

WITNEYPUB00034
29/03/2021

WITNEY
pp 00034-00069

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 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.

<ANTHONY GERARD McNAMARA, on former oath [2.05pm]

THE COMMISSIONER: Mr Ranken, just one matter I want to raise.

MR RANKEN: Yes, Commissioner.

THE COMMISSIONER: I understand that you've advised Mr McNamara about the provisions of section 38?

10

MR RANKEN: Yes, I have.

THE COMMISSIONER: And having done so, he's indicated that he would wish to take the benefit of those provisions?

MR RANKEN: He has indicated as much to me, yes, Commissioner.

20

THE COMMISSIONER: Mr McNamara, as you're not legally represented, I consider it's appropriate for me to advise you of your rights here, as any witness is entitled to know, and you not being legally represented. As I understand it, Counsel Assisting has explained to you the provisions of the Act, whereby witnesses can object to give evidence and that then entitles them to have the benefit of the Act, which means that the evidence can't be used against the witness in the future in any proceedings, other than for proceedings that might arise in respect of an offence under the ICAC Act, for example, giving perjured evidence or other offences under the Act. And I understand that that having been explained to you, you wish to have the benefit of the declaration I can make, whereby you have that protection? ---Yes, Commissioner. Yes, I do, thank you.

30

Thank you. In accordance with the provisions of section 112 of the Independent Commission Against Corruption Act, the evidence that has been given, is to be given in this public inquiry by Mr McNamara, is evidence to which the witness objects. That being the case, though he must of course give truthful evidence, he is entitled to have the benefit of the provisions of section 37 of the Independent Commission Against Corruption Act. Under section 38 of the Act, I now make a declaration whereby the protection under section 37 applies to all questions and I can make a declaration to that effect. Mr McNamara is entitled to that protection. He had indicated that he wishes to avail himself of it as he is entitled to do. I make a declaration under section 38 of the Act that the evidence that he gives in this public inquiry is to be taken as evidence given under objection and it is therefore unnecessary for the witness to object to each, or any class of questions put, as the declaration applies to all such questions.

40

**DIRECTION AS TO OBJECTIONS BY WITNESS: I MAKE A
DECLARATION UNDER SECTION 38 OF THE ACT THAT THE**

EVIDENCE GIVEN IN THIS PUBLIC INQUIRY IS TO BE TAKEN AS EVIDENCE GIVEN UNDER OBJECTION AND IT IS THEREFORE UNNECESSARY FOR THE WITNESS TO OBJECT TO EACH, OR ANY CLASS OF QUESTIONS PUT, AS THE DECLARATION APPLIES TO ALL SUCH QUESTIONS.

THE COMMISSIONER: Yes.

- 10 MR RANKEN: And Commissioner, just for the sake of clarity, is it the case that the declaration you have made applies equally to the evidence that Mr McNamara gave before the luncheon adjournment?

THE COMMISSIONER: Yes. I indicate that. For abundant precaution, I do note that the declaration applies to evidence thus far given by Mr McNamara and to any future questioning,

MR RANKEN: Thank you, Commissioner.

- 20 THE COMMISSIONER: Thank you.

MR RANKEN: Now, Mr McNamara, just prior to the luncheon adjournment, we were dealing with the Five Dock Town Centre Study and particularly the report that was prepared by HillPDA, ARUP and Studio GL and, just backing up a little bit, it's the case that the report that was ultimately produced was a fairly lengthy report?---That is correct, yes.

Comprising a number of hundreds of pages?---Yes.

- 30 And it included some detailed recommendations and some information regarding proposed implementation of those recommendations, is that correct?---Yes.

THE COMMISSIONER: Mr McNamara, can I ask you this? Plainly the task to be undertaken was a substantial one and the council would have the benefit of contracting out, as it were, some of the work that would be required to be done, as for example, in the case of Studio GL and ARUP. Is that right?---That's correct, yes, Commissioner.

- 40 Apart from the benefits from a practical point of view, of having specialists who can assist council in a matter such as this, was there any other benefit in terms of this being dealt with, as it were, in terms of, if you like, independence, integrity by an external, impartial consultancy?---To ask you, Mr Commissioner, I, I think that is a very valid point. The council was looking for the best expertise available, independent of council staff. There, there is, with the consultants, there are areas of expertise which staff did not have e.g. in economic analysis and also urban design and also in terms of the community consultation tools that were applied. So, yes, there, there is

a range of technical skills and there's also the credibility that is associated with using those well-recognised big companies that have a, a, a big spread, particularly within New South Wales and, and further abroad.

Yes, thank you.

MR RANKEN: Now, I just want to deal – and I'll try to deal with it relatively briefly – the recommendations in the Five Dock Town Centre Urban Design Study. And if we could perhaps bring up, in Exhibit 24, page 10 224. Now, that is the cover page for that part of the report, that is the recommendations. Is that - - -?---That's right, yes.

And if we could go through then to page 226, we see there, do we, the index to this part of the report?---Yes.

We might be able to zoom out a little bit. And it's apparent that even that part of the report is a fairly lengthy part and it covers such things as future development and implementation?---Yes.

20 I want to deal firstly with future development and one of the topics that's listed under there, which is, "Planning and built form controls." So, perhaps if we could move forward to page, 278 in Exhibit 24. We see, this is the planning and built form controls part of the recommendations in the Urban Design Study and the first one of the topics I wanted to take you to is, "Land use zoning," and the second paragraph provides, "This study recommends protecting for future needs by expanding the width of the centre core and creating additional areas zoned mixed use along West Street, south of Henry Street, between Garfield Street and Kings Road and along Waterview Street, south of Second Avenue." And then it says to see the adjacent diagram that 30 we can see. There's a diagram in the bottom left-hand corner.---Yes.

And that indicates the areas that I took you to previously in that other map, which are, in this diagram, they are shaded a darker blue.---That's right, yes.

And they were the areas to which the B4 mixed-use zoning was to be extended to, thereby expanding the width of the centre core as per the recommendation?---Yes, that's correct, yes.

40 And then as to floor space ratio, that's also dealt with there on that page and it's noted that the feedback from the local developers, this is in the final paragraph, "And investors have suggested a development that conforms to the existing DCP controls in Five Dock struggled to achieve that current maximum FSR of 3.5:1," as you have already told us. Is that correct? ---Yes. That's right.

And so therefore the study was recommending that there be changes to the DCP that would then allow it to make it more possible to achieve that density?---That's right, yes.

Now, what does that mean in terms of in a practical sense?---Well, trying to put it concisely, 2.5:1 effectively means if you fill the whole block of land with floor space, you can do it two and a half times if you can picture covering the whole block. Now, that, that can work with commercial development, where you've got the whole ground floor covered with shops, and then the next whole, whole of the site covered with, say, commercial, and then a half floor above that. That gives you your 2.5:1 in a sort of a very notional sense. The reality in these suburban shopping centres is that you can put retail at ground floor, which tends to be a fairly large floor plate, but above ground floor – at first and above – it's usually quite difficult to find commercial tenants. Those centres tend to develop with residents from the first floor or the floor above ground level up. And residential development cannot occupy a full floor plate. They cannot occupy the whole block because of requirements of setbacks, air and light and fire controls, so they're set back at the front and at the sides. So effectively, when you've got a height control of about three to four storeys, generally, and a floor space ratio of 2.5:1, which you're filling with mostly residential development, it's very hard to achieve the maximum floor space ratio. So the outcome of this investigation recommended keep the floor space ratio but increase the height, in recognition of the fact that the new development is mostly going to be residential, above ground level, in which case you can come closer to achieving that maximum floor space ratio.

So if we can then go to page 289, we can see that in building heights, the study recommends that the centre's height limit be altered to 16 metres from 15 metres, with a 14-metre street wall height and a requirement for 3.6-metre-high ground floors. Do you see that?---Yes, yes.

30 Was that what you were talking about in terms of being able to change the DCP so as to be able to achieve the existing FSR?---That's right, yes.

It also suggested on larger sites – this is in the second paragraph – that “On larger sites, in excess of 2,000 square metres, that an additional storey should be considered as the size of the site should enable the architect to provide the additional height, that being a 19-metre height limit, without adversely impacting on bulk and scale, privacy and overshadowing.” Do you see that?---Yes, yes.

40 Now, would that kind of recommendation require a change in the FSR for those sites that were larger than 2,000 square metres? Or is that unlikely to be the case.---Not necessarily an increase in the floor space ratio, but to go to the additional height requires a variation in the height control.

