

WITNEYPUB01494  
21/04/2021

WITNEY  
pp 01494-01547

PUBLIC  
HEARING

COPYRIGHT

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 WEDNESDAY 21 APRIL, 2021

AT 2.00PM

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

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

THE COMMISSIONER: Mr Ranken.

MR RANKEN: Yes. Thank you, Commissioner. Mr Sidoti, I think just prior to the luncheon adjournment, I had taken you to the recommendations of the council, or the report of the council prepared for the meeting on 20 May, 2014, and particularly the proposed bonus provision that was referred to in that report and the requirements for there to be 1,500 square metres and a frontage of 20 metres, correct?---Yes.

And you agreed with me that, as things stood at that point, 120 Great North Road would not have qualified for that bonus provision?---Yes.

In order for your family to avail itself of such a bonus provision, your parents or yourself or family would need to acquire additional land adjacent to 120 Great North Road or join in with the holders of those other adjoining properties for a development application, is that correct?---In order to get the provision that was proposed but not in stone at that time? Yes

Not in stone at that - - -?---Yes.

But if that proposal was to proceed and progress and then become law, as it were, your family would need to either acquire additional properties or join in with existing landowners of blocks that were adjacent to 120 Great North Road in order to put in a joint development application that could achieve that?---Correct.

And when this was coming before the council in May 2014, or perhaps in the period leading up to that, did you have any conversations with your parents about the significance of what was being proposed by council and how it might impact on 120 Great North Road?---I think we had some discussions but I don't recall the time frame, if it was at that particular time.

Well, what were the discussions that you recall having with your – do I assume it was with your parents or did it include your wife or did it include your sister?---Yeah, my parents.

So just with you and your parents?---Yeah. Mum, Mum more so and then Mum would talk to Dad.

So you and your mother had some conversations about the significance of the kinds of things that were proposing, as far as the changes to the LEP, and how that might impact on 120 Great North Road?---Yeah, you could say that. It was summary of, of, a, a very basic summary of what, a report and what they were looking at and, and the intentions of revitalising the centre and then, yes.

But also in terms of what it meant as far as any ideas your mother might have had as far as developing the site was concerned?---I'm, I'm thinking it's more later than earlier, about particularly at that point. But it may, may be at that point but I'm, I'm thinking it's more after that point.

Because you were aware though that your mother had had longstanding ideas about the possibility of developing the site?---Yes.

10 And, no doubt, the fact of there being proposals to change the LEP for the town centre, which would include changes to that which affected 120 Great North Road would have at least sparked in your mind that this is something that might be relevant to your mother's ideas?---Oh, not at that point. Just explaining what had been happening. I don't think it was a, you know, "Do you want to do this, do you want to do that?" I don't think it was that sort of discussion.

20 But did you explain to her that whilst there was a bonus provision that was being proposed that would allow an increase of floor space ratio to 3:1 and a height of up to eight storeys, that 120 Great North Road wouldn't be able to get that bonus provision?---I don't think it was in, in that, that much detail, but the detail it would have been would have been that if you got more land, there's more potential to, to capitalise on more height. I don't think the specifics of how many storeys or how many metres at that time.

But in the general terms though you'd had a discussion with her?---Oh, yes. Oh, yeah, and she understood that.

30 That there is a bonus provision but unfortunately, Mum, you're not going to be able to get the benefit of that with 120 Great North Road because it's not big enough.---Yes.

40 And so I took you to that part of the report that dealt with the bonus provision, and if we could then go to page 388 which actually has the recommendations, and do you see that it proposes that the council adopt, or "Recommends that the council adopt the Five Dock Town Centre Urban Design Study and endorse the planning proposal for the Five Dock Town Centre, and that the planning proposal be submitted to the Department of Planning and Infrastructure for a Gateway Determination"?---Yes.

And then "Should it proceed through the Gateway that it then be placed on public exhibition together with the draft Development Control Plan and draft Canada Bay Section 94 Development Contributions Plan." Do you see that?---Yes.

And that point it would be a statutory process that it would be part of. Correct?---Correct.

As opposed to the fact that up to this point it had been a non-statutory process. Correct?---Correct.

And then there were two further recommendations that were concerned with effectively empowering the council to approach the owners of property that had to be acquired as part of what was being proposed. Correct?---Yes.

10 Then before the luncheon adjournment when I referred you to the earlier part of the report, there was the reference to the submissions that had been received and that 31 submissions had been received. Do you recall that?  
---Yes.

And do I take it then that when you read this report, you also looked at the kinds of submissions that had been made to council?---I recall looking at submissions but I don't recall if it was at this period or later.

20 And when I'm talking about submissions, I'm talking about the summary of submissions that the council staff had actually prepared.---That was in a tabulated form I think.

Yes. If we perhaps go to page 389.---Yeah, that's, that's the one, yes.

That's the one, yes.---Yes.

So you would have seen it in this form?---Correct.

Because you would have wanted to see what was the view that was being expressed by members of the public about such matters. Correct?---Yes.

30 Now, can I just draw your attention to one or two of those submissions. Firstly, if we could go to page 390. It is very small, so if we could focus in on the table on the bottom half and particularly what is identified as submission number 5.---Yes.

Which is a submission made by Silvana Cassisi of [REDACTED] Waterview Street, Five Dock.---Yes.

You knew Mrs Cassisi.---Yes.

40 She had been your neighbour for some years. Was that correct?---Correct.

When you and your wife had owned [REDACTED] Waterview Street. Correct?  
---Correct.

And you and your wife lived in [REDACTED] Waterview Street from sometime in the 1990s, is that correct, when you purchased it?---For approximately 10 years, yes.

For approximately 10 years. And did you sell it, who did you sell the property?---To Sean Durkin.

You sold the property to Sean Durkin?---Correct.

And prior to selling it to Sean Durkin or during the course of the time that you occupied █ Waterview Street, did you or your wife do any renovations to any part of Waterview Street?---Yes.

10 And those renovations required though, did they not, the front part, the façade at least to be maintained?---No.

But there was some heritage listing over the site at that time?---No.

There was no heritage listing over the site when you were doing your renovations. Is that what you say?---Correct.

Did the heritage listing come at a later point?---It did. I voluntarily kept it because we liked the, the style of it.

20

Are you able to assist us as to when it was that it was recorded in the council's heritage listing?---It was after and I recall receiving something and we weren't too fussed because we thought that was probably going to be our forever home, and we, we sort of renovated it to the, the way we wanted to. So it was, it was quite weird, actually, the way, it's almost as if the council just say I like that, I like that, or pick a number of features and then that's it.

30

So I'll just clarify then with you. The heritage listing occurred at a time when you were still the owner/occupier of the property.---Yes. Probably the second half of that 10-year period.

So when you sold it to Mr Durkin, it was sold with the heritage listing on it. ---Correct.

But your recollection is that at the time you acquired the property it didn't have such a heritage listing.---Yeah, because I recall having the conversation with my wife whether we demolish the whole thing or, or, or – and we opted for the extension/alteration.

40

But the extension/alteration that you did, was that prior to the heritage listing or after?---My understanding was it was after. It had no, it had no heritage listing when we did any renovations to it is my understanding. Sorry. I'm confusing things.

We're speaking a little bit cross purposes.---Sorry.

No, that's quite all right. Your recollection, if I get the sequence correct you could let me know, is you and your wife acquired the property in the nineties.

You made a decision or you were deciding whether or not to knock it down and rebuild it entirely or renovate. Correct?---(No Audible Reply)

You decide that you liked the front part of it. Correct?---(No Audible Reply)

So you opted to do a renovation, and then sometime after doing the renovation you received notice from the council that it was to be listed as a heritage item in the council's heritage listing.---That's to the best of my knowledge, yes.

10 And then you didn't do any further renovations to it after the heritage listing?  
---No, there was only one renovation.

There was only one renovation. And then you sold it on to Mr Durkin.  
---Correct.

In any event, at the time you owned it, Mr and Mrs Cassisi lived at ■  
Waterview Street.---Correct.

20 And so you knew her. And can you see here on page 390, what the council staff has done is to identify the person who's made the submission, identify the particular issues that the submission has raised and then provided a response. Correct?---Yes.

And in this case the submission that Ms Cassisi made was that the study "Should include properties along the western side of Waterview Street between Second Avenue and Barnstaple Road. This would improve the urban design outcomes limited by the study." Correct?---Yes.

30 And you did not have any conversation or discussion with Ms Cassisi about putting the submission that she put in, prior to her putting it in?---No, not to the best of my knowledge, no.

At that stage your family didn't actually have any property in that part of the block, they only had 120 Great North Road. Correct?---So this is in 2014 still?

Well, this is prior to May 2014.---Yes, that's correct.

40 It would appear prior to 7 May, 2014, which is when this document appears to have been prepared. And the response that the council staff have made was that, "The study proposes to extend the B4 mixed-use zone surrounding the central core of the centre," and so there's a reference to the central core of the centre, "These areas would benefit most greatly from the proposed investment and upgrade to the public domain. The core of the Five Dock Town Centre occurs around a natural ridge within the centre and the area north and east of Second Avenue and Waterview Street is considered to be outside this core." That was the view that was being expressed. "Waterview Street north of Second Avenue has a predominantly low-rise residential character with a few

constrained sites on the western side, including a heritage building and existing strata development.” Correct?---Yes.

And as a statement of fact, as at May 2014, it is correct that the Waterview Street side of that block between Second Avenue and Barnstaple Road was predominantly low-rise residential.---The Waterview Street block?

The Waterview Street side.---The northern side or the southern side, the northern - - -

10

North. From Second Avenue up to Barnstaple Road.---And the question was, was it predominantly - - -

Was it predominantly low-rise residential character?---Yes.

And it did have a heritage building, being number 39?---Correct.

And it also did have an existing strata development, which was, I think it was on the corner of – well towards, sorry, towards - - -?---Barnstaple.

20

Near the top of – yes, near Barnstaple Road.---North, yes, correct.

And it goes on to say, “Rezoning land outside this central core to additional land B4 mixed-use would have fewer benefits and is therefore not recommended.” Correct?---Fewer benefits, yes.

So the position that was being taken was comprised of a number of features. Firstly, a view as to where the central core of the town centre was, correct? ---Fred Kelly Place, yes.

30

And how that related to, or how this block related to that central core, because it’s considered that it was outside of that core?---(No Audible Reply)

I’m just talking about what the aspects of the view that was being reported here.---Oh, that’s, yes, that’s the aspects of the view, correct.

And also that, in addition to that, it had a low-rise residential character along that part of Waterview Street and there were the constrained sites?---Yes, yes.

40

So, if you break up the constrained sites into the existing strata development and the heritage listing, four features outside the main core, low-rise residential, constrained site, the heritage listing, constrained site, strata development, correct?---Yes.

And of course on the other side of Waterview Street, that is the eastern side, it was all low-rise residential? On the eastern side of Waterview Street.  
---That, that's the block we just spoke about?

That's the western side of Waterview Street.---I'm sorry, between Barnstaple Road and Waterview Street or between Second Avenue and First Avenue?

10 If we go to page - - -?---Sorry, thank you.

That's okay. If we could just go to page 232.---That's better.

So does that assist you that north is at the top of the page, south is at the bottom of the page, west left, east right. The eastern side of Waterview Street was low-rise residential, correct?---Yes, the whole street was low rise.

Yes, that whole street, and including south of Second Avenue.---Correct.

20 Now, I just want to then go onto two other submissions briefly. Firstly, if we go to page 394, towards the bottom of that page, there's the submission – and we might need to enlarge it – of Mr Paul Antonatos.---Yes.

His address is an address in Abbotsford.---Correct.

Are you able to assist as to whether or not he was in fact a business or property owner within the Five Dock Town Centre or you don't know?---I, I don't know.

30 Do you know whether he owned property? Did you know Mr Antonatos?  
---I did, yes.

And how did you know him?---Paul was an engineer and he did some work for mum and dad 20 years prior.

In any event, he has firstly commended the council and its consultants on an outstanding study, "Particularly the quality and thoroughness of the work." Do you see that?---Yes.

