

WITNEYPUB00001
29/03/2021

WITNEY
pp 00001-00033

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION WITNEY

Reference: Operation E19/1452

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 29 MARCH, 2021

AT 10.30AM

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: Now, Mr Ranken, I indicate you have been appointed Counsel Assisting for the purpose of this public inquiry?

MR RANKEN: That is so, Commissioner.

THE COMMISSIONER: And we're ready to proceed?

MR RANKEN: Yes, we are.

10 THE COMMISSIONER: Thank you. Just pardon me a moment. The Commission, in this public inquiry, is investigating allegations that, between 26 March, 2011 and 6 February, 2018, Mr John Sidoti improperly influenced or attempted to improperly influence another person or persons to dishonestly or partially exercise any of their official functions in respect of advancing amendments to development controls affecting land between Second Avenue and Barnstaple Road on Waterview Street, Five Dock, and/or any rezoning of the land and/or any proposals to develop the land situated at 120, 122 and 124 Great North Road, Five Dock, and 2 Second
20 Avenue, Five Dock. The Commission is also examining whether, between the 30 June, 2011 and 30 June, 2019, Mr Sidoti engaged in a breach of public trust by failing to make a number of pecuniary interest disclosures, contrary to his obligations to do so under the Constitution (Disclosure by Members) Regulation 1983, the New South Wales Parliament Code of Conduct for Members and the Ministerial Code of Conduct. The general scope and purpose of the public inquiry is to gather evidence relevant to the matters being investigated for the purpose of determining the matters referred to in section 13(2) of the ICAC Act. Having announced the general scope and purpose of the public inquiry, I now call upon Counsel Assisting to make an opening statement.

30 MR RANKEN: Yes, thank you, Commissioner.

THE COMMISSIONER: Thank you, Mr Ranken.

MR RANKEN: Commissioner, the principles of integrity, selflessness and impartiality are of critical importance to the role of local councillors in the discharge of their duties. They are given legislative effect in the Model Code of Conduct for Councils in NSW, prescribed by the Local Government (General) Regulation 2005, for the purposes of section 440 of
40 the Local Government Act 1993. These key principles require local councillors to firstly ensure they do not place themselves under any financial or other obligation to any individual or organisation that might reasonably sought to influence them in the performance of their duties. Secondly, make decisions in the public interest and not in order to gain financial or other benefits for themselves, their family, friends or business interests. In other words, they must make decisions because they benefit the public and not because they may benefit the decision-maker or provide preferential treatment to some private interest. Thirdly, they must make

decisions on merit and in accordance with their statutory obligations when carrying out public business. This means, they must seek to do fairness to all, act impartially and consider only relevant matters.

10 Commissioner, any attempt to seek to influence local councillors to make decisions that may benefit a private interest, but which are plainly contrary to the public interest, is a serious matter. Such conduct undermines the integrity, selflessness and impartiality of local government and jeopardises public confidence in local government decision-making, processes, and outcomes. That is particularly so where the decisions concern development controls and zoning, which have the potential for private interests to achieve great financial benefit at the expense of long-standing impacts upon the livability and public amenity of the local community.

20 Indeed, any conduct of any person, whether or not a public official, that adversely affects or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority is a form of corrupt conduct.

30 This public inquiry is being conducted for the purposes of an investigation by this Commission into whether or not, between November 2013 and September 2017, the State Member for Drummoyne, the Honourable John Sidoti, improperly influenced or attempted to improperly influence local councillors on the City of Canada Bay Council and/or council staff members to dishonestly or partially exercise any of their official functions in respect of advancing amendments to development controls, affecting land between Second Avenue and Barnstaple Road on Waterview Street in Five Dock and/or any rezoning of the land and/or any proposals to develop the land situated at 120, 122 and 124 Great North Road, Five Dock, and 2 Second Avenue, Five Dock.

In addition, and relatedly, this public inquiry will examine whether or not, between 30 June, 2011 and 30 June, 2019, Mr Sidoti engaged in a breach of public trust by failing to make a number of pecuniary interest disclosures, contrary to his obligations to do so under the Constitution (Disclosure by Members) Regulation 1983, the New South Wales Parliament Code of Conduct for Members and the Ministerial Code of Conduct.

40 John Sidoti has been the Liberal Party State Member for Drummoyne since the New South Wales state election in March 2011. Between 1992 and 2008, Mr Sidoti worked in a family business involving a function centre at 120 Great North Road, Five Dock. Evidence obtained by the Commission will establish that that property at 120 Great North Road was first purchased in 1992 by a company, Deveme – that’s D-e-v-e-m-e – Pty Ltd, the directors and shareholders of which were and continue to be Mr Sidoti’s parents, Mr Richard Sidoti and Mrs Catherine Sidoti.

Deveve Pty Ltd is the trustee of the Sidoti Family Trust. It is also the trustee of an indefinite continuing superannuation plan known as the Deveve Pty Ltd Staff Superannuation Fund. Mr John Sidoti and his wife, Sandra, and children are general beneficiaries under the Sidoti Family Trust. Mr Sidoti is also a member of the Deveve Pty Ltd Staff Superannuation Fund. In 2000, Mr Sidoti, together with his wife and his parents, replaced Deveve Pty Ltd as trustees of the Staff Superannuation Fund. In November, 2007, Deveve Pty Ltd sold the property at 120 Great North Road to Mr Sidoti, his wife and his parents, who then became the registered proprietors of 120 Great North Road in their capacity as trustees of the Staff Superannuation Fund. That is, they held the legal title to the property on trust for the members of that fund, which members included Mr Sidoti and his parents.

I expect the evidence will establish that the function centre business run by Mr Sidoti's family at 120 Great North Road finished in about 2008, at which time Mr Sidoti's parents retired and Mr Sidoti pursued a political career. From that time until June 2019, Mr Sidoti, together with his wife and his parents, continued to be the registered proprietors of 120 Great North Road in their capacities as trustees of the Staff Superannuation Fund. In April of 2019, Mr Sidoti and his wife were removed from their position as trustees of the Staff Superannuation Fund and, consequently, they were removed from being registered proprietors of 120 Great North Road.

Now, in 2008, Mr Sidoti was elected a councillor on the Burwood Council and served as mayor of that council from 2009 to 2011, after which he entered state politics. Between October 2014 and March 2015, Mr Sidoti was a Parliamentary Secretary for Planning, and between August 2015 and January 2017 he was Parliamentary Secretary for Roads and Transport. In April 2019, he was appointed as Minister for Sport, Multiculturalism, Seniors and Veterans, a position from which he stood down pending this Commission's investigation.

The investigation concerning the allegation of improper influence arises out of circumstances in which Mr Sidoti engaged with Liberal councillors on the City of Canada Bay Council and members of staff of that council in relation to planning decisions concerning the Canada Bay Local Environmental Plan, or LEP, and the Canada Bay Development Control Plan, or DCP, arising from the Five Dock Town Centre Urban Design Study, which I will refer to as the Urban Design Study. That was conducted in 2013. That itself was built on previous work, including the Five Dock Town Centre Strategy of 2012, which I will refer to as the Town Centre Strategy. Before turning to the background and detail of the Town Centre Strategy, the Urban Design Study and the LEP and DCP, I should say a little about the City of Canada Bay and the state electorate of Drummoyne.

Now, Your Honour will see, sorry, Commissioner, you will see on the monitor is the state electorate map for the electorate of Drummoyne. As can

be seen from that map of the Drummoyne state electorate, the City of Canada Bay local government area takes up the entirety of the electorate. In fact, there is a small part of the local government area that sits outside the Drummoyne electorate in the Strathfield state electorate. That means that the council is responsible for all planning decisions within Mr Sidoti's state electorate.

10 The suburb of Five Dock sits within both the City of Canada Bay local government area and the Drummoyne state electorate. Running through the middle of Five Dock is a main road, Great North Road, which extends from Parramatta Road to the south, through Five Dock, and continuing north through Wareemba and Abbotsford, terminating at Werrell Reserve at Abbotsford Point, which is at the northern end of what I might call the Abbotsford Peninsula. Historically, commercial activity in Five Dock has been centred around a town centre situated along a section of the Great North Road that is bound by Lyons Road to the north, East Street to the west, Fairlight Street and Queens Road to the south, and extending mid-block between the Great North Road and Waterview Street on the eastern side. The town centre is surrounded by predominantly medium-to-lower
20 density residential development.

