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PUBLIC
HEARING

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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 2.00PM

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

THE COMMISSIONER: Mr Ranken.

MR RANKEN: Thank you, Commissioner. Mr McNamara, where we left off just before the luncheon adjournment was the meeting of the Canada Bay Council in December of 2016, 6 December, 2016, on which occasion it was deferred, that is the issue concerning the Urban Design Study and associated planning proposals and specifically this issue concerning the rezoning that had been reconsidered.---Yeah.

It was deferred until a council workshop in 2017 and that was carried unanimously. And I had taken to you earlier to the email that Mr Matthews of Pacific Planning had forwarded to Ms Boyle and Mr Dewar to which you had responded. If we could just go back to that email for a moment, and that's at page 1313 in Exhibit 24, and if I could draw your attention to what I think is the last paragraph at the bottom of that page commencing, "Therefore."---Yeah.

And it says, "It is requested that the matter be deferred for further consideration at the next council meeting to allow us to meet with the council's planning consultant on behalf of the landowners to understand the level of analysis undertaken to inform the recommendations that will have a significant impact on the type and level of development that may occur across the block in the future." Now, to your knowledge did Pacific Planning ever meet with Studio GL following the deferral of the matter in December 2017, sorry, 2016, for that purpose, that is to meet with to discuss with them and understand the level of analysis that was undertaken to inform those recommendations?---To the best of my knowledge that meeting never occurred.

And the email goes on to say, "The designated development controls to this part of the town centre are inequitable in comparison to other very similar sites and the rationale and justification is in many ways flawed." Now, and it then goes on to say, "e.g." for example, "Proximity to the centre of Five Dock. The site is closer than other sites that contain bonus provisions." Firstly do you agree with that proposition that is stated there as to the example, the proximity of it being closer than other areas that have the bonus provision?---I think, yes, I think that's correct in the sense that there's, as I recall, sites along Great North Road further to the north, that is further away from the centre, that we'd identified to which the bonus provisions apply, yes.

That would include in fact the Great North Road side of that particular - - -?
---Correct. That's already existing zoned B4 land.

Except the bonus provisions there wouldn't apply to that, the bonus provision – sorry, I'll withdraw that. That area was zoned B4 mixed-use. ---Yes.

10 But I think you agreed with me yesterday that the bonus provisions wouldn't be able to be obtained in respect of those blocks because of the split zoning in the block.---This particular block between Second Avenue and Barnstaple, because the B4 was quite a narrow zone with immediately adjacent to R3 residential land at the rear to the east, that was the prime reason why they were not allocated the bonus provisions.

Now, to your knowledge did Pacific Planning ever put forward to council some written document or report or submission in a formal sense outlining the flaws that they say existed with the current approach and justification? ---No. I was not aware of any document that showed, showed those points.

20 So other than what we see in this email there was no formal submission made on behalf of those property-owners for whom Mr Matthews purported to represent that identified and made reasoned arguments as to the flaws in the current justification against rezoning?---No, to the best of my knowledge they didn't do any, any more work to, to support this proposition.

30 THE COMMISSIONER: Given that they were in effect seeking a review of what had been analysed and assessed previously, is it unusual that the proponent, having made the challenge as it were, then doesn't put before council what I might call an affirmative case in favour or in support of that proposal?---Ah hmm. Look, I believe so. I, I, I agree, Mr Commissioner, that if they're going to make claims about inequitable and flawed assessments, then they should document what those are, and then do their own analysis to prove that point.

I note that in his email, Mr Matthews says he's representing the views of a number of properties. We know, from the evidence that the interests of 2 Waterview Street had made known there, their interests and their position. And there's Mrs Cassisi, who lived at [REDACTED], had also spoken up and put a view of seeking rezoning.---Yes.

40 But of the five people that Mr Matthews says he's representing, that is, [REDACTED], which is Mr Durkin's property, number 37, and number 43, to your knowledge had any of those last three mentioned property-owners or interests associated with those properties ever spoken up and said, "Look, we disagree with council, we contend there should be a rezoning in the Waterview Street area or location," that you recall?---No, Mr Commissioner, my only recollections were Mr Durkin and Ms, Ms Cassisi had made representations when invited to make objections, and that, that was the extent of their submissions, to my understanding.

Thank you.

MR RANKEN: Thank you. Then the matter then came before the council again in February of 2017 at the council's meeting on 7 February, and for the purpose of that meeting, Mr Dewar prepared another report, and perhaps if we could go to page 1370 of Exhibit 24. And then going through to page 1371, sorry, (not transcribable) that's the first page of the report, with PLD as the author's initials, which is Mr Dewar.---Yes.

10 And if I could draw your attention to the third paragraph, sorry, the first, perhaps the second, staying with the second paragraph, that following the exhibition period, 18 submissions were received. The primary issues raised in the submissions related to the height facilitated by the proposed building controls and the impact of the additional development on the established community.---Yes.

20 And an exhibitions outcomes report has been prepared and recommends that the planning proposal should proceed subject to the maximum height of development on Waterview Street being limited to three to four storeys, and the building height for land with a frontage to Great North Road remaining five storeys.---Yes. Yes.

30 And it goes on to say that this recommendation seeks to strike an appropriate balance between facilitating development whilst reducing the impacts on the amenity of existing and future residents. If we go to page 1379, at the bottom of that page, there are the recommendation for, as to council, that a planning proposal and associated Development Control Plan be prepared to implement the recommendations of Studio GL's exhibition outcomes report dated 26 November, 2016, and that the planning proposal include the removal of heritage item number 1, i486, which is number 39 Waterview Street.---Yes.

So that be removed from schedule 5 of the Canada Bay Local Environmental Plan 2013. That would indicate that option 2 as the councillors had voted in favour of it that was to be the preferred option moving forward. Correct?---That's right.

And that the planning proposal be submitted to the Department of Planning and Environment for a Gateway Determination.---Yes.

40 This was because this was now proceeding as a separate plan, was it, whereas the other LEP was on the way to gazettal this had to go to another Gateway Determination?---Correct. A separate process, yeah.

Through a separate process. And then should it pass through Gateway that it be placed on public exhibition together with the DCP and draft contributions plan, and that authority be granted to the general manager to make any minor changes.---Yes.

And so that was the recommendation of Mr Dewar for the council meeting on 7 February. If I could take you then to the meeting of 7 February at 1409. This is where the item was discussed and one sees that a number of persons addressed the council including Mrs Cassisi. Also Mr Matthews and Mr Durkin.---Yes.

Perhaps just so for your reference if we could quickly go back to page 1405. We see all of the councillors were in attendance and you were also in attendance at that meeting.---Correct, yes.

10

So going back then to 1409 and we can see that the resolution that was proposed by Councillor Cestar and Ahmed includes each of the five recommendations that I just took you to from Mr Dewar's report.---Yes.

But it also includes a sixth paragraph to that resolution "That if the owners of property in the area believe there is a better planning outcome to be achieved than the recommendation, they lodge a planning proposal in the normal way."---Yes.

20

And insofar as that motion was passed it was effectively on the deciding vote of Councillor McCaffrey.---Yes.

Councillors Kenzler, Parnaby and Tyrrell voted against it. Correct?---Yes.

30

And just in relation to item number 6, do you have any knowledge as to how that item came to be on this resolution?---My recollection of that was that that last memo I put around to councillors and the executive had a comment to that effect in there that whilst not supporting their proposals to reconsider the zoning on the western side of Waterview Street if they wished they, under the Environmental Planning and Assessment Act they were still entitled to do their own work and put forward their own private planning proposal and I think it reflects that sort of if you like free advice from myself.

Were you involved in the drafting of this particular item for the purposes of this resolution?---No. No. No, I believe that just came off, from memory I think it just came off the floor based on the recommendation plus, plus the contents of that memo that I'd put around quite recently.

40

Had you had any discussion with any of the councillors, particularly either Councillors Ahmed, Cestar or McCaffrey about the issue since the deferral in December 2016 and this meeting on 7 February?---Not that I can recall, no.

