understand you've already granted authorisation to appear both for me and for my instructing solicitor, Ms Byrne, B-y-r-n-e.

THE COMMISSIONER: Yes, I confirm that, I grant leave. Thanks, Mr Robertson. Mr Yap, do you take an oath or an affirmation?

MR YAP: An oath, Chief Commissioner.

30 An oath. There's a Bible there, if you wouldn't mind taking that. My associate will administer the oath.

THE COMMISSIONER: Thank you, take a seat there, thank you, Mr Yap. Mr Robertson, an application by you?

MR ROBERTSON: Application under section 38. Mr Yap objects to answering any questions or producing any documents or other things and respectfully seeks a declaration under section 38 of the ICAC Act.

10

THE COMMISSIONER: Thank you. Mr Yap, I understand you understand the provisions of a section 38 which entitled me to make a declaration that you may give evidence under objection if that's your wish, and I understand it is your wish?---I do, Chief Commissioner.

20

You understand, however, though that notwithstanding, you must answer all the questions truthfully. The evidence can't be used against you in any other proceedings once an objection is taken, except for one exception, and that is if a witness commits an offence under the Independent Commission Against Corruption Act, such as giving false or misleading evidence which is perjury, but things of that kind. With that exception, the declaration does have that effect of giving you that protection. You understand?---I, I understand, Chief Commissioner.

30

Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by the witness, Mr Yap, and all documents or things that may produced by him during the course of this public inquiry shall be regarded as having been given or produced under objection. That being the case, there is no need for Mr Yap to take objection to each individual question or tender any document or item.

40

DIRECTION AS TO OBJECTIONS BY WITNESS: PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THE WITNESS, MR YAP, AND ALL DOCUMENTS OR THINGS THAT MAY PRODUCED BY HIM DURING THE COURSE OF THIS PUBLIC INQUIRY SHALL BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED UNDER OBJECTION. THAT BEING THE CASE, THERE IS NO NEED FOR MR YAP TO TAKE OBJECTION TO EACH INDIVIDUAL QUESTION OR TENDER ANY DOCUMENT OR ITEM.

THE COMMISSIONER: Yes, Mr Ranken.

MR RANKEN: Thank you, Commissioner. Sir, what is your full name?
---My full name is Nicholas Andrew Yap.

And what is your occupation?---I'm a, I'm a sales manager at a food company and a - - -

And that – sorry.---I'm also a councillor at the City of Canada Bay Council.

And were you elected to that council in September of 2017?---Yes.

10 You have a PhD, is that correct?---Correct.

And that PhD is in science?---Correct.

And you also have a Master of Management from Macquarie University, is that so?---Yes.

Your PhD though is from the University of Adelaide, is that right?
---Correct.

20 And you are a member of the Liberal Party, is that so?---Yes.

With which branch are you a member?---The Drummoyne branch.

And insofar as your membership with the Liberal Party is concerned, has it always been with the Drummoyne branch of the Liberal Party?---I was also a member of a branch, the Norwood branch in South Australia. And then when I moved from South Australia to New South Wales, Sydney, I became a member of the Drummoyne branch.

30 And when did you move from South Australia to Sydney?---Approximately 15 years ago.

So that would make it some time in, what, 2007 or 2006/2007?---Correct. But there was a, there was a gap between when I, I left South Australia, I came to Sydney, and then I joined the Drummoyne branch in October 2011.

And in fact, that branch that you're a member of, the Drummoyne branch, is the branch to which Mr John Sidoti is a member as well, correct?---Yes.

40 Can I ask you this, prior to your election to the council in 2017, did you have any experience in local government?---No.

Did you have any experience in relation to planning matters?---No.

And was the 2017 election, local government elections, the first election at which you stood for election to local council?---No.

When was the previous – or on what previous occasions have you run for local council?---It was in 2012.

And was that also for the possibility of being elected to the City of Canada Bay Council?---Yes.

And were you essentially on the Liberal ticket on that occasion?---Yes.

Were the other members, Liberal Party members, on that ticket, in order, were they Mr Michael Megna at number 1?---Yes.

10 And was there Ms Helen McCaffrey at number 2?---Yes.

And was there, you know, Ms Mirjana Cestar at number 3 and Dr Tanveer Ahmed at number 4?---Yes.

And so you were the number 5 on that ticket, is that right?---I recall it may have been Mrs Wright, number 5, and I may have been number 6.

So there may have been in fact six people on the ticket on that occasion? ---Correct, I'd have to check that, but yes.

20

And in relation to the process in 2011, was it the case that there was no competitive preselection for positions on the ticket?---Yes.

And is that because there were six available spots on the ticket and there were only six persons who were presenting themselves forward for selection?---That's, that's correct, yes.

And then was there also some discussion between the six of you as to the position that you might each take on the ticket?---Yes.

30

So therefore there was no need for any competitive preselection process, correct?---Correct.

And at that election you were unsuccessful in terms of being elected to council, but each of Mr Megna, Ms McCaffrey, Ms Cestar and Dr Ahmed were elected to council, correct?---Correct.

And then in 2017 did you again decide to run for council?---Yes, I recall it was around 12 months out to the prior election where I felt I'd like to have another go at running for council, correct.

40

And so that was a decision, was it, that you made on your own in the sense that nobody approached you about considering running for council, was that the case?---Yes, that's correct.

But in the process of making that decision, or possibly having made that decision, did you reach out to any particular persons in the party?---Yes.

And who were those persons?---Mr John Sidoti was one of those people. Mr Michael Megna was another one of those people. And I may have reached out to other various members just to gauge what they felt, yes.

THE COMMISSIONER: Sorry, other members of - - -?---The Liberal Party, sir.

10 MR RANKEN: And were those other members all persons who were members of branches within the City of Canada Bay local government area or were there some members who were further afield?---I would recall that they may be outside of the area.

And who were the persons who you reached out to who were outside of the area?---Oh, they were people who, the members of the Liberal Party who I just would reach out to and say, you know, well, what do you think about me running for council?

20 Who were those people?---Say, for example, it would be Sandra Blackmore would be one person that I would have reached out to.