In 2012, the council undertook the Five Dock Town Centre Strategy, which explored the economic factors that influenced the town centre and identified actions to enhance the vitality of the centre into the future. One of the key recommendations of the Town Centre Strategy was to consider the Five Dock Town Centre from an integrated design perspective by undertaking an urban design study to ensure that any potential changes to the existing planning controls – such as building scale, density and height – were carefully considered. To that end, the council engaged independent external
30 experts ARUP, HillPDA and Studio GL to undertake what was potentially a far-reaching study, the Urban Design Study.

In October 2013, following an extensive community engagement process with the Five Dock community, the independent experts engaged by the council completed the Urban Design Study, which came to be considered by the council at its meeting on the 26th of November of 2013. At that time, the City of Canada Bay Council was comprised of nine councillors, including the mayor. These included the Labor Mayor Angelo Tsirekas; the Greens Deputy Mayor Pauline Tyrrell; Labor councillors Tony Fasanella, Neil
40 Kenzler and Marian O'Connell; and four Liberal councillors, being Michael Megna, Helen McCaffrey, Mirjana Cestar and Dr Tanveer Ahmed.

Now, the key recommendations of the Urban Design Study included a new town square; an expanded Fred Kelly Place; a welcoming northern gateway; green and tree-lined streetscapes; improved pedestrian network, including a new Five Dock school link; enhanced east-west cycle connection; consolidated efficient parking; new controls to facilitate quality new development; and, importantly, an expanded B4 mixed-use zone. This last

recommendation is of particular relevance to the Commission's investigation.

As I said, one of the recommendations of the Urban Design Study was to expand the width of the town centre core by creating additional mixed-use areas along West Street south of Henry Street, between Garfield Street and Kings Road, and along Waterview Street south of Second Avenue. The recommended expansion was said to allow the town centre to grow over time and provide additional pedestrian connections. And, Commissioner, you can see on the map that is on the screen that there is an area that is marked by a hard, light-blue border. And within that area, you can see some light-blue dotted lines. Those light-blue dotted lines, they represent what was traditionally considered to be the core of the town centre, and then the expanded areas are those areas that are now bound by the hard blue lines around those dotted lines.

So one can see firstly, over on the left-hand side, there is a square that, a pocket between Lancelot Street up to Second Avenue, bounded by West Street, and then on the eastern side there is a pocket that is bounded by Waterview Street up to Second Avenue and then again, back over on the south-western side, there is another area from Kings Road up to Garfield Street. They are the areas that were proposed that the B4 mixed-use zoning would be extended to and those areas would be re-zoned. Significantly, the Urban Design Study did not recommend extending the town centre along Waterview Street to the north between Second Avenue and Barnstaple Road. Commissioner, you can see that area is the area immediately north of the hard blue line at Second Avenue on the eastern side of the town centre. If the cursor could be moved further north, a little bit further north and then below that area of Barnstaple Road. That is the particular area that was not to be included in the expanded B4 mixed-use zoning.

The independent experts recommended that that area remained zoned as R3, which is a medium-density residential, and not be rezoned as B4 mixed-use. That meant that the zoning of that particular block was split with B4 mixed-use zoning for properties between Second Avenue and Barnstaple Road that fronted Great North Road, and R3 medium-density residential zoning for those properties between Second Avenue and Barnstaple Road that fronted Waterview Street. The function centre at 120 Great North Road was one of the properties in that block that fronted Great North Road.

Another issue that was identified by the Urban Design Study was that feedback from local developers and investors had suggested that development that conformed to the existing development control plan controls in Five Dock struggled to achieve the then current maximum floor space ratio of 2.5:1. This is often referred to as a FSR. A floor space ratio, or FSR, is commonly used to estimate the development potential of a site and therefore its land value. To address these concerns, the Urban Design Study did not recommend an increase to the existing FSR but did

recommend changes to the DCP and height controls to make it more possible to achieve an FSR of 2.5:1.

10 To implement the recommendations of the study, three draft documents were prepared. First, a planning proposal to amend the Canada Bay LEP of 2013. The planning proposal details land to be rezoned, land identified for acquisition and new development standards. The second, was the Canada Bay Development Control Plan, or DCP, which provides additional guidance for new development and includes building envelopes – that is,
10 maximum number of stories and setbacks and the like – and a framework to deliver pedestrian and vehicle connections as well as streetscape and building design objectives. The third document was the Canada Bay Development Contributions Plan, which was revised to include public infrastructure in the Five Dock Town Centre.

20 At the council meeting on 26 November, 2013, those councillors present voted unanimously in accordance with the recommendations of council staff to endorse the Urban Design Study and associated documents, for public exhibition throughout December 2013 and January 2014. I should perhaps note, however, that Councillors Fasanella and Megna each declared a pecuniary interest in the matter arising from the fact that they each owned property within the study area, and they left the meeting when the matter was being considered. Councillors Fasanella and Megna adopted that course on each occasion the Urban Design Study and associated planning proposals were considered by the council.

30 The Urban Design Study and associated planning proposals were publicly exhibited between December 2013 and January 2014. Of the 31 submissions received by the council, only one – from a Mrs Silvana Cassisi of [REDACTED] – suggested expanding the town centre to include the western side of Waterview Street between Second Avenue and Barnstaple Road. I might refer to that area as the Waterview Street site.

40 Now, in response to that submission, council staff noted that there was little public benefit in rezoning this site from residential to mixed use, that is from R3 to B4. They noted that the Waterview Street site had a predominantly low-rise residential character and included a heritage building and existing strata development. It was considered that a rezoning of the Waterview Street site was undesirable and would provide no public benefit.

Evidence obtained by the Commission indicates that Mr John Sidoti did not agree with the planning controls being recommended in the Urban Design Study. On 7 April, 2014, he attended and spoke at a meeting held at the Five Dock Chamber of Commerce, in his capacity as the State Member of Drummoynes. Minutes of the meeting record, relevantly, that Mr Sidoti expressed the view that Five Dock's density was far too low and that attractive buildings could be built on small and large parcels of land. He

suggested a 3:1 FSR was required. There will also be evidence that Mr Sidoti sought to arrange a meeting between all four Liberal councillors, that is including Mr Megna and the President and Vice-President of the Five Dock Chamber of Commerce, in advance of the council's next consideration of the Urban Design Study and associated planning proposals in May of 2014, specifically the council meeting on 20 May, 2014.

10 In advance of that council meeting, the independent experts reported back to council about the outcome of the public exhibition of the Urban Design Study and associated planning proposals. Relevantly, it was recommended that a clause be included in the planning proposal that would permit an FSR of 3:1 and a height of 27 metres, or eight storeys, on sites with an area over 1,500 square metres. The bonus floor space and height would be possible for the majority of buildings within the Town Centre Study area but would not apply to certain land that was identified as being a maximum of three to four storeys because of the impact on established dwellings. This proposed bonus provision to the planning proposals would not apply to 120 Great North Road. That was because it did not meet the minimum 1,500 square metres requirement and, in any event, so long as the land behind it
20 continued to be zoned as R3 medium-density residential, the development potential at 120 Great North Road would be limited to maximum of three to four storeys because of the impact on those established dwellings.

Although council staff recommended that the council adopt the Urban Design Study, endorse the planning proposal for the town centre and submit the planning proposal to the Department of Planning and Infrastructure for what's known as a Gateway Determination, all councillors present at the 20 May, 2014, council meeting voted to defer the matter to consider issues of height, setbacks, overshadowing, mix of development and the amenity of
30 the surrounding residents. One of the issues under consideration was the extension of the B4 mixed-use zone. In that regard, the Urban Design Study proposed to extend the B4 mixed-use zone around the central core of the centre, which the independent experts considered would benefit most strongly from the proposed investment and upgrade to the public domain, and I identified those areas in the map that was shown on the screen a short moment ago.

40 Critically, the Waterview Street site was not identified for rezoning as it was considered to be located outside the central core of the town centre, contained a few constrained sites, including the heritage item, which was at number 39 Waterview Street, and existing strata development. It was also considered that it would require the extension of a lane to facilitate improved access. It was considered that rezoning land outside the central core would provide fewer benefits and was therefore not recommended.

When the matter was next before the council on 24 June, 2014, all six councillors present and able to vote, including Dr Ahmed and Ms Cestar, but not Ms McCaffrey, who was not present, voted to endorse amendments

to the LEP as recommended by council staff and to refer the proposed changes to the Department for a Gateway Determination. What constituted the public benefit in the Five Dock Town Centre planning process had therefore been determined after extensive community consultation over a number of years, following exhaustive scrutiny of submissions from the community and the recommendations of independent consultants engaged by the council, as well as the expert advice of council's own planning staff. These processes had determined that the vast majority of the affected constituents were opposed to higher heights, densities, commercial rezoning and development, and wanted to retain the village atmosphere of the area. The planning outcomes sought by the majority in the Five Dock community and endorsed by council staff presented differently to the outcomes subsequently raised and pursued by Mr Sidoti.