Now, the minutes go on to record that during the course of the discussion there was a foreshadowed motion by Councillor Kenzler.---Yes.

Which would effectively have meant that they would have adopted option 1 in this options report.---I believe so.

Would you agree with that?---That's right, yes, yes.

And that wasn't passed because it was only discussed at that time.---Yes.

10 Did you become aware that there was a rescission motion that was subsequently proposed in respect of the decision that was made on 7 February, two thousand and - - -?---Oh, look, I was aware of the rescission motion but I wasn't involved, I was not involved in any discussions leading up to that rescission motion.

And ultimately that rescission motion was defeated on the vote of Councillor McCaffrey. Correct?---Yes.

And effectively that brought the matter to an end. Is that the situation? ---That's, that's, yeah.

20 So from then on effectively that meant that the only change to the Local Environment Plan of any note really was to remove the heritage listing of number 39.---From memory it was to remove the heritage listing and also the floor space ratio of the R3 land went from .5:1 to 1:1. My recollection that was part of that. The zoning stayed the same and the, and the building heights could go from a maximum two-storey to a maximum three at the front, four at the back. That was my, that was the intent of that. So reasonably minor changes to the overall controls.

30 Ad in due course the LEP, the LEP that was going on the other track was gazetted. Is that so?---Which one do you mean?

The previous, the other LEP.---The main one, yes.

The main LEP.---Yes, it was gazetted, yes.

And this went off to Gateway Determination.---Correct, yes.

Yes, thank you, that's the examination-in-chief I have of Mr McNamara.

40 THE COMMISSIONER: There was a development application, wasn't there, Mr Ranken, put in, do we need to trouble Mr McNamara about that or - I'm just not suggesting you should, I'm just - - -

MR RANKEN: Were you aware of a development application being subsequently put in on behalf of the owners of 120, 122 and 124 Great North Road as well as 2 Second Avenue?---I've got no recollection of that, I don't know what - - -

You of course left the council in, I think was it 2018?---That's right, yes.

And it may be that a proposal was - - -

THE COMMISSIONER: May have been after Mr McNamara's time.

MR RANKEN: Lodged after your time.---Well, I'm not aware of it so it could well have been.

10

THE COMMISSIONER: Okay. Sounds like - - -?---I just don't have any memory of that, sorry.

MR RANKEN: Yes.

THE COMMISSIONER: Thank you.

MR RANKEN: That's my only questions.

20 THE COMMISSIONER: Firstly are there any applications to cross-examine Mr McNamara?

MR NEIL: I make an application, Commissioner.

THE COMMISSIONER: Sorry, I can't hear you. I should, I should - - -

MR NEIL: Yes, Commissioner.

30 THE COMMISSIONER: Mr, sorry, the microphones here, unless counsel speak very well into them, it's through no fault of counsel but experience has been that sometimes counsel move away from the microphone and it's very hard to pick it up, so no reflection upon you. But sorry.

MR NEIL: I'm obliged, I'm obliged. Commissioner, is that better?

THE COMMISSIONER: I'm sorry?

MR NEIL: Is that better?

40 THE COMMISSIONER: Yes, that is much better. Thank you.

MR NEIL: Oh, thank you, thank you. Yes, I would make an application. I would not be long.

THE COMMISSIONER: Very well. I'll just come back to you in a moment and we'll see. Is there anybody else wishes to make an application? Very well. Yes, I grant leave to you to cross-examine. Could I just raise one matter with you. As you'd appreciate, the Commission in

these matters carries out investigations over time before a public inquiry is held. There is information that this witness has provided to the Commission previously. It is my view that as cross-examining counsel you're entitled to have access to those documents that record the material this witness has provided earlier. For that purpose I need to make an order under section 112 varying the order that was made in respect of this witness. I have made such an order in anticipation that you may wish the opportunity to examine that material. I propose to have the material I'm referring to placed on the restricted website so that both yourself and others will have access to it.

10

VARIATION OF SUPPRESSION ORDER: THE COMMISSIONER VARIES THE SECTION 112 ORDER MADE IN RESPECT OF MR McNAMARA IN ORDER TO PERMIT ACCESS TO MATERIAL ON THE RESTRICTED WEBSITE BY CROSS-EXAMINING COUNSEL.

20 THE COMMISSIONER: And if there is a need, I emphasise the word 'need', to have the witness recalled, because he travels from out of Sydney here, and I wouldn't want to unnecessarily bring him back again if we can avoid that, but I want at least you to know the position in that regard, you will have access to that additional material, and it's a question of then, I think, you were deciding what you want to do.

MR NEIL: I greatly appreciate that, Commissioner. We'll look at that overnight and hopefully we won't need recall, but we'll advise if we do.

30 THE COMMISSIONER: Yes, I'm not sure how quickly we can get it on the website, but I think we probably can get it on today? Yes, it will be on the website today.

MR NEIL: Thank you very much, Commissioner.

THE COMMISSIONER: Good, a pleasure.

MR NEIL: Now, Mr McNamara, I appear for Mr Sidoti, if you would understand that.---Yes.

40 Just want to ask you a few questions. Could the witness, Your Honour, oh, Commissioner, be shown page 59 of Exhibit 24? It's the council meeting agenda of 26 November, 2013.

THE COMMISSIONER: Yes.

MR NEIL: Do you see that, sir?---Page 59, yes.

Now, I just want to ask you to confirm this, that the Five Dock Town Centre area is as described in the paragraph in the centre of the page starting, “The study area,” do you see that?---Yes.

It’s 800 metres long as a section of Great Northern Road, is that so?
---That’s correct.

And it’s bounded by the streets set out in that paragraph, correct?---Yes.

10 Now, could the witness be shown page 93, Commissioner?

THE COMMISSIONER: Yes.

MR NEIL: Now, at page 93, I think you’ve been shown this by my learned friend, Counsel Assisting, we see there, do we, the outline of the centre as it stood prior to this study of the centre, correct?---That’s right.

Now, I just want to ask you, do you know when that outline was first prepared, and do you know who prepared it?---Again, to the best of my
20 recollection, that was prepared in 2013, prior to the commencement of the study of that, and the strategy that it followed. And it, the idea of that was to encapsulate the B4 zone, I think it’s a village zone or, or neighbourhood business in there, B1. And it was tried to pick up the, the extent of the area. So it’s, it’s identified really as the study area, which was primarily the B4 zone.

And would it be fair to say that the B4 zone was what was understood as the Five Dock Town Centre area?---Well, can I say the term ‘town centre’ is not
30 a defined term. It is used to indicate basically that’s, that’s our, our town centre village, but it’s, it’s not a defined term as such. So the, the whole of the commercial zone, if I might say, was intended to be the study area, and to go forward, the, the study came, came to some conclusions about what council should be doing to reinforce the town centre as such. Still an undefined term, but that became more clear as the study went forward.

All right, thank you. But do you know, tell us if you do or you don’t know, do you know, and if you do, who it was that drew up those lines in 2013?---I
40 can’t give you names. I, I, I was not part of that process, but it was part of my planners, together with the consultants that we had appointed. That was my understanding.

I see. So it would have been council planners in conjunction with some council-retained consultants?---That would be my understanding of the situation, yes.

Was there any report prepared as part of that exercise?---Not to my knowledge.

All right, thank you. Now, just to move to – could you just have a look at page, if the witness might be shown, Commissioner, page 640.

THE COMMISSIONER: Yes. 640.

MR NEIL: Now, I know this is not your document so I'll be brief but were you aware of, or were you part of, any information provided by you or, to your knowledge, any other member of the council, who indicated to Helena Miller, as this minute says in line 4, that someone at council had indicated they would be happy to receive a further submission from us, presumably Helena Miller's MG Planning consultant?---I wasn't aware of this memo before and I'm not particularly familiar with that conversation.

Have you any information as to such a conversation?---No, I don't.

All right, thank you. Would it be fair to say that, as at that time, 3 June, 2019, there were at least two matters of some relevance to the block between Barnstaple Road and Second Avenue on the western side of Waterview Street, being the question of heritage item at 39 Waterview Street and the question of some strata property or properties on the block? ---So the question being was I aware that there were issues under discussion?