40 And no doubt that is praise that must be well founded given his qualifications as an engineer?---Yes.

And he's gone onto say, "It is my opinion that the FSR should be increased to 3.5:1. This would give all stakeholders an incentive to rebuild and consolidate sites." Do you see that?---(No Audible Reply)

So he was advocating for an FSR of 3.5:1, correct?---Yes.

And the response that has been provided is outlined there. Firstly, obviously in respect of the commendation that he was proposing, and the staff simply noted that, but then referred to the fact that, "The FSR for the Five Dock Town Centre is currently 2.5:1." And then, "When determining an appropriate FSR, it is necessary to balance the various needs. These include the viability of development, design quality, amenity impacts and the relationship of new development with the surrounding context." Now, would you agree with that as a statement of general principle?---Yes.

- 10 "Following consultation with the local community, including business and property owners, as part of the preparation, broad concerns with the quality of development being constructed were revealed," and then it lists a number of issues that were identified. Do you see that?---Yes.

And they were, in broad terms, concerns that were being raised as part of the Urban Design Study process, including that there would be, "Elongated buildings with poor distribution of floor space across sites, resulting in squat buildings that have poor orientation with adjoining sites." Correct?---Yes.

- 20 And that was in fact something that I think had been identified very early on in the study process. Correct?---Correct.

"And poor privacy and overshadowing outcomes due to building orientation, limited provision of open space areas within sites and limited opportunity to provide high quality solar penetration and cross-ventilation into units." Do you see that?---Yes.

- 30 And they are all, would you agree, legitimate concerns that would need to be taken into account?---Most definitely.

It goes on to say, "Urban design analysis showed that improvements could be made to the permitted building envelope that would result in better design outcomes. This new envelope allows taller buildings and provides an alternative way of distributing floor space, thereby improving the overall quality of development outcomes."---Yes.

- 40 "The study therefore recommends that the centre's height limit is increased to five storeys with a 14-metre street wall height." And then it goes on to detail the additional recommendation concerning the bonus clause. See that? ---Yes.

If we go over to the next page. Now, it does refer to the fact that, "Further consultation on the draft clause will occur when the planning proposal is placed on public exhibition," but indicates that, "Feasibility testing undertaken revealed that it is profitable to redevelop to an FSR of 2.5:1 whilst still achieving a reasonable market value." And would you agree that at least as at 7 May, 2014, you yourself had no information that would contradict

what's recorded there?---I, I think it, I'm not here nor there. I think that's, that's the experts' summary.

Well, this is the council staff simply recording - - -?---Oh, sorry, the - - -

- - - in this document what they were aware of - - -?---From the report.

- - - as a result of HillPDA having done the feasibility analysis.---I'd agree with that.

10

“And all options tested achieved benchmark project internal rate of return, or IRR, of 18%. This is reinforced by various consents granted and constructed in recent years.” See that?---Yeah, because that was all tested, my understanding, in the whole town centre.

Yes.---Yes.

And that's a sound proposition to have put in response to the submission that Mr Antonatos had made, all of those - - -?---It sounds comprehensive.

20

Now, moving then briefly to a further submission at page 396, about midway down the page you can see there's a submission of Mr Joe di Giacomo.---Yes.

And it appears to have been one that was submitted as the President of the Five Dock Chamber of Commerce, as opposed to as a simple resident.---Yes.

30

And he has indicated that, “The report offers some great ideas and opportunities, especially at the top end of Five Dock, Henry Street to Queens Road. Appropriate incentives, such as an increase in FSR to 3.5:1, to make development viable should be considered.” Do you see that?---I do.

So that was reiterating in a sense the submission that Mr Antonatos made. Correct?---It would seem that way, yes.

And if one goes to the response, can you see in response to that submission, which is to the council staff, council staff have said, “See 17(2) response above.”---Yes.

40

And that's a reference back to the response to Mr Antonatos's point 2. ---Okay.

If you'd like me to go back to - - -?---No, no, I believe you, yes.

Mr Antonatos was submission number 17 and it was number 2. ---Similar submission, there's probably a similar answer.

Yes. He's effectively saying - - -?---The same thing

Without having to reiterate it.---Yes.

And then if we could go to page 397. I want to draw your attention to number 21, which is Vice-President Glen Haron, although not submitted as the vice-president, but that's the same Glen Haron you would agree?

---Yeah. He owned that property.

At 181 First Avenue, Five Dock.---Correct.

10 And he commends ARUP on “the high standard of their report, its detail and the way the issues are considered is comprehensive. The key issues revolve around the commercial realities of redevelopment, timing, yield and tenure. The feedback we have received includes FSR higher than 2.5:1 and close to 3:1. Heights need to be 19 metres to allow six or seven levels on smaller sites and up to 25 metres on larger sites.” Do you see that?---Wow, yes.

And the response to that submission was that “there was strong community support to retain a sense of scale in the centre that relates to the surrounding context and maintains a human scale.” Do you see that?---(No Audible  
20 Reply)

So that, I want to suggest to you, is a reference to community concern that there might be too much height in the centre. Correct?---(No Audible Reply)

And the idea of wanting to maintain the village feel as far as possible.  
---Okay. Yes.

30 “An objective of the study was to balance the existing character and amenity of the area with sufficient development potential to allow investment. It is recommended that flexibility be permitted for larger sites where a site specific response is likely to generate a better outcome.” And then it refers to the bonus provision. So the response to Mr Haron is we understand that, we've heard that, but there is a need to balance that with the other strong view in the community about trying to retain any existing - - ?---Character.

- - - character, but still recognising that, on larger sites where it may be appropriate, you could get a greater height by the bonus provision.---Yes.

40 And would you agree that that was a sound approach to the issue of balancing those possibly competing interests?---Yes.

And as a result there was a planning proposal that sought to give effect to all of those matters.---Yes.

So you said that you may have met with the councillors prior to the meeting on 20 May, 2014 but separately to the meeting that you had arranged for

them to attend with the representatives of the Chamber of Commerce.  
Correct?---The correspondence suggests that.

Yes.---Yes.

And if I might take you to that email, an email of 17 May, 2014 at page 375.  
Now, it's sent on Saturday, 17 May, so this is the Saturday before the  
meeting on the 20<sup>th</sup>. Correct?---Before the meeting of the 20<sup>th</sup>, yes.

10 Of May. And it would have been sent at a time that was after the council  
report that I've just taken you through was available to the public including  
yourself. Correct?---Yes.

But it would appear that you refer in the opening lines, "Dear Councillors, I  
urge you strongly to take into consideration what we spoke about at our  
meeting." Do you see that?---Yes.

20 So that would seem to refer to some discussion that you had with the  
councillors about the Five Dock Town Centre.---And I think that relates to  
the next paragraph.

I'm coming to that.---Sorry.

I'll come to that in due course but I just want to make it clear that you'd had  
a meeting with the councillors to discuss the Five Dock Town Centre?  
---Yes.

30 You don't recall how it was that you came to arrange the meeting?---I'm not  
sure if it was done via email maybe or, I'm not sure.

THE COMMISSIONER: Where was the meeting?---It would have been in  
my office.

MR RANKEN: Now, this email is addressed to Mr Megna, Ms Cestar and  
Ms McCaffrey. Firstly, what was the purpose of including Mr Megna?---It  
should have included all of them. Oh, there's no particular reason. But I  
wouldn't know he had it.

40 Why include Mr Megna in circumstances where he couldn't vote on the  
matter?---I probably shouldn't have. I don't, I don't – it wasn't intentional  
or, it should have been Tanveer, Helen and Mirjana.

Had he attended the meeting that you'd had with the councillors?---No. I  
recall he attended the one for the Chamber of Commerce.

THE COMMISSIONER: Sorry, I didn't hear that.---Sorry. I recall that  
Tanveer attended the one with the Chamber of Commerce in my conference  
room. I don't recall him attending this, I don't know.

MR RANKEN: Sorry, I wasn't precise enough. I meant Mr Megna, did Mr Megna attend this meeting that you'd referred to in this email?---I, I don't, I, I never recall Michael attending a meeting. I, I, because I think, my understanding was, if there was a conflict, that was up to him to disclose that, not me, but I never recall Michael being at a meeting that I was present at.

10 But knowing that he couldn't decide or even be involved in discussions about the matter, why would you include him at all?---Well, that, that's a good point and, and in hindsight I shouldn't, full stop.

Well, there must have been a reason why you included him. You must have wanted to keep him informed for some reason or other?---No. I don't, don't think there was a reason behind it, thinking about it. Maybe clumsy, but he's a smart enough person to know when he should or shouldn't be in a room.

20 In one sense, he was the most senior of the councillors, was he not?---I think he, Michael and Helen had been on for a similar amount of time and more senior. I don't, I think equally, one of the most.

He was the one that you had the closet relationship with?---Well, I had a good relationship with Michael, yes. Closest? Oh, yeah, yeah, I could agree with that.

And he was the one who you considered to be the reliable?---Oh, I think they're all reliable. I think he was the most responsive, I would say.

30 But is there any reason why you might need him to be responsive to issues relating to Five Dock?---Five Dock, no.

In any event, when we go onto look at the content of this email, do you see that you say, "Making 1,500 square metres a requirement in order to achieve 20 metres in the town centre is a pipedream"?---I see that.

You said that, yes, and you meant that?---This is my Jerry Maguire email.

40 And that represented your view that you shouldn't require there to be – well, can I ask this? When you refer to 20 metres, are you referring to 1,500 square metres to achieve a frontage of 20 metres or a height of 20 metres? ---No, my understanding is that was proposed, 1,500 square metres and a 20-metre frontage. So if you had 1,500 square metres and an 18-metre frontage, it, it wouldn't work, is my understanding there. That's what I meant in that.

That's what I wanted to understand. The reference to 20 metres is not a

reference to 20 metres in height, but it's a reference to the fact that you - - -  
?---Width.

1,500 square metres would not necessarily result in a 20 metres frontage.  
So the two requirements were an impediment as you saw it?---Correct.  
Because you could have 1,500 square metres on a skinnier lot, yes.

10 But what you're attacking, in a sense, was each of the requirements that  
underpinned the bonus provision?---No. That, that's very similar to what  
Glen Haron was saying.

Never mind what Glen Haron's saying, I'm just talking about what you were  
attacking with this statement, saying that making 1,500 square metres a  
requirement in order to achieve 20 metres in the town centre is a pipedream -  
- -?---Unrealistic.

20 - - - was attacking both of the requirements that needed to be established  
before someone could get the bonus provision. Correct?---I wouldn't say  
attacking, I, I, I wouldn't say that at all.

Well, it was criticising both of those.---It's unrealistic, would be the wording  
I'd use today.

And in that sense, to that extent, you were criticising those two prerequisites.  
---Well, that was the feedback I was receiving.

30 I'm not saying whether or not it represents the feedback, it represented your  
views. Correct?---No, they were the views that were, were, were, were  
coming across to me as a local member.

Well, you don't say there, the feedback that I'm receiving is that 1,500 square  
metres, making 1,500 square metres a requirement in order to achieve 20  
metres in the town centre is a pipedream, you're simply saying that, making  
that as a statement. Correct?---Well, I'm not going to make a statement  
without anything, feedback coming back to me as an MP.

40 Well, did you, independently of any feedback that you had received from  
anyone, did you have a view as to whether or not 1,500 square metres and 20  
metres was a pipedream?---Independently I think it's unrealistic.

So independently you had that view in any event.---I'd had, I'd had that view,  
but it wasn't stated as my view, it was a view that, that had come back to me  
via property owners, remembering a lot of small property owners had come  
to me, shop owners.

What you go on to say is, you refer to, "Again history has shown this, it may  
on some sites allow this where you are encouraging very large or very small  
buildings to occur in an ad hoc fashion."---Yes.

So you were recognising that it could happen, you could get it.---On the council sites, yes.

But you were suggesting though that it was more unlikely to occur. Is that right?---On any other ones other than the large sites that the council owned.

