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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 WEDNESDAY 31 MARCH, 2021

AT 10.30AM

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THE COMMISSIONER: Yes.

MR RANKEN: Yes, good morning, Commissioner. I understand that Mr Neil, on behalf of Mr Sidoti, would like to make an application for some further cross-examination of Mr McNamara arising out of his consideration of the material that was put on the restricted website late yesterday afternoon, being the compulsory examination of Mr McNamara, and a record of interview that was conducted with him.

10 THE COMMISSIONER: Mr McNamara, would you mind just taking a seat here? I'll have the oath administered. Just before that's done, Mr Neil, I deferred the start today until 10.30 at your request. I trust you're ready to proceed?

MR NEIL: Yes. And I appreciate that and thank you, Commissioner.

THE COMMISSIONER: That's all right.

20 MR NEIL: It enables me to now be able to allow some of your rulings, Mr McNamara to leave in a short time.

THE COMMISSIONER: Yes, thank you.

MR NEIL: Thank you.

THE COMMISSIONER: Very well, we'll re-swear Mr McNamara. Thank you.

THE COMMISSIONER: Thank you, Mr McNamara.---Good morning

Yes, Mr Neil.

10 MR NEIL: Thank you, Commissioner. Mr McNamara, I just want to ask you some questions about some evidence which you gave on a previous occasion in this Commission. Do you understand that?---Yes.

One matter is this – and to assist Your Honour and my learned friend, I’m going to page 182 of an interview dated 29 January, 2020. You were asked some questions about Mr Sidoti and he representing constituencies as a local member and you said this, “Look, there’s, there’s two thoughts on it. As a landowner, I feel okay, you can put forward your argument” - - -

20 THE COMMISSIONER: I’m sorry, Mr Neil, could I interrupt for a moment?

MR NEIL: I’m sorry.

THE COMMISSIONER: It might be better if I have that on the screen and the witness has it in front of him.

MR NEIL: Certainly, yes. Thank you. Yes.

30 THE COMMISSIONER: Just pause there for a moment. We have this on the system, don’t we?

MR RANKEN: Can I just enquire of my learned friend if that page that he’s referring to also has, near the page numbering of 182, does it have page 17 of - - -

MR NEIL: Correct.

THE COMMISSIONER: It’s page 17 of 53?

40 MR NEIL: Yes, thank you.

MR RANKEN: I just wanted to make sure I was on the same - - -

MR NEIL: Thank you very much.

THE COMMISSIONER: All right. Sorry, Mr Neil.

MR NEIL: No, no. Thank you, Commissioner.

THE COMMISSIONER: If you wouldn't mind starting again.

MR NEIL: Thank you. Sir, if you look at a question that you were asked at about line 32. Do you see that, "Did you have any concerns?"---Yes.

And then your answer starts at line 36. You say, "Look, there's, there's two thoughts on it. As a landowner I feel okay, you can put forward your argument." Now, the phrase "as a landowner", can I take it that doesn't refer to you, it refers to what a landowner can do?---Correct.

10

Thank you. Then you go on to say, "I think we made the only – I didn't really talk to John directly about this. I did speak to his consultant." Now, can you recall which consultant that was?---Look, from that text, I can't recall what person we were talking about there. There were two different companies that represented Mr Sidoti at various times so - - -

All right. Well, it could have been one or other of them?---It could have been one or the other of those.

20

Thank you. "And indicated to him what our position was. Didn't really care who owned it. We knew who owned the three properties as it, as they became but just made it pretty clear I suppose that we were pursuing this professionally and I thought that message was pretty well received by the consultant." Could I just ask you what were the three properties you referred to there?---From memory we're talking about two properties on Great North Road and one property in Second Avenue.

Could it be number 2 Second Avenue?---That would be the one.

30

Thank you. Then you went on to say that, "He wasn't trying to use any other sorts of influence to come up with a different decision. He was simply putting forward a planning position on it, which he'd be entitled to do and others would as well, around the town centre. So that's how it was approached so I wasn't uncomfortable. I'd hate to think that a person was excluded from having an opinion put forward. I'm happier to have a consultant put it forward than a person directly." Does that part of your answer include the proposition that, or propositions that, you didn't speak to Mr Sidoti directly about matters but you were happy for a consultant to put forward a position?---That's correct.

40

And you then go on to say, "It's just that sort of, if you like, an appearance of influence that can come from an elected person making their own representations. It's, it's, yeah, it's appearances but it can probably look like, whether they are or whether they aren't it, can be read as they're trying to use some influence that they shouldn't be doing, so that's why I'm always happier if their consultant puts forward the case, articulates it, particularly in writing, and then they receive a response. We feel we're dealing with them as fairly as, as we can do as we must do." Now, is that in

fact what at that time was happening, namely, you weren't talking to Mr Sidoti directly but his consultants were putting forward a case and you thought that was an appropriate procedure?---Yes.

