

WITNEYPUB00070
30/03/2021

WITNEY
pp 00070-00113

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 TUESDAY 30 MARCH, 2021

AT 10.00AM

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

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

THE COMMISSIONER: Mr Ranken, ready to proceed?

MR RANKEN: Yes, we're ready to proceed. Mr McNamara is in the witness box.

THE COMMISSIONER: Mr McNamara, I'll just get you to take the oath again, if you wouldn't mind. My associate will administer the oath. If you wouldn't mind just standing.

THE COMMISSIONER: Yesterday I made a declaration under section 38 of the Independent Commission Against Corruption Act. That declaration continues to apply today in respect of Mr McNamara's evidence.

Yes, Mr Ranken.

- 10 MR RANKEN: Yes, thank you, Commissioner. Now, Mr McNamara, where we concluded your evidence yesterday was at the point in June of 2015 where the Urban Design Study and associated planning proposals had come back before council following the Gateway Determination and the public exhibition.---Yes.

Correct? And also following a further consideration of issues concerning rezoning of in particular the Waterview Street site, if I could call it that. ---Yes.

- 20 Being that part of Waterview Street on the western side of Waterview Street between Second Avenue and Barnstaple Road.---Yes.

And there had been town planners who had been engaged on behalf of the two companies, Deveme Pty Ltd and Anderlis Pty Ltd on behalf of, who were the owners, or it was said were the owners of 120 Great North Road and 2 Second Avenue. Correct?---Ah hmm. Yes.

- 30 And those town planners had been advocating for the rezoning of that strip of Waterview Street and Studio GL had reconsidered that issue. Is that correct?---Yes, that's right.

And maintained the position that it would not recommend rezoning that area because it had little public benefit and was therefore not in the public interest.---That's correct, yes.

And that, as at June 2015, so we're clear, the position had been raised and had been considered by the independent experts who had reported to council staff. Correct?---Yes.

- 40 Council staff had prepared a report on the basis of and relying upon that independent expert advice. Correct?---Yes.

And that was advice with which council staff in your department agreed with?---That's correct, yes.

And indeed the town planners who had been engaged by Deveme Pty Ltd and Anderlis Pty Ltd had had an opportunity to address the council meeting in June of 2015, I think it was 6 June, 2016.---Yes, sir, yes, that's right.

And with the benefit of all of that input, the council voted unanimously to put the, to adopt the recommendations of council staff which reflected the recommendations of Studio GL. Correct?---That's my recollection, yes.

And put the LEP proposal out for public exhibition.---Yes.

10 So and inherent in that, then, was a rejection of the suggestion that the area between Second Avenue and Barnstaple Road could be or should be rezoned.---That's right. If I could just amplify, the council has adopted a document for exhibition, so that is the position of the council at that point of time, but the exhibition effectively is inviting submissions on the basis of that draft document.

And would that include allowing for further submissions to be made, for example, by those, the town planners on behalf of Deveme Pty Ltd and Anderlis Pty Ltd?---That's, that's, that's right, yes, that's correct.

20 Possibly further submissions advocating for the same changes that they were advocating previously.---That's correct, yes.

Would you expect there to be some additional basis put forward by the town planners if they were to advocate for a position that had quite clearly not been accepted by the independent experts and council staff to that point? ---Look, in my view, the applicants would need to do more work to advocate for their position. Not be critical of the work that was undertaken by council and its consultants, but actually put forward an alternative view as to why they had a, an acceptable proposition, that could go into, for example, more studies, more design work, more architectural renderings, to demonstrate that the issues that had been raised by the council were not correct.

30 Now, and following that council meeting in June of 2015, the LEP proposal was duly publicly exhibited?---Yes, that's right.

And did that occur in about July of 2015?---That's my recollection, yes.

40 Then after the public exhibition of the planning proposal, it was expected that the proposal would come back before council, correct?---Yes. Yes.

And would there be some further work done by council staff, particularly in your department, concerning any submissions that may be received from the community?---Yes, there'd always be a advice to council of those submissions. We actually provide all the submissions to council and then provide a report, commenting on the, on the issues raised.

And did you also arrange for there to be a councillor workshop to discuss the Five Dock Town Centre Study in advance of the next council meeting where the matter was to be discussed?---That's my recollection, yes.

Now, according to the records obtained by the Commission, the matter came back before the council on 20 October of 2015. But before we get to the actual meeting of council, if we could bring up page 734 of Exhibit 24. Now, can you see that that's an inter-office council memo from the general manager, that's Mr Sawyer, to the councillors and executive staff advising of a proposed council workshop on 29 September, 2015?---Yes. Yes.

In the Halliday Room at the Civic Centre, Drummoyne, was that a common place where council workshops or councillor workshops were conducted? ---Yes. That's right.

And one of the items is a matter that you were presenting at, relating to something entirely separate. But it also indicates that at 7.00pm it was intended that Marjorie Ferguson present in relation to the Five Dock Town Centre Study.---That's correct.

Do you recall or do you have a recollection of attending that council or councillor workshop?---I believe I was there. I, it's hard to recall the exact details of it, but I would have been there, yes.

So you don't recall any of the detail of what was discussed at the workshop? ---It would have gone through the submissions, but I haven't got a photographic memory of what occurred at that time.

Okay. Now, can I then take you, can we go to page 737, this is a chain of – sorry, here we have a chain of emails. If we could go to page 738. The first in time is at the bottom of page 738 and it's an email from Mr Pavlovic to yourself, copied to Ms Ferguson, referring to the fact that “As discussed John presented to the counter today wanting to organise an appointment with Paul Dewar re Five Dock. He said he wanted to meet next week with Paul together with his consultant planner. I said I'll pass the message on to you and Marg. Cheers. Tone.” Now, do you recall having a discussion with Mr Pavlovic in which he indicated that, well, firstly – I withdraw that. The reference to John, do you recall who that John was?---It would have been John Sidoti.

And do you get that from the subject line that says John - - -?---That's, that's correct, yes.

So do you recall a conversation that you may have had with Mr Pavlovic in which he told you that Mr Sidoti had presented to the counter that day? ---Look, I can't remember any specifics of the conversation.

Were there occasions when, to your knowledge, Mr Sidoti had presented to the council offices to discuss planning issues concerning Five Dock?---No. It's not, not, it was not, not a common occurrence at all, no.

The email above sent about an hour and a half later is from yourself to the general manager, Mr Sawyer.---Yes.

10 And you say, "Hi, Gary. What do you think of this?" Do you recall the context in which you were raising that question?---Look, not specifically but I do recall that my concern would have been meeting with, it was a request from the local member to meet with a member of my staff who at that stage was not a manager. So the council protocol is that members of parliament meet with the general manager and possibly with directors in, in the company of the general manager, but normally they do not meet with managers or, or staff of a rank below manager, so in my opinion I was asking the general manager what do you think of it and I wanted him to make a decision as to whether that's an acceptable meeting to, to undertake.

20 Now, just in your answer then you referred to a protocol regarding state members and their contact with council staff.---Yeah.

30 Was that a written protocol?---Look, I can't recall. My recollection was that this was a matter that was a long-standing protocol that came more from state government about the, how, how councils conduct their business. When I joined the council in 2004 the, I was advised that the standard adopted practice, and I understood it was from a department of local government, or Office of Local Government directive was that members of parliament and even councillors do not talk to staff directly face to face at a level below general manager and, and director. That was the, that was the decision taken.

And you just mentioned in that answer that even councillors, there were some protocols relating to the contact that councillors would have with council staff was there?---That's, that's correct, yes.

THE COMMISSIONER: Under that protocol was it the position that councillors were not permitted to give directions to staff?---That's definitely correct, yes.

40 MR RANKEN: And again, do you recall whether that was a written protocol or was it something that you understood from the time you commenced working with the council?---I understood that from the time I joined council. Look, I honestly can't recall whether it was written down in any code of conduct but it was made very clear that that was, that was the rules and the protocol that councillors and staff were working to.

Appreciating it was some time ago now that you started with the council. Was it something that was told to you as part of some induction you went

through when you took up your role?---That's, that's correct. It was from, basically from day one they, I was advised these are the rules that we work to.

THE COMMISSIONER: Did you understand that the protocol was giving effect to an integrity principle?---That's correct, yes, Mr Commissioner. Yes.

10 MR RANKEN: And so your point again in raising this with Mr Sawyer was because he was the general manager, did you feel he ought to be aware that this contact had happened and that in fact Mr Sidoti appeared to wish to be making or arranging a meeting with a staff member lower than a managerial position?---Yes.

And where Mr Pavlovic referred to his consultant planner, you understood that to be a reference to Mr Sidoti's consultant planner?---Yes, that's correct, yes.

20 And did you know who that consultant planner was at that time?---Look, that doesn't reference that. I know that Mr Sidoti had been using MG Planners up until that point, I probably made the assumption that's who he was working with, but I can't say I had any particular knowledge at that stage.

And so MG Planners were the planners who had put in a submission and addressed the council in June on behalf of Deveme Pty Ltd and Anderlis Pty Ltd.---Yes.

30 Did you have an understanding at least by October of 2015 that Mr Sidoti had some connection to those companies?---Oh, that was, I was, look, I, I had never done any company searches myself but my, my understanding was that, my assumption was that he was involved with those companies.

And was that because you were aware that 120 Great North Road was the function centre and was one of the properties that was owned by Deveme Pty Ltd?---That's correct, yes.

40 Now, if we could go then to page 737, and at the bottom of the page is Mr Sawyer's response to your email in which he says, "Hi, Tony. I understand that Angelo suggested to Sidoti that the Five Dock plan was planning driven and any submission needed to have planning base for further consideration." Just pause there at the end of that sentence. Now, the reference to Angelo, is that a reference to Angelo Tsirekas, the mayor?---Yes, yes.

And what did you understand from what Mr Sawyer was saying by the reference to the fact that the Five Dock plan was planning driven?---My, my understanding of that would be similar to my earlier comment that if a submission was to come forward from anybody which was not in agreement

with the position and the work that had been taken to date by the council, it would have to put forward a compelling planning argument as to why that was the preferable argument to accept.