I expect there will be evidence that, in the meantime, in July 2014, Mr Sidoti was involved in engaging town planners. Whether he retained these town planners on his own initiative or on behalf of his parents is a matter to be explored in the course of this public inquiry. The town planners in question were retained to assist with a development proposal for 120 Great North Road, including the preparation of an options analysis for the site and associated adjoining lots in Second Avenue and Waterview Street, providing town planning advice concerning the effect of the draft planning proposal once it was certified, and reviewing the proposed heights, FSR, setbacks, heritage control, site amalgamation incentives and the like.

The reference to adjoining lots in Second Avenue and Waterview Street is of interest to the Commission because, as at July 2014, the only property owned by Mr Sidoti's family was 120 Great North Road, which Mr Sidoti, his wife and his parents held as trustees of the Staff Superannuation Fund. However, I expect there will be evidence that in October 2014 an adjoining property at 2 Second Avenue was purchased by a company, Anderlis Pty Ltd, as trustee of the Anderlis Investment Trust. The evidence will establish that Anderlis Pty Ltd was first incorporated on the same day that it exchanged contracts for the purchase of 2 Second Avenue. At the time of its incorporation, the sole director and shareholder of Anderlis Pty Ltd was Mr Sidoti's sister, Lisa Andersen. She ceased being a director and shareholder on 21 October, 2014, whereafter her parents – Richard and Catherine Sidoti – became and were the directors and shareholders of the company. Relevantly, Mr John Sidoti and his wife, Sandra, are general beneficiaries of the Anderlis Investment Trust.

The evidence will establish that members of the Sidoti family were involved in further property purchases on that block between Second Avenue and Barnstaple Road. In particular, on 15 May of 2015, Deveme Pty Ltd, as trustee of the Sidoti Family Trust, purchased 122 Great North Road, and on 1 December, 2017, Deveme Pty Ltd – again as trustee of the Sidoti Family Trust – purchased 124 Great North Road. In the meantime, on 25 September, 2014, the delegate of the minister at the Department of Planning

and Environment had determined that the amendment to the LEP should proceed, subject to further community consultation and a public exhibition of planning proposals. Following the period of public consultation, the council was required to refer the proposed LEP back to the Department for finalisation.

10 From 21 October, 2014 to 17 November, 2014, the council publicly exhibited the draft planning proposal as required by the Gateway Determination. Over the ensuing two and a half years, the Urban Design Study and associated planning proposals became the subject of a protracted process of consideration by the council. Between November 2014 and February 2017, the design study and associated planning proposals were an item on the agenda for council meetings on a further five occasions. A consistent matter of contention were representations made by planners engaged on behalf of, inter alia, interests associated with Mr Sidoti's family, seeking to have the Waterview Street site included in the expansion of the area to be rezoned as B4 mixed-use. The planning outcome advanced on behalf of the Sidoti family interests was consistently not supported by the independent experts engaged by the council or by council staff. To the
20 contrary, the independent experts and council staff remained of the view that an expansion of the area to be rezoned as B4 mixed-use beyond that proposed by the Urban Design Study would have no public benefit.

The evidence will establish that, following the first public exhibition of the planning proposal, town planners engaged by the Sidoti family made a written submission to council contending for a rezoning of the Waterview Street site as B4 mixed-use. This would then allow the joint development of 120 Great North Road and 2 Second Avenue as a commercial and residential property.

30 The council engaged Studio GL, an urban designer and one of the co-authors of one of the original Urban Design Study, to review the submissions. Studio GL noted but did not support the Sidoti family's town planner's submission regarding the rezoning of the Waterview Street site and further recommended removing the eight-storey bonus incentive from adjoining sites along Great North Road. Studio GL's recommendations were adopted by council staff in a report prepared for the council meeting dated 2 June, 2015.

40 At that council meeting on 2 June, 2015 the Sidoti family's town planner addressed the council, arguing, unsuccessfully, that the Waterview Street site should be rezoned B4 mixed-use and the eight-storey bonus should not be removed from adjoining properties on Great North Road. Notably, all councillors present at the meeting, including the Liberal councillors Helen McCaffrey and Mirjana Cestar, voted to adopt the recommendations. Councillor Ahmed was not present at the 2 June, 2015 council meeting. This meant that as at June 2015, the Waterview Street site remained outside of the areas proposed to be rezoned, which outcome had been supported by

each of the Liberal councillors on at least one occasion. That is, they had implicitly rejected arguments that were being advanced on behalf of the Sidoti family private property interests.

10 Notwithstanding the position at 2 June, 2015, following a further exhibition of the planning proposals in July of 2015, the town planners engaged on behalf of the Sidoti family interests made a further submission to council repeating the argument in favour of a rezoning of the Waterview Street site as B4 mixed use. The submission was not supported by council staff, who noted that there was no significant public benefit from the proposed rezoning.

At a meeting of the council on 20 October, 2015 consideration of the matter was deferred on a motion of the Liberal councillors Ahmed and Councillor McCaffrey pending the preparation of an addendum report setting out the advantages and disadvantages of alternative height options that had been presented in Studio GL's report.

20 The evidence indicates that a meeting was arranged between Mr Sidoti, his town planner, the then Mayor of City of Canada Bay – that is, Mr Anthony Tsirekas – and council staff on about 27 October, 2015. Within a few days of that meeting, a draft resolution was prepared for the next council meeting on 3 November, 2015, recommending that council investigate the possibility of rezoning three areas at the edge of the Five Dock Town Centre at the edge of the Waterview Street site. This resolution was passed at the council meeting.

30 Studio GL was again engaged to investigate the three sites on behalf of the council and prepared a report dated 3 March, 2016. Studio GL identified two options to the redevelopment of the Waterview Street site. Critically, both options retained the R3 residential zoning for the site, although the second option proposed removing the heritage listing on 39 Waterview Street site and providing for a maximum building height of 14 metres – that is 4 storeys – with the upper level set back. In addition, Hill PDA undertook a feasibility study which indicated that in either case, if either option was followed, many of the sites would not be viable for development for some years.

40 At a council meeting on 2 August, 2016, Councillors Ahmed and Cestar moved that the council adopt Studio GL's second option in relation to the Waterview Street Site. That motion was passed on the casting vote of Helen McCaffrey who, at that stage, was the deputy mayor and presiding councillor following the earlier resignation from council of Mayor Tsirekas.

Following a further public exhibition of the Waterview Street planning proposal in August and September of 2016, Studio GL again reviewed public submissions including a further submission made on behalf of the Sidoti family interests. That submission urged the council to rezone the

Waterview Street site to B4 mixed use and to increase the height limit to 17 metres, or five storeys.

10 Studio GL was not persuaded by that submission and maintained its view that a height limit of 14 metres, that being five storeys – sorry – four storeys, and a residential zoning for the site was the most appropriate. Although the matter was deferred at the council meeting on 6 December, 2016, and a subsequent meeting on 7 February, 2017, the council formally adopted Studio GL’s second option. Accordingly, the Liberal councillors ultimately did not vote in favour of a rezoning of the Waterview Street site, which was ultimately contrary to the position that had been repeatedly advanced on behalf of the Sidoti family’s private property interests.

20 As had been noted, this public inquiry will explore what, if any, role Mr Sidoti played in engaging and instructing the planners who made representations to the council on behalf of his family’s interests, seeking to advance those private property interests. This public inquiry will also explore whether Mr Sidoti used his position as the Liberal member of State Parliament and the concomitant access to the Liberal councillors that he was able to enjoy, in order to influence those councillors, whether by threats or otherwise, to make decisions in respect of the Urban Design Study and associated planning proposals that were contrary to that which had been identified by the independent experts and council staff as in the public interest but would favour, or advance, the private property interests of the Sidoti family. In that regard, the Commission, in the course of its investigation, has obtained various emails and other correspondence that suggests Mr Sidoti regularly raised with the Liberal Councillors issues concerning the Urban Design Study and associated planning proposals, particularly the exclusion of the Waterview Street site from the proposed expansion of the B4 mixed-use zone.

30 The evidence obtained to date suggests that Mr Sidoti arranged and attended meetings with the Liberal councillors, apparently for the purpose of discussing upcoming consideration by the council of the Urban Design Study and associated planning proposals, how the councillors might decide the issue and even, on occasion, what motion they should move. This evidence will be explored and scrutinised during the course of this public inquiry.