10 Then you go on to say, “What we spoke about was increasing the glass contents, not the size of the glass.” Now, that comment, increasing the glass contents, not the size of the glass, was again another way of expressing this idea that you shouldn’t make it a requirement to have a particular area or a particular frontage before you could qualify for the bonus floor space ratio. ---That related to when a meeting took place and some diagrams were shown, very simple diagrams, to show some situations where a block of a certain allotment with a 2.5 floor space ratio wouldn’t achieve any potential heights that were proposed.

20 So just getting back to my question, but perhaps just picking up on something you’ve just said, at this meeting with the councillors there were some drawings shown.---Yes.

Some rough drawings or - - -?---Just, yeah.

And was it you who showed the rough drawings, do you - - -?---I recall, yes.

So you kind of sketched it out for the council, as it were.---Yes, because they didn’t understand floor space, how it worked.

30 And what you did it, you were trying to demonstrate that, look, you shouldn’t have to increase the area in order to get the height, you should just increase the floor space ratio and then you’ll be able to get the height. Is that the position?---No. What I showed them was, on the current FSR, that it doesn’t even reach the height limits that are in place, let alone any additional height limits that are proposed.

40 So what you’re wanting to say though, the point you were trying to impress upon them was that you shouldn’t require there to be any minimum area or frontage requirement before a particular site could qualify for a floor space ratio of 3:1.---I don’t think I was impressing on that.

But that’s what all of this is directed to.---No, it’s actually not. What it’s directed to is that the current FSR and the current heights that have been agreed on by the mayor and agreed on by the reports were saying that they were already substantial at 2.5, but there had been no stimulation to the town centre, and hence the heights in the town centre weren’t even reached before anything was even changed.

Well, let's go along with the email. "The FSR is proposed to increase from 2.5 to 3.0:1 only on large sites which will unlikely be amalgamated."  
Correct?---Yes.

So what you're doing is you're criticising there the notion that you should only have the 3:1 floor space ratio on large sites.---It can be viewed that way, yes.

10 Well, let's go along. The next point. "All the shopkeepers I have spoken to at worst want the current proposal but with no minimum width requirement and no minimum lot size."---Correct.

And that's exactly the point that you were trying to impress upon the councillors. Correct?---No. That was the feedback from all the shopkeepers with the point you just made to pass on to the councillors, correct.

But that's the point you were trying to impress upon the councillors through all of this email.---For the representation, yes.

20 And a view that you held independently as well. Correct?---No, all the shopkeepers.

I understand that you say all the shopkeepers.---Yes.

You've marshalled the reference to the shopkeepers in support of your argument but it was an argument that you independently held anyway.---I, I'd agree with that.

30 You'd agree with that?---Yes.

And so your purpose of referring to the shopkeepers that you had spoken to was what?---From the Chamber of Commerce plus any shopkeepers and other people that I've known that had come to me in my time as the MP.

So you were writing this email, were you, in your capacity as the MP?  
---Well, as a Liberal colleague to Liberal colleagues.

40 But specifically as being the Member of Parliament for the seat of Drummoyne?---(No Audible Reply)

THE COMMISSIONER: Sorry, did you answer that?---I'm just thinking about it. I wasn't thinking whether I was doing it for, I thought that was stating the blind obvious, all the shopkeepers.

MR RANKEN: What do you mean by that, stating the blind obvious? Do you mean that it was obvious that you were making these representations on behalf of the shopkeepers in your capacity as the Member for Drummoyne?  
---That's what I would have thought.

So that was your intention then to send this email in your capacity as the Member for Drummoyne?---Mmm.

And you appreciated though that the position that you were advocating for was one that, if it was successful – that is if there was a removal of the prerequisites for a minimum area or width requirement – that that would be something that would be favourable to your family’s property interests?

10 MR NEIL: Well, Commissioner, could I just object. The question should be minimum area and width requirement. It’s not “or”.

MR RANKEN: And width, well, and width requirement.

THE COMMISSIONER: I thought he said “and”. There are two requirements. That’s obvious.

MR RANKEN: Yes. The removal of those two requirements would be advantageous to your family’s property interests.---I, I wasn’t even thinking  
20 about any of that. I’m passing on feedback.

THE COMMISSIONER: No, no, no, please. You weren’t asked what you were thinking about it then. You are now being asked a question looking at it that the result would be it would favour the family properties, would it not, that is if those two requirements were changed?---If they were changed – sorry, what’s the height proposed here?

MR RANKEN: I was directing your attention to the fact that these were the two prerequisites in order for any sites within the town centre to get the  
30 bonus provision.---Oh, the bonus provision. Yes.

And what I directed your attention to was the fact that if the position that seems to be advanced in this email was ultimately accepted in part, that is to remove any requirement for a minimum width and area before the bonus provision could be obtained, that would be advantageous to your family’s property interests?---Yeah. If, if, if, if. Yes.

If, yes.---Yes.

40 And you don’t make it clear in this email to the councillors that your family would benefit from such an outcome?---Well, I wasn’t thinking about it. This whole letter is in response to - - -

THE COMMISSIONER: No, please. Just deal with the question.---Well, it says about shopping centre, it says about Five Dock Bowling Club, it says about a number of things and you’ve just highlighted one point as if that’s what I’m pushing. I’m just regurgitating what had happened at the Chamber of Commerce and the views.

I think what's being put to you is that the meeting with the councillors to which you're now being asked questions, nothing was said by you to the councillors of your family properties being advantaged if those two requirements, the 1,500 square metres and 20 metres requirement, was removed.---Oh, I said yes to that.

No, you didn't say anything to them about that matter?---Sorry? To my parents?

10

MR RANKEN: No, to the councillors.

THE COMMISSIONER: No. Please listen to the question then we don't have to keep repeating questions. I'll put it again, however. In relation to the meeting with the councillors and yourself to which this email relates, is it the position that you did not make any reference in the course of that meeting to the fact that if the two requirements for the bonus, the 1,500 square metres and the 20-metre requirement was removed, that would be to advantage your family or your family properties? It's being put you didn't say anything to them about that matter. Is that right?---I, I don't recall because I, I'm only assuming, because I'm not sure if this is the meeting that went ahead.

20

Well, there's no mention in the email to suggest that you did mention that in this email. So is it the position that, more likely than not, you wouldn't have said anything to them about the removal of the two prerequisites and the advantage that would flow from that to the family properties in the meeting?---Well, it would have been the family property, not properties.

30 Yes. What's the answer to my question? Is it more likely than not that you didn't go into that aspect with them, the one I have just mentioned?---Well, I thought it was a foregone conclusion, everybody knew my parents owned 120 Great North Road.

Now perhaps you might just answer my question, which I have now put twice. I don't want to have to do it a third time. You remember the question?---Yes.

40 Right. Could you answer it, please? Is it more likely than not that you didn't make any reference to that topic I have just outlined to the councillors when you met with them pursuant to this email?---I, I, I - - -

To which this email refers.---I don't recall, Commissioner.

No. Is it more likely than not that you did not?---I, I don't know.

You don't know?---No. I don't recall that at all.

Do you think you should have if you didn't?---I don't know.

You don't know?---No.

Let's assume for the moment that you failed to make mention of that topic, which I have now put in the last two or three questions. Do you think you should have in retrospect have mentioned that thing?---It's a hypothetical. I don't know.

10 You don't know?---No.

You haven't a view one way or the other whether it was a matter that you should have made disclosure about to them, that the removal of those two requirements would benefit your family property holdings in the Waterview Street area?---They didn't own property in the Waterview Street area.

Well, you know what I'm talking about.---120 Great - - -

20 120, yes, 2 Second Avenue.---But, Commissioner, you've seen the evidence  
- - -

Please don't.---No one denies the ownership of the 120 - - -

I said to you before. No, please, Mr Sidoti. I'm saying this for your own advantage.

MR NEIL: Commissioner, could I also - - -

30 THE COMMISSIONER: You are not – no, wait a minute, Mr Neil. Please  
don't interrupt me.

MR NEIL: I'm sorry. I thought you had finished.

40 THE COMMISSIONER: I am addressing the witness. Please do not  
interrupt me. I said to you before, and you've probably heard me say it to  
other witnesses, you are not at liberty to make statements. You are here to  
attend to questions put, whether by Counsel Assisting, whether by myself,  
whether by Mr Neil or anyone else. You are to listen to the point of the  
question and answer the question directly and not avoid the question or talk  
around the question. You answer it. Now, I think you understand it, but I  
just want to make sure that you do understand. Do you?---I do.

Will you do that? Will you assist this Commission by doing that?---Yes.

Good. Now, Mr Neil?

MR NEIL: To the extent that any question included 2 Second Avenue, that should be excluded because, as I understand it, it wasn't purchased until October 2014.

THE COMMISSIONER: I don't think there's any risk of misunderstanding what properties were talking about. We're talking about the Sidoti family properties, whether they be 2, 4 or 5 at any one time. We're always talking about the properties owned by them, 120 and any neighbouring or adjacent properties. But at this point in time, 2014, I accept that the other properties had not yet been purchased. There was one in 2015 and 2017, I think that's the point you're making?

MR NEIL: And as of the date of this email, 2 Second Avenue had not yet been purchased.

THE COMMISSIONER: Is that the case, is it?

MR RANKEN: Yes, that's so.

THE COMMISSIONER: Thank you. Thank you for pointing that out. That was my error. So, just let me put it then in this form, Mr Sidoti. You don't recall whether you made mention to the councillors in the meeting, which you had, to which this email refers, to the fact that removal of those two prerequisites, the 1,500 square metres and the 20 metres, would advantage your parent's property?---Correct.

And if it, on the evidence, were the case, that you did not, then I'm asking you do you have a view as to whether you should have or you should have just said nothing about it?---Well, the reason I wouldn't have is because it was already known that 120 was owned by my parents.

So, what's the answer to my question? You would not have - - -?---Well, no, I would. I would have been stating the blind obvious.

So you take the view you did not need to make express reference to it, is that right, in this meeting?---No, because I wasn't making reference to that, I was making reference to the whole town centre.

Yes. Just on another matter. Looking at this email and the information that's contained in it, do I understand what you were setting out to do was to seek to provide these three councillors, or to provide the Liberal councillors who you met with, with information that you thought was relevant to the matters they would need to take into account at the next forthcoming meeting of the council, which was programmed for 20 May, 2014?---Could we bring the email back up, please?

Sorry?---If could we just have the email back up, that would be great. So that whole email is with reference to what took place at the Chamber of

Commerce meeting and forwarded on to comments from, feedback to the, to the three Liberal councillors.

Now, would you just answer my question having made that statement? Would you just proceed to answer my question? Were you seeking to provide what you considered to be relevant information for them to take into account and consider before the next time the matter came up before council, which the record shows happened to be on 20 May, 2014?---I, I don't, can't, can't answer that. I don't know. I'm not sure.

10

Well, it's a very simple question. I'll put it a second time. Were you endeavouring in this email to convey information – that is, transmit information to them – concerning the Town Centre Plan Study for them to consider?---This is feedback that was passed on, no.

Please, please.---No. The answer's no.

20 You were not seeking to provide them with information you thought was relevant to consider in relation to the Town Centre Plan?---No, I agree with that comment. With, with, as well as other - - -

So were you or were you not seeking to provide them with information which you thought was relevant for them to consider in relation to the Town Centre Plan? The answer to that must surely be yes or no. "I was trying to provide relevant information" or "I was not trying to provide information to them." Which is it?---Yes, yes.

Which is it? It can't be both.---No, it's yes. Yes.

30 Yes, you were?---Yes, that's - - -

Yes, I would have thought that was the obvious answer, with respect.---Yes.

And you're also, in addition to providing information, trying to provide them with, well, the best advice on those matters you thought you could give, is that fair?---No.

40 Well, you were providing advice, though, weren't you?---I was providing feedback.

Yes, I know the feedback, but with that feedback you were urging them to take a certain position. You were trying to advise them about these matters which you thought were important, is that right?---No. No. They're independent thinkers.