And then still on page 289, there's a heading of Setbacks and it provides that “Additional storeys above the maximum street wall height of 14 metres” – that's about four storeys, is it, 14 metres?---That's right, yeah, yes.

“Should be set back a minimum of six metres from the street and be designed to recede.” What does that mean and what is it designed to achieve, effectively?---Right. Going up, going up an extra floor will increase the overshadowing of the public domain – that’s the footpath and the street and possibly the, even the buildings on the opposite side of the street – if the street wall goes up on the property boundary. So by setting the top floor back from, from the, from that street wall, I think it said six metres, then it means that the shadow is thrown from the floor below it, not from the utmost floor. The top floor being set back doesn’t create additional shadow.

And could we, just on that topic of overshadowing, if we could go now to page 297. There’s a heading here of Overshadowing and it’s noted that “Solar access is a key consideration when changing the density of an area and increasing the building heights.” That’s what you were just referring to?---That’s, that is right, yes.

And it identified that a key aim for the study was “To improve the site feasibility while also limiting the impact on the surrounding context and key areas of public open space.” Was that something that reflects the views that were coming from the community during the course of the Urban Design Study community engagement phase about their concerns about increasing height?---I believe the community concerns were about height and density. One of the concerns expressed is that very tall buildings put streets, footpaths and parks into shadow and then there’s the additional issue of too much density. They’re not always as well articulated in those community consultation, but the interpretation that we got back through our urban design process was to turn those concerns into controls, these are the potential impacts and this is the way to mitigate those potential impacts.

Now turning to implementation, if we could go to page 302. That’s the first page of that.---Yes.

If I could then take you to page 318, unfortunately it’s on its side, I don’t know if it’s possible to rotate the image, but you will see there is UF, there are a number of recommendations and they have numbers or codes we’re just going to try and rotate that. There we go.---That’s better.

The first one I want to take you to is UF-02 and the first one being -1 which is “To revise the DCP controls to establish that maximum consistent wall height of four storeys subject to heritage and overshadowing considerations with any additional storeys set back from the street.”---Yes.

Then if we could then go to page 319 and UF, if we could rotate that view as well, perhaps going counterclockwise. UF-03-1, “Ensure that new development creates successful interface with existing residential low density areas, for example, along Waterview Street.” What is that designed

to achieve?---Where you've got a residential street with low density that's either one or two storey dwellings on either side of the street, the caution is that if one side of the street is up-zoned it becomes a commercial zone and you attract say commercial development or even residential but of a higher, greater heights, greater densities particularly, then the concern is that that higher level buildings will throw shadows across those residences on the opposite side which had not redeveloped. So, it's these edge controls that are looked at very closely in urban design – it's almost regardless of what development goes opposite to have a regard for setbacks and building upper
10 floors to be set back to reduce or minimise that impact on the opposite side of the street.

So, if one was to, perhaps if we were to go back to page 232 and that plan of the study area, and if we were to look, particularly, at the area that's just outside of the study area, between Second Avenue and Barnstaple Road on Waterview Street side, does that mean if that area was to be included in a mixed zone or a B4 mixed-use rezoning, that there would need to be consideration about how or what development controls – as far as height and setbacks are concerned – in order to minimum the impact on those
20 properties on the other side of the street?---That's right.

What about in respect of a block such as that block which on the one, is kind of split zoned, in the sense that you have those properties fronting Great North Road between Second Avenue and Barnstaple Road as being part of the B4 mixed-use zone and those properties outside or on the other side of that blue line, that is on the eastern side of the block, being zoned as R3 medium-density residential.---Yes.

What is the impact or the development controls for any development of those properties that are within the B4 mixed-use zone?---Oh, well, within
30 the B4 mixed-zone, the concern it raises, that of the land that it backs onto is, is not changed, then there will be a need to address very closely the maximum building heights to, to ensure that you're, you're not creating an issue of overshadowing of those properties at, where, where, where, where that can occur. And secondly, also to incorporate detail controls in the Development Control Plan to require, for example, top floors, upper floors to be set back from the building boundary to create that solar access pane, panel – sorry – plane to, to, to, to, to reduce the impact on those adjacent residential properties.

40 Does that mean then that the scope for development of those properties would likely be more constrained that, for example, those that might be within, for example, the area bounded by Waterview Street and Great North Road and Second Avenue or to the south of Second Avenue?---Well, in that case, they would be more constrained on the grounds that there's no street separation basically. That's, that's the point, yes.

And that how would that constraint principally be achieved?---The, firstly by reducing the maximum heights available and then, secondly, looking at the likely sunlight planes to put in place controls to, to, to foreshadow that council will impose controls in any future DA to reduce that impact from the upper floors.

10 Thank you. Now if we could return to page 319 of Exhibit 24. I was dealing with UF-03-1. I got to the point that ends in parentheses, “e.g. along Waterview street, including careful consideration of the bulk and scale building height setbacks façade treatments, overshadowing and privacy impacts, revised DCP controls.” And then the very next item is UF-03-2, which is, “To protect heritage buildings and their visual curtilage by controlling the bulk and scale of new adjacent development.” Is that correct as well?---Yes.

And in relation to the block between Second Avenue and Barnstaple Road on the western side of Waterview Street, there was a heritage site in that block, correct?---Yes.

20 So would the fact of that heritage listing also likely result in DCP controls for the development – in relation to the development of those properties that front Great North Road that would curtail the extent of development that could occur?---That’s correct. Whilst ever that heritage listing was over that house, and any future planning decisions taken in respect of development applications adjacent to that property, would have to have regard to that heritage-listed item.

30 Thank you. Now, in – pardon me. So that report was dated 10 October, 2013, that is the report that came out of the early design study and the matter came before the City of Canada Bay Council at its meeting on 26 November, 2013, and in between the report coming to council from the independent experts and the council meeting, was there further work that was done by members of your staff to firstly be able to present the information in the report, which was length in detail, in a way that was readily digestible by the councillors?---To be honest, I just can’t recall it at the moment. I don’t know if you’ve got examples, but I just can’t recall what we did at that stage.

40 Was it the common practice at the time that, when significant matters such as this were coming before the council, that there would be a report that would be prepared and provided with the agenda papers that might summarise the detail of the report?---The usual practice would be to, firstly, have a, what was referred to as a workshop with the councillors, which is not a formal meeting of council and no decisions are taken, but it would present major projects or major findings to the councillors in an enclosed situation whereby questions could be asked. The documentation would be presented to councillors usually prior to the meeting – most of the time. But it was an opportunity to present that information following the workshop a

report would be prepared to go on a public agenda, a council agenda together with the independent work as an attachment.

Can I just ask about workshops. They're not open public forums?---No.

But they are meetings that can be attended to by councillors, is that correct?
---Yes.

10 Are any other members of the public able to attend those meetings?---No.

Are there – sorry, Commissioner.

THE COMMISSIONER: You go ahead.

MR RANKEN: Are there persons able to be invited to present at those council workshops, for example, someone like Studio GL who had prepared a report for council?---Yes.

20 What about persons who may be representing individual private interests of constituents or persons who might have an interest in the particular matter, would they be allowed to address the councillors at a workshop?---No, it wasn't that situation.

THE COMMISSIONER: Were there minutes kept of these workshop meetings or not?---No, they're not kept.

MR RANKEN: So was there any record kept of who attended these workshops?---No, they're not, no.

30 But I take it that the workshops were voluntarily, you didn't have to attend if you didn't feel you needed to?---They weren't compulsory, they were strongly recommended that all councillors attend to inform their future decision-making at a council meeting, but they were not compulsory and they didn't need to be granted approval by council not to attend.

40 Can I ask you this, from time to time, matters might become the council and they might be matters of some significance in which a particular councillor might have a pecuniary conflict of interest or a non-pecuniary conflict of interest which might prevent them from voting on the matter or being involved in discussion when the matter was to be considered by council.
---Yes.

Were councillors who might find themselves as having either a pecuniary interest or non-pecuniary interest in a respect of a matter, were they able to attend these workshops?---No, the agenda for a workshop – not agenda – but a list of items to come up at a workshop would be distributed to councillors, and councillors who felt they had a conflict of interest or potential conflict would chose not to attend those sections.

How would that be policed, as it were?---It was a voluntary issue with councillors, and usually on an issue such as Five Dock once a person, once a councillor had declared that conflict of interest, that was just maintained, they did not attend any briefings, workshops or council meetings to deal with that issue.