THE COMMISSIONER: Sorry, I missed the name.---Sandra Blackmore.

Thank you.

MR RANKEN: And who was Sandra Blackmore?---She, she's a member of the Liberal Party who I'm friends with.

Does she occupy a particular position within the Liberal Party?---No.

30 What about other persons who you reached out to?---I don't recall. I'd have to think about who I reached out to.

Did you reach out to Craig Laundry?---I don't recall if I reached out to Craig Laundry or if I reached out to Craig Laundry's chief-of-staff.

40 And what was the purpose of reaching out to these people, to other members? Not just the other members, but also Mr Sidoti and Mr Megna? ---Sure, yeah. So I would be reaching out to some of those members just to gauge what they think about me running for council. And the other reason for reaching out to some of these members would be to be seeking their support for me to run on council.

And what sort of support were you seeking in the sense that were you asking them to write references on your behalf to the delegates or for them to speak to delegates on your behalf? Could you assist us with that?---So it would be, yes, correct, if I was asked from a potential preselector for a reference, that I would ask that member if they, of the Liberal Party, to write

me a reference. I would also reach out to those members who would support me if there was potentially a preselection.

So you reached out to some members prior to the point at which it became apparent that, in fact, there would need to be a comprehensive preselection?
---Sorry, can you just repeat the question, sir?

10 You reached out to those members that you've identified – Mr Sidoti, Mr Megna, Ms Blackmore and I don't think, I'm not sure if you identified any other person, but you said "other members".---Mmm.

You reached out to them for support prior to you being aware that there in fact would need to be a competitive preselection process, correct?---Yes, that's correct, sir. Yes.

And in due course, the preselection process for the 2017 local government elections commenced in about late June or early July of 2017, is that correct?---That's correct, sir.

20 And the process began, did it not, with prospective candidates seeking selection, putting in a nomination form, correct?---Correct.

In which they nominated or put their name down for various positions on the ticket, is that correct?---Correct.

And in 2011 you told us there were six spots on the ticket, correct?
---Correct.

30 In 2017, was it six spots again or was it a different number that were on the ticket?---The final, the final number of people on, on the ticket, is, is that the question you're asking?

How many spots were there available on the ticket in terms of being able to nominate for preselection?---On the form that you complete for the Liberal Party head office, I recall there's more than six boxes that you can put numbers in.

40 But there is one also, a separate box for the mayoralty if one wishes to put themselves forward for the mayor, is that right?---That's, that's correct, yes. Yes, correct.

But was it the case that in 2017 there had been some determination within the Liberal Party that there were only four winnable spots?---That's correct.

So insofar as there might need to be a preselection, it would be only in respect of the four spots considered winnable, correct?---Yes.

Now, in due course, you put your nomination form in, correct?---Yes.

And did you nominate for all four spots?---Yes.

And the process is, is it not, that there only needs to be a vote on a particular spot if there is more than one person wishing to contest that spot on the ticket?---Yes.

And so obviously you put your name forward for all four spots, but not the mayor's spot, correct?---That's correct.

10

And did you become aware that in fact there were a total of six persons putting their name forward for one or other of the four spots?---Yes.

And in addition to yourself there were the sitting councillors, that is Mr Megna, Ms McCaffrey, Ms Cestar and Dr Ahmed. Correct?---Correct.

And Stephanie Di Pasqua. Correct?---Correct.

20

Did you know Stephanie Di Pasqua prior to seeing that she had nominated for preselection?---I met Ms Di Pasqua a few times before she put in her nomination.

And how had you met her or where had you met her?---I recall that I met her at the office of John Sidoti.

And what was the context of that, she was employed by Mr Sidoti, was she not?---That's correct.

30

Was it just in the context of you attending Mr Sidoti's office for some purpose and she happened to be there working or was there a pre-arranged meeting with Ms Di Pasqua?---The, the, the former, yes.

And at that stage were you aware as to whether or not she was running for council?---I don't recall when I was advised or became aware I should say that Ms Di Pasqua was running for council.

Would you agree that at least by early July you were aware that Ms Di Pasqua had put her name forward for selection for council?---Yes.

40

And did you have any discussions from that time, that is from the time you first found out that she was running for council, discussions with her about the preselection process?---I don't recall a specific conversation with her about - - -

But you did have a conversation with her?---Yes.

And was the conversation relating to the possibility of the two of you supporting each other's tilt for council?---I don't recall the specifics of the conversation.

Well, I didn't ask for the actual specifics, just as to whether or not the general gist of it was directed to the possibility of the two of you supporting each other, i.e. being part of a ticket?---I think there was an understanding that she would be on the number 2 spot and I would be on the number 3 spot.

10

THE COMMISSIONER: How did that understanding arise?---Yeah, I don't recall how it came about, but there was an, there was an alignment that she would be on the number 2 spot and I'd be on the number 3 spot.

MR RANKEN: An alignment, that's as between you and Ms Di Pasqua. Is that correct?---That's correct.

And who in that alignment would be in the number 1 spot?---Mr Megna.

20

And so was there some discussion between the three of you about that kind of arrangement?---I don't recall any specific conversation on it.

Does that mean you don't recall the specifics of any conversation you had with either of them about it but you do recall that there were conversations with them about it?---I recall that, I recall that leading up to the preselection that there was an understanding that Michael Megna would be number 1, I'd be number, that Ms Di Pasqua would be number 2 and I would be number 3.

30

When you say that's an understanding, an understanding that you had?---Ah hhm.

And was it your understanding that that was an arrangement that you had with those other two?---That's correct.

Okay. As to how that arrangement came about, you're not entirely clear. Is that what you're suggesting?---Yes, that's correct.

40

Was there any aspect of that arrangement that provided for who would be in the number 4 position?---No, but I did have a conversation with Mr Megna about - no, no, I didn't have a conversation about - - -

Well, you seem to remember a conversation with Mr Megna about something.---Yes, there was a conversation about me potentially running on the fourth spot.

Well, I thought the understanding was for you to be number 3?---There, there was a conversation that we had, I had with Mr Megna, I recall now,

two weeks before where Mr Megna and I discussed Ms McCaffrey being on the third spot.