40 This inquiry will consider whether or not, in the period between November 2013 and September 2017, firstly, the Liberal councillors, or any of them, were subjected to any improper influence or attempt to influence them in the exercise of their public-official functions as councillors of City of Canada Bay Council, so as to achieve planning outcomes that would benefit the Sidoti family’s private property interests in the Five Dock area, but which were not in the public interest. Secondly, whether or not Mr John Sidoti sought to improperly influence or attempt to influence Liberal councillors’ honest and impartial exercise of their public-official functions with a view

to achieving such planning outcomes. Thirdly, whether or not Mr John Sidoti exercised his own functions as the local Member for Drummoyne, purporting to represent the concerns and interests of his constituents, including shopkeepers in the Five Dock area, when in fact pursuing his family's private property interests in the Five Dock area. And fourthly, whether or not Mr John Sidoti sought to use his status and/or office as the local member for Drummoyne, and/or his position in the Liberal Party, to persuade the Liberal councillors to move, support and vote as a bloc in favour of specific resolutions that would favour or benefit his family's private interests in the Five Dock area.

Turning to the alleged failures to declare pecuniary interests. Members of parliament, ministers and parliamentary secretaries have different obligations concerning the disclosures of their pecuniary interests. The Constitution (Disclosure by Members) Regulation 1983, which I might refer to as the Disclosure Regulation, requires all members of parliament to disclose their pecuniary interests in accordance with the requirements of it. Relevantly, the Ministerial Code of Conduct, which I might refer to as the Ministerial Code, imposes an additional requirement on a minister or a parliamentary secretary to disclose to the Premier, not only their own pecuniary interests, as defined by the regulation, but also the pecuniary interests of any spouse or de facto partner.

The Disclosure Regulation requires that members of both Houses of parliament lodge regular returns, disclosing certain interests, such as real property, interests and positions in corporations, income, debts and gifts. The regulation also requires that each clerk compile and maintain a Register of Disclosures for their respective Houses. The purpose of the Register of Disclosures is to promote greater transparency, openness and accountability in the parliamentary process. Members are required to make a primary return disclosing their pecuniary and other interests at the beginning of their term in parliament. Every six months after that, members must make either an ordinary or supplementary ordinary return disclosing ongoing interests.

The Ministerial Code commenced on 20 September 2014 as an appendix to the ICAC Regulation of 2010. It applies to a minister, relevantly defined as including a parliamentary secretary. Clause 5 of the Independent Commission Against Corruption Regulation 2017 prescribes that the Ministerial Code is an applicable code for the purposes of section 9 of the ICAC Act. That means that a substantial brief of the Ministerial Code may give rise to a finding of corrupt conduct under section 8 and section 9 of the ICAC Act.

The Ministerial Code requires a parliamentary secretary to provide the following information to the Premier for inclusion in the Register of Interests that is maintained by the Department of Premier and Cabinet. Firstly, a copy of the most recent return they provided to parliament, and that is a continuing obligation. Secondly, a notice in writing to the Premier,

setting out the particulars of any events that have occurred since that return was lodged that will need to be disclosed in the next parliamentary return. And, thirdly, notice in writing to the Premier of any pecuniary and other interests of any immediate family member, the disclosure of which would be required, under the regulation, if the relevant interest were instead that of the parliamentary secretary. Relevantly, an immediate family member is defined to include any spouse or a de facto partner.

10 A parliamentary secretary should notify the Premier of changes in their pecuniary or other interests, or those of their immediate family members, as soon as practicable after the change occurs. The disclosures that I've just referred to are kept on the Ministerial Register of Interests. Clause 9 requires a schedule of the disclosures of current interests made by all ministers under this part to be kept on the Ministerial Register of Interests. A member may also make a discretionary disclosure at any time. Pursuant to clause 6B of the regulation, if a member considers it appropriate to do so, a member may make any disclosures in a discretionary return concerning any or all of the matters that a member is required or permitted to disclose in an ordinary return, before the date on which the member is next required to
20 lodge an ordinary or supplementary ordinary return.

Now, the enforcement of the Ministerial Code, including any sanctions for a breach, is a matter for the Premier, who is supported by the Department of Premier and Cabinet, or DPC, in this function. Disclosures made under the Ministerial Code to the Premier and to the DPC secretary are handled by DPC. Upon a person's appointment as a parliamentary secretary, DPC writes to the parliamentary secretary and the General Counsel meets with them to explain their obligations under the Ministerial Code.

30 The Commission has obtained the returns made by Mr Sidoti to the Premier over the relevant period. They were produced by the DPC in response to a section 22 compulsory notice. According to the Commission's analysis to date, Mr Sidoti was required to declare the following pecuniary interests. Income received in connection with residential and commercial properties at 120, 122, 124 Great North Road, Five Dock, and 13 Andrew Street, West Ryde. And in respect of 120 Great North Road, income for himself, that is Mr John Sidoti, for 2011 to 2012, 2012 to 2013, 2013 to 2014 and 2014 to 2015, and for 2016, 2017, 2018, and for himself and his wife for 2015-2016, 2016-2017 and 2017-2018. In respect of 122 Great North Road, income for
40 his wife, Sandra Sidoti, for 2015 to 2016, 2016 to 2017, 2017 to 2018 and 2018-2019. In respect of 124 Great North Road, income for Sandra Sidoti for 2017 to 2018 and 2018 to 2019. And in respect of 13 Andrews Street, West Ryde, income for his wife Sandra Sidoti for the period 2015 to 2016, including any capital gain from the sale of that property.

He was also required to declare interest derived from the term deposits made by the Staff Superannuation Fund and the Sidoti Family Trust. Insofar as the Staff Superannuation Fund was concerned, that would have

required declaration of the interest income for himself for 2011 to 2012, 2012 to 2013, 2013 to 2014, and 2014 to 2015. And insofar as interest income for himself and his wife, Sandra Sidoti, for 2015 to 2016, 2016 to 2017, and 2017 to 2018. And as to the Sidoti Family Trust, he was required to declare interest income for his wife, Sandra Sidoti, for 2015 to 2016, 2016 to 2017, and 2017 to 2018.

10 He was also required to declare his interest in real property situated at 120 Great North Road, Five Dock, and also a property at 3A, that is 3 capital A, Byer Street – that’s B-y-e-r Street – in Enfield. He was also required to declare his directorship in a company called Betternow Pty Ltd. Although Mr Sidoti has declared an interest in land held by Betternow Pty Ltd as trustee for the JAFS Investment Fund, since the financial year ended 30 June, 2014, he has not disclosed his directorship and status as a shareholder of Betternow Pty Ltd until he submitted a discretionary return form in June of 2019. Mr Sidoti and his wife were appointed directors of that company on 15 July of 2014.

20 Now, Commissioner, this public inquiry will explore the extent to which Mr Sidoti may have failed to disclose the matters he was required to disclose, and particularly the extent to which any non-disclosure may have been deliberate or otherwise a substantial breach of the Ministerial Code. Finally, I should say for the benefit of the public that this Commission is an investigative body, not a court. As such, it will not make any findings that a person has committed a criminal offence. It may, however, make findings concerning the conduct under investigation and may also consider whether advice should be sought from the Director of Public Prosecutions concerning the possible prosecution of any persons for a specified criminal offence. To that end, it will be necessary for the Commission to make
30 assessments as to the credibility of witnesses and their evidence in this public inquiry. In that regard, I should perhaps also note that a person who knowingly gives false or misleading evidence to this Commission – whether at a compulsory examination or public inquiry – is liable for prosecution for a serious indictable offence that is punishable by up to five years’ imprisonment.

And, Commissioner, that completes my opening statement in this inquiry.

40 THE COMMISSIONER: Thank you, Mr Ranken. I propose to take an adjournment and resume at midday. I’ll deal with a number of matters when I resume, including applications for leave to appear or authorisations to appear, and for applications for legal representation. Then I’ll adjourn.

SHORT ADJOURNMENT

[11.39am]

THE COMMISSIONER: There are a number of procedural matters that I'll address now and then I will deal with applications for leave to appear. Firstly, the Commission's sitting times and dates. The Commission will sit today until 23 April next, endeavouring to finish the inquiry within four weeks. Next, the Commission will not sit on Friday, 2 April or Monday, 5 April, as those dates form part of the Easter holiday period. And thirdly, on sitting days we will commence at 10.00am and finish at 4.00pm, with breaks for morning tea and for lunch.