That would, in the first instance, require the councillor to have actually declared that of the pecuniary or non-pecuniary interest, is that right?
10 ---That's right, yes.

And what about in the conduct of these workshops, you indicated that after the workshop was conducted there might be a report that was prepared by your staff that came out of the workshop. Does that mean that there was an opportunity for councillors to raise matters for consideration by council staff in respect of the matter but during the course of the workshop?---Yes, there was no restriction on what matters were raised, they could raise any issue relevant to that matter.

20 And then that would, what, be taken into account by the council staff as they prepared their report in advance of the next council meeting at which the matter was to be discussed?---If it, if it looked like it was an issue that needed to be addressed, we'd address it through the report, yes.

And how would it be able to be discerned, as in if a member of the public was to read the report that was prepared by the council staff, how would they be able to discern whether or not something that was contained in the report came out of a workshop involving the councillors that was essentially behind closed doors?---Look, it, it's possible that that could have been
30 identified as a matter raised at a council workshop, but the, the format for council meetings didn't have a specific section for matters raised in that venue. So it was not, it, it's quite possible a matter could be raised and it's not identified or highlighted through the report.

THE COMMISSIONER: And there were no resolutions passed at these workshop meetings, I take it?---No, there were not.

MR RANKEN: Now I wonder if we could go to page 58 in Exhibit 24. This is the first page of a report that was prepared as part of the agenda for
40 the meeting of the City of Canada Bay Council on 26 November, 2013.
---Yes.

And it's got the author's initials as MF.---Marjorie Ferguson.

And at that stage she reported directly to you, is that correct?---Yes.

So is it likely that you would have seen this report or some earlier draft of it prior to it being included in the papers for the council's meeting on 26 November?---Yes.

And would you review it and assure yourself that it accurately reflected the detail of what it was to cover?---Yes.

This particular report covered the Five Dock Town Centre Urban Design Study.---That's right, yes.

10

This is the first report that was prepared, I think, by your department for the councillors following the report being published by HillPDA, ARUP and Studio GL in October 2013.---I believe so.

20

And indeed if we go to page 59, you'll see that it says one of the key recommendations of the strategy – that's the Five Dock Town Centre Strategy of 2012 – was “To consider the town centre from an integrated design perspective to ensure that any potential changes to the existing planning controls, such as building, scale, density and height were carefully considered.” That was at the top of page 59. I think we've passed – sorry, I think we need to go back to page 59 of the brief. That's page 59 of the agenda papers. That was where I wanted to go, yes. And indeed if we scroll down that page a little bit further, you'll see there's reference to the engagement, community engagement activities that were carried out to ensure a broad range of stakeholders in the wider community were provided with the opportunity to contribute to the process.---Yes, sure.

30

And if we can then go to page 64. Now, one of the recommendations was the expansion of the width of the centre core by creating the additional mixed-use areas, which we've already discussed. So this is consistent with what is in the report from Studio GL.---Yes.

40

And then to page 67. It refers to the fact that to implement – 67. There's recommendations there, those four recommendations, firstly to endorse the Five Dock Town Centre Urban Design Study and for public exhibition throughout December 2013 and January 2014. What was that design, what would that recommendation be designed to achieve?---So, all the consultation to date, as, as I recall, informed the, the process that was undertaken by our, particularly the urban design process, and then, then it was incorporated into that document. Having that document, it was presented to council so that they could see the outcome of the work to date and then putting all that back out to the community so they could see what, how, how that work was incorporated into the study, the outcomes of the study and the recommendations of the study.

The second recommendation there refers to the draft Five Dock Town Centre Development Controls be placed on exhibition with the Urban Design Study on a non-statutory basis to provide guidance on how the study

recommendations can be implemented. Now, does that mean that following the receipt of the study, there was some work done in respect of the Five Dock Town Centre Development Controls, some document?---I, I can't recall what went on exhibition with the study document. The, the intent of that recommendation is to make it very clear this is not a, not a statutory exhibition, which is part of the process in having LEPs, DCPs to contribution plans formally either gazetted or adopted by the council. So, the documentation put out there was more to guide the council on any modifications that might be necessary for those documents prior to final adoption and seeking gazetted or, or formal adoption by council.

Just one moment. And then we can then move to the meeting itself on 26 November, 2013. If we go to page 48 of Exhibit 24. Do you see there it identifies the councillors who were present but also other persons who were in attendance?---Yes.

And one of those persons is identified as yourself?---Correct, yes.

And just turning to page 51. Do you see that at page 51, at the top, item 4 refers to the Five Dock Town Centre Urban Design Study, and in particular that Councillors Fasanella and Megna left the meeting when item 4 was discussed. Do you see that?---Yes, yes.

“At 7.24pm, Councillors Fasanella and Mega both declared a pecuniary interest in this matter and left the meeting.”---Yes.

And do you recall that each of Councillor Fasanella and Councillor Megna had a pecuniary interest in the Urban Design Study, and so for that reason whenever the matter was on the council's agenda, would absent themselves from the chamber?---That's right. That's my recollection.

And Councillor Fasanella, was he a Labor councillor?---That's right, yes.

And Councillor Megna was a Liberal councillor, is that so?---That's right.

Then you can see there that what was resolved was to effectively adopt the recommendations in the report that had been prepared by a Ms Ferguson for the council.---That's right, yes.

And thereafter the Urban Design Study was put on public exhibition in December 2013 and January 2014. Is that consistent with your recollection?---That is my, that is my recollection, yeah.

And what was the process from there? Having now had the councillors consider the report, the extensive report, which has been summarised for their benefit by Ms Ferguson and your team, it then going back out to the community, what was sought to be achieved by that?---Well, firstly, anything that went out to the community for that sort of commentary, we

would go through, through the whole document with the councillors because quite often, as being members of the community, they get asked questions about it and it's, it's absolutely critical that they know what's going on exhibition, have a good idea of what's in it. So the document going out there for public exhibition effectively closes the loop because people previously had been invited to make their submissions on it and talk about issues for the town centre. This was showing them the final outcome of all that work, with all the professional expertise from the people understanding the economics of centres and the urban design issues, and showing what that
10 would look like as best as the diagrams and graphics showed in that document what, what could be expected in future developments.

And how was that done in a practical sense as far as being able to exhibit it? Was there something put on display somewhere or - - -?---Oh, look, the, the usual. I can't recall the specifics, but usually the document itself would be placed on exhibition at the library and at the council, and I, I honestly can't recall, but there's even potential that we could have had some public walk-in sessions to discuss the findings with the community. I, I can't recall the detail of that particular exhibition.

20

Perhaps to assist you, if we could go to page 383 in Exhibit 24. Now, this is part of a report that was prepared for the meeting of the council on the 20th of May of 2014. Perhaps if we go back one page, so I can orient you to it. The first page. So it was going to be item 3 on the agenda for 20 May, 2014, was to be the outcome of the exhibition of the Five Dock Town Centre Urban Design Study, and that report again prepared by Marjorie Ferguson, is that correct?---Yes, yes.

30 And just moving to that page I wanted to take you to, which is page 383, there's a description of what occurred during the course of the public exhibition from 1 December, 2013 to 31 January, 2014.---Right.

Now, firstly, can I ask you this, is that period – that's a two-month period of public exhibition – in your experience, is that a reasonably lengthy period to have a matter such as this on public exhibition?---Look, it's probably double the length because you've got Christmas/New Year in between, which is usually considered a fairly dead time, and if you ever try to put anything on exhibition in December or January, you get criticised. So it was decided it had to go forward rather than leave it go for two months, so we put it up for
40 two months to cover that eight-week period, basically.

And then we see listed there, on page 383 of Exhibit 24, the details of what in fact the community engagement activities involved, including direct letters to landowners who were affected by the proposed rezoning and land acquisition, which would invite them to meet with council. And it indicates that council officers met with 10 separate property owners to explain the background to the study and the recommendations in relation to their

property and the process moving forward. There were letters to landowners in and round the Five Dock Town Centre Study.---Yes, yes.

What was that, a letter drop to - - -?---It would have been a letter drop or, or posted, but we'd, we'd certainly attempt or make a serious effort to contact by, by written letter all of those affected landowners.

10 And there was an e-newsletter to all interested persons who contributed to the study. Is that persons who had played a role in some of the community engagement activities back when the study was being conducted by Studio GL, et al? Were people given an opportunity to register in some way, with their email addresses and the like, so that they could receive further information about it?---Yes, that's right.