But if you read the email – and again we come back now to this question we've earlier struggled with today as to whether documents mean what they say. When you say, "I urge you strongly to take into consideration," isn't

one way of looking at that is to say, look, I think it's important you take into account these matters? You're advising them to, not just to ignore them, but to strongly take them into consideration.---Yes, please deliver the vision of the shopkeepers. Yes.

I thought it was obvious but I thought I'd check it. So what you were seeking to do is to provide them with information and providing them with advice in relation to that information, is that right? Is that a fair summary?  
---I'd say providing them with information and feedback from the  
10 community.

Yes, and advice in relation to thereto, isn't that fair? I thought that would be – if you look at the words.---But it's not my advice. It's, it's the - - -

Well, it doesn't matter - - -?---It's the feedback.

Doesn't matter whose feedback it is. You are, in addition to the feedback, giving them some advice, surely. When you use the words "I urge you strongly to take into consideration what we spoke about at the meeting,"  
20 then you go on later to say, "What we spoke about was increasing the glass contents," et cetera. Then you say, "All the shopkeepers I have spoken to," et cetera. And then you, third-last paragraph you say, "Please deliver the vision of the shopkeepers." You were advising them as to what to do or how to act, were you not?---Yes, in the interests of the community.

All right. That's all I was trying to get to. So it was really, this email is a combination of you providing feedback, providing information and providing advice to the councillors.---Yes.

30 And in doing that – that is to provide information and advice to the councillors as set out in this email – you were seeking to persuade them, weren't you, to the point of supporting the vision of the shopkeepers?  
---Well, that's their choice. That's - - -

No, I appreciate that, but you thought it was important enough to raise these matters and give this advice to persuade them to act as you suggest in the email.---I wouldn't say persuade.

40 Well - - -?---"Good luck in your deliberation" doesn't mean persuade. It means good luck in your independent outcome.

Let's come back to the plain meaning of words again. When you say, "Please deliver the vision of the shopkeepers in the interests of the community, not the mayor's distorted views," you were seeking to persuade or, if you want to use an alternative word, influence the councillors as to what to do when this matter next comes before council. Is that not a fair construction?---No.

Well, you were seeking to influence them, weren't you?---No.

Well, what's the meaning of the phrase, "I strongly urge you to take into consideration" at the top of the letter and, in the third-last paragraph, "Please deliver the vision of the shopkeepers in the interests of the community, not the mayor's distorted views"? Surely isn't that persuasive language?---It's a whole page - - -

10 Feel free to say no if you want to but it's persuasive language, isn't it?---If you don't read it in context, yes, it could be persuasive.

Well, it is persuasive, isn't it?---I don't think so. When you read the rest of it, it doesn't.

Why's that?---Because it says, "Good luck in your deliberations." That means, good luck in what you decide. It's not saying you must do this or you must do that.

20 Sometimes you can persuade somebody by encouraging them to do something, right?---Yes, in a word, yes.

But sometimes you can persuade people to do something by threatening them, is that right?---I've never threatened anybody.

Well, have a look at that second-last paragraph, "I can assure you there have already been a number of shopkeepers lining up to run to council next election if the proposal goes ahead in its current form, and quite frankly I understand where they are coming from."---Correct.

30 Do you think that was a subtle hint or perhaps even more – a threat to them to deliver the vision that you speak of?---No, that's consistent with Helen McCaffrey's feedback in other areas, like Breakfast Point and Rhodes, that many people on many different issues were preparing to run as Independents at the next election.

40 Mr Sidoti, I'll just put this to you. Given that you are now speaking to this Commission on oath and that you are, as you say you will, intent on assisting this Commission, would you conceded that that paragraph I've just read to you, the second-last paragraph, which mentions, "I can assure that there have already been a number of shopkeepers lining up to run for council," was, if not a threat, it was a very persuasive statement to get them to fall into line with what your views were when they next came before council.---No, not at all.

Not persuasion?---Not at all.

Not influence?---Not at all.

Not direction?---Not at all.

And not a threat?---Absolutely not.

MR RANKEN: What was the relevance of including that fact in this email?---The relevance?

10 What was the relevance if it was not to provide them with some warning that their positions might be under threat if they did not deliver the vision of the shopkeepers?---No, that's not what that says.

Well, "Please deliver the vision of the shopkeepers in the interests of the community, not the mayor's distorted views. I can assure you there have already been a number of shopkeepers lining up to run for council next election if the proposal goes ahead in its current form, and quite frankly I understand where they're coming from," correct?---Yes.

So it was a threat?---No.

20 It was a threat that there was - - -?---Absolutely not.

It was a threat - - -?---It's a concern.

30 - - - if the councillors did not make the changes that you were advocating for in this email, that there would be shopkeepers who might challenge their position on the council.---Not correct at all. It's a concern from one colleague to another, and the same concern was expressed by Helen McCaffrey in the evidence that she had similar, heard similar things in two other areas alone. History has shown that every time an Independent runs it's at the detriment of a Liberal.

So when you refer to the vision of the shopkeepers, the vision of the shopkeepers you were referring to, is that which you have referred to above where you say, "All the shopkeepers I have spoken to at worst want the current proposal but with no minimum width requirement and no minimum lot size," correct?---Correct. All the smaller shopkeepers - - -

That correct?---Correct.

40 Yes. That's the vision of the shopkeepers that you were referring to? ---Yes.

A vision of the shopkeepers that would happen to also benefit your family's property interests?---I wasn't speaking on behalf of my - I'm speaking on - - -

No, but you accept that it would also benefit your family's property? ---Potentially, yes.

But you say you were pushing only for the vision of the shopkeepers as you've outlined there?---In there?

Yes.---Yes. Small shopkeepers, yes.

So, you have urged them strongly to consider what you discussed in the meeting which was about the removal of the minimum width and area requirement, correct?---I put that to them, yes.

10

So you've urged them to do that, you've provided further arguments in this email as to why that position should be supported. Correct?---Yes.

You've thrown your support behind this vision of the shopkeepers. Correct?---I'm sympathetic to it, yes.

Well, you've shown you're more than sympathetic, you've thrown your support behind them.---No. This is, this is an email – no, I don't, I don't agree with your question.

20

Well, you've asked them to, "Please deliver the vision of the shopkeepers." You haven't said, please consider what the shopkeepers have said, you've said, "Please deliver the vision of the shopkeepers." Correct?---It says, "Please strongly take into consideration."

No, "Please deliver the vision of the shopkeepers." Am I reading that wrongly?---So, sorry, where are you cherry-picking from now?

30

I've taken you through this email step by step.---Sure, but you're, you're, you – you're taking the lines that suit your argument. You're not looking at the letter holistically. I've explained my position and - - -

The only line, Mr Sidoti, the only line - - -?---You're trying to get me to answer a question that you want that's not the truth.

Well, could you answer my question?---I've put my hand on the Bible.

40

Could you just answer my question. The only line that you have identified that you say puts this in context is the final line where you say, "Good luck in your deliberations."

MR NEIL: I object. He, he, he specifically also referred to the first line.

THE COMMISSIONER: Sorry, Mr Neil. Say that again.

MR NEIL: My friend said the only line he calls in aid is the last line but the witness had said that he refers to the first line.

MR RANKEN: Well, yes, we'll take it from the top with the first line.  
---And you've missed the fourth and fifth paragraph.

"I urge you strongly to take into consideration what we spoke about at our meeting." Correct?---Yes.

That is a statement that is seeking to persuade them to take into consideration that which you spoke about.---To consider, yes.

10 And then you outline the details of that, which relates to the 1,500 square metre requirement and the 20 metre requirement. Correct?---Yes.

And you make the case and the point that it is a pipedream. Correct?---(No Audible Reply)

Do you see the reference to pipedream?---Oh, yes, yep.

Again, so you are bringing in for criticism that requirement.---I'm stating a fact, yes.

20

And that is you are critical of that requirement.---Well, I'm stating a fact.

And then you go on to provide some further information about history, an assertion that history has shown this.---Yes.

And you have made a reference to the fact that it may on some sites allow this where you are encouraging very large or very small buildings to occur in an ad-hoc fashion. And then you go on to develop your argument further, but to say, "What we spoke about was increasing the glass contents, not the size of the glass."---Yes.

30

"The FSR is proposed to increase from 2.5 to 3:1 only on large sites which will unlikely be amalgamated." Correct?---Yes.

Again what you're doing is further developing the argument against the minimum area and width requirement, because you're suggesting that sites will be unlikely to amalgamate.---Yes.

40 Yes. And then you go on to say that all the shopkeepers that you have spoken to, "At worst want the current proposal but with no minimum width requirement and no minimum lot size." That's the vision of the shopkeepers.---Correct.

And you're saying that's what they're telling me, that's the vision.  
---Correct.

And then you go on to say, "The reason is very simple, if you haven't got larger blocks you can't get the turning circles for parking et cetera."---Yes.

“Stating the blind obvious complicates the process.” Correct?---Yes.

Further developing the argument in favour of the vision of the shopkeepers. Correct?---Yes.

And you agreed with that vision of the shopkeepers. Correct?---Yes.

10 Yes. So you’re supporting that vision as you make the case to the councillors.---Keep going.

And then you go on to say, “The fallacy that you can’t have another supermarket is a joke. It’s called a restriction of trade. If you have the land area and the zoning you can have another supermarket, but this doesn’t support the mayor’s vision.”---Correct.

20 And that has nothing to do with the floor space ratio.---No, that has to do for the vision of the centre. So remember that I told you about that block of units that went down there? It was commercial, it should have been commercial.

So is the point that you want to make - - -?---Competition.

- - - the reference to the vision of the shopkeepers is more than simply the removal of the width requirement and the area requirement?---Yes.

30 But it’s this other addition as well. Is that what you’re saying?---This was, yeah, this was brought up in a number of submissions, I think 10, about having a second supermarket, because there wasn’t even a Coles or Woolworths in the Five Dock Town Centre.

And what was it in the planning proposal that prevented the possibility of there being a second supermarket?---Because council, council rezoned it residential so you couldn’t put commercial.

Which area was rezoned residential?---The site referred to at the northern end of Great North Road, where Lyons Road was.

40 So what you’re talking about, are you not, is the area that was 186 Great North Road.---Correct.

That is actually outside of the area of the Town Centre Study.---Outside of the area of the town centre with higher density than inside the town centre, correct.

Outside the area that was part of the Town Centre Study. Completely outside of it.---Yes.

That's an entirely separate issue.---Yes, but was brought up at the Chamber of Commerce, so it's totally relevant to this, to this email.

It had absolutely nothing to do with the planning proposals going before the council in respect of the Urban Design Study.---So if you go to the next paragraph, it will explain it very clearly.

No, but stay with me.---Yes.

10 It had nothing to do with the planning proposal that was going before council as part of the design study, correct?---Yes. Correct. Correct.

So we'll get to it in a moment, but we go to the next paragraph. "Set your mind back in Burwood. Westfield, Burwood Plaza, and people walk between. You need another anchor. This mayor continues to achieve his goals. I hope it won't be on the back of Liberals helping him." Correct? ---Correct.

20 Then you say, "Please deliver the vision of the shopkeepers in the interests of the community, not the mayor's distorted views."---Yes.

Right? You're imploring for the vision of the shopkeepers.---Yes, so if you set your mind back, it just means if that was a commercial development at 186 Great North Road, people would walk from one end of the centre to the other and give the vitality it needed.

30 Nothing to do, though, with the planning proposal that was before the council.---It brings a lot of benefits to the planning proposal in the town centre.

That's a separate matter.---Yes, separate matter.

Yes. "I can assure you there have already been a number of shopkeepers lining up to run for council next election if the proposal goes ahead in its current form." That was a reference to the planning proposal in respect of the Five Dock Town Centre.---No.

40 Well, what was the proposal that you were referring to there, then?---Oh, sorry. Yeah, so, basically, at that Chamber of Commerce meeting, there was a lot of discontent, and I remember clearly Glen Haron said this is an election issue and this is an issue that people will run on at the next election.

That was the floor space ratio.---And that's surely in contrary, that's surely in contrary to, to the Liberal Party. To have other candidates run in the field would, would place Liberals at risk.