10 It's necessary that I make some observations in relation to the Commission's COVID-19 protocol. The protocol is published on the Commission's website and I note, in particular, the following aspects of that protocol. The Commission has instituted a screening process for all those attending the public inquiry to mitigate against any risk of transmission of COVID-19. In order to observe relevant health advice, the capacity of the Commission's hearing room has been assessed at a maximum of 24 persons, including Commission staff. After allowing for necessary Commission staff and the witness giving evidence, only 16 other persons will be permitted in the hearing room at any one time.

20

Members of the public and the media will not be given access to the Commission's premises for the purpose of the public inquiry but they will be able to observe the public inquiry through livestreaming and will be able to access transcripts and exhibits through the Commission's website. Those seeking to be present in the hearing room on any particular day, or part of a day, should at least one working day before their intended attendance, email the Commission with relevant details in accordance with paragraph 9.5 of the protocol.

30 The Commission will determine who can be present in the hearing room on any day or part of a day, subject to any decision that I may make. Only one member of a party's legal team will be permitted to be physically present in the hearing room at any one time. In that respect, I will of course permit parties or their legal representatives address me on the application of that part of the protocol but the protocol is as I have just stated. Parties involved in the public inquiry and their legal representatives who are unable to physically present in the hearing room can keep track of the progress of the public inquiry, of course, through the livestreaming facility and may also apply to attend via MS Teams audio-visual link.

40

I do ask those involved in the public inquiry to familiarise themselves with the protocol and assist in the adherence to the procedures that I set out in that protocol.

I turn to deal with applications in terms of sections 32 and 33 of the ICAC Act to appear at the public inquiry and for legal representation. I have had email correspondence from a number of the persons seeking leave so that I am in a position to deal with applications without calling upon each party or

their legal representative to make submissions. That said, I commence with Mr Sidoti. Plainly, I grant leave to him to appear at the public inquiry. Now, Mr Neil, you obviously are here to appear for Mr Sidoti, with Mr Matthew Tyson. Is that right?

MR NEIL: Yes, Commissioner.

10 THE COMMISSIONER: I just didn't have any email correspondence but unless there's anything you want to put to me, I propose to grant leave, of course, to you, to Mr Tyson, to appear and represent Mr Sidoti and there's Barbara Diaz Escobar, as I understand it, as all part of the KPL Lawyers, for them, is that?

MR NEIL: Yes. And I thank you, Commissioner. Could I also ask on occasions for Mr Domenic Portolesi, of KPL Lawyers, my instructing solicitors, to be able to appear.

THE COMMISSIONER: Yes. Very well. Yes, thank you, Mr Neil.

20 MR NEIL: Thank you, Commissioner,

THE COMMISSIONER: I grant leave to Mr Neil, Queen's Counsel, with Mr Tyson, to appear on behalf of Mr Sidoti, and for Mr Sidoti to appear. I also grant leave to Ms Escobar and Domenic Portolesi to also appear and represent Mr Sidoti. In relation to Gary Sawyer, application has been made by him for leave to appear and for Mr Sawyer to appear. I grant that application and note that Vanja, V-a-n-j-a, Bulut, B-u-l-u-t, of counsel will appear for Mr Sawyer, and grant leave, additionally, to Caitlin Hawthorne and James Riley of RGSLAW to appear in the public inquiry of Mr
30 Sawyer's interests.

In relation to Tanveer Ahmed, is there anybody here that seeks to appear for Mr Ahmed? I note that he's on the list of persons who apparently wish to be authorised to appear in the public inquiry. Although I do not have any written application, it's clear that Mr Ahmed should be allowed to appear at the public inquiry and be represented by his legal representative Eric Hermann, H-e-r-m-a-n-n, and I so direct.

40 In relation to Helen Suzanne McCaffrey, I grant the application made on Ms McCaffrey's behalf for her to appear in this public inquiry and for her to be legally represented by Linda Barnes of Counsel and Michael Blair of Blair Criminal Lawyers.

In relation to Matthew Howard Paul Daniel, I note application made on his behalf. Mr Hale, I see you're present.

MR HALE: Yes. Yes, I seek leave to appear for Mr Daniel. I'm instructed by Mr Todd Neal of Colin Biggers & Paisley and I seek leave be granted for him also to appear.

THE COMMISSIONER: Also I think Kate Emanuel is on the list.

MR HALE: Yes.

10 THE COMMISSIONER: Yes. Thank you, Mr Hale. I grant leave to Mr Hale of Senior Counsel to appear on behalf of Mr Daniel, as well as Kate Emanuel and Todd Neal of Colin Biggers & Paisley. I confirm that Mr Daniel is authorised to appear at the public inquiry.

In relation Charbel (Charlie) Tannous, I understand application has been made by Mr Moses of Senior Counsel. Is Mr Moses here? No. In accordance with the application, I grant leave to Mr Tannous to appear at the public inquiry and I grant leave to Mr Moses of Senior Counsel, with Mr Jay Anderson of Counsel, to appear and represent Mr Tannous. I grant
20 leave also to their instructing solicitors, Stan Kondilios and Vanessa Asumugha, that's A-s-u-m-u-g-h-a, of Hall & Wilcox Lawyers, as well as Charlotte Read of Hall & Wilcox.

In relation to Mr Joseph Georges, on the basis that Mr Georges has been required to give evidence, I grant leave for him to appear at the public inquiry and be represented by Mr Nicholas Di Girolamo, G-i-r-o-l-a-m-o.

In relation to Mr Neil Kenzler, K-e-n-z-l-e-r, I understand application is intended to be made on his behalf, although I do not have any written application. However, he, at the least, will be relevant as a witness. I grant
30 leave to Mr Kenzler to appear and to be represented by Sheridan Goodwin Lawyers.

In relation to Helena Miller, application has been made for her to appear and to be represented by Mr Taran Ramrakha. I note application by Mr Ramrakha. I grant leave to Ms Miller to appear, as she is a witness in the public inquiry, and for Mr Ramrakha to appear and represent her.

In relation to Mark Thebridge, T-h-e-b-r-i-d-g-e, application has been made for him to appear. It's clear that he's been required to attend as a witness. I
40 grant leave for him to appear at the public inquiry and to be represented by Daniel Mendoza-Jones from Mendoza Legal and Consulting.

Are there any other applications in relation to authorisation to appear or to be represented? If not, I confirm what I've earlier stated, that all those who have now been authorised to appear and be represented to adhere to the COVID-19 protocol.

Mr Ranken, you, I understand, will make application under section 112 for a direction in the nature of a suppression order.

MR RANKEN: Yes, that is so, Commissioner. I seek a suppression order pursuant to section 112 of the ICAC Act protecting against the publication to any person outside the Commission of any private email addresses, private residential addresses, private phone numbers, bank account numbers and tax file numbers contained in any of the exhibits to be tendered in this inquiry, and/or other documents shown during the inquiry, with the
10 exception of Commission officers or for statutory purposes, and between witnesses in the inquiry and their legal representatives, subject to any further order of this Commission.

THE COMMISSIONER: Yes, thank you, Mr Ranken. I propose to make such a direction. Pursuant to section 112 of the Independent Commission Against Corruption Act I make the following direction. That pursuant to section 112 of the Act, a suppression order is made protecting against
20 publication to any person outside the Commission, any private email addresses, private residential addresses, private phone numbers, bank account numbers, tax file numbers contained in any exhibits to be tendered in this inquiry, and/or other documents shown during this inquiry, with the exception of Commission officers for statutory purposes and between witnesses in the inquiry and their legal representatives, subject to any further order of this Commission.

SUPPRESSION ORDER: PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT I MAKE THE FOLLOWING DIRECTION. THAT PURSUANT TO SECTION 112 OF THE ACT, A SUPPRESSION ORDER IS MADE PROTECTING AGAINST PUBLICATION TO ANY PERSON OUTSIDE THE COMMISSION, ANY PRIVATE EMAIL ADDRESSES, PRIVATE RESIDENTIAL ADDRESSES, PRIVATE PHONE NUMBERS, BANK ACCOUNT NUMBERS, TAX FILE NUMBERS CONTAINED IN ANY EXHIBITS TO BE TENDERED IN THIS INQUIRY, AND/OR OTHER DOCUMENTS SHOWN DURING THIS INQUIRY, WITH THE EXCEPTION OF COMMISSION OFFICERS FOR STATUTORY PURPOSES AND BETWEEN WITNESSES IN THE INQUIRY AND THEIR LEGAL REPRESENTATIVES, SUBJECT TO ANY FURTHER ORDER OF THIS COMMISSION.
30
40

THE COMMISSIONER: As those appearing would be aware, there is an electronic brief for the first part of the public inquiry. Mr Ranken, I understand you're going to tender.