This was effectively letting them know about this is the outcome of that process that you participated in?---That's right.

20 Was that to afford them an opportunity to have some further feedback in relation to the matter?---The purpose of that is to advise them of where the study is up to, to acquaint themselves with that document that's available and they could comment on it if they wished, yes.

There was also a community meeting to present the recommendations of the study to residents and other interested stakeholders which was attended by approximately 70 residents and business owners.---Okay.

30 Again, those activities, would they be something that would be considered usual or slightly more than usual for a matter such as this?---They were accepted practice for City of Canada Bay as I mentioned, they are not statutory requirements but the council was very conscious of the need to make every effort to communicate with affected people on these sorts of matters, which lead to these sorts of consultation programs.

Right at the bottom of that page it's noted that the council received 31 submissions.---Yes.

40 If I could then take you to over the next page, page 384, it refers to at the top of the page a summary of those submissions with comments in response to each of the submissions were provided as attachment 1 to the report. ---Right, yes.

So does that mean that having put it out there for public exhibition, community were given the opportunity to make further submissions to council about what had been exhibited and then council staff, would that be members of your staff?---Yes.

They would consider the matters that were being raised and provide some comments for the councillors about what the view of council staff was at

that stage.---Well, it was to advise the councillors of what submission came forward within a comment from the staff as to whether there was the appropriate comment to make. Either, these are not necessarily all negatives comments, they might have been positive comments, but the council wants to know one way or the other what the response was, and then is there a council response to go back. So that would have been drafted by staff, Marjorie Ferguson or one of her staff members.

10 And in preparing the response from council staff, would that, would council staff ordinarily be mindful of the recommendations that had been originally made and the reasons for those recommendations by Studio GL.---Oh yes, they were very familiar with it, yes.

So if we could then go to page 390 you might find this hard to read, so we may, if we could focus in, there's two tables if we could focus in the table below. If I could just draw your attention to number five, I'm not sure if you're able to read that easily?---Yes.

20 There is a summary of a submission from a Ms Silvana Cassisi of [REDACTED] Five Dock.---Yes.

And it says 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 delivered by the study." Do you see that?---Yes.

30 Did you understand, looking at that, that what Mrs Cassisi is referring to that area of that block between Second Avenue and Barnstaple Road that was currently outside of the study area?---That's right yes, that's my understanding, the western side.

And the response that Ms Ferguson has prepared is that "The study proposes to extend the B4 mixed-use zones surrounding the central core of the centre, and there are areas which would benefit most greatly from the proposed investment and upgrade to the public domain, but 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 that core."---Yes.

40 Do you agree with that as a proposition, that proposition put?---I do and that's, effectively it was never included in the study primarily for those issues.

And then Ms Ferguson has gone on to state that 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.---Yes, that's right.

Again, would you agree with that proposition as being an accurate one?
---Yes. Yes, I do.

And “Rezoning land outside the central core to additional land B4 mixed use would have fewer benefits and is therefore not recommended.” And again, would you agree as to whether or not that is a proposition that is consistent with what had been recommended by the independent experts engaged by the council?---Yes, I, I believe so, yes.

10 THE COMMISSIONER: Was it consistent with your own view?---It was, Mr Commissioner, yes.

MR RANKEN: Now, could I take you to two other matters I just wanted to draw your attention to in these recommendations. Firstly, if we could go back to page – we’ll go to page 396. And if we could focus in on item number 20, which was a submission that came from Mr Joe di Giacomo. Di Giacomo. I think I’ve - - -?---Di Giacomo.

20 Di Giacomo. And you understood him to be, as he is designated to be, the President of the Five Dock Chamber of Commerce.---Yes.

And the Five Dock Chamber of Commerce, was that a – what was that, to your knowledge?---Oh, it’s a standard group of business owners/proprietors from Five Dock. They used to meet from time to time, and I have attended meetings once or twice in the past, and it’s basically talking about business and, particularly in this case, about responses to, to the work that council was undertaking to, to facilitate development at Five Dock.

30 And one of the things that Mr di Giacomo has, one of his comments is that the report offers some great ideas and opportunities, especially at the top end of Five Dock and Henry Street to Queens Road. But also wanted to suggest an appropriate incentive, such as an increase in FSR to 3.5:1 to make development viable, which should be considered.---Yes.

That would be a significant increase in the FSR from the existing 2.5:1 that had been recommended to remain.---That’s correct, yes.

Is that correct?---Yes, this was not agreed to.

40 And in terms of the response, Ms Ferguson has identified to “see 17(2) response above”. So that’s a reference to a response in an earlier submission, is it?---Sorry, are we looking at - - -

Number 20.---Number 20 and her response is – oh, yes, yes. So it would be response, item number 17 - - -

2.---Which would be earlier in the list of comments, yeah.

Yes, thank you. So if we were to go to, now then to 17, which is on page 394. This was a submission from a Mr Paul Antonatos.---Yes.

Of Abbotsford. And he has said that “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.”---Yes.

Did you know who Mr Paul Antonatos was?---No, I don’t know him.

10 And the response from Ms Ferguson was that the FSR for the Five Dock Town Centre is currently 2.5:1, and she says that “When determining an appropriate FSR, it is necessary to balance various needs. These include the viability of development, design quality, amenity impacts, and the relationship of new development with surrounding context.” Would you agree with that as a proposition?---Yes, I do, yes.

20 And “Following consultation with the local community, including business and property owners, as part of the preparation of the Five Dock Urban Design Study, broad concerns with the quality of development being constructed were revealed, and issues identified included elongated buildings with poor distribution of floor space across sites, resulting in squat buildings that have poor orientation with adjoining sites; 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.” Would you agree with those propositions?---Yes, I do, yes.

30 And there’s also a reference there to “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.” Again, do you agree with that proposition?---Yes, I do.

And do you agree with the recommendation that she has then referred to that the study therefore recommends the centre’s height limit is increased to five storeys with a 14 metres street wall height?---Yes.

40 And then in addition to the recommendations of the study, “It is recommended that on larger sites, where amalgamation has occurred, minimum 1,500 metres squared, additional height should be permitted, allowing eight storeys.” Do you see that?---Yes, I do. Yes.

“And that is in comparison to the existing building envelope that comprises three storey and potential for an attic within the central part of the site.” And it goes on to say that, “Further consultation on the draft clause will occur when the planning proposal is placed on public exhibition.” So, this was a suggestion that what was being considered now was the possibility of

an increased – that there be increased height on amalgamated sites with a minimum of 1,500 square metres?---Yes. If I could say, that didn't come out of the Urban Design Study. That came from councillors and Chamber of Commerce, who were strongly of the view that more floor space and more height would, were necessary to achieve development within the town centre. The, our urban designers, that's GL Studio, always stuck to their opinion, four or five storeys, with the possibility of six, was the maximum for that centre. So, the, the outcome of this was to put the eight-storey issue on exhibition to, to gain some sort of feedback on that issue, was one
10 response. And the second response was to get Studio GL to actually model the outcome if those controls of eight-storey and 1,500-square-metre sites were applied throughout the centre to, to really analyse what would the impacts be if you study it closely.

So there were two things that I wanted to take up with you in respect of that. Firstly, I think you said that this suggestion came from two quarters. Firstly, there was the Chamber of Commerce. So how was that raised by the Chamber of Commerce? Was that through, for example, Mr di
20 Giacomo's submission?---Through this. They made that, those written submissions and my understanding was they also had discussions with councillors.

And which councillors had they had discussions with?---From memory, I, as I recall it, coming up at council workshops – I'm just trying to think where it came from now. I, I do recall Councillor Kenzler raised that at a workshop, and as a result it was, it was, it was investigated shall we say.

And you've got a recollection of Councillor Kenzler raising it. When he raised it, did he indicate that he had been asked to raise it on behalf of the
30 Chamber of Commerce or was he raising it separately and individually? What was the context?---I don't recall him every mentioning that anybody raised it with him directly. He, he just put these issues forward as suggestions.

Did any other councillors suggest this, or put this forward as a suggestion to be considered by council staff?---I can't, I can't recall any other councillors coming forward with those suggestions.

But this is something that was raises at one of the councillor workshops?
40 ---Oh, yes, it certainly was.

And then you referred just before to the prospect that Studio GL was going to do some further modelling, is that correct?---Yes.