And it goes on in the next sentence to say, "The heritage property strata units access et cetera were matters that needed to be addressed."---Yes.

Again they were part of the issues that had concerned Studio GL.---That's right, yes.

10

And the council. Correct?---That's correct, yes.

"If the planner that John has engaged can address these issues to Diane's satisfaction, then perhaps the area can be reconsidered." Now, firstly, can I ask, the reference to Diane, is that Diane Griffiths?---That's correct, yes.

And she was the main contact for the council at Studio GL?---That's correct, yes.

20

The independent urban design experts that had been engaged along the way to consider these issues.---For council, that's right.

For council.---Yes.

And finally Mr Sawyer has said, "I would suggest that if they present a case it will receive independent consideration by the consultant who will make a recommendation to council."---That would be, yeah, that would be the approach, yes.

30

So in a sense did you understand Mr Sawyer to be suggesting that, look, this has already been looked at, but if they're able to provide further, a further basis on which it could be, might be reconsidered, then we can ask Studio GL to look at it again?---Yeah. My understanding was that whether it's John Sidoti or anybody, he'll need to put forward a professional planning-based argument in support of whatever it is he's asking for. Just because it's John doesn't really matter, it's, it's, it's the, the substance. Gary Sawyer, the general manager, was well aware of the issues that we'd already raised and he understood that that situation would prevail unless somebody came back with, if you like, a better more compelling planning argument.

40

And had a more compelling or had a different additional argument been put forward by the planners on behalf of Deveme Pty Ltd and Anderlis Pty Ltd following the public exhibition?---No.

THE COMMISSIONER: But by this time, that's 6 October, 2015, the interests associated with 120 Great North Road and 2 Second Avenue had put forward a contention for rezoning on the area in which those properties were located.---Yep.

Firstly by way of – I think I’m right in saying – two detailed written submissions prepared by the planner, Ms Helena Miller, MG Planning.
---Right.

And it was clear from those submissions as to exactly what it was that the interests associated with those properties were interested in achieving, and the basis upon which they were then in the submissions putting forward relying. Right?---Yes.

10

So that as of 6 October, they had had the opportunity on those two occasions by way of written submissions, and I think there was evidence also that Ms Miller appeared at one of the council meetings you’ll recall and was heard.
---Yes.

20

So is this a normal situation, that notwithstanding that that process has been gone through, that the interests making the submissions once again are requesting council staff, as it were, to have another go at rezoning the rezoning issue? Is that normal?---Well, if, if I could say, Mr Commissioner, it’s, it’s probably unusual, in the sense that normally if the council has given consideration to a submission and determined it at least once, the majority of people accept that that has had a fair hearing and, and, and accept that outcome. To keep coming back with the same line of argument is, is not, is not usual, but it’s not – it can, it can be done, because you’ve invited submissions. Where, where, I suppose, it was of concern to me is that, as I’ve mentioned yesterday, the implication was that the work done by the council to date was deficient or inadequate in some way, and that we’d, we’d come to the wrong conclusion. But I, I strenuously objected to that, indicated we’d, we’d gone to great lengths and great expense to, to address all of the issues. And as I’ve said, I don’t believe these applicants came forward with new or compelling information of their own. They were simply looking back at what we’d done and indicated that we had come to the wrong conclusion. So, that’s where it starts to become, I suppose almost, almost like a waste of time, to keep revisiting the same issues.

30

40

At the end of the day, from first to last, a question of a possible rezoning of the area in which properties 120 Great North Road and 2 Second Avenue were located, was wholly a public interest issue. That is to say, was there any possible potential public benefit in rezoning or not? Is that right? That was the issue from first to last?---Effectively – effectively, that’s correct. The land was already zoned B4. It could have been redeveloped for some permissible use under the B4 zone, and there was no development proposal before us anyway. It was, that’s, that’s really the nub of the issue.

All right, thank you.---Yes.

MR RANKEN: And just turning back to that email chain of 6 October of 2015, I’ve dealt with Mr Sawyer’s response to you, and if we could go back

to page 737, bring that up on the monitor, and above Mr Gary's response to you is an email from yourself to Ms Ferguson forwarding the earlier email chain to her, in which you say, "Response from GM. Can we please discuss?" Can I ask you this – what, if any, discussion did you have with Marjorie Ferguson about this, to the best of your recollection?

---To be honest I don't have a recollection of that discussion. I would have shown, or rather presented that response from Mr Sawyer to Marjorie Ferguson and would have asked her opinion as to what we should be doing.

10 Do you know whether or not a meeting of the kind that appears to have been sought by Mr Sidoti together with his planners with Mr Dewar occurred?

---Look, I, I couldn't honestly say at the moment. I, I didn't keep diaries from that period. Sorry, I did have them at the time but I didn't keep them once I finished with the council so I just can't recall whether we had that meeting or not.

If such a meeting occurred that would be quite an unusual thing to happen?

---Quite, quite unusual.

20 And would you expect if such a meeting had occurred that either yourself or the general manager, Mr Sawyer, would have been present?---I would have, that would be my understanding, yes, that we should have been. Not, certainly not a manager and her subordinate officer.

Certainly as far as you recall you didn't attend any such meeting where Mr Sidoti was present with his town planner and Mr Dewar?---I just can't recall ever having that meeting.

30 Do you recall ever meeting with Mr Sidoti to discuss the Five Dock centre?

---No, I can't, I can't recall having a face-to-face meeting with Mr Sidoti on the matter.

When you say you can't recall, does that mean your recollection is that you did not have a meeting or is it that you just simply have no recollection one way or the other and it's quite possible that you did?---I really have no recollection one way or the other.

40 If you had had such a meeting, is it something that you would have made a file note or some record of?---I believe so, yes, yes. That would have been a, I think it would be a significant meeting and it should have been recorded.

And if it had been a meeting to discuss the Five Dock Urban Design Study would you expect that given the nature of what was being sought on behalf of the Sidoti family interests as far as that rezoning is concerned, is that something that would remain in your recollection?---Look, it's very hard to say at this point of time but my recollection would be we would have, we would have said to John Sidoti and his advisers at the time if you feel that

strongly about it you must make a formal submission. We're not going to deal with this through a face-to-face conversation.

Now, moving towards the meeting of the council on 20 October, 2015, the council staff prepared a report as is ordinarily the case?---Yeah, correct.

10 Perhaps if we could bring up page 929 in Exhibit 24 and that's the first page of the agenda. If we move forward through to the next page and the next page and again. (not transcribable) so that's page 933, the first page of the report that was prepared by Marjorie Ferguson.---Yes.

In respect of item 2 that was to be before the council on 20 October, just firstly, dealing with the issue of submissions received, the report indicates that there were 389 submissions that were received following the exhibition period.---Right.

Do you see that in the first line of the second paragraph?---Yes.

20 And that the primary issue that was raised in submissions related to the proposed eight-storey height limit.---Yes.

And the impact of that height on the public and private domain.---Yes.

The exhibition outcomes report was prepared and concluded that a maximum of five storeys should be imposed with the ability to construct a sixth storey on certain large sites over 1,000 square metres.---Yes.

30 So effectively that was to reduce the effect of the bonus provision that had earlier been included in the LEP.---That's right, yes.

And that reflected, or that reduction or reducing of the bonus provision reflected what was the overwhelming view of the local community in relation to that issue of heights.---That's correct, yes.

If we can go to page 934, just continuing in relation to that, the issue of building heights, if you see about two-thirds of the way down there's a italicised subheading of Building Height.---Yes.

40 Being, "The vast majority of submissions commented that they did not support increase in the building height from four storeys to eight storeys," and in fact it was 94 per cent of the submissions that were received were against that.---Yes.

And again in relation to that, if we could then move on to the submissions in relation to expansion of the B4 mixed-use. If we could go to page 938. And you can see that in relation there's an italicised subheading about a third of the way down the page, Land Between Second Avenue and Barnstaple Road."---Yes, I see.

That's the very area that we've been talking about on Waterview Street - - -
?---That's correct, yes.

- - - that was the subject of the submission made on behalf of Deveme Pty
Ltd and Anderlis Pty Ltd.---Yes.

10 And it refers to the fact that, "Two submissions proposed a substantial
expansion to the B4 mixed-use zone to include land on the western side of
Waterview Street."---Yes.

So those 2 per cent, would you accept that out of 389 submissions, those
two submissions would represent about point 5 per cent of total submissions
that had been received in relation to - - -?---That seems about the right
amount.

- - - the public exhibition?---Yes.

20 And if you can see that it goes that on a couple of – it goes on to say that,
"This area was not identified for rezoning in the Five Dock Town Centre
Urban Design Study or the exhibited planning proposal."---Yes.

And goes on to provide some further reason, ultimately concluding that,
"The part of Waterview Street between Barnstaple Road and Second
Avenue is further away from the core of the centre and there are no
significant public benefits arising from its rezoning. The expansion of the
B4 mixed-use zone to land between Barnstaple Road and Second Avenue is
not supported."---That's correct, yes.

30 So again council staff were recommending that there be no further extension
to the B4 mixed-use.---That's correct.

Now, could I then take you to page 928. This is what appears to be a
calendar meeting entry, possibly through Outlook, and it refers to "Five
Dock Council meeting. Where: Tony's office. Organised By: Paul Dewar.
To occur at half past 3.00 on the afternoon of 20 October."---Yes.

40 And the required attendees are identified as yourself and Mr Dewar and Ms
Ferguson. "A quick chat to discuss the interest of speakers registered to talk
about Five Dock at tonight's meeting." So the meetings of council, they
would ordinarily kick off at about 6.00pm. Is that correct?---That's correct,
yeah.

And if someone wished to address council's meeting about a particular
topic, would they have to put in some form or make some application to be
registered so that they could speak?---There's a written application.

A written application.---Yes.

And that would then entitle them, when the particular item came up for consideration, to make such submission or address to the councillors they wished.---The mayor had to make a ruling on the night, but he always allowed people to make a formal submission.

And this meeting was particularly to discuss though the interested people who were registered to talk about the Five Dock issue, as opposed to any other issue that might be before the council. Correct?---Yes.