Yes.---I was certainly aware of those issues, yes.

Thank you. Ultimately, I think it's the case that, as we've heard, that the heritage listing was removed, is that so?---That's correct, yes.

And was there some legislation at a state level that sought, without going into the details, to at least ameliorate perceived problems relating to strata titles?---Yes, I am familiar with that legislation.

And how did it operate, please?---Up until the legislation, and I can't give you a date when it was carried, but for a strata plan, for a, for a site to be, which is under a strata plan of subdivision to be redeveloped required 100 per cent of the members of the strata to agree to that redevelopment. My understanding that the legislation was, it was amended to require 75 per cent of strata members to agree, at which point there was a mechanism for the redevelopment to occur and how to deal with the 25 per cent dissent in members of the strata.

All right, thank you. Now, could Mr McNamara be shown page 479?

THE COMMISSIONER: Yes.

MR NEIL: This is the introduction page and another subheading, Subject Land of the MG Planning Submission, which starts at 478. Do you see that?---Yes.

And I just want to draw your attention to the fact, and ask you, firstly, do you note that at the first line it says that the owners of 120 Great North Road, Deveme Pty Ltd, and 2 Second Avenue, Anderlis Pty Ltd, wish to make a submission?---Yes.

And did you understand that at least at that time MG Planning were making a submission on behalf of the owners of both those properties?---Yes.

10 Thank you. Now, could the witness, Mr Commissioner, be shown page 490, 4-9-0. This is from Mr Thebridge who I understand is an architect, and it's addressed to council with a number of cc's, including Mr John Sidoti@parliament.nsw.gov.au . Did you at any time become aware of this email from Mr Thebridge?---I wasn't aware of it at the time. I, I've since seen it at this inquiry.

And did you understand that – I think you said something along these lines, but let me so if I'm correct – that Deveme, which owned 120 Great Northern Road, and Anderlis, which owned 2 Second Avenue, Five Dock,
20 were companies that were in effect owned by Mr Sidoti's parents?
---That was my understanding.

Thank you. And I think you told the Commission yesterday that since you'd started at the Canada Bay Council in 2004, you had known the Sidoti family reception centre as a well-known local business. Is that right?
---That's correct, yes.

Had you ever attended any functions at that function centre?---No.

30 All right. Thank you. Had you ever known of any applications being made by anyone on behalf of the owners of the function centre for any development applications whilst you were at the council?---No.

Not aware of any development application in relation to a garage at the back of the property?---No, I wasn't aware of that.

All right. Or any application in relation to a laneway from Second Avenue to the back of the function centre?---No, I can't recall anything of that nature.

40 Thank you. Now, could the witness, Commissioner, be shown page 402.

THE COMMISSIONER: Yes.

MR NEIL: This is, the page is the end of the email train, which seems to go over to the next page, and do you see there's references to, at the top of the page, Mr Sawyer appears to advise you that Bruce had advised that John Sidoti had asked him about his parents' property. Do you see that?---Yes.

Did you understand that Mr Sidoti's parents were of somewhat advanced years?---I wasn't aware of their age, to be honest.

All right.---I've never met the people.

All right. Thank you. Thank you, Commissioner. Those are my questions.

THE COMMISSIONER: Yes, thank you Mr Neil.

10

MR RANKEN: One matter just arising from that. Perhaps, for this purpose, if we could bring up page 93 in Exhibit 24. This was the plan that Mr Neil took you to just short while ago.---Yes.

And he asked you about the preparation, who may have prepared it.---Yes.

20

But just so that we are clear, the white site boundary that is recorded on that, did that represent the boundary of the existing B4 zoning as at prior to the study being undertaken?---I believe that was the situation. I would need to look at the B4 zoning map as at that time, but that was my understanding. It was only looking at a study of that existing B4 zone and the business-zoned areas of the township.

And if that is so, then what we see there is in fact a pictorial representation of what was already existing under the existing LEP for Five Dock?
---That's correct, yes.

That was the only matter arising.

30

THE COMMISSIONER: Yes. Mr Ranken, further to what I said to Mr Neil, it seems to me that if the material I have referred to earlier is on the website, the restricted website this afternoon, in the event that Mr Neil has any questions of Mr McNamara, subject to hearing from Mr McNamara himself as to whether he would be available to have that dealt with tomorrow morning rather than bringing him back on a second occasion. So Mr McNamara, that's something I'm addressing to Counsel Assisting, it's really just more a planning matter – planning in a different sense – to try and minimise the inconvenience to you. I appreciate that you've travelled some distance to be here. But what's your personal position, and feel free to speak as to what would be the most sensible arrangement.---Given those two options, Mr Commissioner, I would rather stay and attend tomorrow morning rather than have to come back.

40

Yes, I think that might all around be the best approach. Thank you for that. So, Mr Neil, I think we'll operate on that basis so the risk of Mr McNamara having to make a separate trip down in the future can be avoided, and it's probably in the interest of everyone to get witnesses finished and move onto the next one.

MR NEIL: I certainly appreciate that, Commissioner. With no disrespect, it may be that – depending on how much the material is – that I might not be able to advise earlier than 10 o'clock but I'll certainly advise by then, so Mr McNamara, if he has to attend, I'm sure the questions would either be short or he could get away straight away.

10 THE COMMISSIONER: Yes, all right. Well, thank you. If you wouldn't mind liaising Counsel Assisting, that would be useful.

MR NEIL: Thank you,

THE COMMISSIONER: Thank you, Mr Neil.

MR NEIL: Thank you.

20 THE COMMISSIONER: Mr McNamara, we'll ask you to stand down on that basis before I excuse you and we'll see you back here tomorrow morning at 10 o'clock.---Thank you.

THE WITNESS STOOD DOWN

[2.48pm]

THE COMMISSIONER: Thank you. Yes.

MR RANKEN: Yes. Commissioner, the next witness is Mr Gary Sawyer.

30 THE COMMISSIONER: There's no objection to Mr McNamara being present, is there, during his evidence if he wishes to be? I wouldn't have thought so but - - -

MR RANKEN: For my part I have no objection to it.

THE COMMISSIONER: No. All right. Well, Mr McNamara, you're free to stay if you wish or go as you please. Mr Sawyer, do you take an oath or an affirmation to give evidence?

40 MR SAWYER: Oath, Commissioner,

THE COMMISSIONER: An oath. Thank you. I'll have my associate administer the oath.

THE COMMISSIONER: Thank you, Mr Sawyer. Just take a seat there.

MS BULUT: If I may interrupt, Chief Commissioner, my name is Bulut, I appear for Mr Sawyer with leave that was granted yesterday.

THE COMMISSIONER: Yes.

10

MS BULUT: Prior to my learned friend, Mr Ranken, commencing his examination, can I please make an application on behalf of Mr Sawyer for a declaration pursuant to section 38 of the ICAC Act?

THE COMMISSIONER: Yes. And you have explained to Mr Sawyer what that entails?

MS BULUT: Yes, I have.

20

THE COMMISSIONER: All right. Very well. Mr Sawyer, I'm told you've had those provisions under section 38 explained to you and, in effect, just to restate, a witness is entitled to object to giving evidence. The effect of the objection is that that the answer given to the objected question can't be used in any other proceedings in the future, other than, there's only one exception, and that is if a witness commits an offence under the Independent Commission Against Corruption Act, such a perjury for example, then the evidence could be used in the prosecution for such an offence, but otherwise it affords the witness the protection that I have referred to. It goes without saying, but I'll say it anyway, you of course must answer all questions truthfully. But with the order I'll make, it's not necessary for you to object to each individual question, for I'll make a declaration that all your evidence is covered. I take it then on that basis you object to giving the evidence and you wish a declaration to be made, is that the case?---Yep.

30

Thank you. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by the witness, Mr Sawyer, any documents or things that may be produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection. That being the case, there is no need for Mr Sawyer to make objection in respect of any particular answer given or document or thing produced.