That was the floor space ratio issue, was it, that Glen Haron was saying was an election issue?---No, that's, that's, that's, that the Liberals weren't

concerned – sorry, weren't, were, were, weren't present at the meeting and, and showed, we don't know where they stand on small business. This should be their bread and butter. And, you know, if, if they don't get interested, this is potentially what could happen.

What you have written there is "I can assure you there have already been a number of shopkeepers lining up to run for council next election if the proposal goes ahead in its current form." See that?---I see that.

10 So the warning that there are shopkeepers lining up to run for council is linked to the prospect of the proposal going ahead in its current form, correct?---No, not exactly, no. I wouldn't - - -

Well, that's exactly what you've said. Is this another instance where what you've written is not what you mean?---Well, potentially, but it's, it's, it's not, it's definitely not what you're saying.

Do you ever write what you mean?---(No Audible Reply)

20 Do you ever write what you mean?---Mr Ranken, I can only tell you what I wrote. You may interpret any way you want. It's not a threat, it's merely stating the obvious, and in concern for my Liberal colleagues.

And you go on to say, "And quite frankly" - - -?---And that same view has been shown in your evidence from Helen McCaffrey herself.

And you go on to say – we'll get to Ms McCaffrey's views in a moment. But you go on to say, "Quite frankly, I understand where they are coming from."---Yes, they're very frustrated.

30 And then what I want to suggest to you is that your statement at the end, "Good luck in your deliberations," was not a genuine statement wishing them good luck in their deliberations, but effectively giving emphasis to the threat that you had made in the previous paragraph.---No, not in any shape or form.

40 THE COMMISSIONER: Mr Sidoti, just two other matters. You were taken through the submissions that were provided to council when the matter went to a public exhibition, and this is prior to the next council meeting of 20 May, 2014. Mr Ranken has taken through, you recall on the screen submissions that came in as a result of that public exhibition?---Yes.

Mrs Cassisi was one of them, you recall?---Yes.

And it was against the Mrs Cassisi entry that the response addresses the issue concerning the fact that, in effect, that was suggested did not warrant a further extension of the town centre. You may recall that, it doesn't matter if you don't, but just trying to get your mind back on that document. But in

any event, you'll recall Mr Ranken took you through the various submissions council received from various members of the community?  
---Yes.

One of whom happened to be Mrs Cassisi?---Yes.

10 It does not appear to have been an avalanche of shopkeepers, whether they be small or large, as it were, objecting and protesting to the Commission about what they saw on the public exhibition. Is that the impression you also get?---I - - -

If they had views, they didn't seem to take the opportunity of writing submissions?---Not at that particular period, there is only 30 odd.

As of April, you said there was a strong feeling at the 8 April meeting expressed by shopkeepers?---Yes.

20 They weren't given an opportunity to express their dissent, if you like, or point of view and the reasons, once the matter was put out on public exhibition, whether they were hot under the collar that evening on 8 April or not. They don't seem to have been very concerned, or not concerned enough, to actually lodge a submission. That appears to be the case doesn't it?---It may be the - I don't agree with it. Small businesses are very time poor and - - -

Sorry?---Small businesses are very time poor and so I think the response from the Chamber of Commerce would be representative of the views.

30 I see. So that's how you explain the apparent dormant or lack of response by shopkeepers?---No, it was actually proportional. There was one from the Chamber of Commerce, there was one from Glen Haron, there was one from Mrs di Giacomo, there were a number of them. I don't think it was dormant when there was 34 or 35 submissions overall.

But we have to look, and we have looked, indeed, at what each of them, the points they made.---Sure.

40 I'm simply saying to you, it doesn't seem to reflect shopkeepers themselves writing and putting forward proposals or suggestions in response to the public exhibition. That does appear to be the case, doesn't it?---Well, no, I don't agree with that. The Chamber of Commerce represents all the shopkeepers, so.

I see. The second matter, just in relation to now considerable questions that have been put to you concerning the email of 17 May, 2014, you said you're familiar with the code of conduct that Mr Ranken went through with you yesterday, and having been in local government yourself, you understand

that councillors act in accordance with appropriate standards of integrity?  
---Yes.

One of the standards is that they must adhere, abide by, is the principle of independence.---Yes.

Councillors must independently serve the community in relation to matters that come before council in an independent fashion.---Yes.

- 10 The obligations of councillors arise by virtue of the fact that they are indeed the governing body of the council, is that right, is that your understanding?  
---Yes.

The general principle, in addition to independence, is one that they must serve in what they do in performance of their public functions, they must serve the public interest?---Yes.

Not private interest?---Yes.

- 20 They must act with integrity?---Yes.

They must deal with matters in accordance with established procedures in an impartial way?---Correct.

The importance of proceeding by way of established procedures is that there are processes in place which helps ensure that councillors discharge their public functions properly. Is that right?---Yes.

- 30 When you spoke to the councillors at the meeting referred to in your email of 17 May, and when you wrote what you did in that email of 17 May, 2014, what right did you, or entitlement, did you consider you had to speak to the Liberal councillors as to how they might go about exercising their public functions?---I have every right, like any citizen - - -

And where does that right come from, sir?---From the view expressed by the Chamber of Commerce and other constituents. That's my role, to represent all the - - -

- 40 What right – sorry. Go on.---All the things you've just outlined refer to local councillors.

And your role in meeting with the councillors and writing to them as you did on 17 May, was what role? Was it as the local member or was it some other role?---As the member of parliament and as a constituent, as member of the same party that those councillors are part of.

So both political and by virtue of the - - -?---And as a local member.

- - - fact that you were the member of parliament, being the local member, is that right?---Yes.

Well, how do you reconcile that with the integrity principles that apply to members who serve on council, that is councillors? How do you apply your office, as local member, for example, to what the councillors do under their statutory obligations?---I'm sorry, Commissioner. Can you maybe change the wording? I don't know.

10 I'll go back to square one. As at 17 April, thereabouts – sorry, 17 May, thereabouts, 2014, you were not a member of the Canada Bay Council, were you?---No.

You did not hold any office with that council?---No.

You had never held office with that council?---Correct.

20 You had no powers or functions under the Local Government Act in respect of the Canada Bay Town Centre – sorry – the Canada Bay Council?---No.

No. You know enough, having been a councillor yourself, that the statutory regime under which local councils operate and councillors perform their functions is governed by the Local Government Act?---Correct.

And under the Local Government Act, codes of conduct and so on are prescribed?---Yes.

30 If they're not in a schedule, certainly there are codes of conduct which govern the performance of councillor's functions?---Yes.

Now, I'll put it again. What right, what entitlement did you have to be talking to Councillors Cestar, McCaffrey and Ahmed, about the matters you did speak to them that are referred to in the email of 17 May, 2015?  
---Because we share the same constituency.

I see. That entitles you to speak to them about how they might exercise their statutory functions, is that what you say?---No. They exercise their own statutory functions.

40 Yes. The fact that your jurisdiction, if I can use that expression, or electorate, happens to overlap – not entirely, but in main – with the local government of Canada Bay City Council, is a fact of course, but nothing springs out of that fact which gives you a right to interfere with the way in which councillors might go about performing their functions, and indeed have a duty to perform independently and with integrity, correct?---Correct but I've never interfered.

So it's not the fact that there's an overlap between the constituencies. Come back to my question.---Sorry, sorry, I don't agree with that. We share the same constituency, so it's only logical. If I hear compliments, I pass them on. If I hear negative stuff, I pass them on. That's what we did.

Pass it on.---It's in their interest and it's in the state member's interest and it's in the federal member's interest as well.

10 I'm not addressing the general question of passing on information. I'm talking about councillors at work performing their public functions.---Sure. But I've denied - - -

I'm limiting it to that.---Yeah.

20 I'm just trying to get your understanding on this. How, if local government councillors are to exercise their public functions independently with integrity and in the public interest and no other interest, can you address them and provide information and/or argument as to how those functions that they are to exercise should be exercised?---I'm not telling them how to exercise, Commissioner. And, and what I've expressed, any member of the public can express the same view to the councillors.

But were you not, on 17 May, feeding them information for the purpose of them taking that into consideration in exercising their functions?---I'd say the first part but not the second part. So I'd say for the reason of giving them the feedback to take into consideration, most definitely, and then the decision is up to them, obviously.

30 Well, if it was just feedback, I can understand what you're saying, that sometimes you can provide feedback, but it depends on, I suppose you would agree, what feedback and whether you were passing it on for general information or whether you were passing it on for a particular purpose for them to use in performing their independent functions. Is that right? It does depend, doesn't it?---Oh, definitely. But it wasn't for the second reason.

40 I'll just put to you simply, so that you have an opportunity of putting whatever you want to say, do you think, looking back now, even if you didn't appreciate it at the time, that the material and the other matters contained in your email of 17 May, 2014 did cross the line? Crossed the line in the sense that you were interfering with their independent exercise of their statutory functions at the next council meeting, whereby the council would consider matters related to the Five Dock Town Centre Study?---I can honestly say no.

No.---And the reason will be not one councillor ever, ever, ever said, "You've crossed the line. I don't want this, I don't want that. Don't do this, don't do that." And there is no messages to that avail, there are no emails to

that avail, and there was no verbal. The first time I heard anything of this was at this Commission.

Well, some of the matters you've raised we'll be looking at.---Or after.

Yes. All right, thank you, Mr Sidoti.

MR RANKEN: And is that how you judged whether or not you'd crossed the line, by whether or not a councillor had actually stood up to you and  
10 said, "No, I'm not going to do what you say?"---No. No.

Now, what was the purpose of including in that second-last paragraph the reference to you being, that "Quite frankly I understand where they," that is the shopkeepers lining up to run of council, "are coming from"?---That I, I share their frustration.

Were you not suggesting or hinting at the prospect that you might actually support such shopkeepers in the run?---No. No.

20 No? Are you sure about that?---Hundred per cent.

Do you accept that someone might perceive it that way?

MR NEIL: I object. How someone might perceive it is totally irrelevant. It may be that there is, the question might relate to the recipient, but not someone.

THE COMMISSIONER: I don't think you need press that question.

30 MR RANKEN: No. Now, you are aware, are you not, that at the meeting of the council on 20 May, 2014, the matter was deferred to look at such matters as - - -

THE COMMISSIONER: Sorry, which meeting are you talking about?

MR RANKEN: The meeting of 20 May of 2014.

THE COMMISSIONER: Mr Ranken, is that right?

40 MR NEIL: No, it's not right.

THE COMMISSIONER: I thought, but I may be wrong, that there was a unanimous resolution passed at that meeting - - -

MR RANKEN: It was.

THE COMMISSIONER: - - - but that there was a further matter raised that it be deferred, et cetera. You're going there anyway, are you?

MR RANKEN: No, that's a later meeting in November of 2015 I think you're considering.

THE COMMISSIONER: I see. So what happened on 20 May?

MR RANKEN: On 20 May, 2014, the resolution which was unanimous was that the matter be deferred to consider issues of height, setbacks, overshadowing, mix of development and the amenity of surrounding residents.

THE COMMISSIONER: I see.

MR RANKEN: Do you recall that?---I don't recall it, but yes, that's, history shows that, yes.

And do you recall that each of Ms Cassisi and Mr Haron addressed the council at that meeting?---Yes.

20 And when the matter came back before the council in June 2014 there was a further report that was prepared by council staff, concerning some of the matters that they were asked to look at further.---I'll take your word for that, yes.

One of those matters concerned the possible extension of the B4 mixed-use zone beyond Second Avenue so it would continue on the eastern side of Waterview Street up to Barnstaple Road. Do you recall that?---What, what year are we up to there, still '14?

30 We're still in 2014.---Yes.

Do you recall that?---Yes.

And that was directly relevant to the submission that had been made by Ms Cassisi that I took you to before. Correct?---Yes.

And in fact Ms Cassisi was the only person who had made a submission up to that point that had advocated for the extension of the B4 mixed-use zone up to that point.---That's possible, yes.

40 And so it was directly in respect of, in relation or in response to her submission and no doubt because she had addressed council at the meeting on 20 May, 2014, that the matter was looked at further and addressed by council staff in its next report prior to the meeting in June.---Of 2014?