10

And do you recall attending a meeting with Ms Ferguson and Mr Dewar on the afternoon prior to the meeting of 20 October, 2015, to talk about the speakers who wished, who had registered to speak about Five Dock?

---Look, I'm sorry, I just can't recall the specifics of, of a meeting.

If we then turn to the meeting itself at page 941 of Exhibit 24, we see the attendees there identified as including yourself being in attendance.---Yes.

20

And Councillor Tsirekas as the mayor, Councillor McCaffrey, Councillor Ahmed, Councillor Cestar, pretty much a full house as far as councillors were concerned.---There's only eight there, so - - -

I think there's one, the only person missing might be O'Connell, Councillor Marian O'Connell, is that correct?---That's correct, yes. Yes.

And if we go then to page 200, sorry, page 943, we can see that there are declarations of pecuniary interest in relation to item 2 by each of Councillor Megna and Councillor Fasanella.---Yes.

30

As was their usual practice. And then turning to page 944, there is a list of the persons who addressed the council regarding item 2.---Yes.

One of those persons identified there is Helena Miller from MG Planning. ---Yep. Yes.

And you understood her to be addressing the council on behalf of the Sidoti family interests, or those companies, Deveme Pty Ltd and Anderlis Pty Ltd? ---Those companies, yes. Yes.

40

And also Sean Durkin, who was a resident. Did you know who Sean Durkin was?---Yes, he's the owner of the heritage property.

That's the property at 39 Waterview Street?---That's right.

And do you recall what, do you have a recollection as to what he addressed the council about on this occasion?---Oh, not, not specifically at that meeting. I, I, I'm, I was aware of his issues, but - - -

And what were his issues?---Well, he had a range of issues. His, his house is a heritage-listed property and had been for a long period of time. Sean seemed to have two, two views. One was, if no – he seemed to be accepting the continued heritage listing of his property, given the, given the existing circumstances, except that he always had an issue with too much parking on the street, because he didn't, doesn't have a garage. So he's always concerned about where to park his car. And so he would like to have a resident parking scheme instituted, because there is none in that part of the world. The alternate position was that if the rezoning was going to occur in that locality, he envisaged that there would be a build-up of development around his property, which would in effect potentially lead to devalue his property by big buildings overshadowing his heritage-listed property. On that basis, he was of the view that if, if the, if the zoning's going to change in this area, do not penalise me by leaving a heritage listing on my property, take the heritage listing off my property, and let me develop in accordance with whatever the final plan is. So he seemed to always present, if I could say, those two alternative views which, I'm not saying they're not valid, but they were – he'd present at least two views as to how his property was, was presented or affected.

20

And in terms of – perhaps I should have identified this before I moved onto the council meetings, but as far as the recommendations in the agenda report that have been prepared for council – and perhaps if we could go back to page 939 in Exhibit 24. Just looking at the first three of those recommendations and “The council note the matters raised in response to the public exhibition of the planning proposal draft Development Control Plan and draft Development Contributions Plan for the Five Dock Town Centre that council approve the planning proposal for the Five Dock Town Centre as shown at Attachment 3 to be made as a Local Environment Plan under a section 59 of the Environmental Planning and Assessment Act 1979, and that council approve the Canada Bay Development Control Plan part 7, shown at Attachment 4,” et cetera, et cetera.---Sure, yes.

30

So effectively to just having now publicly exhibited it, to actually now approve it to move forward with it as unchanged as from June of 2015.---I just, I assume though there's no changes in those documents recommended for adoption. Conclusion – I'll just read that conclusion if you don't mind.

40 Sure.---So it's recommended maximum height of buildings be set at five storeys, 2.5:1.

So there was that change.---Yeah, I'm just getting that from – so embodying those recommended changes, then it was recommended that the plans with those amendments be adopted.

Yes. That's what was being recommended by council staff - - -?---Yes, yes.

- - - following the public exhibition of the plans and the receipt of submissions.---Correct.

Now, then turning back to the minutes of the meeting on 20 October, 2015, we see that the council did not appear to follow the recommendation of the council staff.---Sorry, I haven't got that.

Sorry, 944. That was the page we were at which had the list of speakers. ---Right.

10

Do you see the resolution there was that it was not as had been recommended by council staff, but rather on the motion of Councillors McCaffrey and Ahmed that the item be deferred pending the preparation of an addendum report setting out in tabular format the advantages and disadvantages of the alternative maximum height options presented in the consultants' exhibition outcomes report.---Yes.

20

What did you understand that that was designed to achieve, that deferral?
---The, my understanding was it would mean looking at, considering greater building heights and greater floor space ratios as had been on public exhibition and we wanted to revisit those issues and look at the pros and cons of adopting those controls as opposed to the controls in the recommendation to the report.

30

What isn't referred to in the resolution as to what the addendum report would cover, is any reference to re-looking at again and reconsidering the possibility of a rezoning of that area of Waterview Street between Second Avenue and Barnstaple Road. Is that correct?---No, that's correct, yes.

Now, the matter was then to come back before the council on 3 November, 2015, and in advance of that meeting did the – I mean obviously the council staff prepared the addendum report in the tabulated format that was requested by the councillors.---Yes, we would have undertaken that, yes.

And would the council staff also have been involved in drafting a proposed resolution to be put forward at the next council meeting?---We, we wrote all the – sorry, that's a draft resolution?

40

Yes.---We would put forward a draft resolution if we're asked to do so. Normally we put forward a recommendation which may become a motion, but we only put forward draft resolutions, in other words like a notice of motion in that format if asked to do so.

THE COMMISSIONER: Just be clear about that. In relation to a particular issue that's coming before council, the drafting that you assist with is, do I understand you to say, in the drafting of the matters of motion which would set out the specific provisions which if adopted would form the basis for a resolution on that matter?--- Yes.

And that, I suppose, is directed to ensuring that there's some precision being brought to bear as to exactly what it is that council's being called upon to consider before they actually make a resolution?---That would be correct, Mr Commissioner.

MR RANKEN: In the circumstances that things were at as at October 2015, council staff had already made a recommendation as to the way forward in respect of the LEP, correct?---Yes.

10

The deferral that was moved and ultimately successful on 20 October, 2015, was only for the purposes of obtaining that addendum report that effectively would present the information about the pros and cons of building heights in a different format, correct?---Yes. That's what it's asking for.

20

That of itself would not necessary require the council staff to re-look at the recommendations that would be put forward, but rather would provide the information that councillors needed to consider whether or not to support the recommendation already, correct?---That, that information that was asked for would be presented as they asked for in a tabular form, and normally that would be presented for information because it's been called for and the question then arises, since the original report and recommendation has been deferred, that it would normally come back for determination.

30

But because of the nature of what was being looked at in the addendum report, it wasn't likely to raise any new issue concerning building heights, for example, that might affect the recommendation?---Oh, I don't believe so, no. We'd already considered all those matters at a staff level and it would not affect the recommendation.

40

Now, I want to take you to some emails from 30 October, 2015. If we can start at page 959 of Exhibit 24. This is an email from Mr Dewar to yourself, of 30 October, 2015, which attaches a draft resolution for further rezoning investigations. And if we go to the next page, it refers to various areas on the edge of Five Dock Town Centre that could be investigated for future rezoning. Now, this is at a point after the matter has already been publicly exhibited. There's been a deferral of the issue by council but not to consider anything to do with rezoning, to have information about building heights presented in a different way. Where did this draft resolution, relating to a reconsideration of the rezoning, come from?---My recollection is that I asked Paul Dewar to, to put forward that draft resolution on the basis of a question that was put to me by Councillor Helen McCaffrey at or following a, a workshop, a council workshop, immediately prior to me making that request.

So, when was the request made of you? Do you say just only a day before or - - -?---It was, it would have been a workshop prior to that date, whatever

that – it would have been a Tuesday night and it would have been verbal request.

THE COMMISSIONER: And this verbal request, was that made face-to-face, that is to say Ms McCaffrey putting this to you or is on the phone or how was it done?---It was done face-to-face.

And whereabouts did this meeting take place?---That meeting took place in the Halliday Room.

10

In the?---Halliday Room.

Which was used for - - -?---Which is the councillors' committee room or meeting room. Not the, not for the formal council meetings but the committee meetings or - - -

And was there anyone else present when this conversation took place that you recall?---I don't recall anybody being in that group. There were other people in the room but I don't recall any, any other witnesses so to speak.

20

And how did this meeting come about?---Well, sorry, the, the basis of being in that room, there was a council workshop there discussing the various matters on that night and then the, the councillor said to me, "I would like you to, I would like you draft a motion so that we can re-investigate these three areas." And I, I didn't advise her as to which areas to look for. She seemed to have some information as to what areas would be the ones that should be the subject for her notice of motion to council.

30

And did she provide you with any explanation as to why she was making this request?---Well, I did say to Helen at the time, "So why are we doing this?" And she said to me, "I'm getting some pressure within the party."

I want you to, if you would, reconstruct the conversation to the best of your ability.---Yes.

Firstly, do I take it this was a somewhat unusual request in the circumstances?---It's, yeah, we had not received – I had not received any questions from any councillors about putting forward notices of motion.

40

And what did she say to you, doing the best you can to recall what she said?---Well look, going back to that time, it was a long time ago, but the, she wanted to, she said to me, "Can you put together a notice of motion so that we can investigate the Waterview site and the other two sites within the vicinity on, one on the western side and one on the southern side of the Five Dock Town Centre to, to review these." My, my question to her at the time was, "Why are we investigating these three and where did this come from?" She said to me, "We need to investigate the three so it doesn't look we're just looking at the Waterview Street site specifically. It looks, it looks, it

looks as though we're being more even handed and I'm getting, I'm getting pressure within the party to put forward this submission.”

And did she say anything as to specifically who was involved in the party or the pressure that she referred to?---I don't, I don't recall her mentioning a specific name in that situation.

Did you hold a belief at that time that you understood that she had been under pressure or was then under pressure independently of what she said?
10 ---Well look, I, I understood she was under pressure because she said to me, “I'm not very comfortable with this.”