40

DIRECTION AS TO OBJECTIONS BY WITNESS: PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THE WITNESS, MR SAWYER, ANY DOCUMENTS OR THINGS THAT MAY BE PRODUCED BY HIM DURING THE COURSE OF

HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. THAT BEING THE CASE, THERE IS NO NEED FOR MR SAWYER TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

10 THE COMMISSIONER: Yes, Mr Ranken.

MR RANKEN: Thank you, Commissioner. Sir, what is your full name?
---Gary Sawyer.

And what is your current occupation?---Retired.

Prior to your retirement, were you the General Manager of the City of Canada Bay Council?---Yes. I was.

20 And when did you retire from that position?---I finished at the council in January, 2018, and - - -

THE COMMISSIONER: I'll just interrupt for a moment. Mr Sawyer, the, need to magnify your voice so it carries right to the end of the room. If you wouldn't mind speaking as close as you can, without being uncomfortable, just speak to the microphone, and then everyone can hear you. Yes.
---Mmm. Just repeating that, I, I finished working at the council in January, 2018, and my official retirement date was in July, 2018.

30 MR RANKEN: So between January and July, was there a period of accrued leave in a sense that you took before your official retirement date of July?
---That's correct.

And when did you commence with the council in the role of general manager?---May 2006.

And prior to taking up that role in May 2006, what was your occupation?
---It was general manager at Kogarah Council.

40 For how long were you a general manager at that council?---Seven years.

So that would mean since at least 1999, you have been, acted in roles as general manager of councils?---That's correct.

And insofar as your role was concerned and the functions as a general manager, what did they involve?---A general manager's role is, is the looking after the day-to-day operation of the council in, in accordance with our strategies, our plans, our policies, directing staff, hiring staff, engaging with the community, and, both formally and informally, liaising with the

councillors, mayor and councillors, making sure that we deliver on the council resolutions, carry those out, and work with our executive team to deliver on all the services and functions that we provide.

Now, in terms of your liaising with councillors, and also their interactions with council staff, were there any protocols in place that managed how that was to be done?---The, the day-to-day with, operation with councillors was that they, well, the mayor in particular, came through me. But also they had access to the directors on a, on a daily basis, if the item was in particular something in their portfolios.

So was that a, so there was a – sorry, I withdraw that. So if understand you correctly, councillors were able to have direct contact with either yourself or the directors of the various departments, is that correct?---That’s correct, yep.

But what about direct contact between councillors and other council staff? Was that to be done through yourself or the directors, or how was that to be managed?---It depended on the matter. For example, if the councillor was ringing up about an abandoned vehicle that someone had raised with them that hadn’t been moved, they could talk to the manager of that area directly, so it depended on the level of inquiry about where that inquiry should be directed.

So then let’s confine our consideration of this to circumstances where the contact is in relation to a matter that is going to be on the agenda for an upcoming council meeting. So it’s a matter for which there would need to be some decision made at a councillors’ level in meeting there being a proper quorum of councillors. How was contact between councillors and council staff managed in respect of those kinds of matters?---It was through, through the general manager or the director of that area.

And when you say director of that area, do you mean director of the area that was responsible for the particular item that might be on the council’s agenda for that meeting?---Yeah, that’s correct.

So was that a protocol or a guideline that was in a written form?---No, not, not that, not that I’m aware it was in a written form, but certainly it was one that we, we tried to ensure was the level of inquiry and it was one that, you know, the councillors in most cases respected that.

And what was the reason and the rationale behind that protocol?---Well, I think it was important that either myself or the directors knew exactly what the council inquiry was.

And why was that important?---Well, because if, quite often you need to manage that inquiry, you need to understand what, what the councillors are asking because at the end of the day it fell back to us to respond to the

councillors and give them the information they required. So it's important that we, well, the directors and myself knew exactly what the inquiry was about.

What about concerns for the potential of pressure to be brought to bear upon council staff by councillors about matters that were coming before council?
---Well, as far as the protocols we had in place?

10 Yes.---There's the code of conduct that, that was in place and the code of conduct is quite clear that councillors, it's inappropriate action if councillors put any pressure or, yeah, try and direct staff in the carrying out of their duties.

And so was that one of the rationales perhaps behind this protocol that the, that on matters of significance that might be coming before the council for consideration in its meetings that contact with staff be done through either yourself or the executives, the directors of the particular departments?
---Yes.

20 Now, in addition to council meetings we've heard some evidence that, at least at the City of Canada Bay Council, from time to time there would be council workshops in advance of meetings where particular items that were to be on the agenda for the upcoming meeting were the subject of presentations and discussion. Correct, is that - - -?---Yeah, just, just not items that were on at a future meeting. They might be general items like broader items that, that might be, you know, a long way off in the distance sort of thing that, that the councillors need to be aware about. But yeah, certainly that was, that was the case.

30 And when you're talking about items that might be a long way off in the distance, is that – are you talking about items that weren't immediately going to be before – or sorry, I withdraw that – weren't going to be before the council in the immediate future but it was anticipated that sometime in the future it would be a matter that would be coming before council.
---Yeah, that's correct.

Now, as you I think may be aware, this Commission is interested in the circumstances surrounding the process and progress of the Urban Design Study and associated planning proposals for the Five Dock Town Centre.
40 ---Yes.

And we had some evidence about the fact that there was an analysis that was initially done by HillPDA looking at economic issues associated with the town centre, correct?---Yeah, that's correct.

And that out of that, one of the key recommendations was that there be an integrated design study for the town centre?---That's correct.

And that what followed from that was what's been referred to as the Five Dock Town Centre Urban Design Study that was undertaken by ARUP, HillPDA and Studio GL?---Yeah, that's correct.

Now, if I might just refer to that as the Urban Design Study, and that first came before the council for consideration, that is the report that had been prepared out of that design study, in November of 2013. Do you recall that?---I recall that's the date, yes.

10 But the study period itself had occurred over a fairly lengthy period of time, would you agree?---Yes. There was a, a, a lead-up, a lead-up to the, to the final report.

And did you yourself have any involvement in the study and in terms of managing that study or was that something that you left to Mr McNamara, as the executive responsible for the Environmental Department?---Yeah, that was left to Mr McNamara and his team.

20 But do we take it that you were broadly across the issues that were canvassed in the report and the study and the proposals that were coming out of that?---Yeah. I was broadly across those.

Now, one of the things that occurred following the study was that it came before the meeting of the council on 26 November, 2013, at which time it was resolved unanimously that the council endorse the Urban Design Study and put it out for public exhibition throughout December 2013 and January 2014. Do you recall that?---Yes.

30 And that in fact there had also been a draft Development Control Plan that had been prepared associated with that, correct?---Yeah, I can't recall that exactly but that is normally the case that happens, yes.

40 But what was envisaged as a result of that, that the matter would be available for the public to provide some input again into what was being proposed by council, is that correct?---Yeah. It probably, the, the reason it was put out on public exhibition was so that the community could get, would be engaged in, in the, in the overall design of the Urban Design, of the Urban Design Study, as far as having input into it, and, and that information would be used as far as trying to deliver a good outcome for the residents around Five Dock, and business owners.

And submissions could be received from the community that would then be taken into account and synthesised by council staff?---Yeah, that's correct.

And on a matter such as this, which I take it, was of some significance to the Five Dock community?---Yeah, certainly a major, it was a major project.

So given that it was major project, do I take it that – or should we take it that you might have showed perhaps a greater interest in it than other planning-type matters that might come before the council?---I certainly, certainly did have an interest in how it was progressing.

10 And does that mean that following the public exhibition, you considered or looked at any of the submissions that had been received from the public or did you look at reports, the reports that were prepared that summarised those submissions?---I looked at the reports that were prepared that summarised those, those – sorry. I recall, like, looking through the, some of the, but not all of them, but, you know, looking through those. I attended, you know, at the time they had them, the workshops at the library. I, I, you know, walked into those workshops to see just what the feel was like. So - - -

So does that mean you, did you participate in those workshops, or you just sort of - - -?---Observing.

- - - were there as an observer?---There as an observer, yep.

20 When you're talking about the workshops, are they community workshops or the workshops with the councillors?---They were community workshops.