Yes, 2014.---Yes.

So if we could go then to the report that was prepared by council staff in advance of the meeting on 24 June, 2014, and particularly at page 416. That's the first page of the report. And can you see down under Background it refers to the fact of the resolution of the council on 20 May? ---(No Audible Reply)

Do you see that?---Yes.

10 And then just going over the page to page 417, drawing your attention to the issue of the extension of B4 mixed-use.---Yes.

20 And it identifies what was already contemplated by the study in terms of increasing the rezoning or increasing the B4 mixed-use zone to include certain land between East and West Street and certain land between Garfield and King Street and certain land between First and Second Avenue on Waterview Street, and then it goes on to the fact that it was suggested that council consider extending the area of land being rezoned to the northern end of Waterview Street and it then provides some reasons as to why that area was not identified for rezoning.---Sure. And is this from the council staff?

This is the council staff's report as a result of the - - -?---Submissions.

- - - the submissions and as a result of the resolution of the council. ---Okay.

30 And I'm just dealing with one issue that was dealt with which was this question as to whether or not or the reasons why it was not proposed to extend the B4 mixed-use beyond Second Avenue. And do you see that it refers, the very first item is, "Because it is located outside the central core of the centre." Correct?---I can see that, yes.

"It contains a few restrained sites, including the heritage item and the existing strata development."---Yes.

"It would necessitate the extension of the proposed Waterview Lane to facilitate improved access."---Yes.

40 And it was considered that rezoning land outside the central core would provide fewer benefits and was therefore not recommended.---Yes. Fewer benefits.

At the meeting of the council on 24 June - - -

THE COMMISSIONER: Sir, did you want to add something?

MR RANKEN: Sorry.

THE WITNESS: No, that's fine. Fuel benefits, yep.

MR RANKEN: Yes. Sorry, was there something that you wanted to add?  
---No, no. That's perfect, sorry.

10 Then 24 June, 2014, are you aware that the council resolved unanimously to effectively endorse the amendment to the LEP that had been recommended by staff as at 20 May, 2014? So effectively we've considered these further issues and we're just going to proceed to a Gateway Determination?---I take your word for that, yes.

So that meant that there was not going to be a rezoning of that block between Second Avenue and Barnstaple Road?---Correct. On the council's advice.

Obviously there was a further process that would be undertaken once it had gone through a Gateway Determination, correct?---I don't think so.

20 Once it had gone through Gateway Determination, it was likely to come back with some recommendations that would include further public exhibition?---Of what was within the lines, not outside the lines.

Yes.---Correct. So it wouldn't include Waterview Street because that wasn't part of it.

That's right.---Correct.

30 So, just going to the resolution though on 24 June, 2014, all six councillors that were present at the council meeting, including Dr Ahmed and Ms Cestar, but not Ms McCaffrey, voted to endorse the amendments to the town centre LEP?---I, I don't remember. If you showed me, I take your word for it. Yes. Because there were 10 meetings basically on this issue.

There were 10 meetings or so?---Over three and a half years.

40 Well, would you agree though, that the decision to refer the planning proposal to the Department of Planning for Gateway Determination at that stage was not an outcome that you were hoping for?---No, I wouldn't say that. I think that's part of the process.

So you were quite content, were you, for the planning proposal to go to the Gateway Determination in circumstances where the B4 mixed-use zone was not going to extend between Second Avenue and Barnstaple Road?---Well, that's the process. You, you can't send something that's never been investigated.

Well, it had been investigated, had it not?---No, it hadn't. It, they were comments that had come consistently from the staff and that was shown down the track when consultants were engaged.

It was considered as part of the initial Urban Design Study.---No. That's not correct.

10 MR NEIL: I object. There may be a fundamental misconception here, Commissioner. As we understand the position, it wasn't considered and it wasn't considered as such until the council staff reports leading up to the meeting in June 2014.

THE COMMISSIONER: Well, what do you say, Mr Ranken?

20 MR RANKEN: Well, part of the design study that was conducted looked at the extension of the core of the town centre and it came to the position, and what was recommended in the study, was that it should be expanded but only up to the, up to Second Avenue and there were reasons that were provided for that, and those reasons are summarised in the report that was prepared for the council meeting in November of 2013, prior to the study being publicly exhibited. So the issue of how far to extend the B4 mixed-use zone was considered, and as part of that consideration there was consideration given to what was the core of the town centre and how far that should be expanded, and the view was taken not to expand it beyond Second Avenue.

30 THE COMMISSIONER: You're saying that unlike some matters, development applications or other LEPs, when the investigation comes later, the process in this matter being a non-statutory process was, as it were, front-end loaded by the Studio GL/HillPDA reports, so that is the assessment and investigation?

MR RANKEN: Yes.

THE COMMISSIONER: Yes. Mr Neil?

40 MR NEIL: Commissioner, as we understand the GL report, it was a report that considered and added to the extent of the B4 area with three specific areas.

THE COMMISSIONER: That's right. That's right.

MR NEIL: It did not consider – and we're looking at page 231 – it did not evaluate the area north of Second Avenue. It didn't pass upon it. It just didn't go that far. And we take issue on the suggestion that it set out reasons that, in effect, meant that it was rejecting any consideration of the northern area of Waterview. We say it simply didn't address it.

THE COMMISSIONER: I understand what you're saying, but the study was to determine, was it not, firstly, was there to be an extension of the B4 mixed-use zoning and, if so, to determine how far that should go. The answer plainly was, yes, there should be an extension for the reasons set out in the report. As to how far it should go, it was saying it should go to the limit that they specified, which was short of the area where Mr and Mrs Sidoti's properties were located. And that's true, they didn't investigate on any other basis. Whether there's any other basis for extending B4 beyond that limit, there was no reason to do it, but there was reason against it in the sense of the, the whole objective was to have an expansion of the town centre. That's what they determined that it had limits to how far the extension should go or it would become counterproductive if you went beyond a certain point. And I think the town planners that came into it at the request of Mr and Mrs Sidoti, they manufactured a – when I say manufactured, they undertook an assessment, having regard to various features as to what could be developed there. They took into account the strata title, heritage and the like. And it may be said, on one view of it, Mr and Mrs Sidoti got a side-win benefit by getting the heritage listing removed, but that had nothing, ultimately, to do with how far the town centre should be extended. So that was part and parcel of the investigation, an important one, that was re-looked at. Council officers had the same view about it. So I don't think it can be said that there was no, that there was an obligation for them to say, well, even though we say it shouldn't go any further, that we should go further and carry out a separate investigation as to the development potential on other bases.

MR NEIL: Well, Commissioner, I'm just concerned about the questions that are being asked of this witness and the position he's in, in the sense that as we read the documentation and as we read the report, the first time consideration was given to the inclusion of the northern portion of Waterview Street was pursuant to Ms Cassisi's submission, which is months later, in 2014. We maintain the position that the council original Studio GL report simply said what it said. It is not open to read it as rejecting, with reasons, an extension above the Second Avenue, to the north of Second Avenue. It's silent, in effect, on that. We know it says put these three areas, extend in these three areas the B4, but in our submission, the question of going north simply didn't arise till a later stage, and then the council staff started to consider the matter, and they came up with certain views, and then we reach a stage where the issue really is joined, and the council took the view that there should not be an extension.

THE COMMISSIONER: I understand, I understand the point you're making, with respect, I don't accept what you've put is entirely the end of the matter. But I think, rather than taking up hearing time, I'm sure Mr Ranken will try and fashion his question so that it doesn't create any problem for you or for Mr Sidoti.

MR NEIL: Yes, but - - -

THE COMMISSIONER: If there is an issue that you consider the same question arises, then at some point we'll have to deal with it, but at the moment I think we'll leave there or reserve it. Obviously, it will be an issue that we will deal with.

MR NEIL: I thank you Commissioner, I'd invite my learned friend if he could find, identify a portion of that first report that he wants to put to the witness, he might be able to do that.

10

THE COMMISSIONER: Yes.

MR RANKEN: Well, what I was I think asking questions that were directed to was the position as it stood following the resolution of the council on 24 June (not transcribable) 2014 and the resolution that the matter go off to a Gateway Determination, and what the effect of that decision was, particularly in respect of its impact on 120 Great North Road. That's what I was directing my questions towards. The first proposition was that having further considered the issue, council staff maintained a position against extending the area of land to be rezoned to that part of Waterview Street beyond, between Second Avenue and Barnstaple Road.

20

MR NEIL: I submit the word "further" is not available.

MR RANKEN: Well, I've taken the witness to the report that was prepared for the purposes of the meeting on 20 May, where it was dealt with in response to the initial submission made by Ms Cassisi. It was then reconsidered as part of the report that was prepared for 24 June, so - - -

30

THE COMMISSIONER: Mr Neil, perhaps if I could try and say this, just by way of analogy. It's as if there was – it's not a complete analogy, of course, but when a matter is litigated in court, it goes on appeal, Court of Appeal upholds the primary judge. Somebody comes to say, "But I want to reargue the point." The position would be the second attempt to have another go would be in jeopardy because it would be simply said this matter has been thoroughly examined already, twice, and it should go no further. There shouldn't be another investigation going over the same ground. Now, what we're dealing with here is that there was, what would seem to me just looking at the size and the detail and of it, a meticulous examination of the question of extending any further than the point north, that that was then, those conclusions about that it should go no further is then evaluated through the feasibility study, and it confirmed the validity of the conclusions about the feasibility aspects of it. Now, whether or not there was further examination of the planning controls which would enable some form of development to be increased, that came out in the options 1 and 2 scenario later. It does not mean that council would be required to completely undertake another Studio GL analysis of the position going north because that was out of bounds in the sense that, the factors that would drive justify,

40

validate expanding, extending the B4 mixed-uses peters out and ends at that northern point where Studio GL say “and no more”, because negative effects then start to flow if you did take it further back.

10 So try as they may, both MG Planning and Mr Daniels and Matthews trying to conduct another investigation into it, it seems to me that – you might persuade me otherwise – but their analysis didn’t undertake a detailed investigation that would have been required to establish that, indeed, the zoning should have kept going, the expanded zoning should have gone further north. They made the assertions but without underpinning analysis to justify it. That’s no criticism of them, but it seems to have emerged in the course of evidence, possibly because they just simply didn’t have time, because the analysis that was undertaken by, investigation, by both those consultancies took a long time, well over a year as I recall it. So, anyway, I just thought I’d try and make clear my present position about it. You might persuade me otherwise, but that’s the way I see it.

20 MR NEIL: Well, Commissioner, I greatly appreciate that. Could I answer in this way, that for the moment, setting aside matters of Mr Matthews and a his partner’s position – because we would seek to persuade you to a different view in due course – setting aside the question of the process allowing further investigations, that needs consideration, and setting aside the question of whether the original investigation was limited in its consideration of higher density, what I’m principally concerned about is that it would appear that a suggestion may be made – or perhaps is involved in what you’re putting to me – that Mr Sidoti has persistently sought to put forward a particular view in the teeth of decisions that have been made previously. But it’s vital, in my submission, that it be clearly established in terms of this witness’s knowledge, and in terms of the objective facts, when in fact the issue of the addition of the subject block north of Second Avenue started to take place, because the longer the period, the more it would be said Mr Sidoti has been persistent. If we’re correct and the period is shorter, then that attack, we submit, has less force. And that’s what I’m seeking to deal with, so that it can be fairly, in due course, joined issue on.

30 THE COMMISSIONER: It’s been useful having the exchange. I think what I’ll ask Mr Ranken to do is just to quarantine this area of questioning unless it disrupts his approach. I’m very anxious to use the time as much as we can on evidence.

40 MR NEIL: Yes.

THE COMMISSIONER: So, Mr Ranken, can you perhaps reflect on it overnight and press on with other matters?

MR RANKEN: I’ll perhaps deal with it this way. At least by 24 June, 2014, the position that was adopted by the council was one that did not

involve an extension of the B4 mixed-use zone beyond Second Avenue, correct?---You'd have to show me, I'm not sure.