If we go to the next page, which is page 395, if we're not already on it, the response continues. I read up the point where it says, "Further consultation of the draft clause will occur when the planning proposal is places on public exhibition," and then the next part reads, "Feasibility testing undertaken

revealed that it is profitable to redevelop to a FSR of 2.5:1 while still achieving reasonable market value.” Was that a reference to the feasibility testing that had been undertaken by HillPDA?---Yes.

As part of the original Urban Design Study or even earlier?---No, I believe that was the one study done by Hill PDA.

The economic study that preceded the Urban Design Study, is that - - -?
---Oh that’s right, yes.

10

That’s the study you’re talking about?---That’s the one.

Okay. And “All options tested achieved the benchmark project internal rate of return, IRR, of 18%, and that is reinforced by various consents granted and constructed in recent years.” Is that last sentence, was that a reference actual experience council in terms of development applications?---What that’s saying is the 2.5:1 is economically viable to facilitate development. The “reinforced by various consents” is not so much referring to council doing economic assessments of projects, but the fact that at that time a
20 number of projects were being undertaken on Great North Road given the existing controls, so the view was there’s got to be an economic rate of return or people would not be doing these projects. The two are sort of independent but confirming each other.

20

Now, so just dealing with this issue of the proposals in respect of the additional height in respect of 1,500 square metres, which would be allowed up to eight storeys, just in that report, this is appendix 1 to the report, if we could go back to page 385 in Exhibit 24. We’ve got there at the bottom of the page is the very final paragraph, you see that it refers to, “In addition to
30 the recommendation of the study, there is considered to be scope to provide flexibility for larger sites, where a site-specific response is likely to generate a better outcome.”---Yes.

30

And “A draft clause has been prepared for inclusion in the planning proposal and would permit a floor space ratio of 3:1 and a height of 27 metres or eight storeys on sites on an area over 1,500 square metres” - - -?
---Yes.

- - - “and a frontage of 20 metres.” So there, is it the case that there were a
40 number of pre-conditions there. There needed to be an area of 1500 square metres, correct?---Yes.

40

And also a frontage, that is a street frontage of 20 metres.---That’s right.

Before a block could qualify for the addition floor space ratio of 3:1 and the additional eight-storey height.---Correct.

It goes on, though, to say that the bonus floor space and height, and if we go over to page 386, would be possible on the majority of land within the centre but would not apply to certain land that was identified as being a maximum of three to four storeys due to impact upon established dwelling houses. Do you see that?---Yes, I do.

Does that mean then, that if, for example, we were to go to a property that was between that block between Second Avenue and Barnstaple Road but fronting onto Great North Road - - -?---Yes.

10

- - - that it would not be able to qualify for the additional FSR of 3:1 and the additional height even if it was able to meet the two criteria of 1,500 square metres and a frontage of 20 metres because of the impact on the established dwellings behind it?---That is, that is correct, yes.

So long as those properties on the western side of Waterview Street remained zoned as R3 residential, any property in that block that fronted Great North Road would never be able to qualify for the proposed bonus incentive?---To go to eight storeys, that would be my understanding, yes.

20

Or to have the increased FSR of 3:1.---I, I believe that would, yeah, under, under those scenario that was identified in the earlier paragraph, they would fail to qualify.

And just back at page 386, just completing that paragraph in the report, it's provided that "This amendment would provide an incentive for the amalgamation of land and ensure significant redevelopment makes a positive contribution to the centre." So that was one of the – was that one of the impetus behind it, to encourage amalgamation of blocks so that they could take advantage of this bonus?---Yes.

30

Now, that was the report that was prepared by Marjorie Ferguson for the purposes of the meeting on 20 May, 2015. Can we go to page 403 in Exhibit 24. Now, this is the last, sorry, this is part of an email chain that commences on page 402, but as with all email chains, we see in reverse chronological order.---Yes.

So I'm taking you from the first in time. Now, the first email in time there is an email from Helen McCaffrey to Marjorie Ferguson that's copied to you. And it's at 7.43am on 20 May.---Right.

40

Now, this is the same day as the upcoming council meeting. And Helen McCaffrey, she was a Liberal councillor, is that correct?---Yes.

And what she has referred to in that email, "Does the Chamber of Commerce still want 3.5:1? Can this be achieved anywhere with a height of 27 metres? Is making it 1,500 square metres a requirement in order to achieve 20 metres frontage in the town centre actually possible? Yes, there

has to be amalgamations. What would be the result if you had the current proposal but with no minimum width requirement and no minimum lot size?" Do you see that?---Yes.

10 So what did you understand Councillor McCaffrey to be asking of you or of Ms Ferguson, but copying you in on it, in this email?---My understanding of that is that the nature of Five Dock shopping centre, particularly along Great North Road is it has many small frontage allotments. It's a very old-fashioned main street shopping strip. And for an individual to, for one person to own 1,500 square metres and a 20-metre frontage is almost unique down there. There might be one or two spots like that, but it, it's, it's a tough requirement. And so the chamber likes 3.5:1 because it increases the value of the site. But it's almost impossible to, for most, for most individuals, to put together a parcel of 1,500 square metres and a 20-metre frontage. So they're, I guess the question that is being put to Councillor McCaffrey was "Can we keep the 3.5:1 and get rid of the other controls?" And she's asking Marjorie, "What do you think?"

20 So effectively allowing for a 3.5:1 across the entire centre, town centre. ---I think, as I read it, that would be their preference.

And the email immediately followed at 9.34am is one that was actually from Mr Dewar to you. If we go back to page 402, we can see at the bottom it's from Mr – right at the bottom you can see "From Paul Dewar".---Oh, yes.

30 And then if we go back to 403, it was sent at 9.34 and it was sent to you. And in that email, Mr Dewar made reference to the fact that "The consultants recommended building heights of four to five storeys across the centre, and the maintenance of the 2.5:1 floor space ratio. The incentive clause originally recommended by the consultant was to permit six storeys on sites with an area over 1,500 square metres. These recommendations were based on the outcome of the community engagement and to achieve the community's aspiration of a village character."---Yes.

Would you agree with the proposition that Mr Dewar has stated in that paragraph?---I believe that's correct, yeah.

40 That in fact this bonus incentive clause was something that was based on the outcome of community engagement to achieve that village character, or was it - - -?---That's right. Yeah, the, the idea being that people don't express the view that they didn't like big tall buildings along the main strip, and the consultants pretty much confirmed that their view of four to five is the desirable maximum. But where you do have a, a big site, you, you can add another floor, which is well set back from the perimeter, it's out of site and had less impact in terms of shadowing and overlooking and, and, and that's why it's called a bonus clause, it gives you extra, extra height, and bear in mind that that side of, that, that lower end, southern end of Five Dock is on a hill which has city views, which is, which is the attraction to go for height.

In the next paragraph, Mr Dewar has referred to the fact that, “If the frontage and lot size requirements were removed, it is likely that there would be more development but less amalgamation.” Do you see that? That’s the last sentence of the second paragraph.---Yes, yep.

10 And why would that be a bad thing, that is more development but less amalgamation, having regard to the community engagement and the aspirations of a village character?---The expressed view of council, I wouldn’t necessarily say that, that GL Studio or the staff supported it, is that the view of the council was you need to amalgamate these blocks to get the development occurring for Five Dock Town Centre. So taking, taking the frontage lot requirements off would allow individual blocks to, to achieve more development but it would take away this pressure to, to amalgamate multiple properties.

20 And why would that be a bad thing as far as - - -?---Oh, it would not achieve what the council had expressed their opinion were, that we want to see amalgamations. The council saw this fragmented property along, along the main street as a bad thing.

And the other things that Mr Dewar has referred to in the next paragraph, this is the final paragraph of his email, is the fact that, “In relation to the Chamber of Commerce request to increase the floor space ratio to 3.5:1, this proposal is likely to result in buildings of 10 to 15 storeys.” Would you agree with that proposition?---That’s, that’s entirely possible, that’s right.

30 And why is that?---I, I think, if I might say, the, the concept of floor space ratios is often hard to grasp. You can explain the principles of it but for many people, more floor space ratio means more dollars, they just see it in terms of more floor space, which equals higher value of the site. In an urban design or architectural concept, you can end up with very high buildings. As I explained before, the majority of the new built form on these sites is anticipated to be residential, so you don’t get big floor plates, you get quite narrow floorplates and you get, and if you try to optimise the floor space ratio, it leads into a very tall building, if, if either the controls allow it or potentially if people can argue that that’s what you’ve intended to do by giving us all that floor space ratio.