THE COMMISSIONER: Sorry, discussed what?---Ms, Ms McCaffrey being on the, on the third spot on the ticket.

MR RANKEN: But was that ultimately not part of the arrangement that you understood to be in place by the time of the preselection event itself on 6 August?---That's correct.

10

And had something happened in between to interfere with what you'd discussed with Mr Megna? Or was it just there was some of this discussion and ultimately didn't result in anything?---The, there was some discussion I had with Mr Megna. As I understand, Mr Megna may have reached out to Ms McCaffrey. But to, to your question, it, it didn't become resolved.

Now in order to facilitate or give effect to the arrangement that you had with Ms Di Pasqua and Mr Megna, was it necessary for you to withdraw your nomination in respect of either or both of the number 1 and number 2 spots? ---That's correct.

20

Because you'd put your name forward for those positions as well on your original nomination, correct?---Correct.

And so as part of the arrangement was it that you would withdraw either on the day itself or possibly beforehand from your nomination for those two positions, correct?---I, I received a, a phone call from - - -

And who did you receive a phone call from?---Mr Joe Tannous.

30

Mr Joe Tannous, is it?---Ah hmm.

And who is Mr Joe Tannous?---He's a member of the Liberal Party.

He's not a member of the Drummoyne branch of the Liberal Party, is he? ---No, he's not.

He's not a member of any – is he a member of any branch of the Liberal Party within the City of Canada Bay local government area?---No, he's not.

40

Is Mr Tannous – does he occupy any formal position within the Liberal Party Executive?---I don't think so, no.

So what position does Mr Tannous hold in the Liberal Party that would have him reaching out to you about something to do with the local government preselection process?---Mr Tannous is sometimes referred to within the party as a powerbroker.

And what does that mean, from your understanding?---A, a powerbroker is, is someone who has consideration of how people may vote on internal matters within the Liberal Party.

Does that mean that, from your understanding, he is able to lobby preselectors to vote for particular people?---That's my understanding.

And he contacted you, it wasn't – you didn't contact him? Is that the way it worked? He reached out to you?---Correct.

10

And what was the conversation that you had with Mr Tannous about this preselection process?---Mr Tannous asked if I could withdraw from the number 1 spot and the number 2 spot.

And he did he suggest why he wanted you to withdraw from those two spots?---I remember from the conversation that he said, I recall that he said words in the effect of, "It's too crowded," or, or, or, "There's too many people on the, on the second spot."

20 THE COMMISSIONER: Just pausing there for a moment. You're now referring to a phone call.---Yes, I am, Chief Commissioner.

He rang you?---Yes. Yes, he did.

And you had met him prior to that time that you had the call from him?
---Had I met him previous - - -

Had you met him?---Yes, I, yes, yes, I had met him, yeah.

30 And doing the best you can, I'd like you to, rather than summarise the conversation, to try and reconstruct it in your own mind as closely as you're able to.---Ah hmm.

He said, "Hello, this is Joe here," whatever and then I said – you understand what I'm asking you to do?---I, I, I understand, Chief Commissioner.

40 I know there's some difficulty in recalling the precise words, but if you could do your best, please. So how did it go, the phone – your mobile phone, was it?---Yes, I, oh, I received the phone call on a mobile phone. I was, I was driving at the time. And I don't recall the, the specifics of the conversation. The only thing I recall, Chief Commissioner, is that he requested that I withdraw from number 1 and number 2 spot, and, and then during the conversation, what I do recall is him saying words to the effect that it's too crowded on, on the ticket. I understand what you're asking, Chief Commissioner, but I don't recall any more than that.

Did he mention the name of anyone in that telephone conversation to explain why he was ringing you?---Not that I recall.

Did he mention anyone by name?---Not that I recall.

So it was quite a short phone call. Were you surprised (not transcribable)?
---Was I surprised?

It was just a short call.---Yes, it was a short call, yes. He asked me if I could do that promptly. If I recall, he asked me on a Thursday before the weekend of the preselection.

10

MR RANKEN: The preselection having taken place on 6 August, 2017. Would that - - -?---I recall the preselection is on the Sunday. I'm not sure if it was the 6th or the 9th but - - -

If you'd accept from me it was 6 August.---Okay, 6th, yeah, sorry, my apologies.

20

So that would make, if that was the Sunday, that would mean it would be about 3 August, 2017, correct?---I recall it was a Thursday that he, that he, so that's the dates.

So if it was in fact 6 August was the date of the preselection event, and that was a Sunday, then the 3rd would be the Thursday?---Correct, sir.

So it's likely that on 3 August, 2017 was the date that you received this call from Mr Tannous in which he requested you to remove your name from the number 2 spot, and the number 1 spot I take it as well, correct?---That's correct.

30

So it wasn't just that the number 2 spot was too crowded. He also wanted you to remove your name from number 1, correct?---That's correct.

What did he say about the number 1 spot?---I don't recall.

THE COMMISSIONER: Did he elaborate on why he was ringing?---No, sir.

40

MR RANKEN: Well, did he elaborate on why it should be you who withdrew from that, from either of those spots as opposed to someone else?
---No.

Well, did he indicate who he had in mind to remain in the number 2 or the number 1 spot?---No. I don't recall. I don't recall, sir.

THE COMMISSIONER: Had you nominated for the four positions to give yourself a maximum chance of getting preselected?---I nominated 1 to 4 and I recall when doing that I was talking to Mr Megna, I recall, at the time, when we were completing the paperwork. And I recall asking which boxes

do I tick or put in, and he said, "Put in all of them and we'll work it out later."

Now, did you say anything to Mr Tannous on this telephone call? Do you recall saying anything in particular to him?---Yes, Chief Commissioner.

What was that?---I told him that I would do that promptly and I, I recall he, he asked me to let him know when I've completed that, Chief Commissioner.

10

And did you do that?---Yes, I did, Chief Commissioner.

And after the call that you say you received from Mr Tannous, did you subsequently speak to anyone about having had the call from him?---No, not that I recall.