Because of the planning proposal that was, it was resolved to forward to the Gateway Determination was not one that envisaged that that part of Waterview Street would be rezoned.---Okay. And so your question?

10 Do you accept that at that point the council had not determined to include that Waterview Street site as part of the area to be rezoned as B4 mixed-use?---Yes, that seems to be what happened, yes.

And equally, as at 24 June, 2014, the council or the proposal that was resolved to be sent to the Department for a Gateway Determination did not involve a 3:1 floor space ratio on sites other than those which met the prerequisites of having an area of 1,500 square metres and a frontage of 20 metres, correct?---I, that's, I think that sounds consistent.

20 Yes. And would you agree that that meant that the only benefit to your family's property, 120 Great North Road, that would arise from the planning proposal that was being submitted to the Department for a Gateway Determination was the increase in height by about a metre?  
---That's on, based on a lot of assumptions because not the planning proposal will start - - -

30 No. I'm talking about as at 24 June, that which was going to the Department did not envisage that, correct?---Well my, I don't know if that's correct. I, I thought, my interpretation of that was, that's what was sent and the planning process will now commence, the planning proposal, and then where that ends up is another story. Might end up where you're saying - - -

Quite. That's another story. But the planning proposal that was being put forward to the Department for a Gateway Determination did not provide any benefit to 120 Great North Road, other than the increase of a metre?  
---Perhaps 2 metres, 17 metres was it, perhaps?

Was it possibly two metres? One or two metres, something in that – that's it?---Yes.

40 No bonus provision?---2014, correct.

And was that an outcome that you were happy with?---It's, it's a long process. You, you can't start, sort of, it's a long, long process. I wouldn't have been here, not there.

At that point, I mean, at that point were you concerned about the fact that your family's property might be getting relatively little benefit from the planning proposal that was being put forward?---No. My only concern has

been, always, that proper process is followed and then wherever that leads I would be happy with wherever that led.

Were you concerned that there wasn't proper process as far as it related to your family's property?---I, I think there, there were, as has been established, a couple of different processes.

I'm talking about the process as it was in June of 2014, or up to June 2014. ---And, and so up until that point, sorry, the question was, was I - - -

10

Did you have concerns about the process as far as it affected your family's property?---No, I didn't have concerns about individual properties, no.

Well, there was only the one property at that time, 120 Great North Road? ---'14 still?

Yes, still June 2014.---Yep. Okay, yep,

20

Did you in fact contact the council prior to the meeting on 20 May, 2014, and speak to Mr Bruce Cook, who was the Director of Corporate Services, about your parents' property?---Did I ring or did I, sorry - - -

Or did you speak to him, is all I asked?---Yes.

And do you recall what it was you spoke with Mr Cook about, in relation to your parents' property?---And that was around the time of the meeting?

30

It was the day of the meeting on 20 May, 2014.---Oh, yes. It was procedures and what was protocol for addressing council meeting.

Addressing council meeting in respect of the Five Dock Town Centre Study?---Correct.

So were you intending, as at that date, to present to the council at the meeting on 20 May, 2014?---It was a thought, yes.

And what were you proposing to address the council about in respect of the Five Dock Town Centre Study?---The views of the shopkeepers.

40

Well, when you approached Mr Cook, you approached him and indicated that it was about your parents' property.---I saw that. I, I don't recall about my parents' property but I, I saw the exchange on evidence here and I don't recall that part.

Well, perhaps we'll just bring it up, page 402. You can see that the email is part of a large email chain that involved Ms McCaffrey and Mr Dewar and Mr McNamara, in which Ms McCaffrey, as it happened, raised with the council staff the prospect of a 3.5:1 floor space ratio across the entire centre

without any need for minimum requirements. If you want to look at that, you can go to page 403. Where Ms McCaffrey has said, “The Chamber of Commerce still want 3 to 5:1.” I think it’s supposed to be 3.5:1.---3., yeah.

“Can this be achieved anywhere with a height of 27 metres? Is making 1,500 square metres a requirement in order to achieve 20 metres frontage in the town centre actually possible?” Do you see that?---Yes.

10 Now, those words are almost lifted verbatim, that is, “Making 1,500 metres a requirement in order to achieve 20 metres frontage,” is almost taken straight out of your email to Ms McCaffrey and the other councillors of 17 May, 2014. Would you agree?---(No Audible Reply)

And then she’s gone on to say, “What would be the result if you had the current proposal but with no minimum width requirement and no minimum lot size?” See that?---I think she’s asking the question to the staff.

20 And she’s asking that question on 20 May, which is on the day of the meeting, but also after she’s received that email that we’ve gone through at length with you now - - -?---Yes, on the 14<sup>th</sup>.

- - - of 17 May.---17 May, yes.

And then you can see there is, the email above that is an email from Mr Dewar to Mr McNamara. You can see that from the bottom of the previous page, that is page 402.---Sure, but that’s not exclusive view that from my email either. It’s also, if you look further down, Chamber of Commerce request.

30 I understand. I referred to that when I just said “The Chamber of Commerce.”---3.5:1.

Still want 3.5:1. Do you see?---Yes.

40 But I just want to take you to page 402. Mr McNamara has ultimately responded to Ms McCaffrey and provided a number of reasons why the council staff had taken the position they had taken, and there’s a further email from Mr Sawyer to Ms McCaffrey, because he was copied into Mr McNamara’s response to Ms McCaffrey – sorry, Mr Sawyer to Mr McNamara, and he makes the point, “Hi, Tony. Bruce,” which we understand is Bruce Cook, “has advised that John Sidoti asked him about his parents’ property and may be attending tonight to address council.” ---Yes.

And he’s gone on, “So you may wish to read up on the site he will be speaking about so you are familiar with the issues he will raise.” Correct? ---That’s what Tony had said, yes.

Yes. Well, if you had indicated to Mr Cook that you were proposing to address the council about the concerns of the shopkeepers, that's something that we would expect Mr Cook to, or we would have expected to turn up here in this email reporting about your interaction with Mr Cook.---Oh, I can't talk for Tony or Gary or - - -

Well, it would appear from this email though, would you not agree, that the conversation you had with Mr Cook was about your parents' property?  
---Specifically, well, it wouldn't have been specifically because I recall them  
10 pulling out of it for, for a couple of reasons.

Well, that's the other point of it, isn't it, that ultimately neither you nor your parents addressed the council on that occasion?---Correct. But Glen Haron did so that alleviated some, some issues for me.

So did you speak with Glen Haron between speaking with Mr Cook and the meeting and decide that he was going to cover the topics that you were hoping to cover?---I think he was a speaker on the night.

20 No, I know, but did you have some foreknowledge that he was going to speak about that?---I, I heard he was going to speak, yeah, and address the council.

Did you attend the council meeting that night?---No.

So it must mean that if you decided not to address the council, it's because you had some knowledge of what Mr Haron was going to say to the council before.---Not exactly, but he was representing the view of the Chamber of Commerce so I was happy with that, and there was also a conversation with my sister, at the time I recall speaking to her and I think it's for this meeting,  
30 and she says, "John, keep away. There's no need to. Your views have been shown so don't attend." And that was the advice I took.

And what else did your sister suggest to you about not attending the council?  
---She said, "Just don't, don't, keep away from it. There's no need to. You've made your representations, you don't want to have any conflicts if that can arise.

So your sister drew your attention to the possibility that there might be a conflict?---Well, if you start referring to individual properties so, my  
40 concern, as I said, early on in the piece in particular at that stage was just the overall town centre that all the information and representations at least got to where they had to go and then the decision was someone else's.

So you took on, did you not, the views of your sister and you took them seriously when she raised the issue about the potential for there to be a conflict?---It was brought to my attention but as I said, my driving motivation there was as long as there was someone there to represent the views of the shopkeepers, I was content.

Well, what did your sister tell you about the potential for a conflict, what did she advise you?---That's probably not best to attend, because then when you address the council there is always a lot of people in the gallery, people will start calling out things and then, you know, you may say the wrong thing and it won't be a, you're there to represent everybody and hence, as I said, the stakeholders - - -

10 THE COMMISSIONER: Well, she's sounded a warning that because you're the local member it might not be a good look for you to be advocating a particular position before council?---And the view was - - -

I'm sorry, is that yes or no? You can add a supplementary statement but that's, was that the case she was, you took it she was providing some advice about being circumspect so that it wouldn't have the appearance of you appearing before council as the local member and perhaps people might misconstrue the situation?---Yes, as well as, if you're going to talk about everything, great. If you're going to talk about individual property, there should be a consultant doing it on behalf of mum and dad independently.

20

MR RANKEN: And what your sister was drawing to your attention was that the fact that because of 120 Great North Road being within the study area that there might be a perception of a conflict of interest?---True, there's a perception if all parties don't know who owns 120.

Well, but it might be she was concerned, was she not, to advise you of the possible perception that might be created of where you might be addressing the council as the Member for Drummoyne but there also being a property that your family had an interest in that would benefit by the particular matters about which you were making submissions?---Yes, that's possible, yes.

30

So, that discussion you had with your sister was prior to this meeting on 20 May, 2014 at which Mr Haron ultimately spoke on behalf of the Chamber of Commerce?---Yes.

THE COMMISSIONER: Just incidentally, was or is your sister a lawyer? ---She's got legal training, yes.

40 As at a period we're talking about June 2014, had she graduated in law? ---Yes.

And had been in practice?---I'm not sure if she was practising at that time, I don't think she was practising.

Has she never practised?---Yes, she has practised, yes.

MR RANKEN: She practised for a number of years before getting married and having children, I think?---Yes, with the DPP and the Wood Royal Commission.

Yes, in the 1990s.---Yes.

But in any event, from that time on, at least, you were aware of the views of your sister about the position that you were in?---Well, it was a suggestion that I took.

10

But no doubt one that you took seriously having regard to her legal training? ---I totally, well, yes.

Now, you did, did you not, engage with some town planners at least following the meeting of the council on 24 June of 2014?---I, you'd have to refresh my memory.

20

Well, do you recall the circumstances in which the town planners Mr Mark Thebridge and Helena Miller came to be engaged to make a submission on behalf of Deveme Pty Limited and then subsequently possibly also Anderlis Pty Limited?---They were engaged, yes.

Yes, and you were involved in the process by which they were engaged, were you not?---I, I still can't remember the exact way they were engaged. My understanding was mum either found them locally, and the other possibility, just from having seen the evidence, potentially was there was another property on Great North Road that used the same consultant. So I just can't, I haven't worked out exactly.

30

THE COMMISSIONER: Or the other possibility is - - -?---There's two possibilities.

- - - you made contact with MG Planning.---I just don't remember if it was MG Planning or if it was – so they're all together, I'm gathering. Helena. I just don't recall exactly.

40

Well, was correspondence from MG Planning – namely, Helena Miller – received addressed to you?---The first correspondence, there was plenty of correspondence to me. But the first correspondence, from memory – or there was correspondence to mum at some point in that, early on in the piece.

MR RANKEN: So but was there some discussion that you'd had with your mother before anyone had been engaged?---I, it's possible, I'm not sure.

I wonder if we could bring up page 432. It's a calendar entry for your, for a meeting regarding the Five Dock Master Plan. The organiser is Mr

Thebridge. The location is the electorate office at 128 Great North Road, Five Dock. That's your electoral office, correct?---Yes.

And it refers to the required attendees as being Mr Thebridge, Mr Giovanni Cirillo. Do you know who he is?---Yes, I think he's associated with Mark.

And yourself.---Yes.

10 See that?---And, and, and how is that in relation to the timeline of that meeting?

So that is a meeting that's scheduled for 9.30am on 24 June, which is the morning of the meeting of 24 June at which the council ultimately resolved to refer the matter to the, or refer the planning proposals to the Department for a Gateway Determination.---Right.

20 So do you recall what was the purpose of the meeting?---I'm not sure. It seems like – I just don't know. (not transcribable) engagement. Because Mark Thebridge did do work, so I just can't - - -

Did do work?

THE COMMISSIONER: Something to do with the Town Centre Plan, I assume.---Well, yeah, Mark Thebridge is MG Planning, yes.