MR RANKEN: I shall, Commissioner.

THE COMMISSIONER: Just before you do tender that, I'll just deal with one other matter. Just pardon me a moment. You earlier in your opening statement referred to some maps and policy codes and guidelines. I think I should mark those firstly as exhibits. You're tendering those?

MR RANKEN: Yes, perhaps just before I move to the tender of matters relating to the inquiry, there was a further application that was made by, on behalf of an interested party for a non-publication order in respect of her name and the company she appears for.

THE COMMISSIONER: That's the application that Mr Ramrakha made.

MR RANKEN: Yes, that is so.

THE COMMISSIONER: All right. I'll deal with that, then, firstly.

MR RANKEN: I understand there is an application made on behalf of Ms Miller and her company, which is MG Planning Pty Ltd.

THE COMMISSIONER: Yes, very well.

MR RANKEN: And the application is that the name and the name of her company not be published during the course of the inquiry.

THE COMMISSIONER: Yes, very well. I'll deal with that. On 26 March last, Mr Ramrakha of Counsel, who now appears and has been granted leave to appear on behalf of Ms Miller, made application by email on that date that the name of the witness and the company should not be published, and sought an order under s112 suppressing the identity in respect of her name and the name of her company. I understand that Ms Miller's role in this is to be called in relation to certain planning matters and she, at the least, will be a witness, if not an affected person. However, I proceed on the basis, at this stage that she will be a witness. I have read the email from Mr Ramrakha in which he sets out the basis upon which the application for a section 112 direction or order is made. Mr Ramrakha states that he is content for the application to be dealt with by me in chambers. I considered it was more appropriate that I deal with that in the course of the public inquiry, that is the application he's made. Mr Ramrakha submitted that the position of his client and her company should not be conflated with the position of affected persons. He has further put forward the basis for the application is that it put at risk, perhaps, Ms Miller and her company and that for that reason the details should be suppressed. I have considered Mr Ramrakha's application, I understand the basis upon which he makes it, I have regard to the nature of a public inquiry, the importance that, except in particular circumstances, many of which are well known, evidence should be taken in public inquiry rather than private hearing and further there should be no suppression of identify unless there is compelling reason for

that to be done. I do not consider there is any compelling reason or justification for a suppression order as sought by Mr Ramrakha and accordingly I refuse the application. Now, Mr Ranken, where are we?

MR RANKEN: Yes, if the Commission pleases.

THE COMMISSIONER: Seems to me that I should deal with the tender of the electronic brief and perhaps the other documents that I earlier mentioned, either now to at least before the first witness is called.

10

MR RANKEN: Yes, Commissioner. And to that end, I firstly tender the Drummoyne state electoral map that was shown during the course of my opening remarks.

THE COMMISSIONER: All right. Just so everyone is aware, the numbering of the exhibits will commence with the number 23. So the document Drummoyne state electoral map will become Exhibit 23.

20 **#EXH-023 – DRUMMOYNE STATE ELECTORAL MAP**

MR RANKEN: And then I tender what I will refer to as the rezoning brief.

THE COMMISSIONER: Yes. That's, as I understand it, up to page 1746, is that right?

MR RANKEN: Yes, that's so.

30 THE COMMISSIONER: The rezoning brief will be admitted and become Exhibit 24.

#EXH-024 – REZONING BRIEF

MR RANKEN: And finally, I referred to policy codes and guidelines. I tender that material, which - - -

40 THE COMMISSIONER: Yes. The policy codes and guidelines, to which reference was made, will become Exhibit 25.

#EXH-025 – POLICY CODES AND GUIDELINES

MR RANKEN: They are the only matters I wish to deal with by way of tender.

THE COMMISSIONER: Well, what about the electronic brief? Are you tendering the electronic brief.

MR RANKEN: The rezoning brief if the electronic brief, as is the policy codes and guidelines, they're each part of the electronic brief.

THE COMMISSIONER: So there's nothing else?

10 MR RANKEN: Nothing at this stage.

THE COMMISSIONER: All right, thank you. Well, now - - -

MR RANKEN: We're in a position to call the first witness if the Commissioner is content with that course.

THE COMMISSIONER: Yes, thank you, Mr Ranken. Yes, all right. Very well.

20 MR RANKEN: I call Mr - - -

THE COMMISSIONER: Well, just before you do, unless anyone wants to raise any other matters, we'll proceed and have the first witness called.

MR HALE: I would only raise, if you would excuse me for the moment, since I don't need to be here this afternoon.

THE COMMISSIONER: Yes, certainly, Mr Hale. You can come and go as you please. Thank you. Yes, Mr Ranken.

30

MR RANKEN: Thank you, Commissioner. I call Mr Anthony McNamara.

THE COMMISSIONER: Now Mr McNamara, to give evidence do you wish to take an oath or an affirmation?

MR McNAMARA: An oath.

40 THE COMMISSIONER: An oath, very well. I'll have my associate administer the oath, she's here, thank you. Would you mind just standing while you take the oath. Have you got a Bible there? If you take the Bible. Thank you.

THE COMMISSIONER: Thank you Mr McNamara, if you just take a seat there. If you can try and speak into the microphone, it magnifies so everyone in the room, including those right down the back, can hear. Thank you. Now, Mr Ranken, who appears as Counsel Assisting, will proceed to ask you some questions.

10 MR RANKEN: Thank you, Commissioner. What is your full name?
---Anthony Gerard McNamara.

Are you currently employed?---I'm retired – oh, I should say I do some small consultancies as well, but basically retired.

What sort of consulting work do you currently do?---Planning work.

Between 2004 and 2018 were you the Director of Planning and Environment for the City of Canada Bay Council?---That's correct.
20

What were your qualifications in terms of town planning?---I have Master of Environmental and Local Government Law, Bachelor of Arts, I've got an Ordinance IV Certificate as a Planner under the Local Government Act 1919, a Diploma of Urban Studies from Macquarie University.

And prior to taking up the position of the Director of Planning and Environment at the City of Canada Bay Council, what roles, if any, did you have as a town planner?---Prior to the that position I was a partner with Environmental Resources Management Australia, which is an
30 Environmental Planning Consultancy. Prior to that, I was the Director of Planning and Environment at Hastings Council Port Macquarie. Prior to that, I was Chief Town Planner at Wollondilly Shire Council based at Picton.

So, as at 2013, for arguments' sake, how much experience did you have in town planning, how many years' experience in actual town planning?---In excess of 30 years.

40 And by the time you completed your time with the City of Canada Bay Council, what – did you have some 35 years' experience as a town planner?
---It was more like 40 years worth, in total.

And insofar as your responsibilities as the Director of Planning and Environment with the City of Canada Bay Council, could you just tell us what they were?---They were pretty broad. Strategic land use planning, development control, which is all the development applications, building control, building compliance, waste management, environmental control, parking enforcement. They were the major technical areas of expertise.

Who did you report to in your role as the Director of Planning and Environment?---General Manager Gary Sawyer.

That was Gary Sawyer was it?---Correct.

Was that for the whole of the time that you were the Director of Planning and Environment or - - -?---No, the early probably first 12 months was with Mr Michael McMahon.

10

But certainly from 12 months into your term as the Director of Planning and Environment until you left the position in 2018, was it Mr Sawyer?---That's right.

Is it called a division or is it a - - -?---It's a division, yes.

In terms of the Division of the Planning and Environment, how many people did it employ?---In the order of 50 to 60 people.

20

Were all of those direct reports to you or were there managers involved? ---No, I had a number of managers.

And was one of those managers a Manager for Strategic Planning?---That's correct, yes.

30

What is a Manager of Strategic Planning?---The Manager for Strategic Planning is basically charged with a number of duties but that included doing, either commissioning or undertaking planning studies, which is basically involved with, ultimately, land use planning, strategic planning, development of Local Environmental Plans, Development Control Plans and also that role encompassed land information, keeping track of zonings for property certificates, zoning certificates.

If we just deal with things like LEPs, Local Environmental Plans.---Yes.

And DCPs, Development Control Plans.---Correct.

40

Could you just – what is an LEP?---A LEP is a planning instrument which is a gazetted document under the Environmental Planning and Assessment Act. The, it is a legal document. It, the basic controls over land use are zoning, height controls and floor space ratios, which are planning controls contained within that document, and they, those rules are applied to development applications, which, which are dealt with through various mechanisms via council and approved through various authorities.

And what about DCP?---Development Control Plan is a non-gazettal document. It's a document which is adopted by the council. It sits under a Local Environmental Plan and it adds more detail. It cannot override the

provisions of the LEP, but it certainly adds details to, to that, for, to, to guide and assist applicants and council in the administration of those basic controls in the LEP.