That was as part of the public exhibition process, correct?---That's correct.

In December 2013 and January 2014.---Yeah, I'm not exactly sure of the, the dates, but that's when it was on exhibition, and I, I, and the workshops were held at that time. I certainly recall attending the workshops in the library.

30 But following or in response to the public exhibition, and those public workshops, a number of submissions were received from business, landowners, and residents, would you agree?---Yes. Yes.

And did you consider any of the reports that may have been prepared by council staff that kind of gathered together the information that had been obtained over the course and in response to the community engagement activities that were part of that public exhibition?---I can't recall if I did or I didn't, I'm sorry.

40 One of the aspects of the Urban Design Study that was proposed was an expansion of the existing B4 mixed-use zoning. Do you recall that?---Yes, I do.

And what's your recollection, as best you can now tell us, about what the thinking was behind the expansion of the B4 mixed-use zone?---It was basically to futureproof the centre for growth that would come with the development. It expanded the, the B4 zone on the, on the east side, down from council's car park down to Second Avenue. It included an expansion

on the west side that would provide a pedestrian link or a, a laneway link through to the school. And there was another section that one of the, the churches owned, it was more like a, used as a, an age or a retirement village, which was between Garfield and King that was a, a business use that was expanded into there. So it was, it was more to futureproof the, the area or the, the centre as population growth increased with the, with the, the development that was going to happen.

10 And now, following the public exhibition and the receipt of submissions from business and the community, landowners and residents as well, before the matter came back again to council for consideration, there were, well, there was a further councillor workshop that was held in relation to the Five Dock Town Centre Study on 8 April of 2014. You may not recall the date, but does that sound about right? That there would have been a - - -?---Yeah, there, there was generally a workshop before a council meeting, and with something like the, the, the study before it went to council, I do recall the council – like, like there was a council workshop that took place, yes.

20 Now, can you tell us a little bit about these councillors workshops? They were sessions that were not open to the general public, is that correct? ---That's correct.

Would you, in your usual course, attend all councillor workshops?---Yes.

So you would attend all of them, is that - - -?---If I was at work, yeah, I would.

30 So subject to you being on leave, you would attend any councillor workshop that was taking place?---Yes. That's correct.

And there was usually an agenda for the councillor workshop, is that right? ---Yeah, a list of items that we were going to discuss.

And they would usually be items that are likely to be coming up in a, in due course, if not sooner, then at least later, correct?---That's correct, yeah.

And would it also indicate who might be presenting on the particular items to the councillors?---That's correct.

40 Now, other than the councillors and the persons who would be presenting and yourself, were there anybody else who would attend these workshops? ---Yes, the, the directors would attend, and if there were any staff members who, who were involved in the project and the director felt that they, they could do the presentation and inform the councillors, they were invited to attend as well.

And by directors, you mean the other members of the executive team (not transcribable)?---Exactly. Mmm.

And were there any records kept of attendees at these particular workshops?
---No.

10 Was there any protocol in place whilst you were the general manager regarding the declaration of pecuniary or non-pecuniary interests by councillors when attending these workshops?---The declaration of pecuniary interests and non-pecuniary interests was the sole responsibility of the person involved. So if it was staff, it was staff. If it was councillors, it was councillors.

But there's one thing, would you appreciate there is a difference between declaring a pecuniary interest at council meeting?---No, there wasn't. We, well, from, from my recollection the, the councillors who, who declared an interest at, at a meeting, if the workshop was about an item on the agenda that they'd declared an interest in, they would have absented themselves from the meeting.

20 I understand that might be the intent, but how was that policed, in a sense?
---Again, it really came down to the councillors or the, the staff who, who felt they had an interest to make that call themselves.

If it was the situation that you were attending a councillor workshop and a councillor was present who you understood had a pecuniary or non-pecuniary interest, what would you do as the general manager in that situation?---If they'd already declared a pecuniary interest and they were attending the workshop, they'd be, they'd be reminded of that.

30 So that would necessarily depend, in the first instance, on the councillor having declared the pecuniary interest in what guise? Either at that workshop or at an earlier occasion?---Well, generally they declared that at a council meeting, and it was on the record of a council meeting.

But if the matter that was being discussed at the councillor workshop hadn't yet been before the council and at a council meeting, then you may not know whether or not the particular councillor had a pecuniary or non-pecuniary interest that was required to be declared.---That's correct.

40 Are you aware of any occasions when councillors who had a pecuniary or non-pecuniary interest did in fact attend workshops concerning items that they ought to have excused themselves from?---No. No, I, I'm not aware of it.

Now, and there are no minutes that are kept of these councillor workshops, is that correct?---That's correct.

And certainly at least when you were the manager. I take it you don't know what the situation is today.---That's correct.

And as far as what occurs in these councillor workshops, someone presents about a particular topic, does it allow an opportunity for councillors to ask questions of the people who are presenting?---Yes, it does.

10 And is the principal object to allow the councillors to get a better understanding about the items that are coming up for consideration at a meeting, at an upcoming meeting, at an earlier time so they can be prepared for when the decision comes to be made?---Yes, to give a better understanding, to ask questions, and also give an opportunity to discuss it amongst themselves as to, you know, just generally their thoughts on, on what the, what the, what they believe is the right approach.

20 So does that mean that it would allow for the councillors an opportunity to actually have input into the council staff as to what they think should be actually coming before, or the form in which it should be coming before the council?---No. Well, certainly in the discussion, you get a feel for some of the issues that the councillors are looking to have resolved. But it's up to the officer to do that, to do the report, and own, own the report and own the recommendation. If the, if the council wants to make the change, well, they can do that in the formal room of the council.

Now, one of the recommendations, original recommendations of the Urban Design Study was that there be no change to the existing FSR for the town centre of 2.5:1. You understand what I'm referring to when I refer to FSR? ---Yes.

30 And that's the floor space ratio. And do you recall that in fact that was one of the recommendations of the Urban Design Study, that there be no change to that FSR?---Yeah, that's correct.

Following the councillor workshop on 8 April, 2015, on 14 April – sorry, 8 April, 2014, sorry, on 14 April, 2014, a draft clause was prepared to permit the increase, an increase in FSR to 3:1 on certain consolidated sites. Do you recall that?---No, I don't recall that.

40 Do you recall at the councillor workshop in April of 2014 that one or more councillors possibly were interested in encouraging amalgamation or consolidation of sites and seeking to do so by allowing for additional height and floor space ratio provisions to be built into the planning proposals? ---Yeah, I, I do recall that there was a fairly robust discussion about what, what could help facilitate the revitalisation of Five Dock and the, the lots are small, the ownership's fragmented and the council, the councillors were talking about how do they provide incentive to make, to make things change, and I know they had that discussion amongst themselves about what is, you know, what, what might be the best way forward on that. And certainly the consolidation or amalgamation of sites was, you know, one of the, one of the, the, the matters that they, they felt that should, should be

considered and, and, yeah, how do, how do they incentivise that to make, to make it work, but I know that was a broad discussion that was going on at the time.

When you say that was a broad discussion, was that one that was occurring in the course of the workshop that was conducted?---Yeah, from what I recall that, that's, that's right.

10 And do you recall which councillors were involved in that discussion?
---I think from memory Councillor Kenzler was the, was the main driver of that discussion in looking at, you know, consolidation of sites.

He was a Labor councillor. Is that correct?---Yeah, that's correct.

20 And so he was, when you say he was the main driver, are you saying that Councillor Kenzler was the person who was really pushing to see that there be some incentive to the amalgamation of sites?---Yeah, he, he was, he was, you know, looking to come up with a solution of, of, you know, a solution what he thought would, would give an incentive for some of the owners of those sites to, to consolidate and amalgamate.

And so it was out of that discussion at the workshop, was it, that the inclusion of a bonus provision allowing for an increased FSR of 3:1 on larger blocks arose. Is that your recollection?---Well, not that I can exactly recall it, but there was, would have been a report that would have been prepared and, and would have gone to the council and I can't recall whether it was part of the report or part of the resolution of the council, but it would have emanated certainly from a discussion that took place in the workshop.