40 Thank you. Now, if we could move then pack back to page 402, we see your response to Ms McCaffrey, which you have copied to each of Mr Dewar and Mr Sawyer.---Right, yes.

And one of the things you’ve – you’ve identified six points in response to explain your reluctance to support going to 3:1 across the board.---Yes.

And what you meant by 3:1 across the board was removing any

requirements for amalgamation effectively?---Effectively, that's right.
Going from two point - - -

Removing the lot size and frontage requirements, is that correct?---That's correct, yes.

10 And the first one was that it was pretty clear from the workshops that councillors want to see incentives to amalgamate blocks in Five Dock. So, that's a point you've already made to us, that 3:1 will give some very big developments if people actually build them.---Yes.

And, I mean, there you've referred to if people actually build them. Was there a sense on your part that there might not be, if you had a 3:1 across the board, that in fact there might not be further development?---As I mentioned before, it can be a disincentive to actually develop. If you've got too much potential development on the site, it can overvalue the site.

20 And then your next point is "Going to 3.5:1 may overvalue small blocks, making them difficult to develop." That's a further expression of the point you've just made, is that correct?---Yes, that's right.

"The only one to have done any real testing of the economics are HillPDA, working for council, and we are following their advice."---Yes.

So is that, were you very much, in terms of this aspect of it, happy to follow the advice of HillPDA as the experts in terms of the economics of this?
---That's, that's right.

30 And the whole, then the fourth point is that "The whole discussion appears to revolve around FSRs, which is only part of the issue. We are not being flooded with development proposals that would proceed only if the council were more reasonable with their planning controls." What was that a reference to?---I, I, I guess it's me offering an opinion there that this issue about more, sorry, increase in floor space ratio on these individual blocks was not the basis of a rational development assessment, undertaken by the landowners, putting, putting the case where the council's controls are blocking future development. It was more the case that it's an ambit claim aimed at increasing the value of land without any real prospects of developing it.

40 And then point 5 is that "The work to date has attracted real interest in developing council's land and the Five Dock Hotel. Interested parties are not asking for more FSR."---Yes.

What was that a reference to?---That's a reference to the, the council land is the council car park located between First and Second Avenue on Waterview Street on the western side, and it, immediately adjacent to that is the Five Dock Hotel, which is an existing hotel, quite an old hotel. And

there's been, at that point of time, the owners were very seriously considering a redevelopment of their site in conjunction with the council land, and, and they had done some real work on feasibilities for a combined development of the sites. And the real point was that they were very comfortably working within the 2.5:1 to achieve all the objectives that they had, and likewise it fitted into the planning controls that we'd, we'd put out there, proposed for, for Five Dock.

10 Now just getting to the meeting itself, if I could just quickly go to the report that Ms Ferguson prepared. If we could go to 382 of Exhibit 24. The first page of Ms Ferguson's report in relation to the item.---Right.

And if I could then just go to page 388. And we have there the recommendations that she has proposed, and one of the recommendations was to, well, the first one was "To adopt the Five Dock Town Centre Urban Design Study". The second, "To endorse the planning proposal for the Five Dock Town Centre, and that this planning proposal be submitted to the Department of Planning and Infrastructure for a Gateway Determination." Can you just assist us with what a Gateway Determination is and for what
20 purpose it's sought?---The Gateway Determination is a part of the statutory process leading to the development and gazettal of a Local Environmental Plan. So the Gateway is actually a formal review process undertaken by Department of Planning, and the outcome of that process, once they've reviewed it, is to give council the authorisation to exhibit the draft instrument.

So if we then go to the meeting itself, commencing at page 405 of Exhibit 24.

30 Again, the list of attendees as far as the councillors and other persons in attendance.---Yes.

Would you agree that you identified as one of the persons who attended that meeting?---Yes.

And then if we could go to page 408, we again see that Councillors Fasanella and Megna declared a pecuniary interest in the matter and left the meeting.---Right.

40 There's then a list of persons who address the council, do you see that? ---Yes.

One of those persons was Mrs Cassisi?---Yes.

And another one was a Mr Haron on behalf of the Five Dock Chamber of Commerce. Contrary to the recommendations or – I withdraw that. Somewhat differently to the recommendation of Ms Ferguson which was to,

the Urban Design Study be endorsed and adopted and that be sent to the Department for a Gateway Determination.---Yes.

It appears that the matter was deferred to consider issues of heights, setbacks, overshadowing, mix of development and the amenity of the surrounding residents on the motion of Councillors Kenzler and McCaffrey. Is that- -?---Yes.

10 Do you recall why that was, what the concern was raised at the meeting?---I can't recall the specifics of the conversation that lead to that motion.

Did it have anything to do with this question of increasing the FSR to 3.5 without the need to have amalgamations and the like or are they separate issues?---I can't, I just cannot recall the context of that motion to defer.

20 Do you recall what further consideration was given to height setbacks overshadowing in the mix of development and amenity?---From my recollection we had Studio GL model the potential sites for the eight storey and 3:1, I'll need to look at all the documentation on that but it originally came forward as a simple control that would go into the LEP that could be applied wherever somebody could put together, consolidate that area of land with that frontage that would give them that height. The concerns that were raised by particular by staff but in response to community concerns were, we should know whether there's going to be adverse impacts out of building of that height. So from recollection, we had Studio GL model what that outcome would be and where, what sites or what parts of what sites were suitable to go to the eight storeys.

30 And what was the result of that modelling, do you recall?---The result of that was a plan that eliminated some properties entirely from the eight storey concept and with others it would set it in a part of the block where the shadows had been modelled so that they didn't impact on adjacent residential properties or they didn't throw shadows over heritage properties.

So does that mean, that in fact, as a result there was a reduction in the number of properties that might be able to achieve the increase to eight storeys even if they were able to amalgamate?---That's right yes.

40 So a further reduction even though they might meet the 1,500 square metre and the 20-metre frontage requirements?---Yes, my recollection is that's the document that finally went public exhibition for public review.

Now, the matter next came before council for consideration for the meeting on the council on 24 June of 2014. But I want to take you to a report that was prepared for the purposes of that meeting by Ms Ferguson commencing at page 416 of Exhibit 24. You can see that's the first page and at the bottom of the page there's a reference to the fact of the matter being deferred on the last occasion.---Yes.

And then the report deals with some of the matters that were to be considered, including the height of buildings.---Yep.

And if one goes over – that’s dealt with at the bottom of that page, and then over on the page 417.---Yes.

10 And in particular, one of the things that was suggested was that the height limit could be increased by a metre to facilitate an additional storey, which would increase it to 18 metres. Is that correct?---Yes.

But that wasn’t, that was considered to be counterproductive, as it would result in six storeys being contained within an envelope that was designed to accommodate five storeys.---That’s right, yes.

And it was also noted that the previous report to council had recommended the 27-metre storey height. That’s the eight-storey – sorry, 27-metre height, being the eight-storey bonus limit on certain large sites.---Yes.

20 And then there is a separate heading, which is Extension of B4 Mixed-Use Zone. And in particular it refers to the fact that it was suggested that “Council consider extending the area of land being rezoned to the northern end of Waterview Street.” That being that part of Waterview Street from Second Avenue to Barnstaple Road.---Right.

30 That’s what you understood? It says, “The northern part Waterview Street between Second Avenue and Barnstaple Road was not identified for rezoning as it is located outside the central core of the centre, contains a few constrained sites, including a heritage item, an existing strata development, and would necessitate the extension of the proposed Waterview Lane to facilitate improved access.”---Yes.

“Rezoning land outside of the central core would provide fewer benefits and is therefore not recommended.”---Yes.

Now, that seems to be in line with the response that Ms Ferguson had provided to the submission that had been made by Mrs Cassisi - - -?---Yes.

40 - - - following the original public exhibition in just December and January. ---Yep.

Correct?---Yes.

And as we noted before, Mrs Cassisi had apparently addressed the council at the meeting on the 20 May, 2014.---Yes.

Does that assist you in your recollection as to how it was that this report, from 24 June, 2014, was dealing with this issue of an extension of the B4 mixed use?---I think it's very consistent, yeah.

Insofar as what, as - - -?---The concern. The deferral was to consider those sorts of issues.

10 But that it had come from Mrs Cassisi?---That's, that's the best I can determine at this stage, yes. It was still an area for, obviously, submissions. And where it says it was suggested that council might consider, that, that sounds very consistent with that approach.