And the reference to party you took to be a reference to what?---To the Liberal Party.

Was there the discussion of any names of a person or persons in the Liberal Party?---No. I didn't ask and I wasn't given that, any specific names.

Did you have any belief or understanding as to any person or persons that she was referring to?---I had the impression she was talking about John Sidoti.
20

What was that impression built on?---The fact that, well, the real issue that we were intending to investigate, or which I believed was the intent of the notice of motion, was to revisit the Waterview Street site. And my understanding was that John Sidoti had a specific interest in the Waterview Street site and I couldn't imagine that the Liberal Party had any interest whatsoever other than John.

Can I ask you this, Ms McCaffrey was a person who had long experience in local government work. Is that right?---Yes, yes, she had been - - -
30

Been a councillor for some years?---Certainly in the time I was with Canada Bay Council and I believe I prior with Concord Council.

Was she highly regarded?---Yes, she was very highly regarded.

You said that she said something to the effect that it would be necessary to examine three sites rather than one and she indicated the purpose of that was again what?---I, I did ask the question, why are we investigating three sites, the other – I, I understood why – well, my understanding was that I, I understood why Waterview Street was coming up for investigation, but I had no understanding of why we're suddenly finding two other sites to investigate. And so that, that, I, I'd asked Councillor McCaffrey, “Why are we investigating the three?” and she indicated to me that it was really to make it look as though we're being even handed and, and broadening the investigation for looking at further rezoning opportunities outside of that core area that we'd previously identified.
40

Two of the three sites that she identified, had they been in fact examined, assessed by Studio GL?---They'd certainly been considered when the original study area had been identified.

10 And was one of those properties the East/West Street property, properties?
---It's in the, yes, yeah, it, half of the block between East and West Street was identified for rezoning to B4, from residential to B4, and the reason half of that block was identified for rezoning was that there was to be an acquisition of two of the blocks to allow a public road to run through it, to connect up with the Five Dock school. And it was seen as, in a way, an incentive for that area to be redeveloped to encourage that, that, that, that link to develop, and then it would have a new road with B4 development on either side of it. But it was seen as, if we went to about the midblock location, that would be adequate, there was no need to extend that rezoning for the whole of the block.

20 But this request that Ms McCaffrey was making was indicating that it be relooked at again.---Correct, and just rezone, consider rezoning the whole of that block between East and West Street to B4 business.

Did Studio GL make it plain in their report as to why there should not be a rezoning of the whole of that East to West Street area?---Well - - -

30 If you don't recall, just say so, we can always look at the report, but I just wondered if you have a recollection.---Not, not specifically, Mr Mayor, I think the reasons I've already advanced were pretty much as far as it went, and to my knowledge I don't think anybody had ever previously asked for that rezoning to occur.

And I think we saw on the screen, it's on the screen now, one of the other properties being put forward by Ms McCaffrey to make up the three was the - was it the Ramsay Road, or is it - - -?---Yes.

MR RANKEN: The neighbourhood centre land.

40 THE COMMISSIONER: Yes. And had that been also looked at by Studio GL earlier?---Well, it had been, it's, as it indicates there, it's currently zoned B1 neighbourhood centre, it actually has some shops on it. It's a, an odd-shaped or a little triangular parcel of land. There was, it was, it was seen as a, an area which didn't have great capacity for, for development, and it was, in its location if, if any higher range of development was, was ever built on that parcel of land, the issues of overshadowing from midday onwards to, to the residential land to the east would become an issue. There - so it was identified as not - it was already, had commercial development on it, it wasn't seen as having a great potential for growth, and the impacts of overshadowing on the residential neighbours were seen as a, a constraint on that land developing.

And did Studio GL address the issue of any possible rezoning in that area, do you recall?---Mr Commissioner, they, at our request, at the council's request, following this, when, when this matter was resolved, yes, they, future development was, was investigated and modelled, and it was recommended against.

That is, rezoning was recommended against?---Correct, yes. That's the best of my recollection on the matter, yes.

10

Could I ask you this, did you have some concerns about what Ms McCaffrey was raising with you on this occasion when she was asking or proposing or requesting that there now be a motion to examine the three properties, that is for rezoning, that is Waterview Street property and Great North Road property, East West Street's area and the Ramsay Road or neighbourhood centre area, in light of what she had said to you?---I was concerned. I, I, I think I understood why, why she made that request and it's an issue that I recall I raised at a executive team meeting following, following that workshop, and raised that as my areas of concern and what my intentions were with respect to it.

20

Is that executive committee meeting held on the same day as the day that she made the request to you or was it made the next day or some other day? ---Would have been made I would, I can't tell you exact dates, Mr Commissioner, would have been the same week. Usually workshops are held on a Tuesday night and we used to have executive team meetings on a, on a Wednesday or Thursday of the same week, so it would have been quite fresh when it would have been raised.

30

And did you raise it at the executive committee meeting because you felt some obligation to do so?---For two reasons, Mr Commissioner. Number one, at those executive meetings we always raised any, what came out of workshops or what came out of the meetings beforehand with a view to actions to take. Secondly I would have expressed my concerns that this, what I considered were the motivations for that request and, but at the same time respecting it's, as far as I was aware it's a legitimate request and it's something that had to be dealt with because it came from a councillor.

40

And just to be clear about it, the motivation to which you refer behind the request was what, as you understood it?---The motivation behind councillor's request?

Mmm.---I think she was, well, she, she was, she'd been asked to do it by, following, as I understood it, a request that was made to her at one of her Liberal Party meetings.

And what's that built on, your understanding about that?---My understanding of that was the fact that when I asked her why, why, "Why

are you making this, why are you asking me to draft you this resolution?" she said she was getting pressure from, from the party to put, to put this case forward.

Thank you. Yes, Mr Ranken.

MR RANKEN: Insofar as your concern about the motivation behind that request, what was your concern?---My concern was the fact that with all the work that we had put in and expressed how we come forward to the
10 recommendations, our reports and recommendations to council, my concern was that our, our professional work was being undermined and discredited for basically personal motives.

And whose personal motives are you referring to?---Well, it would be the owners of the properties that would be affected, particularly that, the, the Deveve property, which seemed to be the main motivator for, for this submission.

Were you concerned about the possible impact of that upon Ms McCaffrey's
20 capacity or the exercise of her functions in an impartial way?---Well, I suppose I, I, I found it unusual for her to be putting that position forward and I, as she expressed to me she felt very uncomfortable putting that position forward, so I guess that represents some sort of level of concern.

What did she actually say to you about her feeling uncomfortable about putting it forward?---I think she felt that she shouldn't be doing it.

What were the words that she used, to the best of your recollection?---Oh,
30 she, she said, "I'm, I'm under, I'm under pressure to do this and I'm, I'm not really comfortable with this situation."

And you said that you raised it with an executive team meeting. Was that executive team meeting prior to, or would it have been prior to you speaking with Mr Dewar about drafting a resolution for the next council meeting?
---Look, I can't recall the exact days but it would have been around that time.

It was one of the things that you said in answer to some questions from the Commissioner just a short while ago, was that you raised it with the areas of
40 concern but also let the executive team know what you intended to do about it.---Yes.

And what was it that you intended to do about it?---From my recollection, I – well again, a couple of actions there. Number one, we had to follow out the terms. When it was resolved by council, we had to pursue that investigation because that was, to the best of my understanding, a, a valid resolution of council. But also I undertook to issue a memo from myself to councillors and to the executive team. So it was, it was, it didn't go on a

council agenda but it was an internal memo to advise the councillors of my views on the history of, particularly why that western side of Waterview Street was not included and why I had no intention basically of recommending it for rezoning.

We'll come to that memo in a moment but can I just stay with the executive meeting. Do we take it that – who else attends these meetings, the general manager?---General manager and the directors.

10 Does the mayor or any of the councillors attend those meetings?---No.

And if you raised a concern about the motivations behind the request that was being asked of you by Councillor McCaffrey at an executive team meeting, would you expect, for example, the general manager to do something about that?---No, I didn't expect the general manager to, to do anything further about it but I certainly wanted that information to be known.

20 Did you make any other record of this interaction that you had with Councillor McCaffrey and your concerns about it?---No. I simply did the memo at the time.

So we might go to that memorandum. Sorry. If we could go to page 951. That's an interoffice memo to the councillors from the Director of Planning and Environment. That's yourself, correct?---That's right.

Dated the 29 October.---Yep.

30 And the purpose of the memo is to provide, "Additional information in relation to the report being considered by council about the Five Dock Town Centre, specifically further information is provided in relation to the zoning of land between Barnstaple Road and Second Avenue."---Yes.

So is this the memo that you're talking about that you prepared as a result of your interaction with Councillor McCaffrey?---Yes, that's right.

40 And just in relation to the interaction with Councillor McCaffrey. You said it happened after a councillor workshop and it was an exchange just between the two of you. Is that correct?---That's right.

No other councillors present?---I don't believe so. No, nobody in part of that conversation that I recall.

Did you have any interactions with any of the other councillors around this time who made or may not have raised this question of the re-looking at the zoning of the Waterview Street site?---No, I can't recall any other conversation with any other councillors.

So it was just with Councillor McCaffrey?---That's right.

And in this memo you set out, as you said or as you've told us, your reasons for, or the history of the consideration of the rezoning and your reasons for agreeing with the conclusion of Studio GL that it not be supported?---That's right.

But even having done so though it's the case that you then instructed Mr Dewar to prepare a draft resolution?---Yes.

10

And was the preparation of the draft resolution something that you raised with the executive team meeting as to whether or not it was appropriate to draft a resolution of that kind?---Look, I can't give you specifics, but I believe I would have raised that with the executive and advised them of the request and then said this is how I intend to proceed.

20

At that time did you have a sense in terms of your own – having been a part of this process from the beginning did you have a sense as to what you thought was most likely going to be the outcome of any further reconsideration of this rezoning issue by Studio GL, for example?---Well, I don't believe I had any concerns that Studio GL would suddenly change their view. As had been previously expressed I think we'd worked through that issue ad nauseam if I might say and this is, what I had to do was deal with a resolution from the council, and it's always been my training and principles that where there is a legitimate resolution, you must treat it with respect and deal with it appropriately, and I couldn't see any other outcome. Given all the information that I had, I couldn't see any other outcome other than the one that would recommend against any change.