30 And as far as your recollection is concerned, other than that issue about how to encourage amalgamation with some sort of bonus provision, were there any other particular issues that the councillors were concerned about in relation to the Urban Design Study and what was being proposed?---No, not that I can recall.

There certainly wasn't any concern about the extent of the proposed rezoning in terms of the extension of the B4 mixed-use?---No, no, not, not at that time.

40 I'm just talking at that time. This is in early 2014.---Yeah.

No one was considering the possibility of extending the rezoning further north past Second Avenue up to Barnstaple Road?---Further north past Second Avenue? No. No, not at all.

Now, can I take you to an email chain commencing at page 402 of Exhibit 24. That's the first page of an email chain. And as is always the case with email chains, they are in reverse chronological order. If I might take you

first to the second page of that email, which is at page 403. I won't necessarily take you to all the detail in each of the emails, but do you see there that there's an email from Helen McCaffrey, that's Councillor McCaffrey, to Marjorie Ferguson and Tony McNamara, referring to the, on the subject of Five Dock, and referring to the fact that the Chamber of Commerce still want 3.5:1 as a floor space ratio, and asking whether that could be achieved anywhere with a height of 27 metres, et cetera. Do you remember this being a kind of issue that was still being debated after the council workshop? That is, in the sense of what the precise form of the bonus incentive would be?---Sorry, when you say the precise form, you mean the - - -

So what the bonus would entail. Would it be 3:1 or 3.5:1? Would it be 1,500 square metres or 2,500 square metres as a condition? Or that's not something that, the detail that you would be involved in?---It's not the detail I'm involved in, but I, I don't think that a change from the eight storeys and the 1,500 square metres and the 20-metre frontage.

Now, if we move to the previous page, 402, we see the later emails. One is – you can see in the centre of the page there's an email from Tony McNamara to Ms McCaffrey indicating the reason why he is reluctant to support going to 3:1 across the board, but rather limiting it to certain amalgamated sites. But I really want to draw your attention to the email at the top, the very last in time, because you were copied into this email and then you have responded to Mr McNamara to say that "Bruce has advised that John Sidoti asked him about his parents' property and may be attending tonight to address council." Now, who was Bruce?---Bruce Cook was the Director of Corporate Services.

And you had had a conversation, had you, with Mr Cook about some interaction he had had with Mr Sidoti that day? Or thereabouts.---You need to register to talk at the council, and Bruce, Bruce collated all, the register of all the people who had filled out the form to speak at the council meeting. And when he, when he, obviously he received the form, John, John Sidoti, he, he just let me know.

I mean, presumably Mr Cook would not let you know about any person who registered an interest in speaking at a council meeting, would that be correct?---Sometimes, depending on the nature of, you know, who was there and who wasn't there, he, he'd, you know, let you know who was coming. So you might need to do some extra preparation in relation to an issue that he was aware of. But, yeah, it didn't happen that frequently.

In this case, was there some significance in the fact that the person who Bruce was telling you might be attending to address the council that night was in fact the Local Member for Drummoyne?---Yes.

That was a matter of significance, that he might wish to address the council?---Yeah, that's correct.

10 And what was it about the fact of Mr Sidoti being the local member that made it significant if he was going to be attending to address the council, particularly having asked about his parents' property?---It was more, it was more, that email was more to advice Tony that, that he, he would probably get asked through the public forum, through the mayor, he may need to have a, a full understanding of what the issues were in relation to the sites that his parents owned down there.

And were there particular issues that you were aware of regarding those sites at this time, that is as at 20 May, 2014?---Not that I can recall.

20 When Mr Cook spoke to you about his interaction with Mr Sidoti and referred to the fact that he'd asked about his parents' property, did you have in mind a particular property at that time?---At that time, I think 120 Great North Road was the property that I was familiar that the Sidoti family owned.

And is that because of the function centre that they had operated there for some years?---That's correct.

They had ceased themselves running that function centre in about 2008. Does that accord with your recollection?---Yeah, from what I understand that was about the time they ceased using it, yeah.

30 But had it continued to function in the meantime as a function centre?
---2008?

From that time?---Yeah. Yeah, I'm pretty sure. I, I, I think I only attended the function centre once and I, I don't know if it was before 2008 or not but I, I know it's a church or something now but I don't know when the changeover was that it did continue beyond that. I think it did actually, yes, I do recall now that there was another operator, I think, took over that business for a while, yes.

40 But even though it wasn't being run by – or the function centre wasn't being operated by the Sidoti family after 2008, it was your understanding that they actually owned the property?---Yeah. I, I assumed they did.

THE COMMISSIONER: Can I ask you something about – you joined the council, you told us, in May 2006 and you remained with council until 2018. You knew in that period that the Sidoti family had a site as referred to in the email, being presumably, the function centre site. Is that right?
---That's right.

And were you aware, in the period that you were general manager up to 2018, as to whether the Sidoti family had any other properties in the Drummoyne area or not?---Yes, I was.

When did you find out?---That's, the date, while, while the, the Five Dock Urban Design Study was, was going through the, the processes, I was informed at different stages that they had, or their family interests had 2 Second Avenue and 35 or 37 Waterview Street.

10 2 Second Avenue and?---35 or 37 Waterview Street. Might be 37 Waterview Street, is it?

MR RANKEN: Who told you – sorry.

THE COMMISSIONER: Yes.

MR RANKEN: I was going to say, what was the source of your information as to the Sidoti family owning 37 Waterview Street?---I, I honestly can't recall. It was just, I think in conversation that they had
20 interests in, in those properties.

In conversation with whom though?---Good question.

THE COMMISSIONER: Was it somebody within council?---Yeah, I think it was someone when we were, must have been discussing something and, in that, in that area and I, I thought it was, I thought that was, that's where I got that information from.

MR RANKEN: And so you recall when this conversation occurred?---Oh,
30 it would have been, yeah, would have been certainly after the Urban Design Study had started in, you know, 2013/14 or beyond that. I can't remember exactly, no, when.

THE COMMISSIONER: And in what context were you told that they owned those particular properties?---It was just, it was just in the context of, you know, when we were having a look at, from what I recall, when we were just having a look at the Waterview Street, the issues down there, that, I think someone mentioned that the, the ownership of the, the two
40 properties, Second Avenue and, and Waterview Street were owned by the Sidoti family or had family interests in it. The heritage place was next door and the, the strata development was, you know, they were just the issues or some of the issues that we were trying to, they were trying to deal with.

And was the subject of, you said the Sidoti family having interests in a number of properties of some relevance to issues that were under consideration by council at that time?---No, not at all. Not at that stage.

Well, why would people be talking about the specific properties which you've identified were in the ownership of the Sidoti family?---It was just, I suppose just to, just to inform.

MR RANKEN: Why would you need to know what properties the Sidoti family owned?---I, it was just, it was just more or less a, a conversation where someone just said, well, you know, that's, they own those properties.

10 Was it on the context of some discussion relating to the Urban Design Study or the planning proposals that had come out of that?---No, I think it was, it was fairly early, fairly early in the, in the, in the, in the, in the work that was going on. It was just a, a matter of who owns what down there.

THE COMMISSIONER: Can I ask you, did you know Mr Sidoti, Mr John Sidoti?---Yes, I did.

And had you met him many times over the years?---Yes, I have.

20 And in what sort of context or contexts?---Professional context. He was the local member and, and I was the general manager.

So in that capacity, he as local member, you as general manager.---That's right.

Had he ever spoken to you about the urban study or plan on any aspect?
---He, he did, he did in, he mentioned it to me in 2017.

And tell me about that occasion.---Sorry?

30 Tell me about that occasion in 2017.---Yeah. We were at, we were at a, a function and, and the, the matter, we were at a function and he just more or less said, "I can't understand why the Waterview Street area wasn't included in the, in the B4 zoning. I just, I just don't, don't understand it." You know, that was, that was - - -

So was there some discussion about that?---No. The function we were at didn't allow that. I, I didn't continue the discussion on it at all. You know, there was other people around and whatever so I just left it at that.