And now if we could then go to page 419, Exhibit 24. You see there that effectively the recommendation as per the report that was prepared for the meeting of the council on the 20th of May, 2014 is again put forward.---Yes. Yes.

20 Now, one aspect, though, or one important aspect of this report, though, is that having further considered the issue of an extension of the B4 mixed-use zone, the council staff had maintained a position that was against extending the area of land to be rezoned to that part of Waterview Street between Second Avenue and Barnstaple Road, is that correct?---Yes.

Thank you. Then if we could then go to the minutes of the meeting at page 427 of Exhibit 24. Now, you can see there that again we've got the first page of the minutes, and as far as the councillors are concerned, I think everyone is present except for Councillor McCaffrey.---Yes.

30 And I think there might be one other - - -?---Yeah, there's only seven.

And do you recall who the other – Councillor Megna was not present either.---No.

And you yourself were present?---Yes.

And then if we go to page 429 and over the page to 430, we see that effectively the council resolved or made resolutions that were consistent with that which was being recommended by Ms Ferguson?---Yes.

40 So that meant that then the Urban Design Study and associated planning proposals were put forward to the Department for a Gateway Determination?---That's correct, yes.

And ordinarily how long does that process of a Gateway Determination take?---It's usually about a week, maybe four to six weeks, something of that nature.

In this instance, I think the determination – if we could go perhaps to page 438. It's not apparent on the face of this particular letter from the Department to Mr Sawyer, as the general manager, but this is the letter regarding the Gateway Determination. And if we move forward to page 440, we see the actual determination. And if we move to 441, you see the date, being 25 September, 2014.---Right.

10 Now, as part of the Gateway Determination, there was a requirement that there be further community consultation under sections 56(2)C and 57 of the Environmental Planning and Assessment Act.---Yes.

And that would require it to be publicly available for a minimum of 28 days and the relevant planning authority must comply with the notice requirements for public exhibition.---Yes, yes.

And is that what occurred on this occasion?---Yes.

20 In fact, I think the council publicly exhibited the draft planning proposal between the 21 October, 2014, and 17 November, 2014. Does that accord with your recollection?---Yes, it does. Yeah.

30 And what is generally the process that follows from that? You've had the Gateway Determination, you've then publicly exhibited the planning proposals that are associated with the Urban Design Study. Then what happens?---Submissions are received at, at, after, after that exhibition period. They are compiled into a submissions report, that is reported back to the council. If there's any modifications necessary, minor modifications to the, to the draft instrument, that will be done and, under delegation of the general manager, and submitted back to the Department of Planning for gazettal. If there is major issues arising or recommended, the matter would need to go back to council for consideration and that could go into a number of various ways, such as a re-exhibition or re-assessment of certain issues if that was necessary.

And – sorry. I interrupted you. If that was necessary. And were submission received following this public exhibition?---My recollection is yes, they were.

40 And did you receive some representations or submission from a MG Planning? Do you recall - - -?---Yes, yes.

And do you recall on whose behalf MG Planning were acting when they made the submission to the council?---My recollection is they were, they were acting for the proprietors of 120 Great North Road from memory.

And do you recall the name of the proprietors?---Is was a, it was a company name. Devme or somebody of that nature, from memory.

Deveme Pty Ltd, is that - - -?---That would be it, yes.

Did you know anything about the property at 120 Great North Road at the time of receiving this submission?---I was aware that that is a, like, a reception centre and it was owned by the, the Sidoti family.

And how were you aware of that?---I had known that ever since I started with the council in 2004. It was just a local business, a well-known local business, yeah.

10

And in terms of the submission that was received on behalf of Deveme Pty Ltd, what was it seeking to achieve? Or what was being put forward on behalf of Deveme Pty Ltd?---I, I haven't got the details really at the moment. My, my staff were the ones addressing those sort of issues there, but my recollection was to the extent of trying to support B4 zoning on the western side of Waterview Street. That's my recollection.

20

THE COMMISSIONER: You would have known, as at 2014, that the reception business conducted at 120 had long since closed. In other words, it wasn't being used as a - - -?---I wasn't aware what it was being used - - -

It hadn't been used for some years prior to, up to 2014.---Okay, well, I - - -

You're not aware of that?---I wasn't particularly aware of that fact, Mr Commissioner, no.

30

MR RANKEN: So, to your knowledge, it was still something that was being run, as far as you were aware, by the Sidoti family.---As far as I was aware, that's correct. I didn't ask those sort of questions, I have to say. It was just my assumption, yes.

At that stage did you know whether or not the Sidoti family or any members of the Sidoti family had any interest in other properties in that block?---No, I wasn't aware at that stage, no.

40

This is in November 2014, I'm talking about, at the conclusion of the period in which the planning proposals associated with the Urban Design Study had been publicly exhibited as required by the Gateway Determination. ---Yes.

You weren't aware of any other properties?---No, I wasn't, I wasn't aware.

Now, can I take you, then, to page 490 of Exhibit 24. That's an email from a Mark Thebridge addressed to council@canadabay.nsw.gov.au. Do you see that?---Yes.

Now, that address, council@canadabay.nsw.gov.au, is that a generic email address to which persons who wish to make submissions concerning the

public exhibition of the planning proposals associated with the Urban Design Study could submit them, those submissions?---Yeah, yeah, my, my recollection was that was like a general mail address for submissions.

And so is this a – but this submission would in due course come to one member or other member of your staff.---Yes.

And do you recall reading the submission that was received on behalf of Deveve Pty Ltd and Anderlis Pty Ltd?---Right now, I can't recall it, no.

10

If we go to the next page, which is page 491, just to see whether or not that helps you to refresh your memory, if you recall seeing the document that might have had a cover page like that.---I was aware that MG Planning had prepared the submission. At this time distant, I wouldn't have looked at that since about that time in 2014, and I can't recall any detail of it right now.

And Anderlis Pty Ltd, did you have any understanding as to who might be the owners of that company?---No. No, I had no idea.

20

If we go to page 492, Anderlis Pty Ltd is described in that first paragraph under Introduction as being the owner of the property at 2 Second Avenue. ---Right.

But you didn't know who actually was behind Anderlis Pty Ltd?---No, I didn't, no.

30

And one of the things it's asking for in that – it's just dealt with briefly in that introduction – is the expansion of the B4 zone to include the land as a logical extension of the proposed rezoning of similar land to the south, on the western side of Waterview Street. So effectively wanting to extend that mixed B4 north up to Barnstaple Road?---Yes, yes, I'm familiar with the issue, yes.

What was done with this submission, was it provided to Studio GL for further consideration or what?---This would have been reported to council. At that point of time I don't recall us getting Studio GL to do work, that wasn't my recollection.

40

THE COMMISSIONER: This was a new development, wasn't it, in terms of it now being interest expressed by the owners of 120 and 2 Second Avenue in extending the rezoning area, in terms of point 1 on this document.---Yes.

There had not been earlier any indication that the landowners of those lots were interested in that aspect?---Not to my knowledge, Mr Commissioner. I recall the issue was raised earlier by Mrs Cassisi and I was more focused on the issue rather than the individual, if I might say that, I thought we'd already addressed that point.

I think we saw that Mrs or was it Ms - - -

MR RANKEN: Cassisi.

THE COMMISSIONER: Cassisi.

MR RANKEN: Cassisi.

10 THE COMMISSIONER: Had raised this sort of issue, but I don't recall seeing in any of the other documents or correspondence we've been taken to so far of any evident interest also being expressed to council by the owners of 120 Great North Road.---I would agree, yes.

MR RANKEN: In so far as Mrs Cassisi was concerned, her property was on the western side of Waterview Street [REDACTED].---That's my understanding, yes.

20 That property was in a zone that was zoned as R3 medium-density residential.---Yes.

When one comes to this submission, and if we could go to page 497 in Exhibit 24, we see that the recommendation, just going down to the bottom at 8, is put forward that the land on the western side of Waterview Street between Second Avenue and Barnstaple Road should be included in the expansion of the town centre for the following reasons. The first reason that's proffered is that it would increase the viability of redevelopment of the land fronting Great North Road. Correct? So that's - - -?---That's their argument.

30 That's essentially suggesting that this is actually about developing land on Great North Road.---Yes.

It would minimise the potential for land use conflicts and associated amenity impacts. What do you understand that to be referring to?---I think what's it's anticipating is that if the land on the Great North Road frontage, the B4 land was redeveloped backing onto R3 land, there's a potential for conflict between the two forms of development.