30

At this stage, though, there hadn't been a resolution of council. It was in fact a resolution that was being drafted by Mr Dewar.---Yes, yes.

But you anticipated that the resolution would be made?---Oh, I assume so. I would assume so. I don't, can't read into the future.

40

But were you quite quietly confidently that even if the resolution had been made, the likely end result was going to be that Studio GL would reconsider the matter and unlikely change their position?---Yeah, my position, I didn't believe Studio GL would change their position. I couldn't predict which way the council would go on the matter.

Now, the recommendation, if we go back to page 960. The recommendation which is highlighted in yellow on that page is that a separate report be prepared to investigate the zoning and development controls.---Yes.

So, the separate report would be prepared by Studio GL, was that what you understand would be the effect of that resolution if it were passed?---The

resolution didn't specify who would do what, it would be leaving it to staff to do the work. The, the process that was undertaken, as I recall, was to commission Studio GL once more to do their work on the three locations which would then be presented to council together with a staff report.

Now, if could then go to - - -

10 THE COMMISSIONER: Could I just ask, as a matter of practice. You already had outsourced and obtained expert reports in relation to questions of rezoning in relation to these three properties that are referred to in the draft resolution. There had been public exhibitions, there had been submissions, there had been further consideration of all of that material by councillors in formal council meetings, and up to this time, that is prior to this motion going forward, there has seemed to have been a significant level of unanimity between councillors, whatever party they belonged to. This is now a further step in the multiple reviews, as it were, of these three properties. Did the council have some sort of threshold or requirement to say, well, we're not just going to keep investigating every time we're asked by some person with a particular interest and go over and over and over again when it's already been through multiple levels of consideration? I assume that there must be some sort of threshold that has to be met so that somebody can't keep asking and the council being obliged to keep reviewing. Why in this case then was there to be another review, as it were, for the asking, that is without meeting any threshold justification?---Well, Mr Commissioner, I don't know that I can really answer that. It, it, you're quite right, it would be, the, the – all the work that we had done to date was, I believe, very comprehensive and the issues of study areas had been addressed and, and particularly even in respect of Waterview Street, why it was not included but it had been well addressed before. But, so I, I would put this resolution in the unusual category, to say the least. When it was resolved by the council, I don't recall significant objections from councillors. It, it came forward, it was resolved and then we just proceed to, to deal with that.

Thank you. Mr Ranken, I see the time, we might take a morning tea adjournment. Is that convenient to you?

MR RANKEN: Yes, that is convenient, thank you, Commissioner.

40 THE COMMISSIONER: All right. Mr McNamara, we'll take a break for 15 minutes and then we'll resume.---Sure.

I'll adjourn.

SHORT ADJOURNMENT

[11.31am]

THE COMMISSIONER: Yes, Mr Ranken.

MR RANKEN: Yes, thank you, Commissioner. Now, Mr McNamara, we were dealing with the draft resolution that was prepared by Mr Dewar at your request following your interaction with Councillor McCaffrey following a councillors' workshop in October of 2015.---Yes.

10 And was it a concern of yours that in relation to these councillor workshops that they would provide the councillors for an opportunity to provide direction to council staff as to the resolutions that should be put before council at the next meeting?---You mean the recommendations to put forward?

Yes.---No, I don't think I ever had that concern, no. If the councillors wanted a particular notice of motion they could ask for it to be drafted by us and that happened from time to time, but always felt that our recommendations were independent and not, not put forward with any direction.

20 So there was no recommendation by the council staff in this instance that the particular resolution that was drafted by Mr Dewar at your request be actually the one that is adopted by council?---No. The process was we drafted, gave Councillor McCaffrey a draft resolution, it was up to her whether she presented it or whether she varied it and then presented it to council.

But that draft resolution was not a matter that featured in any recommendations from council staff?---No, no, no.

30 And so when it came to the meeting in November of 2015 when the matter was again before the council, the draft resolution that had been prepared by Mr Dewar formed no part of any recommendation by council staff?---No.

40 And just incidentally, if we could bring up page 963 in Exhibit 24, here we have an email from yourself, or it would be, the top email is from Ms McCaffrey, her Canada Bay email address to another email address which I understand may be her place of employment, but it's forwarding effectively an email from yourself to Ms McCaffrey attaching the draft motion. And if we go to the next page, 964, we can see the same draft motion as drafted by Mr Dewar.---Yes.

So that's you effectively forwarding it onto Ms McCaffrey, so plainly this was done at her request.---That's correct. Yes.

Moving to the meeting of 3 November, 2015, if I can first deal with the agenda report that was prepared for the purposes of that meeting, commencing at page, I think it's just after 971, the report starts at 975. Again, the author of the report is Marjorie Ferguson.---Yes.

And at the outset of the report, it acknowledges that the reason why the matter was coming before the council now is because it had been deferred pending the preparation of an addendum report setting out in tabular format the advantages and disadvantages of the alternative max height options presented in the consultant's exhibition outcome report.---Yes.

10 Now, if we can go then to page 976, there, the second-last paragraph on that page refers to the public exhibition as had been referred to in the report that was prepared for the council meeting on 20 October, and a reference to the number of submissions that had been received.---Yes. Yes.

And then turning to page 980, again it effectively reiterates that which was in the report prepared for the 20 October, 2015 meeting concerning the land between Second Avenue and Barnstaple Road, and the submissions that were received, and the reasons why it wasn't supported, correct?---So which parts are you referring to there? Oh, yes, the second part, yep.

20 Just from about two thirds of the way down the page.---Yes.

Effectively, that's almost word for word, I would suggest to you, to the report that had been prepared for the purposes of the 20 October, 2015 meeting.---Correct, yes.

So the position effectively was that as far as the rezoning issue was concerned, what was being recommended and advanced by the council staff had not changed from the position in, before the October meeting to the position before this November meeting, correct?---Yes, that's right.

30 And then if we go again to the recommendations commencing at page 981, I would – yes, and they continue over to 982, by all means take the time to read them yourselves, but what I wanted to suggest to you is that the recommendations of the council staff had not changed since the 20 October, 2015 meeting.---That sounds correct to me.

And then turning to the meeting itself of the council, the minutes commence at page, I think, perhaps if you just go to page 990.

40 THE COMMISSIONER: This is the meeting of 3 November, 2015?

MR RANKEN: Yes, that is correct. We can see that again we've got a list of the persons who presented or addressed the council in respect of the matter.---Yes.

And there's the list of persons, one of those persons included a Mr M. Thebridge, representing Deveme Pty Ltd and Anderlis Pty Ltd.---Yes.

Did you know who M. Thebridge was, Mr Thebridge was?---Oh, at the time no. I don't think I'd ever met the man.

Do you have an understanding that he was one of the town planners who was acting on behalf of Deveme Pty Ltd and Anderlis Pty Ltd?---Yes, I do. Yeah, I do.

And so was there in the same capacity that Helena Miller had been from MG Planning?---That's my understanding, yes.

10

THE COMMISSIONER: Does that mean there was a change of planners, just say if you don't know, from the previous planners MG Planning, in other words was there a new set of planners now advocating or I should say making submissions for - - -?---Mr Commissioner, my understanding was Mr Thebridge had a connection with MG but I - - -

Oh, I see.--- - - - I don't, I think he was still associated with them but I've picked it up more from the correspondence than personal knowledge.

20 Thank you.

MR RANKEN: Now, as far as the recommendations that were put forward – I withdraw that. As far as the resolution that was put forward, there were two parts to it, a part A and a part B.---Right.

And part A broadly reflected aspects of the recommendations that were put forward by the council. Is that correct?---That's my recollection, yes.

30

Part B though reflects the separate report, sorry, reflects the draft resolution that had been prepared by Mr Dewar at the request of you at the request of Ms McCaffrey. Is that - - -?---Could you just put that one up? I think that's my recollection.

That's on page 992.---Part B, yes.

Effectively to investigate those three sites.---That's, that's correct, yes.

And ultimately that was in fact the resolution, the resolution passed so including part B.---Yes.

40

And that was passed over the – or two councillors voted against that. That was Councillor Tyrell who was the Greens councillor. Is that correct? ---Yes.

And Councillor Mirjana Cestar who was a Liberal councillor?---Correct, yes.

Now, ultimately the matter went over for further consideration by Studio GL.---Yes.

And is that something that was facilitated by your department?---Yes.

Engaging Studio GL to prepare a further report in relation to the three sites?---That's right, yes.

10 And in due course Studio GL came back to council with a further report following its investigation of those sites in response to that resolution. ---Yes.

Perhaps if we could go to page 1010 and do you see that there is the - - -

THE COMMISSIONER: So this is the final report Proposed Development Controls Additional Sites?---Yes.

For 3 March, 2016.

20 MR RANKEN: And if we turn to page 1012 there are three sites effectively that identified site A, site B and site C.---Yes.

And site A is the site over on the western side. Perhaps the easiest way is just if we go to page 1014. This plan or this map shows the areas that were considered by Studio GL.---That's right.

And site A is the area shaded blue on the left-hand side being the western side of the town centre.---Yes.

30 Site B is what I have been referring to as the Waterview Street site.---Yes.

That being that part of the Water Street, the western side of Water Street between Second Avenue and Barnstaple Road and then site C is that small area down towards the south-eastern part of the map.---Yes.

So site B was the – and in respect of site B there were two options that were considered by the experts, that is Studio GL, and the first one was an option in which the heritage status of 39 Waterview Street was retained. Is that correct?---Yes.

40 And then it was about recommending a building height and a building envelope that would protect the setting of that heritage item. Is that the position?---Yes.

And if we go to 1021, that is explained there, set out there about what that option involved. And at 1022 in terms of the proposed built-form controls, as far as the land use zoning is concerned, it was recommended that the zoning remain R3 medium-density and that B4 mixed-use was not

recommended as it was not seen as desirable to increase commercial development away from Great North Road and the town centre's core, or locate businesses along this section of Waterview Street.---Yes.