40 Right.

MR RANKEN: And how is it that you are able to say that it was in 2017 that you had this discussion with Mr Sidoti?---Because I'm pretty sure that it was at a citizenship ceremony that we both attended.

How often would you have citizenship ceremonies that you would attend in your capacity as the general manager?---They were generally held every, every couple of months or more frequently if the numbers got up, and

between the Director of Corporate Services, Bruce Cook, he was, he, he attended the majority of those, but if he was away I would certainly attend those.

So how is it though, given that they occur every couple of months, and appreciating that for the most part they were attended by Mr Cook, how is it that you're able to say with any confidence that it was 2017 and not some other year?---It was Australia Day.

- 10 So it was Australia Day. Well, Australia Day happens every year. What makes you say it wasn't 2016 or 2015 Australia Day?---It was at the Rhodes Connection, which had only opened that, that year.

So you have a clear recollection of a conversation that you had with Mr Sidoti on Australia Day at a citizenship ceremony in 2017?---Yeah.

Did you have any other conversations with Mr Sidoti about the Urban Design Study and, in particular, his properties?---No.

- 20 And insofar as the discussion that you had with him on this occasion, did it only go so far as to him expressing the view or expressing the query that he could not understand why the Waterview Street area hadn't been included in the B4 zoning?---Yeah, that was it.

THE COMMISSIONER: Did you consciously or deliberately not wish to enter into any discussion with him on that occasion about the matter?---It was not my area with the planning. It was not something that it was, that I wanted to get into a conversation about at that time or – it wasn't my area. The process was going on, so - - -

- 30 MR RANKEN: Did you, prior to this conversation on Australia Day 2017, did you have some understanding that Mr Sidoti had an interest in the inclusion of that Waterview Street area within the B4 zoning?---Yes.

Where did you get that understanding from?---There have been presentations at a number of council meetings over the years before, where the consultants who are representing the family interests put those submissions to council about including that particular area in the B4 zoning.

- 40 So you were already aware, by the time you had this conversation, that Mr Sidoti had an interest in seeing that area included in the B4 zoning?---That's correct.

And given his position as the State Member for Drummoyne, had you turned your mind to inform yourself about the issues that related to the reasons why it wasn't included in the B4 zoning?---Yeah, I was aware of the issues why it wasn't included in the B4 zoning.

And so did you understand that one of the reasons why it wasn't included in the B4 zoning was that it was considered to be away from the main central core of the urban town centre?---That's correct.

And is that something that you agreed with - - -?---Yes.

- - - as the general manager of the council?---Yes.

10 Having regard to the process and the consultation that occurred with the community over an extensive period of time as part of the Urban Design Study?---Sorry, the - - -

Having regard to what had informed that position, which was the process of the Urban Design Study and the significant public consultation.---Yeah, that's correct.

20 And so is it your evidence that, prior to this conversation on Australia Day 2017, you'd never discussed with Mr Sidoti the issues concerning that Waterview Street site and it being rezoned?---Not that I can recall, no.

Or any other issues that Mr Sidoti had in respect of the Urban Design Study?---Yep.

If we go back to that email that I took you to before, at page 402, it's an email of 20 May of 2014, you see you say, "You may wish to read up on the site he will be speaking about, so you are familiar with the issues he will raise." Now, did you have any idea at that time as to what issues Mr Sidoti might raise?---No, I wasn't too sure what he was going to speak on.

30 Well, you go on to say that "Bruce has more detail if you need it." That would seem to suggest that Bruce was able to – that is, Mr Cook – was able to provide detail as to the issues that Mr Sidoti might raise, correct?---Yeah, probably just a subject, it might only, might have had the name of the property or the, the item that he wanted to speak to.

40 But do you say that Mr Cook didn't actually speak to you about what issues might be raised in respect of it?---No, I think he, he just sent me – or he, yeah, he might have just told me that John was attending the meeting. I can't - - -

But he didn't just tell you that John was attending the meeting, he told you that he had asked him about his parents' property.---That's right.

And were you not interested in terms of what was it that he asked about his parents' property?---No, I wasn't. It was, to me it was – his, his parents' property was in the Five Dock Town Centre, and that's something that Tony and his team were handling so any, any questions about that that were raised on the night would need to be answered by the, the town planning team.

But weren't you interested, as the general manager of the council, being advised of the fact that the local State Member for Drummoyne had expressed a desire to address the council about issues concerning his parents property, weren't you interested to find out what that might be, what those issues might be?---No, I was going to find out firsthand that night.

So you didn't question Mr Cook at all about what it was that Mr Sidoti might be raising?---Not, not that I can recall, no.

10

And just so that I can be totally clear that you maintain, do you, that the only occasion, the only function at which Mr Sidoti ever spoke to you about the town centre and issues concerning the town centre was at this Australia Day citizenship ceremony in 2017?---Yeah, I'm pretty sure that's the only one that I can recall.

THE COMMISSIONER: Had you met any other members of his family? ---I've, I have met his wife.

20

No-one else that you can think of?---No.

MR RANKEN: And again, do you say that it was limited to that one query and nothing else was said about it?---It was, yeah, it was short and sweet given the circumstances, so I'm pretty sure that's where, where it was, and there was, yeah, that was the end of it.

THE COMMISSIONER: Had you spoken to any planners who acted on behalf of the Sidoti interests relevant to the urban study?---No.

30

MR RANKEN: Did you raise the fact of this conversation that you had with Mr Sidoti with anybody at the council, any member of your staff after you'd had it, the conversation?---Yeah, so I, I did, like, casually mention it to, to Tony McNamara.

What was the context in which it was mentioned? Was it on the same day? Was it some other time?---Oh, was a, a – I don't know, wasn't the same day, because that was a public holiday, but it was some other time, and it was just in passing to say that I had a, a short conversation with John at the, at the, at the, the function and, and he raised, he raised the issue he's still not happy about the, the zoning issue down at Waterview Street.

40

So you've just referred there to the fact that he said he was 'still' not happy. Given that this was the only occasion that you'd spoken with him about it, on what basis were you expressing the view that he was still not happy about the rezoning?---Well, the, the number of times that it'd come, come before council and the R3 zoning was, well, the B4, the, the zoning from R3 to B4 wasn't changed, I think it was in the context that he's still not happy that it's not changed.

Prior to your conversation with Mr Sidoti in early 2017, had you spoken with any other council staff members or any councillors about interactions they may have had with Mr Sidoti regarding the Urban Design Study and particularly the question of the rezoning of the Waterview Street area?

---Yes, I, I have.

And with whom and when?---I spoke to Councillor Cestar, it was at the, the council meeting that was held on 7 February - - -

10

That's 7 February, 2017?

THE COMMISSIONER: What year?---2017. As we were preparing for the, for the meeting to start, I walked into the, the council chamber and Councillor Cestar was holding the phone and she said to me something along the lines that, "I just can't believe the message I've received from Sidoti."

20

MR RANKEN: And did she tell you what the message she received from Mr Sidoti was?---No, she didn't. I said to her something along the lines that, "If it relates to an item on the council agenda tonight, you should not vary the council recommendation of the staff unless you can, unless the changes you make are based on planning merit and you can give good planning reasons for doing so."

30

So what was it that enabled you to make the leap from Ms Cestar saying, "I just can't believe the message I've received from Mr Sidoti," to, "Well, if it's got anything to do with the planning on the council agenda tonight, you shouldn't vary it without any proper planning basis"? There seems to be a large leap there, if I might suggest, Mr Sawyer. Why was it that you were able to make that leap? Was there some further interaction between you and Councillor Cestar before you actually said that?---No, no, not Councillor Cestar but Councillor McCaffrey had, had raised, or had, in passing, commented that, that she was being lobbied by John in regard to the item on the agenda tonight.

Was that in relation to the same meeting, was it?---Yes, it was.

40

So, there are two interactions you had, were they on 7 February, 2017?
---No. I think the one with Helen McCaffrey was probably on the Wednesday before that, perhaps. I can't recall the exact date.