So those two documents, do they work together, do they?---That is right.

And as at 2013, who was the Manager of Strategic Planning at the City of Canada Bay Council?---Marjorie Ferguson.

10 And so did she report to you directly?---Yes, she did.

And did she have a team of planners or strategic planners under her?---Yes, she had a small team of, from memory, about four, four people.

And did Ms Ferguson leave that position as the Manager of Strategic Planning some time in about late 2015 or early 2016?---From memory, she left at the end of 2015. That's, that's my recollection, yes.

20 And who took over from her in that role?---A gentleman by the name of Paul Dewar, and Paul acted in that role as an acting manager for approximately 12 months, and then the position was advertised and Paul applied for that position and was appointed as a permanent manager for that position.

And prior to acting in the role, was he a strategic planning coordinator within Ms Ferguson's team?---That's right.

30 And how long was he in that position for, do you know, prior to Ms Ferguson leaving the council?---Probably in the order of 10 years.

Now, can I ask you about the Five Dock Town Centre Urban Design Study and associated planning proposals?---Yes.

40 Now, could you assist us with the circumstances in which the council sought to undertake the Urban Design Study? Was there some concern at the council level that led to it being considered and pursued?---The, there was a view that the Five Dock Town Centre was not thriving. There was a number of vacant properties within the centre. It didn't appear to be, have the, I suppose, the economic activity and the vibrancy of other centres such as Birkenhead Point, possibly Drummoyne and the Concord Town Centre. So the view of the council, which I shared, was that it was worthy of investigating what actions could be taken to look at revitalising and reinvigorating the town centre.

And as a first step in that process, what did you do or what did the council do?---The, we did a number of actions. We undertook a number of professional studies. One was an economic study.

And who performed the economic study?---HillPDA.

And what did that involve, to your knowledge?---The HillPDA study, and I am going from memory here because I haven't got those documents, I didn't take those documents with me, but the purpose of it was to look at the nature of the business in the town centre, the, the controls that applied to the town centre, looking, looking at whether or not the centre would, would benefit from growth, particularly in the areas of heights and floor space ratios. So this was, this was not the Urban Design Study, this was generally
10 looking at what is, what is the role of the centre, what is the business that's normally conducted in the centre, and would, would that centre have any potential if we looked at increasing floor space, increasing heights, possibly even increasing the size of the centre.

And was there a document or report that was developed out of that economic study?---Yes, there was.

Was that the 2012 Five Dock Town Centre Strategy or was that a different thing altogether?---That's my recollection was the document we're talking
20 about, yes.

And was one of the key recommendations – or what were the key recommendations that came out of that economic study and the strategy? Firstly, you talked about, I might go through some of the matter that you identified. The kind of commercial activity that was present in Five Dock, what were the conclusions of the economic study, concerning commercial activity in the Five Dock Town Centre?---My recollection, and I apologise to the Commission, but it's going back a while and I have not reviewed that because I don't have access to that document, but effectively it was, the
30 nature of the centre is basically a large village. There was an issue that there was an undersupply of major retail within the centre, so it was identified that there was a need for an additional shopping centre. There was identified that we could improve the public parking within the town centre and there were issues about the size of the centre. Five Dock is a linear centre running along Great North Road and it's, from one end to the other, is, the zone, B4 zone, is in the order of 800 metres and the view was that's too big for a village. It's there for historical reasons. And the outcome was that we'd be better focusing on the southern end, developing that as a, as a more well-serviced town, village centre, and focus the
40 attention for retail, the B4 in that location.

When you refer to the southern end of that Five Dock Town Centre, was that focused on a particular location towards the southern end?---From memory, it was about halfway down, roughly Henry Street, which intersects at right angles swath Great North Road, down to the, going down south towards Parramatta Road.

And where in that area is Fred Kelly Place?---Fred Kelly Place is on the western side of Great North Road. It is a public open space. It's roughly in the centre of that location.

And you also mentioned that one of the things that the economic study looked at was things like floor space ratios and the controls, I think, in relation to development. What were there conclusions of the economic study, as best you can recall?---As best I can recall, the, the question that was raised in discussion by council was, "Do we need greater height and great floor space ratio to generate economic activity within the centre?" The response, as I recall, from HillPDA was that that can be a negative. There was an existing 2.5:1 floor space ratio, which was underutilised, in other words the centre had, as a total, had well below the 2.5:1 in its existing capacity. To go higher, to higher floor space ratio, such as 3:1 or 3.5:1, has the effect of increasing the value, that is the dollar value of lands, which can have a negative impact in terms of investment and development.

Why is that?---This, this is why we relied on HillPDA and their, their view was that you're talking about a village centre, you're not talking about a bit subregional or regional centre where those bigger centres tend to attract higher values because they can support larger developments. The, the negative impacts of increasing the value of these properties, it may be a deterrent to development and investment. That, that point was taken, particularly by staff, with the view that since the centre was well below capacity in terms of potential development and based on that advice, we were of the view that we should leave the 2.5:1 as the maximum floor space ratio.

That's something that came out of the economic analysis that had been conducted by – or study conducted by HillPDA. Out of that strategy or the document the Five Dock Town Centre Strategy, were there some key recommendations in terms of moving forward with a design study?---Look, from memory there was a range of actions, small and large, I thought it was a very useful study, and the smaller end of it, such as street level activations and so forth, were undertaken without any major further work by council. But looking at the fact that the town centre had undercapacity in terms of floor space ratios, there was a general perception that there wasn't a lot of development occurring, particularly commercial development. The view was we should look at the existing controls and see was there something wrong with those controls and what could be done to change those controls, in a sense whereby the centre wasn't turned from being a large village into something else, e.g. a sub-regional centre, but it would be more, there would be more incentives for developers to take interest in developing in the town centre.

What steps were then taken in relation to pursuing or trying to identify how that could be achieved?---Following that strategy document, we commissioned – originally it was ARUP and then the person who was the

key urban designer working for ARUP left that company and moved to develop their own company called GL Studio, and as a result that's why we started with ARUP and then moved onto GL Studio over time. But the purpose of it was to undertake an urban design study which would take the strategy advice and turn it into a document which hopefully added great detail and understanding. It looked at building massing because the controls that come out of the LEP – which I've mentioned before, zoning controls, building heights, floor space ratios – they're legal documents but they're crude documents there's no finessing in those. It doesn't really tell you what that town centre will look like. Urban designers can work with that sort of document and look at building massing, looking at issues of overshadowing, the streetscapes, particularly issues about open space, the issues of access particularly pedestrian access, but I've mentioned before the 400-metre criteria is based on Five Dock being really a pedestrian-type centre where you don't drive around, you park and then you walk around to do your business. So taking all of those elements the Urban Design Study was intended to, if you like, produce like a 3D document dealing with what the centre could look like and what would need to be done to implement those recommended controls.

20

In terms of the zoning of the town centre at the time that this work was being undertaken, there was an area, was there, that was B4 mixed zoning, is that correct?---That's right.

But did that allow for both residential as well as commercial development in the area?---Yes, that's right.

You mentioned two firms, firstly ARUP and then you said there was a person who had worked at ARUP went off and formed their own company called Studio GL.---That's right.

30

What sort of companies were ARUP and Studio GL?---ARUP is a big engineering company that had multitude of areas of professional expertise. One area was the urban design component, they also do, from my knowledge of their company, a lot of engineering and road designs, civil design and so forth. Our interest was only in that urban design development and then Studio GL was very focused on urban design and it didn't cover the other areas that ARUP covers.

And you mentioned that Studio GL was, in a sense, a breakaway from ARUP by one of ARUP's personnel. Who was that person?---Diane [sic] Griffiths.

40

And so was it the case that the council was, in a sense, following Diane's Griffith's expertise from ARUP to Studio GL?---I believe that was the case, yes.

And are you able to say anything about Ms Griffiths and her experience in urban design?---Look, I, I do know her professionally and through the Planning Institution of Australia. She's very well regarded in that area. She's considered an expert in the area, both, both professionally and through the Planning Institute. Their, that decision to follow was, was, was not a personal decision on my behalf, but it was certainly one that I was, I endorsed.

10 And in due course, was there a report that was produced known as the Five Dock Town Centre Urban Design Study?---That's right.

And was that something that was produced ultimately in about October of 2013?---That's my recollection.