MR RANKEN: Did he offer you anything in order for you to agree to withdraw your name from those positions?---No.

20 For example, did he offer you or suggest to you that you would be supported in the number 3 spot if you did withdraw from number 1 and number 2? ---No.

So he wasn't suggesting to you that if you withdraw from number 1 and number 2, I'll make sure you get support for number 3, something along those lines?---No.

No, not at all?---Not that I recall, sir.

30 THE COMMISSIONER: Did you speak to Mr Megna about having received a call from Mr Tannous?---I don't recall, Chief Commissioner.

MR RANKEN: Would you agree that it would seem a little bit odd that you would simply agree, just upon the bare request by Mr Tannous, to do what he suggests as far as removing your name from number 1 and number 2, given that he was not a member of any branch of the Liberal Party that was within the City of Canada Bay local government area?---Leading up to the preselection, there was a, a, an understanding that Mr Megna would be on the number 1 spot, Ms Di Pasqua would be on the number 2 spot, and I'd be
40 on the number 3 spot. So when I received the, the phone call from Mr Tannous to remove myself from the number 1 spot and the number 2 spot – you, you are asking me, was it a surprise or, or - - -

Yes, well - - -?---Well, no.

Mr Tannous was not a member of any branch of the Liberal Party that was within the local government area, correct?---Oh, okay, yeah. Correct, sir.

And he wasn't a person who to your knowledge occupied any official position within the executive of the Liberal Party otherwise, correct?

---That's correct, sir.

The only thing you knew him to be was what they call a Liberal, a party powerbroker, correct?---That's correct, sir.

10 So is this the position then, that given that you had this arrangement with Ms Di Pasqua and Mr Megna, or this understanding as far as you were concerned, that when Mr Tannous called you and suggested that you remove yourself from number 1 and number 2, that you understood that as being part of this arrangement that you had with Ms Di Pasqua and Mr Megna?---That's correct.

And that he was suggesting a way in order to facilitate that arrangement going into the preselection.---That's correct, sir.

20 Well, was that aspect of it discussed with Mr Tannous during your conversation with him on 3 August?---No, sir.

Is that just an assumption that you made on that, on your part?---Correct, sir.

And is that assumption effectively based on your knowledge of him as being a powerbroker and your knowledge that the arrangement between you and Ms Di Pasqua and Mr Megna was 1, 2, and 3?---Correct, sir.

30 And you put those things together in your mind and thought okay, well, this is Mr Tannous giving me advice about how to facilitate the ticket as it were. ---That's correct, sir.

THE COMMISSIONER: And why did you agree to what he was proposing, without perhaps saying, "Well, look, I want to think about this, take some advice, I'll get back to you"?---Chief Commissioner, my, my understanding of Mr Joe Tannous is he's a powerbroker, but also has I would say more understanding or more experience in the preselection process than I had at that time, sir.

40 MR RANKEN: But this was not a contact that you had initiated. This was contact, as far as you were aware at the time, had come out of the blue from Mr Tannous.---That's correct, sir.

So you must have wondered why it was that he was suddenly reaching out to you about this only three or four days prior to the preselection event itself.---Yes.

So did you not ask him anything about that? "Why are you telling me this, why are you asking me to do this?"---No, I don't recall that. Again, I, I, at that time, my experience in preselections, that Mr Tannous is more

experienced in, in that area of how preselections work, and that's – so I took his advice.

THE COMMISSIONER: But it must have occurred to you he is ringing you with some purpose or objective in mind. Is that right? It's pretty obvious.---That's, that's correct, Chief Commissioner.

10 And you say you didn't really seek to obtain from him why you are asking me to find out what his objective was?---Initially when he asked me I, I questioned myself, but it's my understanding that preselections, if you have a number of people on one spot you can, each person will take some votes, Chief Commissioner, so I probably wasn't as experienced in preselections at that time but my experience now with preselections and having been involved in other preselections within the Liberal Party that the fewer people that you have on the ticket, the less the votes are distributed across the candidates, if that makes sense, Chief Commissioner.

20 And since the preselection to this day have you come into information which explained to you what his objective or purpose was in having made that request to you?---My, I would be making an assumption that it would be, if I removed myself from the second spot, that Ms Di Pasqua may have a better chance of winning the spot.

MR RANKEN: That's not something that he said to you during the course of the telephone conversation though?---That's correct, sir.

So you'd already come into an arrangement with Ms Di Pasqua in that regard.---That's correct, sir.

30 So have you ever come into any information as to whether or not anybody had suggested to Mr Tannous to contact you?---No, sir.

Were you aware at the time that Mr Tannous had any relationship with Mr Sidoti?---Yes, sir.

What was your understanding of Mr Tannous's relationship with Mr Sidoti at that time?---At the time I, my understanding is they knew each other through the Liberal Party, sir.

40 Were you aware that Mr Tannous had been Mr Sidoti's campaign manager in 2011?---I wasn't aware, then I wasn't aware that he was the campaign manager of Mr Sidoti's campaign.

And have you subsequently become aware of that prior to me asking you the question now?---Yes, sir.

Were you, were you aware at the time that he had been Mr Sidoti's campaign manager when he first ran for the Burwood Council in 2008?
---No, sir.

Is that something that you've also subsequently come to know or you've only just found out as I've asked you the question in the witness box?
---I've just found out now that you asked me the question, sir.

10 Now, just one moment. Yes, thank you, they're my questions of Dr Yap.

THE COMMISSIONER: Can I ask you whether in more recent times anybody's contacted you to discuss the subject matter of what you've just been asked about, that is the preselection in 2017?---No, sir, not that I can recall.

Have you had any discussions with Mr Sidoti about it?---Yes, sir.

20 When was that?---I haven't, I haven't had much, I didn't have much contact with Mr Sidoti for the last 12 months, but, but I did see him twice this year. Once was at a park opening and then there was another time when I bumped into him at a car park in a supermarket, so, Chief Commissioner.

And on either of those occasions was there any discussion about the 2017 preselection?---Not, not at the, where I bumped into him in the car park at the supermarket, yes, there was a conversation about, at the park, yes, sir.