MR RANKEN: He is from Group GSA and he worked, did he not, on MG Planning on submissions?---I think so. I think so, yes.

30 And was this the situation, that you in fact engaged initially with Mark Thebridge, and it was through Mark Thebridge that MG Planning was engaged?---That's possible, yes. Possible.

Well, this was a meeting that was occurring on 24 June, 2014. So was this the first meeting you were having with Mr Thebridge?---I don't recall a lot of meetings. It may have been the first, I'm not sure.

40 And you were obviously wanting to discuss with him the Five Dock Master Plan, because that's what appears to be the subject of the meeting.---It looks that way.

And what was it about the Five Dock Master Plan that you were going to be speaking with Mr Thebridge about and how, if at all, did it relate to 120 Great North Road?---I'm assuming that's advice.

What were you seeking advice about?---Well, that'd be advice to engage for mum and dad, to, to give them some advice, obviously, about whatever his qualification. Is it town planning?

THE COMMISSIONER: But about what, though?---Well, Group GSA, potentially what can be done, I, I, I recall for 120 Great North Road.

MR RANKEN: So at least as at 24 June, 2014, we can accept, can we not, that your family were looking or wanting to look at what the proposed changes to the LEP would mean for the possibility of developing 120 Great North Road, is that the position?---I, I think that sounds very, very reasonable, yes.

10 And that was a situation or a position that you'd come to as a result of some discussions with the family?---Yes.

And when I say discussions with the family, that would be mainly discussions - - -?---That would be my mother.

- - - between yourself and your mother?---Yes.

And your mother, had she asked you to be the family member who was involved in liaising with Mr Thebridge and the planners about this?---No. I  
20 think it was to provide advice and, and, and to put any distance, I guess, between any roles I had.

I'm sorry, I don't understand what you're saying. Are you saying that the idea about having Mr Thebridge engaged was, or town planners, was so that there could be some distance between you being the person making the representations on behalf of the owners of 120 Great North Road so that you could then make other submissions about the, or representations concerning the town centre generally without it being perceived as a conflict?---Or any other residents, yes.  
30

So was this then really a considered decision about how you might manage that perceived conflict of interest that your sister had spoken to you about? ---It's in line with what she said, yes.

Well, what I'll do is, we'll get external town planners to prepare reports and submissions to the council and they can be the submissions on behalf of the Sidoti family and then whatever submissions I make, or representations I make as a member of parliament can be separated and be considered to be submissions and representations being made on behalf of the constituents.  
40 ---Yes, you could say.

And if we could then go to page 446. This is an email chain. It might be quite small. Can you read that?---Yeah, that's fine.

And I want to take you perhaps to, do you see at the bottom of the page it says, "Hi Richard and Catherine." So you see that?---Yes.

And it's from Mark Thebridge, this is at 18 July, 2014, at 3.40pm. And it goes over the – before we go over the page, do you see that it's addressed to sandra.sidoti@bigpond.com?---Yes.

So whilst the salutation is, "Hi Richard and Catherine," it was being forwarded to yours and your wife's email address?---Correct.

10 And if we go over to the next page. Do you see it says, "Further to discussions held with John," that's you, "we provide for your consideration our fee proposal for the following scope of work." And then it outlines the scope of work. Do you see that?---(No Audible Reply)

"The preparation of an options analysis for the site and associated adjoining lots in Second Avenue and Waterview Street." Do you see that?---Yes.

So, at this stage, that is 18 July, 2014, your family only owned 120 Great North Road, correct?---Yes.

20 Was there some plan in train for you to acquire, that is your family, to acquire adjoining lots in Second Avenue and Waterview Street?---No. That's not my understanding. It was - - -

When one thinks of adjoining, just that description, adjoining lots in Second Avenue and Waterview Street - - -?---I can see that, yes.

30 And, well, as far as adjoining lots in Second Avenue are concerned, would you agree that 2 Second Avenue was the adjoining lot in Second Avenue? ---I, I agree with what's written there, but not for the reason. I, I, the preparation of an option analysis for the site, and that's referring to 120. And I guess that, it's always about how one property works in regards to all the surrounding properties.

We'll just go through this again – well, one more time. "Further to discussions held with John."---Yes.

Okay? So there's been discussions between yourself and Mr Thebridge, correct?---Yes.

40 And those discussions concern the scope of work that you were engaging Mr Thebridge to do on behalf of your parents, correct?---Yes.

That's why it says, "We provide, for your consideration, our fee proposal for the following scope of work." Correct?---Yes.

And what I want to suggest to you is that Mr Thebridge has then identified the various aspects of the scope of work that he was being engaged to do that had been determined following discussions with you.---Yes, that sounds right.

Now, the preparation of an options analysis for the site.---Yes.

That is 120 Great North Road.---Yes.

And then it goes on to say that it's for "Options analysis of a site and associated adjoining lots in Second Avenue and Waterview Street."  
Correct?---Yes. Yes.

10 Now, at this stage, your family had not acquired any properties in Second Avenue or Waterview Street for that matter.---Correct.

When one considers what properties might be referred to by that phrase "adjoining lots in Second Avenue and Waterview Street", they must necessarily be lots that adjoin 120 Great North Road. Correct?---Correct.

And as far as Second Avenue is concerned, the lot that had joined 120 Great North Road on Second Avenue was 2 Second Avenue, correct?---And Waterview Street, yes.

20

No, I understand, but there's two aspects to that, isn't there?---Well - - -

There are lots, there are lots.---Yes.

So that means more than one property, correct?---Yes.

And lots, and they're lots that adjoin 120 Great North Road, correct?---So, yes, they can interpret what you're saying up to that point, yes.

30 So as far as Second Avenue is concerned - - -?---There's only one house.

Yes. And that's 2 Second Avenue.---Correct.

As far as Waterview Street is concerned - - -?---There's a number.

- - - there's 39 and there's 37 and there's - that's it, is it? 37 and 39?---No, all the way down. There's probably another seven or eight lots.

40 All adjoin 120 Great North Road?---But I think the idea here is that he's read all the backup stuff and he's come to the arrangement that there's impediments in Second Avenue and Waterview Street, and hence he'd have to do an analysis of problems that were identified, like heritage and like strata and all that. That's why I think that's relevant there. It's not because of ownership.

So when you refer to - when you read the words "associated adjoining lots", that is not limited to those lots that specifically adjoin 120 Great North Road but actually refer to all of the properties along Waterview Street in that

block?---I think you're very logical in assuming that, but I don't think there's any relevance if you don't own anything there. I think it was because of the lead-up work that had been done or hadn't been done with regards to the identified impediments from the council staff.

Well, you were a party to the discussions about the scope of the work that Mr Thebridge was to do.---Yes.

10 What were you asking him to do as far as the preparation of an options analysis for the site and the associated adjoining lots in Second Avenue and Waterview Street?---My understanding at that time was no work had been done on Waterview Street and in the block we've been talking about other than, other than council in submissions referring no more than a paragraph in a column or a few one-liners. There's been no rigour or any work done by the consultant to the level that was done in other areas in the town centre, and the reason being was because it was outside the town centre, so it wasn't part of the scope of the work.

20 What did you contemplate would be an options analysis? What options would be analysed?---I'm not sure. That's up to the professionals to come back with the professional advice.

30 THE COMMISSIONER: He's talking about rendering advice which will consider options for a redevelopment involving 120 Great North Road and adjoining lots. I mean, that's in essence what was being looked at, wasn't it, the potential to redevelop 120 and adjoining lots, be they one or two, or presumably more than one because you are referring to adjoining lots, plural. I mean, that's what this is about, isn't it? He's saying, "I'll give you advice on that sort of project"?---I, I can't see it? Why would we be doing that? My parents don't own anything there.

Well, as it turned out, your family ended up buying two more properties in due course, one in 2015 - - -?---Three, three more.

Three more, okay.---But one, one in that area.

So your family became a multi-property owner in those general area of 120 Great North Road?---Yeah. They did, yes.

40 And isn't he talking about looking at advising on the development potential of that sort of scenario of a multi-property development? That's what it's about, isn't it?---No, I don't think so.

Well, what is it about then?---Well, I, I've already said that. It's about how 120 can be developed and addressing any impediments, some town planning advice, concerning the effect of the draft planning proposal. Once it's certified, review the heights, setbacks, heritage controls – there it is, heritage controls – of a property they don't own. Site amalgamation incentives and

the alike. Review the physical extent of the planning proposal and advice as to whether the boundaries should be revised to reflect a more appropriate configuration. Exactly what it says there.

Now, look, I know it's getting late in the day and focus and the concentration might start to wane, but this may be another instance of looking at a document that says something but you're suggesting it has a meaning which is not apparent from the face, it seems to me. Let's go back to it. "Preparation of an options analysis for the site and," that's the  
10 conjunction, "associated adjoining lots in Second Avenue and Waterview." So, he's talking about an option analysis for the site and that's obviously 120 Great North Road, isn't it?---Yeah. Oh, that's, that's the way I read that, yes.

"And," not or. "And associated adjoining lots," plural. So, he's looking at an analysis, preparing an options analysis for that conglomerate, 120 Great North Road and adjoining lots. That's what it says on its face. Do you say you should not give the words on the page the meaning that they apparently convey?---No, I'm not saying that. What I'm saying is that you're asking  
20 me to say what Mark Thebridge means. You may have to ask Mark Thebridge that. That's not the way I interpreted that.

Do you agree with my reading of that line of his email, that that's what he's addressing?---Yeah, no, I do. I do. But I - - -

It's a multi-property redevelopment possible proposal.---I agree with you. I just can't see why my parents would spend \$5,000 on something they don't own.

30 Oh, well, we know they became owners not too much later in time, do we not?---Well, a history - - -

Of adjoining properties.---Adjoining property on, on, in that precinct.

MR RANKEN: Perhaps just before we finish, because I do note the time, Commissioner, if we just briefly go back to the previous page, page 446, we can see the bottom of the email that I took you to, where it says, "Hi, Richard and Catherine." Do you see the subject is "Fwd: 120 GNR", which is Great North Road, "development report"? Do you see that?---Yes.  
40

So it's plain, isn't it, from that email that you, on behalf of your parents, were investigating the development possibilities for 120 Great North Road and associated adjoining lots on Waterview Street and Second Avenue?  
---No, it talks about cut-off dates for submission.

You're looking further up, you're looking further up the page.---I'm halfway down. So where, where are we looking?

At the bottom of the page.---Yes.

This is the top of the email that I've just been taking you through.---Yes, "Hi Richard and Catherine." And then is the next part at the top of the page?

No, no. Do you see at the bottom of the page where it says, "From Mark Thebridge, sent Friday, 18 July, 2014, 3.40pm?"---Yes, yes.

10 "To sandrasidoti@bigpond.com"---Yes.

Forward, or "Fw: 120 GNR Development Report."---Yes. And the next part?

If you go to the next page we see that - - -?---Oh, okay.

- - - "Further to discussions held with John we provide for your consideration our fee proposal for the following scope of work." Correct?  
---Yes, I see that.

20

And you agreed with me that the scope of work was something that was part of the discussions that you had with Mr Thebridge.---Yes.

And what he's setting out below there is each of the aspects of the work that his firm was being requested to do.---Great. So - - -

30 And the first of those is, "The preparation of an options analysis for the site." When one reads that in the context of the other dot points as well, and the subject line of the email, it's quite plain, isn't it, that what you were looking at was exploring the development opportunities in respect of 120 Great North Road and the associated adjoining lots?---I think that will be clearer when you see what work they actually undertook, then you can maybe come to that arrangement.

THE COMMISSIONER: That might be a helpful suggestion, but it would be more helpful to me anyway if you just answered the question.---Yeah, I don't, I can't answer. I don't, I don't know.

40 All right. That might be a good note to adjourn.---Thank you.

Yes, very well. I'll adjourn till 10.00am tomorrow.

**THE WITNESS STOOD DOWN**

**[4.42pm]**

**AT 4.42PM THE MATTER WAS ADJOURNED ACCORDINGLY**

**[4.42pm]**