20 But was it something that took some time before it was actually prepared? Was there a fair bit of work that went into it, to your knowledge?---Look, there was a lot of work to go into this. What hasn't been discussed, there was a lot of community consultation and online consultation. There was various, various tools of how, how to connect with our local community, which included public meetings at the library. There was, there was displays and stalls located in Fred Kelly Place to, to meet with the community on weekends to talk about their, their ambitions for the town centre and how they used it. And there was, there was an online tool whereby people could go on and make comments as to what they saw as areas for civic improvement, so then other people could see those comments and add their comments. The idea was to get maximum exposure and maximum commentary coming from our community. That information built into the Urban Design Study as well as professional expertise.

30 So did that project involve council staff or members of your staff, within your division of strategic planning, working with the experts of Studio GL and ARUP and HillPDA?---Yes, my, my staff were very involved in that process. I was involved in some of those meetings myself.

40 And over what period of time did this community engagement occur? ---Well, it was in the period of something like six to 12 months. From memory, I struggle to recall the exact dates of those meetings, but it was an extended period. It wasn't just like a 14 or 21-day period. It was over a period of months where that was conducted.

And for what purpose were you trying to seek the views of the community in the course of this Urban Design Study?---Look, the idea of it was not to, not to grow a bigger centre around or change the nature of that centre, but it was, number one, to identify what, what were the valued issues, and that really had to come from community, what did they value in the centre, and then look at ways and means of improving that centre. So it really wasn't an exercise in how to maximise real estate values. It was about how to

better service that community and, and enhance the position of Five Dock without trying to transform it into something very, very different.

I wonder if we could bring up on the monitor in the zoning brief, which is Exhibit 24, page 68. Now, you may be able to see that on the monitor in front of you, Mr McNamara.---Yes, I can, yes.

That's the front page of the Five Dock Town Centre Urban Design Study that was prepared by ARUP, HillPDA and Studio GL.---That's right.

10

And if we turn to the next page, page 69, we can see the date of that report is the final report, it's 10 October of 2013.---Yes, yep.

Now, if we could go to page 74. There appears some references to the kind of engagement with the community that I think you were referring to, such as individuals, groups and organisations that were identified as being key to the project. Is that the kind of people you were trying to identify in any engagement activities referred to as well?---That's, that is right, yes.

20

And then if we go to the next page, 75, there was a stage 1, which involved some community participation in June and meetings at Fred Kelly Place. ---That's right.

And so there was an opportunity for the community to put in their views about what they would like to see as far as urban design in the town centre, is that the position?---Oh, look, it was an urban design issue but it wasn't phrased at a too high a level. It was often, "What do you like about the centre and what would you like to see in the centre," those sort, that was the sort of terminology that was applied at that stage, yes.

30

And what was the general response from the community? If there were some key themes that you recall coming out of the Urban Design Study from the communities perspective as to what they wanted to see? ---Generally there was a, the community told us they valued the centre very highly because of a number of factors. They could do their local shopping there, they could do their banking there. There is actually a number of banks which have disappeared from many centres. They value the presence of the council library there. They, they like the fact that Fred Kelly Place was an open park in the middle of the centre, where you could sit down and have a coffee and so forth. The, the, the issues that came out, and there's always issues about parking, how that could be more, more accessible and more convenient or, or, or more parking generally. There was the issue that the community, I would say, in general, did not favour high rise. We're very close to Burwood Town Centre, which has gone very big and very high rise and the usual contrast was, we don't want to look like Burwood, and we sort of understood that to mean, we don't like that density and we don't like those heights. Burwood is more of a regional centre than Five Dock and it was never intended to go down that path, but these were, this was feedback

40

that we were getting. So, I guess that probably encapsulated a lot of the feeling.

And so out of that community-engagement process, and no doubt other consideration by the experts, there were a number of recommendations that came out of that report?---Correct.

Is that correct?---Correct, yes.

10 And did they include looking at what could be done as far as expanding the width of the centre core of the centre?---The, they did, yes. Yes, that's right.

And would that require a change in terms of the area that would be subject to the B4 mixed-use zone?---It involved increased areas of B4.

20 And could we first perhaps go to page 150 of Exhibit 24? Now, there's some dotted lines, or dots and dash lines. That represents, does it not, what was considered to be the existing town centre area that was subject to the B4 mixed-use zoning?---Well, the dashed line is really referring to the study area.

That's the study area?---Yes.

And that study area did not include the area between – well, initially did not include the area on Waterview Street side between around about Garfield Street, or in line with Garfield Street, up to Second Avenue, or from Second Avenue through to Barnstaple Road?---That's right.

30 And the areas that are shaded in a brown colour, they represent areas that are subject to a heritage listing, is that correct?---Yes.

Sorry, I should say sites or properties that are subject to a heritage listing. Is that correct?---Yes.

And in relation to the area between Second Avenue and Barnstaple Road on Waterview Street, that is particularly the western side of Waterview Street, there was one property that was heritage listed?---That's right, yes.

40 And then moving across onto the other side of Great North Road, there were a number of sites that were within the study area that were subject to heritage listings, is that correct?---That's right.

I wonder if we could then go to page 232 of Exhibit 24. Commissioner, for your reference, this was the map that I showed during the course of my opening statement. Now, there seems to be, there is a revised town centre boundary that was being recommended by the study, is that correct?---Yes.

And that now included, relevantly, on the eastern side, that area between, on Waterview Street, on the western side of Waterview Street between about Garfield Street up to Second Avenue. Is that correct?---Yes.

But not further north from that.---That's right.

10 And do you recall reasons why it was considered not to extend it further north from Second Avenue ?---Yes, the reason for that was the studies to date had identified the need for more retail within that lower section of the Five Dock Centre, ideally a new supermarket because Five Dock only contained one supermarket, it wasn't one of the major chains and it was felt that there was a lot of escape expenditure going out of Five Dock to other centres such as, particularly Burwood. So, the recommendation was to include that land on Waterview Street below Second Avenue, including a laneway between Great North Road and Waterview Street to enable that area to develop that additional commercial floor space, and then there's other studies which also show increasing the amount of open space in the centre there to make that the real centre of the town.

20 Why not move further north of Second Avenue?---The reasons identified at the time were we don't need it, number one, the supermarket should be located in the south plus the parking to go with it, public parking. Going further north, the issues were that there was a heritage property there, there was the strata title property there, which, which would create some issues, they're difficult to redevelop. There was no laneway through there. So it was just seen as unnecessary, and as I keep coming back to, the exercise wasn't to make Five Dock Town Centre a bigger centre, although that was one of the outcomes in a sense, but it was to grow it only where it was necessary, which was in that bottom or southern section. So, to, to keep
30 extending up along Barnstaple Road, it would create a real confusion as to where is the centre because it's starting to grow in that northern direction where it was already identified that it's really too far to walk from the main car parks, which are, one of them is in that new section that you identified there on the eastern side. The other one is under that big square building which is called Super Barn, that's exactly there where you've got the marker. There's another car park to, from memory, to the south of that, so the car parking is condensed, yes, that's right. So, the car parking is condensed in the southern area and there's no intention of growing that centre all the way along Great North Road.

40 Again, you remembering your evidence that it was a predominately pedestrian centre.---Yes.

And the 400-metre rule.---That's the prime basis of it. So you could park in one of those parking areas and access comfortably any of those locations in the southern section.

So this proposal then to extend this town centre boundary, as it were, that would require, would it not, a change to the zoning for those areas that either two were not zoned as mixed B4?---Yes.

10 So, they're those areas, those squares that we see in the, on the eastern side that I've already identified and then on the similar square on the western side of Great North Road towards West Street?---That's correct, yes, that's low-density housing and it was recommended for that to be included. Reason being, there's the Five Dock school further to the west and there's no easy, or no simple access coming through from that school through to the main centre. So one of the recommendations of the strategy was to improve access, and the view that was put forward was the simplest way to do that would be – there's nothing simple in these things, but probably the most efficient way would be to allow development to occur and require a laneway to be dedicated as part of that process which would have B4 zoning on either side.

20 Just finally, the area to the south-west, which appears to be identified for an extension of B4 mixed zoning, do you recall reasons for that?---Yes, look it was in that area, I can't recall the detailed reasons for that, it was an issue that came up as part of submissions, it was an area that was identified as, I think, from memory, containing existing commercial-type activities already and it was adjacent to the council car park and it was seen as appropriate for expansion of that town centre.

Thank you. That might be a convenient time?

30 THE COMMISSIONER: Yes. Mr McNamara we're going to take the luncheon break now and we'll resume at 2 o'clock if you could be back for 2 o'clock.

THE WITNESS: Yes, Commissioner.

THE COMMISSIONER: I'll adjourn.

LUNCHEON ADJOURNMENT

[1.02pm]