THE COMMISSIONER: Why do you think it was the Wednesday before 7 February?---Because we, we used to sit down and go through the, the business paper with the mayor and, and look at all the items and if she needed some background or, or some, you know, advice or feedback on what they were about, we were able to provide that for her. it was probably a Thursday actually.

And where was this discussion?---Generally it was in the meeting room adjacent to my office.

And was it daytime, night-time or - - -?---Yeah, it was generally in the afternoon.

10 And did this statement by Ms McCaffrey arise in the context of some general discussion that you were then having or did she just specifically raise that particular matter with you and not in the context of other matters?
---Yeah. From, from what I recall, it was more when we got to that item and we outlined what the recommendation was, she said something along the lines that, “Well, John won’t be happy with that,” something along those lines.

20 And you said, by what she said, that she was being lobbied about the item on the agenda.---Well, I got the, I got the impression that she, when she – she more or less said something along the lines that, you know, “He won’t be happy with that. He still can’t understand why that area has been left out of the town centre.”

But you said before that she said she was lobbied by John in respect of an item on the agenda tonight, was that the effect or the essence of what she said to you?---Yeah. Basically, yes.

30 MR RANKEN: What were the words that she said to you that led you to say that she said she had been lobbied by John?---It was more – yeah, lobbied, lobbied might not be the word she used but it was more or less that she had been, look, she’d had contact with John or spoken to John.

What did she say about having spoken to John?---Nothing really, nothing more than that.

So what – and I’m just trying to exhaust your memory about this conversation that you had with Ms McCaffrey. The item came up on the agenda. You were going through the recommendations that council staff were suggesting. She indicated to you that she had spoken to John.---Yeah.

40 And that he would not be happy with it. Correct?---Yep.

That he still can’t understand why that area had been left out of the zoning, rezoning. Correct?---Yeah.

What else did she say about that?---That was all. It was only short.

But did she say that he had contacted her or she had contacted, in what context that they had spoken?---No, no, not that I can recall, but it was, yeah, like - - -

Was there something about her demeanour that gave you the impression - - -
?---Her body, her body language was certainly, yeah, not, not, was tense or
how would you say, yeah, she was, you know, uncomfortable with, with the
situation.

10 THE COMMISSIONER: She originally said that she had been lobbied by
him. The ordinary meaning of lobby is that somebody's trying to influence,
persuade somebody to accept a proposition. Now, I think it's necessary
that if she didn't use the word lobby, what did she say which conveyed that
meaning to you?---Yeah, as I said, I think, I'm trying to recall. She, she
more or less inferred that, you know, John wouldn't be happy with that, that
decision, couldn't understand why that wasn't included in the, in the
original study, and, yeah, I, I, I could tell she was very uncomfortable about
what the, what the recommendation was.

And did she explain why she was apparently uncomfortable?---No, not that
I can recall, but - - -

20 Well, did what she said to you cause you concern?---The, in regard to the, to
the recommendation of the, of the officers, that was in accordance with what
the, the consultants had recommended and the office had recommended and
she was happy to go along with that recommendation. So as far as, I didn't
know the extent of what the contact was or what was being said, I was
unaware of what that was, so I, yeah, I, it was a concern I suppose but it - - -

MR RANKEN: Well, plainly - - -

30 THE COMMISSIONER: Just a moment, just a moment, sorry.

MR RANKEN: Sorry.

THE COMMISSIONER: Sorry, did you finish what you said?---Yeah, so it
was a, was a concern but it wasn't, it wasn't prolonged. Like, we moved
onto the next item and, and went through the rest of the paper sort of thing.

You had worked with Ms McCaffrey for some time.---Yeah, she was a
councillor from 2004 to 2017.

40 And in addition to being very experienced was she in your judgement a
competent operator as a councillor?---Yes, she was.

Did you hold her in high regard?---Yes, I did.

And are you able to say whether others with whom you worked in the
council also respected her as a councillor?---Yes, they did.

Yes, thank you.

MR RANKEN: Thanks. It was your use of the word that she appeared to have been “Lobbied” by him. That was your word, your description, and that she, you also said that she was obviously uncomfortable with the situation. Was it not a matter of concern to you as the general manager that a councillor, one who was very experienced and was a person who you considered to be very competent, had been lobbied by the local member for the state electorate in respect of a planning matter that affected his family’s private interests?---Yeah, well, I didn’t know to what extent she had been
10 contacted by or whatever, and she didn’t raise any direct sort of complaint or concern about, about that with me at the time.

It’s not about her raising the concern, it’s about your impression, Mr Sawyer, that she had been lobbied, and that she was plainly uncomfortable with the situation. Were you not concerned about the prospect that someone was attempting to interfere with the impartial exercise of the councillor’s function?---Well, the recommendation that she was supporting was the staff recommendation that, yeah, she, she didn’t – well, I didn’t think she was
20 influenced by the lobby in that case at that time.

But regardless of whether or not you felt that she was actually influenced, was it not of concern to you that someone might, that it appeared to you, did it not, that someone was attempting to influence her decision?---Sorry, did it appear to me that - - -

That Mr Sidoti had attempted to influence her position.---Yeah, that’s correct.

That was your impression.---Yeah, that was my impression.
30

And, indeed, when you then subsequently spoke with Councillor Cestar, from the mere mention of the fact that she couldn’t believe the message she had received from Mr Sidoti, you leapt to the – or made the leap, if I might describe it that way, to say that if it related to an item on the council agenda, you should not vary from what was recommended by council staff. Correct?---That’s correct.

And that, you told us, was informed by this earlier interaction you’d had with Councillor McCaffrey.---That’s right.
40

So when you said those words to Councillor Cestar, was it the case that you were concerned that Mr Sidoti had, in fact, also been lobbying Councillor Cestar in relation to the item on the agenda?---Well, I assume that he contacted her about that.

And by that and by the item, you’re specifically referring to the item on the agenda relating to the reconsideration of the rezoning of the Waterview Street area.---That’s correct.

THE COMMISSIONER: When you saw Ms Cestar on the evening, on 7 February, when she was on the phone, and she said, “I just can’t believe a message I’ve received from Sidoti,” what was her demeanour when she said that?---She, she looked a bit sort of, sort of stunned a bit, I suppose.

Sorry?---Stunned a bit.

10 And how did you react to her statement about the message she’d received from Sidoti?---As I said, I, I said to her - - -

Yes, I’m sorry, you have told us how you responded to that.---Yeah, yeah.

Your response, as I would see it, is in very strong terms. Would that be an accurate description?---The advice - - -

20 You’re now speaking to a councillor. Would you regard what you said to her as speaking to her, that is Ms Cestar, in very strong terms?---Well, I was, I was trying to – yes. When I say strong terms, I was certainly making sure that she was clear in what the ramifications might be if she didn’t, if she was looking to make a change in the recommendation and it wasn’t based on planning merit, that she would have to explain a situation at some stage or maybe have to explain that at some stage later. So she needed to be very mindful of that in making her decision.

30 Well, of course, it was her duty, was it not, as a councillor, to do just what you said. That is to say, to make a decision on this item, that is supporting it, but only if there was – the exception to that was if there was a planning error or other good reason, then of course she could exercise her judgement. In effect you were really telling her what was implicit in her duty as a councillor, is that right?---Yeah, that’s correct.

MR RANKEN: And did she respond to you when you made that suggestion that she should not bury the recommendation from council about planning merit?---No, because the meeting was just about to start and I think everyone started to file in and we all took our, took our seats.

Commissioner, is that a convenient time?

40 THE COMMISSIONER: Yes. Mr Sawyer, we’ll have to get you back in the morning at 10 o’clock, if you would be back here then, and hopefully we’ll have you away sometime during the course of tomorrow morning. ---Thank you, Commissioner.

Thank you. It’s probably a given, I think it would be best that you don’t discuss your evidence with anyone else before you return tomorrow.---Sure.

Thank you. I’ll adjourn.

THE WITNESS STOOD DOWN

[4.01pm]

AT 4.01PM THE MATTER WAS ADJOURNED ACCORDINGLY

[4.10pm]