And when you read this – I take it you did come to read this at some stage?
---Mmm, yes.

Is it fair to say that you were not surprised that was the view that Studio GL had come to?---No, I wasn't surprised.

10

And then in terms of option 2, if we could go to page 1027, effectively option 2 was the same as option 1 except for removing the heritage listing for number 39 Waterview Street.---Yes.

And insofar as that option was concerned, if we go to 1028, even with the removal of the Waterview Street site it was still recommended that the zoning remain as an R3 medium residential density, medium-density, for effectively the same reasons as for option 1. Correct?---Yes, yes, that's my recollection, yeah.

20

So does that, I mean do you agree with that as a proposition, that the removal, essentially that the rezoning was not dependent solely upon the heritage listing of the item number 39 Waterview Street?---That's right. It was an issue to deal with, more to do with immediately adjacent built form, but it wasn't a fundamental only issue that had to be dealt with, yeah.

But the removal of the heritage-listing site would allow for other aspects of the built form to be more generous to property owners. Would you agree with that?---Correct, yes.

30

So in addition to this work that was done by Studio GL, was HillPDA Consulting also asked to do some work in relation to those additional sites - - -?---Yeah, my - - -

- - - based on this review?---My recollection was that HillPDA did a feasibility analysis of these recommended built-form controls to look at whether there was economically feasible to achieve redevelopment.

40

So the work wasn't just about looking at the built form, it was also looking about, well, if we were to make these changes, what would, what was the likely economic feasibility to be. So something a little bit more in-depth than just built form.---That's correct.

And did HillPDA ultimately prepare a draft feasibility analysis of those additional sites that you considered?---Yes, that's my understanding, yes.

If we could go to page 1058 in Exhibit 24. And that's the draft feasibility analysis.---Yes.

And do you recall what the ultimate conclusion was?---My recollection of the outcome for Waterview Street was that, was it was not viable to facilitate redevelopment on virtually all of the land, except there was one, one land, one, one parcel of land, I think it was on Barnstaple Street, which had marginal viability for redevelopment. That's my recollection.

10 And if we just go to the conclusion expressed in that report at page 1068, "HillPDA have tested three additional sites with a total of 11 development options. Of the total 11 options, our modelling revealed that site B1 (retain heritage building) was the only option to achieve a marginally feasible scheme at an FSR of 1.28:1." Does that mean that there was consideration of different floor space ratios and how they might be used or achieved in accordance with other built-form controls to achieve a profitable development of the site?---That's my recollection of it, yes.

20 And by reference to the "site B1 (retaining heritage building)", does that mean that they were suggesting that actually option 1 was the, as far as site B was concerned, was the most economically feasible as far as development was concerned?---Look, I think, I don't know if they had any recommendations, but simply that was their finding, that that, if you, if you were going to develop, that's the only one that would have a marginal profitable return.

Oh, that's what I was meaning.---Yeah.

I'm not saying that they were recommending that B1, that option 1 be the one that is followed.---No.

30 But that on their analysis, that was the most profitable option of, as far as site B was concerned.---If - - -

THE COMMISSIONER: Do I understand then, in summary, the two options dealt with here, options 1 and 2, proceeded on the basis – well, sorry, concluded on the basis that there was no basis for changing the existing zoning 3 residential, is that right?---Effectively, that's right, yeah.

40 And that insofar as it looked at other considerations, many of the – or, I don't know, some or many, depending upon what your view of the detail of how these areas could be subject to some form of development in the future – some of those considerations were planning-control-type matters, is that right?---The - - -

Is that how you'd characterise them?---Given, given the – I, I think that, as I say, the Urban Design Study looked at what could reasonably be developed there given all the concerns we had before about heights and overshadowing and so forth, and, and amenity, so it set certain constraints, and then against that, working within basically a limited a range of development options, the

HillPDA analysis was undertaken. And due to the high price of land, cost of construction, and the fact that these, these are all developed sites already, they came to the conclusion that it had very limited viability for development, given those planning constraints.

10 And so far as the three sites the subject of this investigation, from a practical point of view, it meant that the existing zoning, residential, would permit a development of two storeys in relation to options 1 and 2, is that right?---I'd have to, I'd have to refresh my memory on those studies again, but it was - -

All right, we can – the report makes it clear anyway.---It, it was existing, the, the existing controls allowed two-storey development, and from my recollection and the, the ultimate outcome went to three to four storey, I think, from, in that R3 zone, retaining the R3 zone.

Yes. Incidentally, are council engaging experts such as Studio GL, HDA - - -?---Yes.

20 Are councils required to fund out of their own reserves or resources the cost of the, such expert consultancies, or does the person whose interest might be affected also have to contribute in some way to defraying the costs of getting these experts to assess or examine a potential proposals?---To answer your question, Mr Commissioner, when the council resolves to do that work, the council pays for that work. It's not paid for by the owners of the land.

30 In your experience are they costly exercises?---They are, Mr Commissioner, yes, they are expensive exercises.

And in relation to the three sites investigation here, the council fully funded it out of its own - - -?---Yes, correct.

- - - out of its own resources.---Out of its own resources, that's correct, yeah.

Okay. Thank you.

40 MR RANKEN: Just on that, are you able, do you have any recollection as to, even in ballpark terms, what the cost of just the investigation of these additional sites - - -?---I don't have any recollection of the costs, I'm sorry.

So I've just taken you to the HillPDA consulting draft feasibility analysis of the additional sites, which was I think dated 11 May, 2016. Can I move forward then to June of 2016 and specifically if we could bring up page 1101. There's two emails, you'll see there two emails forming part of an email chain that was initiated initially by you emailing Mr Dewar asking, "Can you advise when the report on the additional sites is likely to get to

council? Also is there word on the gazettal of the main LEP?” And so what were you doing there, you were chasing up the report or - - -?---Oh, just a follow-up to find out exactly where things were up to, yes, or two issues, yeah.

10 But they were related issues.---The main LEP, no, the, well, the, in the sense that they’re all, both related to Five Dock, but the main LEP was on a path through to gazettal so the, and the additional sites, if, if the council resolved to proceed with those, they would be treated as a separate planning proposal.

That’s what came out of effectively the resolution back in November of 2016.---That’s right, yes.

So essentially from November 2016, as a result of that resolution that, or that was drafted at the request of Ms McCaffrey, there was a bifurcation of the Five Dock Town Centre proposals.---Effectively there was a, yes, a new line of investigation, yes.

20 Whereas what had effectively been settled was going on one path towards gazettal and there was still going to be consideration by the council of the possibility of a separate plan in relation to these additional sites.---That’s right.

30 So Mr Dewar’s response of 15 June is to refer to a memo that he had prepared on the outcome of the investigation, which he attaches to that email. And if we go to page 1103, there is a short one-page memo which was attached to the email and ultimately you can see that the conclusion in the penultimate paragraph is, “It is suggested that the existing zoning and development controls remain unchanged.”---Can I just have a read of that for a moment? Yes, yes.

And in particular, immediately above that, Mr Dewar’s expressed the view that, “To enable a feasible outcome to occur, the height and density of development would need to be increased to a level that would be inconsistent with the principles of the Five Dock Town Centre Urban Design Study and create additional impacts upon amenity of the surrounding locality.”---Yes.

40 So essentially would you agree that what Mr Dewar was saying was that to change the existing zoning development controls it would be in fact contrary to what had been determined to be the public interest?---Yes, that’s correct, yeah, I would agree.

THE COMMISSIONER: You agree with his view?---I do agree with Mr Dewar’s view, yes.

MR RANKEN: Now, the matter I think came before the council again on 2 August of 2016 but can I take you – sorry, I withdraw that. In preparation for the matter coming before the council, as was ordinary practice, there was a council staff report prepared for the councillors.---Yes.

If we could go to page 1154. That's the first page of the report that was prepared for council.---Yes.

And the author's initials are PLD, that's Mr Dewar.---Paul Dewar.

10

And in that report Mr Dewar outlined, at 156 to 157, the two options that had been considered in relation to what I have referred to as the Waterview Street site.---Right.

And do you see that if we, option 1 proposing to retain the heritage status of 39 Waterview Street and recommending a building height and a building envelope that protects the setting of the heritage item?--- Yes.

20

And then option 2 over the page proposing to remove the heritage status of 39 Waterview Street.---Yes.

And ultimately when we go to page 1160, he's identified the fact that the testing, this is under feasibility analysis, "The testing review that all but one development option is unviable in the current market. The site that was shown to be marginally feasible is located on the corner of Barnstaple Road and Waterview Street and would accommodate a four-storey apartment building." That was the site that you were referring to in your evidence earlier.---That's right, yes.

30

And then further down on that page, in terms of under assessment, Mr Dewar has said, "It is strongly recommended the controls should not be increased further than recommended by urban design advice in order to facilitate viable outcomes."---Yes.

"This would create new impacts on surrounding properties and be contrary to the broad-ranging consultation undertaken and the principles of the Urban Design Study adopted by council."---That's right.

40

That effectively gives a little bit more flesh but reflects the view that he expressed in that inter-office memo that I took you to a moment ago.---Yes, very consistent.

"And there are therefore two alternative options available to council. Leave the current zoning and controls unchanged, proceed with changing the zoning controls in accordance with the Urban Design Report prepared by Studio GL dated 3 March, 2016."---Yes.

“Council should be”, and then sorry, if we perhaps turn over the page.
“Council should be cognisant that there are advantages and disadvantages to implementing both of the above options.” And then he has set out those various advantages and disadvantages for each of those.---Yes.

And ultimately, the conclusion is on page 1162, and I just draw your attention to the fact that “The feasibility testing of the recommended development controls has revealed that, given the high cost of land, many of the sites will be unattractive for redevelopment.”---Yeah.

10

And then if you go over to the next page, “That should council resolve to proceed with rezoning, it should be on the understanding that extensive amalgamation and redevelopment is unlikely to occur in the short term.”
---Yes.