30 And what was that conversation?---It was about the offering of the position of Ms McCaffrey. I had a conversation with Mr Megna about Ms McCaffrey being on the third spot on the ticket.

We're just dealing with the conversation which you said you had with Mr Sidoti.---Yep. Yep.

Firstly, when was it?---It was in February, sir.

February - - -?---It was early in the year, sir.

This year?---Yes, yes, sir.

40 And, again, where did this take place?---It was at a park in Russell Lea, sir.

Was that a prearranged meeting?---No. No, sir.

Just by coincidence?---It was by, by coincidence. I was there with some other councillors, with the Mayor of the City of Canada Bay Council, a number of residents. It was a, it was an opening of a park.

I see.---Yep.

Do I understand your evidence correctly to say that on that occasion there was some discussion about the 2017 preselection?---Yes, sir.

And what did Mr Sidoti say about that?---I think he recalled, I recalled that he said he was a supporter of Ms McCaffrey.

He was a supporter of - - -?---Ms McCaffrey.

10 In what context did he say that?---He wrote her a reference.

This is February 2021.---He wrote, so he wrote her a reference for the campaign.

Sorry - - -?---Wrote her a reference when, when, for the election for the (not transcribable)

And what was being said in that context, through that, that that statement occurred in? In other words, reconstructing how the conversation went,
20 what did he say?---He said he was a supporter of Ms McCaffrey. Yes, that's - - -

He was what?---He was a supporter of Ms McCaffrey during the - - -

He obviously didn't just come out and make that statement in isolation. ---Correct. Yes, sir.

30 So what was the conversation in which that occurred?---I recall, Chief Commissioner, that I said to Mr Sidoti, I said, "How are you?" and he, he, and then there was some, some conversation. I can't recall the conversation, the specifics of the conversation. And then the conversations were about the upcoming AGMs. So we have AGM, we had an AGM coming up, the branch AGMs, and we had AGMs coming up for the (not transcribable) AGM as well. And Mr Sidoti indicated that the Concord West branch wasn't happy with him.

40 Is that all that you recall that was said?---I, I did talk to, Chief Commissioner, I did talk to Mr Sidoti about the Drummoyne branch AGM and that I was going to run for president again for the Drummoyne branch AGM.

But he said nothing about the 2017 preselection at this meeting?---Context that, that came up was, was, the, the preselection was just, it was just about Ms McCaffrey and the Concord West branch, Chief Commissioner.

What did he say about that?---He, Mr Sidoti said that the Concord West branch is not, he, he thought the Concord West branch isn't happy with him, or unhappy with him, sir.

Was not happy with - - -?---Him. Him.

Him.---Yeah.

Sorry, is that the full extent of your recollection of this conversation?---Yes, sir.

10 Now, in the lead-up to the preselection in 2017, did you have any conversations with Mr Sidoti about it?---Leading up to the 2017 - - -

Yes, by phone or otherwise?---I can't recall any, the, any specific conversation I had with Mr Sidoti leading up to the 2017 - - -

Is it possible that you did but you just simply forgot it?---Well, I don't, I don't recall.

20 And have you spoken to Mr Sidoti either on the phone or otherwise since the preselection about the preselection, or any aspect of it?---Oh, I, I don't, I don't recall, sir.

MR RANKEN: Sorry, if I might just pick up on one aspect of that, Commissioner, going back to the conversation you had with Mr Sidoti at the park in Russell Lea, you said that he said that he didn't think that the Concord West branch was very happy with him. Did he say why he didn't think that they were very happy with him?---No, sir.

30 Or was it somehow linked to what happened to Helen McCaffrey in the preselection in 2017?---He didn't say that, but that's the assumption I made.

So you made a link between him saying that he didn't think that the Concord West branch was very happy with him, you made an assumption in your mind that, oh, that must be because of what happened to Helen McCaffrey in 2017. Is that right?---That's correct, sir.

40 So did you have some understanding that the Concord West branch had particular views about the treatment of Ms McCaffrey in 2017?---Well, my understanding is that some of the members of the Concord West branch weren't happy that Ms McCaffrey didn't get higher up on the ticket at the preselection.

But that somehow was linked to them possibly having an unfavourable view about Mr Sidoti, correct?---That's correct, sir.

So did you have an understanding that Mr Sidoti somehow had some role in Ms McCaffrey not being further up on the ticket?---Well, it's my understanding that Mr Sidoti was supportive of Ms Di Pasqua being on the number 2 ticket (not transcribable)

I didn't ask about Ms Di Pasqua, I was asking about Ms McCaffrey, I thought.---Well, well, if, if, if - - -

That you had some - - -?---My, my assumption is if, if, if Mr Sidoti is supporting Ms Di Pasqua on the number 2 ticket, he's not supporting Ms McCaffrey on the number 2 ticket.

10 Well, but that would still leave open the number 3 ticket for Ms McCaffrey, correct?---Oh, that, that, that's correct, sir.

So did you consider that the reason why, or did you have some understanding that the reason why the Concord West branch was unhappy with Mr Sidoti was because he had had some involvement in Ms McCaffrey not being higher on the ticket?---That's correct, sir.

And what was the basis of that understanding?---That he was supportive of Ms Di Pasqua being on the number 2 ticket.

20 And also supportive of you being on the number 3 ticket?---My, my understanding, my understanding was that he was supportive of me being on the number 3 ticket, that's correct, sir.

So you had an understanding that Mr Sidoti was supportive of Ms Di Pasqua's being 2 and you being 3?---That's correct, sir.

And is that an understanding that you had at the time of the preselection? ---Yes, sir.

30 And did you also have an understanding that Mr Sidoti was supportive of Mr Megna being number 1 on the ticket?---That's correct, sir.

Now, what is or was the basis of your understanding that he, Mr Sidoti, was supportive of that ticket, 1, 2, 3 being Mr Megna, Ms Di Pasqua, and yourself? Was it a conversation you had with Mr Sidoti?---Yeah, I don't recall the, the, the conversations, but that's, that was my understanding.