40 And then it would provide for an improved urban form including street activation and would ensure consistency with the zoning approach taken elsewhere throughout the town centre. Now do you agree with that proposition?---Well, no, I don't and I think what I was reading from this submission and subsequent was that in fact our staff and our advisers had made a mistake, we'd made an omission in leaving out this area of land. I saw it as being phrased in that fashion to councillors it sort of, this is the right thing to do and this is the correction as opposed to what I saw it as an unnecessary and not part of our main strategy.

So sorry, you perceived this submission to be suggesting to council that they have got it wrong and does that mean that council – I withdraw that. Does that mean that you perceived it as suggesting that council’s independent experts have got it wrong as well?---It would have implied that because we follow their advice fairly closely.

But that was a process that the council’s experts had taken involving significant community engagement. Correct?---Correct.

10

Over a long period of time?---Yes.

And including an economic feasibility analysis that had been conducted by Hill PDA?---Yes.

To see whether or not development was economically feasible. Correct? ---That’s exactly right, yes.

20

And in this submission, was there any evidence of any feasibility study having been conducted in relation to the development of those properties? ---No, I’m not aware of any supporting documentation other than at some stage massing diagrams were prepared to show how the plan could have developed from, from my memory.

But that doesn’t involve an economic analysis of the kind that HillPDA had conducted in terms of the feasibility of achieving floor space ratios and the like?---Not to my knowledge, I don’t believe it was ever undertaken by this group.

30

Now, in due course, I think the matter came back before the council, again, in June of 2015 but in advance of that Studio GL was asked to prepare a further report in relation to the exhibition outcomes for the town centre planning proposal.---Right, yes.

So that is, in fact, a report that Studio GL prepared following the Gateway Determination and the exhibition that followed the Gateway Determination?---Yes.

40

If we could go to page 568 of Exhibit 24. So that’s the first page of the final exhibition outcomes report, dated 21 May of 2015. And I want to take you specifically to page 600. This is part of the recommendations and number 1 referred to, “The key sites that should be changed are the block on the eastern side of Waterview Street, Barnstaple Road and Second Avenue. This is not considered a good location to encourage amalgamation and increased height and FSR as the interface between these tall buildings and the residential uses need and the heritage item on Waterview Street is likely to be poor. This change also ensures future development more closely

reflects the planning controls in this area on the opposite side of Great North Road.”---Yes.

Now, firstly, is that correct insofar as it refers to the block on the eastern side of Waterview Street, between Barnstaple and Second Avenue as opposed to the western side of Waterview Street?---Right.

10 Or is that a typographical error?---I think it must be. The question is, the eastern side was never intended to be changed, so why they put the eastern side, I’m not sure. The, the issue of, the issue of change and amalgamation and so forth was mostly focused on the eastern side of Great North Road, backing onto that Waterview Street land, yes.

But in any event, it was not being recommended that there should be amalgamation in that area of increased height and FSR?---That’s right, yes.

20 Now, if we can then go to page 525. That’s the first page of the Town Centre Outcome of Public Exhibition of Draft Planning Documents report. The author is identified as PLD.---That’s Paul Dewar.

That’s Mr Dewar. And one of the things it identifies is that over the exhibition period there was 124 submissions and a petition with 421 signatures had been received.---Right.

And the primary issue raised in the submissions related to the proposed eight-storey height limit and the impact of this height limit on the public and private domain.---Yes.

30 Do you recall what it was that the particular concerns were about the height limit, the eight-storey height limit, and the impact of that height limit on public and private domain?---I think the issue relates to the fact that the original, the original documentation studies that were put on exhibition went to five and six storeys maximum and there was a lot of, there was a lot of consultation. We went to a great effort to spread the message or spread the documentation widely so that people understood it. And I think they did understand it. When it came back and proposed eight storey, number one, people said that’s not what we told you. We, were happy with a maximum of six storey and now you’re proposing eight storey. And in any case, when we originally made the issue of, made our issues known to council, we told
40 you we don’t like height and we don’t like density. So this exhibition of those heights is contrary to what we told you.

So is it fair to say, then, what was flushed out as a result of this exhibition process was that the community, the vast majority of members of the community were concerned about the proposed increase to eight storeys?---I believe so, yes, yes.

They wanted to see development, but smaller development, not larger development.---I believe so, yes.

And one of the things that this report identifies is that the number of sites that are permitted to develop up to eight storeys should be reduced in order to strike an appropriate balance between improving opportunity for investment and achieving acceptable amenity and environmental impacts.
---Yes.

- 10 Was that the way in which it sought to strike a balance between, on the one hand, the need to encourage amalgamation with incentives for higher development, but by the same token to ensure the community's concerns were given full effect?---I believe that's really the essence of it, yes.

So to meet those sometimes competing aspects of the public interest.---Yes, well, Studio GL, who did that outcomes report, were never in favour of eight storey, but they accepted this as the will of the council to investigate that, so their preference was a maximum of six storeys. They'd modelled it. Submissions came from the community. And the Studio GL advice, which
20 was also supported by staff, was we've got to reduce, we've got to reduce those eight-storey areas to, to keep good faith.

Now, can I then go to page 529. Now, dealing specifically with the question of rezoning, we see that there are three different areas that, where there was further consideration of a possible rezoning, the first one being land between East and West Street, the second one being land between Barnstaple Road and Second Avenue on Waterview Street, which is the one we're concerned with.---Yes.

- 30 And then the third one being the land between Kings Road and Garfield Street. Just referring back to the land between Barnstaple Road and Second Avenue on Waterview Street, there's a reference to the fact that there were two submissions that requested that the land be rezoned to be for mixed use. And the existence, and it also refers to the fact that "The existence of a heritage-listed house and a strata-titled residential flat building result in limited opportunity for change should this area be rezoned. Future development would impact these properties and would be unlikely to resolve vehicular access issues for properties fronting both Great North Road and Waterview Street. It is recommended that this land retain an R3
40 medium-density residential zone."---Yes.

So again, despite these further submissions about rezoning that block to be B4 mixed use, the views of the experts and supported by council staff, was that the area should not be rezoned and should remain as an R3 medium density.---That is correct, yes.

THE COMMISSIONER: Mr Ranken, I see the time. Are you moving onto something else?

MR RANKEN: I was going to move onto – perhaps I could just close off this meeting of the council just briefly?

THE COMMISSIONER: Yes.

MR RANKEN: So we can finish off there. Which is this report, as I said, was prepared for the meeting on 2 June, 2015. If we can go then to the minutes of the meeting, which are at 634. Now, I think all persons were present there except for Dr Ahmed, as far as the councillors were concerned?---Yes.

You didn't attend this particular meeting but Ms Ferguson was in attendance?---Yes was, and Mr Pavlovic - - -

And Mr Pavlovic.---- - -I believe was acting director for that meeting.

So he was acting in your role, was he?---Yes.

20 And what was his usual role?---Manager of building and compliance basically.

But whenever you were on unavailable, would he step in generally in your stead as it were?---On occasion Ms Ferguson would step in as she was also at that same manager level. So, she could have done it but on this occasion, my recollection is Mr Pavlovic was the acting director.

And then if we could go then to page 636. Again, we see that there is the declarations of pecuniary interest by each of Councillors Fasanella and Councillor Megna in relation to item 1. And then turning to page 637, we see the resolution but above the resolution it refers to the fact of the persons who addressed council and one of those is a Ms, it says, H Miller, representing Deveme Pty Ltd and Anderlis Pty Ltd.---All right.

And ultimately, however, though, it was resolved that the matters that were raised in response to the public exhibition were noted but that the planning proposal be amended to revise the land to which the 27 metre, eight storey and 3:1 floor space ratio applied as shown in an attachment.---Yes.

40 So that was to reduce the number of properties that would be entitled to achieve the bonus provisions, correct?---Yes, yes.

And ultimately to amend the draft Canada Bay Development Control Plan and to amend the planning proposal and then have that exhibited for a period of 28 days?---Yes.

And that was passed unanimously, is that - - -?---Yes. That's about right, yeah. I can't see anything to the contrary on that.

Yes, thank you, Commissioner. That might be a convenient time.

THE COMMISSIONER: Yes. Very well. Mr McNamara, we'll have to have you back tomorrow.---Okay.

So, we'll resume at 10.00am tomorrow if you'd be here then.---Yes.

Thank you. Very well, I'll adjourn. 10 o'clock tomorrow.

10

THE WITNESS STOOD DOWN [4.03pm]

AT 4.03PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.03pm]