And was that suggesting that if it was to rezone that area, then it would be unlikely that there would in fact be any development?---Certainly in the short term you wouldn’t see any changes.

20

Now, when it came to the meeting on 2 August of 2016, if we can go to page 1164, you’ll see that you didn’t attend on that occasion but Mr Pavlovic attended in your stead. Is that correct?---That’s right.

And again all of the councillors attended except for I think Councillor O’Connell.---Councillor O’Connell is actually Councillor Parnaby. She had actually remarried by that stage.

She had remarried and – all right.---The one missing was Councillor Tsirekas, who was, he was not on council at that time.

30

So at that stage, Councillor Tsirekas had in fact resigned from his position as mayor, is that correct?---Yes.

And he had resigned in order to pursue election to Federal Parliament, is that the case?---Correct, yeah.

And in his stead, Councillor McCaffrey, who was deputy mayor, she became the presiding councillor at council meetings, is that right?---She was acting, acting mayor for a period and then became mayor, yes.

40

And in that role, in terms of a meeting of councillors – sorry, I withdraw that. So from that point, at least for a period, there were only eight councillors on the council, is that correct?---That’s right, yes.

And that meant that if, in the event of a split, an equal split between the councillors on a particular issue, the casting vote would be that of the presiding councillor, is that right?---Yes.

And in this instance that would Councillor McCaffrey as the deputy mayor?---That's right.

And so just turning to page 1168 in Exhibit 24, we can see that at the bottom of that page we see the item in the minutes, and it identifies that Councillors Fasanella and Megna each declare their pecuniary interest and left the meeting?---Yes.

10 And then when it comes to the next page, there are a number of persons who are identified as having addressed the meeting. One of those is a Mr J Matthews of Pacific Planning, representation various landholders.---Yes.

Do you know who Mr J Matthews is and who Pacific Planning were?
---Yeah, I, I did, yes, yes.

And who was he?---James Matthews is the principal planner with this company, Pacific Planning, and they represented the same people as previously represented by MG Planning.

20 So this was new town planners, effectively, representing the interests of Deveme Pty Ltd and Anderlis Pty Ltd?---Yeah, that's right.

Were there any other landholders that you understood them to be representing at this time?---My understanding was they were representing just those, Deveme and the, the other - - -

THE COMMISSIONER: Anderlis.---Anderlis. Just, that was, what was my understanding, yeah.

30 MR RANKEN: And what was the basis of that understanding, from where did you get it?---Well, here Mr Matthews presented himself as representing various landholders. My recollection was he, he was, generally speaking, about the value of having a, a commercial or business zoning for Waterview Street. He was questioned, from memory, by Mr Dewar as to exactly who he was representing and, at some stage, and then he, he advised us on that.

Was that during the course of the council meeting, was it, or - - -?---I don't believe it was during the meeting. It was later via correspondence.

40 But at this time, as of 2 August, 2016, or was it an earlier time that that question occurred?---From memory it was at a later stage. I can't give you an exact date but, yes.

Now, just turning to resolutions. Firstly, there was a motion put by Councillors Kenzler and Tyrrell that, "The outcome of the urban design and feasibility reports were noted and in particular the GL Studio in the Five Dock Town Centre proposed development controls relating to the various sites."---Yes.

And secondly that, “After careful consideration, that the existing zoning and controls applicable to the three sites identified in the report remain unchanged.”---Can you move onto that page, I just can’t see, sorry.

Sorry. That’s it, paragraph 2.---Yes. It will remain unchanged, that’s right, yes.

10 And it went further to express the reasons why they should remain unchanged?---Yes.

That, “The proposed development controls are not feasible in the current market. That, “Increasing densities to make development viable would create unacceptable impacts in surrounding residents.”---Yes.

That, “The changes would impact an existing local heritage item and the rezoning would encourage development outside the core of the town centre.”---Yes, yep.

20 Now, in relation to that resolution or that motion, it was ultimately put and lost on the casting vote of Ms McCaffrey as the deputy mayor, is that - - -?
---That’s right.

And turning to the next page, there was an alternative motion put by Councillors Cestar and Ahmed.---Yes.

Both of them being Liberal councillors, correct?---Yes.

30 And that that was that option 2 in the additional sites report for the land between Second Avenue and Barnstaple Road on Waterview Street site be endorsed.---That’s right.

And that there be no change in relation to those other two portions of land, being the one on the western side and the one on the southeast corner of the town centre area.---Yes.

40 And that there were further resolutions or aspects to the resolution that would have them be incorporated or have a planning proposal amendment be made to accommodate that.---That’s right, yes.

And so that would involve removing the heritage listing of number 39 Waterview Street.---That’s, that’s my understanding, yes.

That motion passed on the casting vote of Ms McCaffrey?---Yes.

Now, but even with that motion though, that was endorsing though that there be no further rezoning of the Waterview Street site from R3 to B4 mixed-use.---That’s correct.

And that was a matter that had been considered again as a result of the resolution in November of 2016 and the subsequent reports that were prepared by Studio GL and HillPDA.---That's right.

Now, I want to move on then to events following August 2016. Were there further representations that the council received from Pacific Planning in relation to this Waterview Street site following August 2016?---I can't recall any further submissions.

10

If we could go to page 1282, it's a series of emails, and can you see that there's an original appointment email that is from Mr Dewar?---Yes.

And it includes yourself and Ms McCaffrey and James Matthews - - -?
---That's right, yes.

- - - as a meeting with Pacific Planning to occur on 14 November, 2016?
---Mmm, yes.

20 Do you recall attending a meeting with Helen McCaffrey, Mr Matthews, and Paul Dewar sometime in November 2016?---Look, it is possible, but I, I have no recollection of the details or meeting, to be honest.

Would that be an unusual thing to occur, that is, for there to be a meeting involving not only a planner on behalf of a private interest and members of council staff, but also a councillor?---No, it, it wasn't, it wasn't common, but it was, it did happen, yes, it did happen. I notice there's two particular matters there, one was the Parramatta Road, because there's a lot of planning work being undertaken on Parramatta Road. You would have thought the Five Dock Waterview Street rezoning would have been put to rest by that stage, but the, Pacific Planning obviously had involvement in both and wanted to talk about both, so - - -

30

THE COMMISSIONER: So the email here records, as you say, two matters that they were seeking to have a meeting about. One concerned the Parramatta Road and the other Five Dock Town Centre Waterview Street rezoning.---Yes.

40 So, well, you don't have a recollection of - - -?---I'm not saying it didn't happen, I just, I don't keep, didn't keep any diaries and it's - - -

But it seems that as of the date of this email, 11 November, 2016, the issue of a possible rezoning of Waterview Street had not yet died.---No.

And this postdates the three sites review. So anyway, we'll find out what happened.---They didn't give up.

Yes, Mr Ranken.

MR RANKEN: What of the participation of the councillor, Helen McCaffrey? I take it that there are occasions when town planners who represent the interests of private constituents might from time to time meet with council staff to put forward what they are being instructed to advance?
---Yes.

10 And I assume there would be no, you would see no difficulty in appointments and meetings of that nature taking place?---No, it was, usually a meeting of that nature would be, at least involve a manager, if not the director, myself, but they're not uncommon, yes.

As I understood it, ordinarily councillors wouldn't have direct meetings with council staff other than in the presence of at least a manager, sorry, at least an executive such as yourself, or the general manager, Mr Sawyer.
---That, that was not common. The mayor, when Councillor Tsirekas, when Councillor Tsirekas was there as mayor, on occasion people would approach him and ask him to be part of those meetings and I would take it that at this meeting Helen McCaffrey would have been acting there as the mayor
20 because, because she was the mayor at that stage.

So is that your recollection, that Ms McCaffrey's inclusion in this was because of her position as the acting mayor at the time?---That would be my understanding.

Did it not cause you any concern that this issue of the rezoning of Waterview Street was a matter that Ms McCaffrey had herself raised with you in November of 2015, apparently as a result of pressure that she had been receiving from the Liberal Party or from the party, and that these
30 persons who would be attending were the very planners who were representing the source or who you understood to be the source of that pressure on Ms McCaffrey?---Well, when you say a concern, I assumed it was just another attempt to see if there was any way that council could, could, could change its view on the rezoning. I didn't – so I was expecting more of the same in a sense.

Is that not of itself a matter of concern, that as to the attempt to possibly apply further pressure upon council to change the position it has taken?
---Oh, I can't say it's, I can't say it's common but it's just the thing you live
40 with in a council. You're forever receiving requests to talk about properties and that's why it's, yeah, you, you need to, in my, in my humble view, maintain a propriety about how you approach this, preparation for those meetings and basically being happy to tell people the same story on repeat occasions, that the matter's been fully investigated, not interested.

THE COMMISSIONER: In terms of what's usual or not usual, given that there had been multiple reviews now of the question of the rezoning of the Water Street property, including the three sites investigation, is there any,

given that background, was there anything else council physically or otherwise could do about Water Street rezoning, and that was the very issue that had been, as it were, thrashed out multiple times with different investigations.---There was really - - -

10 Was there any scope for the council to do anything more about it?---A few, Mr Commissioner. There is, there is protocol in councils about – not a protocol, I think it comes out of Local Government Act, as to how soon after a resolution a contrary resolution can come before the council. That’s a period of months. And if a councillor was of the view that they wanted to reverse a decision being taken, they’d have to go through that appropriate process, no doubt talk to the general manager as to whether it was appropriate, and put forward a notice of motion to, to reverse an earlier decision. I don’t recall that happening, but that’s a provision of the Local Government Act. But in my personal view the matter had been thrashed to death and I don’t think anybody really wanted that to come back again for further consideration.

20 And you do not know or have any recollection as to whether the process or procedure you just referred to – that is to say, dealing with the issue again by a notice of motion – was a procedure that was followed or not.---To my knowledge, it was never followed through.

Yes, Mr Ranken.

MR RANKEN: Yes, thank you. Can I take you, then, through to December of 2016, and specifically if we could go to page 1320. You’ll see this is the first page of a chain of emails. If we could go to page 1321.