40 So you might not recall the actual detail of the conversation, but your recollection is that whatever understanding you had was based on conversations you had with Mr Sidoti?

MR NEIL: I object. That's not what he said, Commissioner.

THE COMMISSIONER: Well - - -

MR RANKEN: I'm asking that question. Was that, is that the case? Whilst you don't recall the specific detail of the conversations you had with Mr Sidoti at the time, that is, at the time of the preselection - - -

MR ROBERTSON: No, so I now object, because there's a premise in the question as to the evidence.

THE COMMISSIONER: Yes.

MR RANKEN: Do you recall that you had conversations with Mr Sidoti around the time of the preselection, about the preselection process?

10 MR ROBERTSON: I object. My friend needs to add the word 'whether' to that question.

THE COMMISSIONER: I'm sorry?

MR ROBERTSON: My friend needs to add the word 'whether' to that question, because it still assumes evidence that the witness hasn't given.

MR RANKEN: Do you recall whether you had any conversations with Mr Sidoti around the time of the preselection, about the preselection process?
20 ---Yes, sir.

So you did have conversations with him around the time of the preselection process?---Yes, sir.

Yes, thank you. And is it the case – well, do you recall the detail of any of those conversations?---Yes, sir.

Oh, what were the conversations you had with Mr Sidoti at the time of the preselection process, about the preselection process?---The, the only
30 conversation I can recall is a conversation I had with him, would have been about two weeks before the preselection.

And was that a conversation about this ticket with you as number 3, Ms Di Pasqua number 2, and Mr Megna number 1?---No, it was actually about Ms McCaffrey being on the, on the third spot on the ticket.

THE COMMISSIONER: Being on the number - - -?---Third, number 3, Chief Commissioner.

40 Three.

MR RANKEN: But I thought that was a conversation that you had with Mr Megna.---I also had a conversation with Mr Sidoti with that, sir.

So you had a conversation with Mr Megna about that topic and then you also – was it Mr Megna first and then Mr Sidoti second? Or were they present at the same time?---It was Mr Megna first, and Mr Sidoti second.

But by the time of the preselection, you had an understanding that Mr Sidoti was supportive of a situation where Mr Megna was 1, Ms Di Pasqua was 2, and you were number 3, correct?---My understanding he was supportive of that ticket, correct.

But that was your understanding at the time of the preselection?---Yes, sir.

10 So insofar as you had a conversation with Mr Sidoti about the possibility of Ms McCaffrey being number 3 on the ticket, it wasn't his position – or your understanding was that he was not supportive of such an outcome by the time of the preselection?---That's my understanding, sir.

Was that based on the discussion or conversation you had with Mr Sidoti?
---No, I don't recall, sir.

Well, was it based on a conversation you had with somebody else?---Look, I don't, I don't recall the, the, the, the specifics of the, the conversations.

20 But it must have been a conversation with either Mr Sidoti or someone else that gave you that understanding.---I don't recall if it was with Mr Sidoti or if it was with someone else, sir.

All right, you just - - -

THE COMMISSIONER: Sorry, you don't recall whether it was Mr Sidoti, or - - -?---Or, or someone else, sir, Chief Commissioner.

30 Presumably it would have been somebody associated with the preselection.
---Yes, that's correct, Chief Commissioner.

Are you able to say who it was - - -?---I, it could have been with Mr Megna, it could have been with Ms Di Pasqua, or it could have been with Mr Sidoti. I, I think that's the three that I would, I would say, sir.

MR RANKEN: Or could it have been with Mr Tannous?---No, the, the only conversation I had with Mr Tannous was on that Thursday, sir.

40 So either a conversation with Ms Di Pasqua, Mr Megna, or Mr Sidoti led you to the understanding that as at the preselection, Mr Sidoti was in favour of a ticket involving yourself at number 3, Ms Di Pasqua at number 2, and Mr Megna at number 1?---That's correct, sir.

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

THE COMMISSIONER: Mr Neil, do you have any questions?

MR NEIL: Thank you, Commissioner.

THE COMMISSIONER: I grant leave.

MR NEIL: Mr Yap, I act for Mr John Sidoti. You've given evidence that at a meeting at a park some time ago you've had a discussion with Mr Sidoti. I think you've also given evidence that you've not had much contact with Mr Sidoti for about 12 months. Was the meeting at the park in 2021 or 2020 or 2019, can you remember?---Yes, sir. It was 2021.

10 And you've given evidence to the effect that Mr Sidoti said to you he was a supporter of Ms McCaffrey and he'd written her a reference for the election, is that right?---Yes, sir.

Did he say it was a reference for the preselection in 2017?---I recall it, I recall the words in effect was a reference for the election, sir. Hang on, sir, let me – I can't recall, sir.

20 Was he effectively rejecting some suggestion that might have been circulating in the Concord branch that he had not been supportive of Ms McCaffrey in the 2017 preselection?---From my conversation with Mr Sidoti, the conversation, the words in effect was the he wrote her a reference, and that the number 3 spot was also offered to her.

Were you, at the time of the preselection in 2017, of an understanding that Ms McCaffrey had been offered the number 3 spot but had refused because she wanted a higher spot, number 2?---I don't, Mr Neil, I don't know if she, I don't, I don't know, I didn't hear back from, I didn't – I don't know, sir.

30 But if she had refused, it would leave it open for an alliance, I think you've called it, between you and Mr Megna, he at number 1, and Ms Di Pasqua number 2 and you at number 3, correct?---That's correct, sir. So if she refused, if she didn't want to be on the number 3 spot, it would be 1 Mr Megna, number 2 Ms Di Pasqua, number 3 myself.

Pardon me, Commissioner. And the process of preselection is that each candidate speaks to the preselection panel in the absence of the other candidates, is that right?---Yes, sir.

40 You had been interested in running for the 2017 preselection from early in that year, is that correct?---Yes, sir.

And you'd in fact anticipated that there might be a preselection even before it became clear that the head office was going to call a preselection because of the significant number of applicants, correct?---Yes, sir.

Is that right?---Yes, sir.