30 THE COMMISSIONER: This is 5 December, ‘16, is it?

MR RANKEN: That’s correct. The last in time is 5 December, but the earliest in time is the - - -

THE COMMISSIONER: I see. The 2nd.

40 MR RANKEN: - - - 2nd of December. And that’s an email from Yolanna Boyle to Mr Matthews regarding Five Dock Town Centre, changes to planning controls for land on Waterview Street, 2 December. And it’s effectively giving notice, is it not, that the report on the matter would be considered at the next council meeting on 6 December?---Yes.

So that’s notice that was just going out to Mr Matthews as someone who had registered an interest in that particular item.---That’s right.

To let him know that the matter would come back before the council on 6 December.---Yes.

And there is a response from Mr Matthews to Yolanna Boyle and also to Mr Dewar, but it's also copied to Helen McCaffrey and Michael Megna and a Matthew Daniel. Do you know who Matthew Daniel is?---My understanding is Matthew Daniel is also a member of Pacific Planning.

And what he says in that email is that he is representing the views of 2 Second Avenue and 37, 39, 41 and 43 Waterview Street.---Right.

10 So 2 Second Avenue you understood was owned by Anderlis Pty Ltd.
---Yes, yes.

39 Waterview Street you understood was owned by Mr Durkin.---Yes.

That was the heritage-listed item.---Yes.

I think I took you to, earlier yesterday, that [REDACTED] was owned by Mr and Mrs Cassisi.--- Yes.

20 Did you know who owned 37 Waterview Street?---No.

And what about 43 Waterview Street?---No, I can't recall knowing who the owners were.

One thing, Mr James Matthews does not purport there in that email to be representing the owners of 120 Great North Road.---No, no.

30 And one of the points that Mr Matthews makes is that the lots that he represents form more than half of the block the subject of the planning proposal, and is requesting that the matter be deferred for a number of concerns with the content and level of analysis of the recommended controls, particularly regarding feasibility and lot amalgamation.--- Yes.

So he was effectively asking the council to defer, consider deferring the issue rather than determine it in December.---That's correct.

40 To allow what?---Well, I, I, my understanding of his request was that it's, that in a sense he could challenge the findings of the work that had been undertaken by council and its consultants, and would be seeking a, a different outcome.

And there is a response from yourself not to Mr Mathews but essentially forwarding that email to the councillors.---Yes.

And also to amongst others Mr Sawyer as the general manager.---Yes.

Can I ask, there's also a reference to a John Osland and a Russell Wolfe and a Bruce Cook.---Yeah.

Who are they?---John Osland was the Director of Technical Services, in other words a council engineer. He was a director of council. Russell Wolfe was an Acting Director of the Community Development Division of council and Bruce Cook was the Director of Corporate Services.

And what was your purpose of including them on the email, are they members of the executive team?---They're members of the executive team.

10 So were you intending to in essence raise your views or express your views about Mr Matthew's request with not only the councillors but also the executive team in the one go?---That's right.

And what you've said is you've referred to the email that you had received from Mr Matthews and you said that, "In addition to a request for deferral James appears to be seeking planning controls which are greater than those contained in the recommendation to item 5 on tomorrow night's meeting. The basis for the request appears to be what James considers flawed and inequitable of the planning outcomes. May I respectfully suggest the basis for all recommendations has been well and truly canvassed in the various
20 reports despite not suiting all landowners."---That's right.

And you stand by that - - -?---Yes, I do.

- - - that view?---Yes.

We've already gone through the numerous times the matter actually was considered particularly as far as rezoning is concerned.---Yes.

30 And on each occasion it was considered that it was not in the public interest. Correct?---Yes.

"And rather than deferring this item, may I suggest the item be adopted as per the recommendation and Mr Matthews be advised to submit a planning proposal setting out his client's preferred position for future development with appropriate planning justification."---Yes.

40 What were you suggesting there in terms of the way forward for Mr Matthews and the interests he was representing?---There was a number of elements behind my comments. Number 1, as I've mentioned before, rather than put forward a development proposal, James was putting forward, James Matthews was putting forward a proposition that there were some fundamental flaws or something inequitable in all the work that we'd undertaken to date, and in a sense I suppose I did take exception to that because it had been very extensively investigated, and the council – on behalf of the community – had gone to a lot of effort and expense to, to get to its current level of reports and recommendations, and Mr, Mr Matthews doesn't exactly identify what is flawed or inequitable other than he doesn't agree with it. So that's, that's one point that I wanted to point out. I

thought that was really the only basis of his submission. Secondly, I was concerned that if the council sent me off down another path of doing more studies and more investigations, there was more time and there was more expense being incurred by the council on behalf of other people who may benefit from that, individuals. And so my, my concluding point was if they really wanted to pursue that line that there's, there's a provision within the Environmental Planning and Assessment Act that individuals can prepare and submit their own planning proposals, i.e. requests for rezoning their properties, and then it's up to them to, to go to all that effort and expense and, and seek that support from council and/or other planning authorities.

And of course this request for a deferral was on the Monday, 5 December, being only the day before the meeting was due to occur and the matter was due to be considered. Correct?---Yes.

And for the purposes of the meeting was a memo prepared at your request by Mr Dewar for councillors and the executive team regarding the exhibition outcomes?---Quite likely. I can't recall that off the top of my head but if you have it handy I'm sure I can - - -

I'll take you to it. If we could go to page 1315.---Right.

That's an email from Mr Dewar to yourself attaching a memo, "Waterview Street," in both a PDF and a word format.---Right.

And if we go to the next page and the pages thereafter, we can see that there is a memo that Mr Dewar has prepared regarding the exhibition outcomes on the planning controls for the land of Waterview Street.---Right, yes.

And if I could draw your attention to page 1317. There were recommendations in the GL Studio report on page 21 of that report, maximum building height of development recommended up to 14 metres, the building stepdown to a height of 10.5 metres, six-metre laneway from Barnstaple Road to Second Avenue would be recommended. A landscape buffer of six metres along Waterview Street and Barnstaple Road is also recommended, and a one-metre articulation zone recommended with the six-metre setback to Waterview Street and Barnstaple Road and a maximum length of straight wall without articulation, such as balcony or return, as eight metres.---Yes.

And if we go over to the next page, about halfway down the page, there's a reference to a question raised is, "Why the proposed height of new development on the First Avenue to Second Avenue frontage to the southern end of Waterview Street is 15 metres, while it is 14 metres on the northern end between Second Avenue and Barnstaple Road? Despite this one metre difference in height, DCP controls identify four-storey maximum heights in both locations." There are a number of responses to this question and then he sets out the various responses.---Yes.

And if we then go over to the next page, and particularly toward the final paragraph, it refers to the fact that, “The recommendation of the latest urban design report for the northern section of Waterview Street include an uplift in FSR from 0.5:1 to 1:1 and an increase in storage from two to four. If these substantial increases do not satisfy relevant owners, it is respectfully suggested that they be advised to submit their own planning proposal and support justification.---Yes.

10 Is that something that you agreed with?---Absolutely, yes.

And then when we come to the actual meeting in December of 2016, or indeed on 6 December. If we go to page 1360, we see that all of the councillors attended except for Dr Ahmed.---That’s right, yeah.

You also attended.---Yes.

20 And then going to page 1364, rather than proceed with the matter, in fact, the matter was deferred, as had been suggested by Mr Matthews. So contrary to the recommendation that you made, or the views you’d expressed in your email to the councillors and the executive team, it was deferred on the motion of Councillors Kenzler and Parnaby.---Yes.

Do you recall the circumstances in which that occurred?---Look, I’m sorry. I really don’t.

30 Was it of concern to you that the matter hadn’t proceeded, moved forward at that time?---Look, I, I, it wasn’t really a concern. I, it was pretty much in accordance with the, the way this whole issue had been dealt with, that nothing, nothing went forward, nothing was expedited, it all went through multiple investigations and reports and workshops but, yeah, it was one of the things I had to live with.

And did you have any, over this period, and particularly in this period from November 2015 through to the end of 2016, you told us about the conversation that you had with Councillor McCaffrey.---Yes.

40 Did you have any other discussions with any other councillors about this particular issue concerning Waterview Street and the interests that were behind the push for it to be rezoned?---No. I don’t believe I ever did.

So not with any of the other Liberal councillors?---No.

With any of the Labor councillors?---No.

And with the Greens councillor?---No, nah.

So the only conversation about, that you have a recollection of, is this conversation that you had with Ms McCaffrey in about November of 2015?
---As far as councillors were concerned, that's right, yes.

Oh, so that's councillors.---Yes.

10 What about as far as members of the executive team? Did you have any conversations with members of the executive team about that?---I definitely raised that issue in the executive team meeting, with the directors and the general manager, and that's the reason that wherever I put out a, a memo, I'd include them on that to, to confirm the, the basis of the discussions I'd had on these issues.

But what about your discussions with other members of the executive team? Did Mr Sawyer or any other member of the executive team ever tell you that they had spoken with councillors about pressure being received or particular outcomes being pursued?---No, I didn't have any conversations of that, nothing that I can recall.

20 Did you have any conversations with Mr Sidoti at any time or any contact Mr Sidoti in which this issue about the rezoning of Waterview Street may have been raised?---No, I don't believe I ever had a conversation with Mr Sidoti on this issue.

Did any of the members of the executive team ever tell you about conversations that they may have had with Mr Sidoti about the issue of rezoning?---No. No, I - - -

30 Never - - -?---I can't recall ever having that conversation or advice, from, from any of the members.

And did you ever hear a suggestion that Mr Sidoti had – or considered that there was some conspiracy relating to the leading out of the Waterview Street site from the rezoning?---No, I can't recall that conversation.

No-one ever raised that with you?---No, no. Nah.

40 THE COMMISSIONER: Mr Ranken, I note the time. Is that a convenient time? Or is there anything else you want to raise?

MR RANKEN: Yes, that's convenient. I do expect that I'll only be short after the luncheon adjournment with Mr McNamara, but - - -

THE COMMISSIONER: Yes, very well. I'll adjourn. We'll resume at about 5 past 2.00. See you then, Mr McNamara.---Okay.

LUNCHEON ADJOURNMENT

[1.03pm]