So that even before the number of persons had nominated for preselection, you thought that there was a realistic prospect that there would have to be a preselection, is that right?---Yes, sir.

Is that because you understood that morale was increasing in the party and more people are interested in running for preselection for council?---That's correct, sir.

10 And did you start your campaigning for preselection, what, in about February of 2017?---Yes, sir, I reached out to, to, to members during the year to gauge their interest in me running for council, sir.

And the various people you spoke to were people from whom you were obtaining feedback as to whether you should run, correct?---Correct, sir.

And you obtained sufficient positive feedback to help you make a decision to actually run for the preselection, correct?---Yes, sir.

20 And did you actively canvass preselectors throughout the time between the announcement of who the preselectors actually were and the date of the preselection?---Yes, sir.

And did you campaign strongly with those persons?---Yes, sir.

Did you provide them, through the head office with material to go into a dossier about yourself as a candidate?---That's correct, sir.

30 And would it be correct that Mr Sidoti did not approach you to nominate as a candidate?---That's correct, sir.

Yes, thank you, thank you, Commissioner.

THE COMMISSIONER: Yes, thank you. Mr Robertson, do you have anything?

MR ROBERTSON: Chief Commissioner, I would just take instructions on one matter. I'll need less than five minutes. I'll then be in a position to indicate whether I wish to ask any questions.

40 THE COMMISSIONER: Yes, certainly. I'll adjourn.

MR ROBERTSON: I apologise for making that request at this time of the day, but I think I'll be very brief.

THE COMMISSIONER: Yes. All right.

MR RANKEN: Can I inquire through you, Commissioner, whether or not Mr Stanton, who I understand appears in the interests of Mr Tannous, wishes to - - -

THE COMMISSIONER: Yes, Mr Stanton?

MR STANTON: For the record, sir, I haven't formally announced my appearance as Mr Tannous has not been called, although he has been summoned to attend the public hearing, sir. In anticipation of that summons
10 being called upon, I seek leave to appear for him with Ms Quarrell, my instructing solicitor.

THE COMMISSIONER: Yes, I grant leave as sought, Mr Stanton.

MR STANTON: May it please the court. Thank you very much, Commissioner. But I've done it very properly, bearing in mind my learned friend's prescient knowledge of my appearance here today and the need to conclude Mr Yap if at all possible. Thank you, sir.

20 THE COMMISSIONER: There's no other application you want to make, other than the one you have made, is that right?

MR STANTON: Yes, there's no other application, sir.

THE COMMISSIONER: Thank you, I understand.

MR STANTON: Thank you, sir.

30 THE COMMISSIONER: Look, I'll adjourn for a short time so that you can take instructions, Mr Robertson.

MR ROBERTSON: May it please the Commission.

THE COMMISSIONER: Yes.

SHORT ADJOURNMENT

[5.11pm]

40 THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Chief Commissioner, thank you for that indulgence. There's a small aspect of Mr Yap's evidence that I'm concerned that, whilst strictly correct, might be thought to be misleading if not given some further context. I've raised the nature of the topic with my learned friend, Counsel Assisting. As I apprehended, he'll apply to ask some further questions with a view to dealing with that particular issue, and if that's dealt with in that fashion, I have no further questions.

THE COMMISSIONER: Thank you.

MR ROBERTSON: But I do ask my learned friend to clarify that particular issue for the abundance of caution.

THE COMMISSIONER: Yes, thank you, Mr Robertson, for raising that matter.

10 MR RANKEN: Yes, thank you, well, I make that application to ask further questions.

THE COMMISSIONER: Yes, go ahead.

MR RANKEN: Now, Mr Yap, in the examination-in-chief I asked you some questions about the telephone conversation that you had with Mr Tannous on the Thursday before the preselection event, and I think in one of your answers you suggested that was the only conversation that you in fact had with Mr Tannous about the preselection process. But that may not be, in fact, a complete picture, is that the case?---That's correct, sir.

Had you had an earlier telephone conversation with Mr Tannous about the preselection process?---No, I saw Mr Tannous at a Liberal Party function in late June.

And what was the – did you have a conversation with him at that time about the preselection process?---I did, sir.

30 And did he initiate the conversation or did you initiate the conversation about the preselection process?---I, I can't recall who initiated the conversation.

What was the, what were the terms of the conversation, if you can do, as best you can recall in terms of what did he say and what did you say.---I recall he, Mr Tannous said, or clearly, that it was his understanding that there looks like there's going to be a preselection for, for the City of Canada Bay Council, yeah.

40 So, what, he made that comment, did he, at least?---Yes, he did, sir.

“It looks like there will be a preselection process for the City of Canada Bay ticket.”---I think he asked, I think he asked the question to me.

“Is there going to be a preselection process for the City of Canada Bay ticket?” Is that, something along those lines?---That's, yeah, correct, sir.

And was that the extent of the conversation or was there something further? ---Sir, sir, I, I said, “Yes, it looks like it's going to be a preselection,” yes.

Did he provide any suggestions in relation to the preselection process and how you might navigate that, as it were?---Yes, yes, he did, sir.

What did he say?---Words to the effect of “You need to go try and sort it out before it goes to a preselection.”

Did he suggest how you might go and sort it out?---No, sir.

10 Did he suggest that you speak with anybody in particular about, in relation to sorting it out?---No, sir.

Was that the extent of the conversation?---That’s as much as I can recall, sir.

And this Liberal Party function, where was it?---It was at a – well, it was after a Liberal Party function.

So after the Liberal Party function.---It was at a bar, sir.

20 At a bar?---At a bar, yeah.

Where had the Liberal Party function been?---At the, at the convention centre. Sydney Convention Centre.

So a Liberal Party function in late June of 2017 at the Sydney Convention Centre. What was the function?---I recall it was the dinner for the National Liberal Party Convention, sir.

30 And after the convention, proceedings had moved on to a bar in the city, is that the position?---Darling – yes, the bar somewhere - - -

In Darling Harbour?---I can’t recall. It was, I think it was in Darling Harbour, sir.

And you were having a drink, were you, with Mr Tannous at the time?---I was, I was just, there was a number of Liberal Party members there and we were mingling and having drinks, sir.

40 Who were the other persons who were party to this conversation or present during the course of the conversation?---No one, sir.

So it was just between yourself and Mr Tannous?---That’s correct, sir.

And had you been mingling for a while before the topic of preselection came up, the two of you had been talking for a while before it happened or did he approach you and then you had the conversation about the preselection?---I recall, sir, we were standing there and we were having a chat and - - -

About other things, is that right?---I, I think it came up very early in the conversation, sir. The, the, “Hi, how are you?” “I’m well.” And then it may have come up soon after that, the start of the conversation with him, sir.

But in any event, the topic was one that was initiated by Mr Tannous?
---That’s my recollection, sir.

10 And is that the only other communication that you had with Mr Tannous about the preselection process prior to the event on 6 August, 2017.---That’s my recollection.

So there’s just those two communications, is that right?---Yes, that’s what I recall, sir.

And was there any communication with, between you and Mr Tannous after the preselection event on 6 August, 2016, in which you discussed what had occurred?---Not that I recall, sir.

20 Thank you. They’re my only further questions, Commissioner.

THE COMMISSIONER: Yes. Nothing else, Mr Robertson?

MR ROBERTSON: No questions on my part.

THE COMMISSIONER: Thank you.

MR STANTON: Commissioner, could I just ask one question now?

30 THE COMMISSIONER: Sorry, Mr Stanton. I can’t hear you.

MR STANTON: Could I ask one question, please, sir, if I may?

THE COMMISSIONER: What subject matter does it go to?

MR STANTON: It goes to the conversation with Mr Tannous at the Darling Harbour Convention Centre in June 2017.

40 THE COMMISSIONER: Yes, all right. Okay, I grant you leave.

MR STANTON: Mr Yap, I ask for Mr Tannous, obviously. Stanton’s my name. By June 2017, you were in full campaign mode, were you not?
---Yes, yes, sir, I was reaching out to – in terms of full campaign mode, I would say that we were, I was talking to members of the party, correct, about my nomination.

And you’d been actively undertaking that since as early as February 2017. Is that when you started?---That’s correct, sir.

So the preselection process was something that was notorious in terms of common knowledge in the Liberal Party and, in particular, the Canada Bay area?---Can you just rephrase – can you say the question again, please?

The preselection process and its existence or need for that process was fairly notorious, with the Canada Bay council election coming up.

10 MR RANKEN: Can I just ask my friend to clarify the time at which it was said to be - - -

THE COMMISSIONER: Yes.

MR STANTON: June 2017, Mr Yap. That's all I'm interested in.---The preselections, the preselection for the City of Canada Bay and preselections are what I would describe as fluid, dynamic. I'm not sure I accept your characterisation of notorious.

20 Well, no, but in any event it was a reality that you were concerned with, were you not?---Yes, sir.

And his conversation with you didn't take you by surprise?---The, the conversation I had with him in June, I was a little surprised with the conversation.

But apart from that, sir - - -

30 THE COMMISSIONER: And why was that?---Because he, that Mr Tannous was aware that there potentially could be a preselection, Chief Commissioner.

MR STANTON: And if I may, sir, describe your surprise. You didn't ask him why or you didn't ask him anything to indicate why you were surprised?---No, sir.

No. And the conversation would have been no more than a minute or two, would it not, in terms of the preselection subject.---It was a brief conversation, sir.

40 Yes. A minute or two.---Approximately, sir.

Yes, thank you. No, nothing more than that.

THE COMMISSIONER: Thank you.

MR STANTON: Thank you.

THE COMMISSIONER: Mr Ranken, in relation to next week's program, I'm not in a position at the moment to release Mr Yap from his summons, but I am of course prepared to do so once next week unfolds. So, Mr Yap, thank you for your attendance here today. That completes the examination today. The summons that you are under at the moment is still operative. It may or may not be necessary for you to be recalled at some point. It perhaps is unlikely, I think, but I'll be in a position next week to determine that, and the Commission staff will be in touch with you to let you know.

10 ---Thank you, Chief Commissioner.

Thank you. You're excused. You may step down, thanks, Mr Yap.

THE WITNESS STOOD DOWN

[5.32pm]

THE COMMISSIONER: Just one other matter I wanted to raise. On Monday, because it's a fairly full program, I'd like to start earlier, at 9.30, if that's not going to inconvenience anyone, including Counsel. Mr Neil, I know time before 10 o'clock, I still remember, is valuable time. But, however, if you can accommodate an earlier start.

20

MR NEIL: Your Honour, Commissioner, we'll certainly accommodate an earlier start in the circumstances, even though it is inconvenient.

THE COMMISSIONER: All right.

MR ROBERTSON: Can I just raise, Chief Commissioner, I'm not in a position to be here on Monday.

30

THE COMMISSIONER: No, I understand that, Mr Robertson.

MR ROBERTSON: I don't apprehend that I would make any application for leave to cross-examine any of the Monday witnesses. I simply put that on record, that in the event that something arises where I do need to make an application, I won't be in a position to make it on the day on Monday.

THE COMMISSIONER: I'm sure Counsel Assisting would let you know if there's anything that's likely to affect your interest and so that you're not left out.

40

MR ROBERTSON: I'm indebted to the Commission and my learned friend.

THE COMMISSIONER: Thank you. Very well. Well, then, well, Mr Neil, I don't want to put you under any serious difficulty.

MR NEIL: No, it is not serious, Commissioner.

THE COMMISSIONER: All right, then.

MR NEIL: As you'd appreciate, the time in preparation – we'll just bring ourselves forward. And we'd rather have things move, I can say frankly, we'd rather have this matter, if at all possible, finish next week than have to go over.

10 THE COMMISSIONER: That's my intention, to try and finish the hearing next week, yes.

MR NEIL: Thank you.

THE COMMISSIONER: Very well. Well, I'll stand over. We'll resume 9.30 on Monday. Incidentally, I thank the staff and everyone else for staying back.

20 **AT 5.34PM THE MATTER WAS ADJOURNED ACCORDINGLY**
[5.34pm]