Thank you. Now, just briefly could I ask you this. In terms of Councillor McCaffrey, was her first name Helen?---Yes.

10 Thank you. And would it be the case that in terms of any pressure that she may or may not have been receiving, you made an assumption that any such pressure had come from Mr John Sidoti?---That's correct. She didn't use that, she didn't say it to me, didn't use those words.

Thank you. Is it the case that – and I think we go here, Commissioner, to page 174 of the same interview, if that might be shown, Commissioner.

THE COMMISSIONER: Yes. We'll have that brought up.

MR RANKEN: Would that be page 9 of 53?

20 MR NEIL: Yes, I'm sorry, I should have said also, 9 of 53. Thank you.

THE COMMISSIONER: Yes.

MR NEIL: In about the centre of the page at about line 14, right, I'll go back to line 10, are you able to confirm that if you read between about line 10 and 15, your evidence there, is it the case that there were council workshop agendas but not minutes of workshop meetings?---There were council agendas, there was no written reports, but there were primarily verbal submissions made and no minutes were kept.

30 Thank you. When you say at line 16, "I have seen council workshop agendas," does that mean you've seen written forms of agendas? ---That's right. It's a list of items to be discussed at those workshops.

All right, thank you. And you've given some evidence about I think, I'll keep it short, a proposal for consideration of different aspects of – I withdraw that – proposals for consideration of the block on the west of Waterview Street between Barnstaple Street and Second Avenue. What I want to ask you this is, is it not the case that various applications or proposals that were put forward over a period of time of some years, varied in terms of their content? In other words they weren't all exactly the same. Would you agree?---I'm not sure what applications you're referring to.

40 Well, if for example there had been an application at some stage for that block to be made all zone B4, that would be different from an application that addressed some specific items, for example the heritage listing?---Yeah, but I'm still not sure. I don't recall any specific planning proposals for that

block, so I'm not really clear. You mentioned the word applications, I'm not sure what applications you're referring to there.

All right. Well, let me ask you a further matter. Did a request for three additional sites to be investigated by council for possible changes to zoning or other matters, did that emerge from a council workshop?---The, the, at the, the issue was raised with me at the council workshop by the councillor and the request was to draft a resolution which would be put to council.

10 THE COMMISSIONER: Which councillor?---That was Councillor McCaffrey, made that request to me.

MR NEIL: Thank you. And can you recall, if you can, what other councillors were present at that workshop?---To the best of my knowledge, the majority of councillors, but I can't name names because I just cannot tell you that they were all present or if anybody was absent at that, at that time,

20 Would it be fair to say that you made an assumption that the request for further investigation was made at the instigation of Mr Sidoti or his family?
---That's, that is correct, that Mr Sidoti was not named by Councillor McCaffrey.

Thank you. Yes. Thank you, those are my questions, Commissioner,

THE COMMISSIONER: Yes, thank you, Mr Neil.

MR RANKEN: I have no questions arising from that additional cross-examination.

30 THE COMMISSIONER: Yes, thank you. Mr McNamara, thank you for your attendance here. You are excused.---Thank you, Mr Commissioner.

THE WITNESS EXCUSED

[10.51am]

MR RANKEN: And then perhaps if Mr Sawyer could be recalled to the stand.

40 THE COMMISSIONER: Yes. Mr Sawyer. Good morning, Mr Sawyer. I'll have the oath administered again. Thank you.

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

MR RANKEN: Thank you, Commissioner. Now, Mr Sawyer, at the end of your evidence yesterday you told us about an interaction you'd had with Mr Sidoti at the Australia Day 2017 citizenship ceremony, and then I'd asked
10 you some questions about conversations that you had had with other council staff or councillors about interactions that they may have had with Mr Sidoti regarding the Urban Design Study, and in particular the question of the rezoning of the Waterview Street area, and you told us in response to that question about two interactions you'd had, one with Ms Cestar just prior to the meeting on 7 February, 2017, correct?---Yeah, that's correct.

And an earlier interaction you'd had with Councillor McCaffrey, either the Wednesday or Thursday prior to that council meeting on 7 February, correct?---Yeah, that's correct. I, yeah, I'm not sure of the exact date but - -
20 -

I think what you told us was that it was at that point in time when you, as general manager, were going through the papers for the items that were coming up before the meeting to be held on 7 February, 2017, with Councillor McCaffrey, as she was the acting mayor at the time?---Yeah. That's what I recall.

Now, so my original question was directed to not just councillors but also council staff. Did you have any, or have you spoken with any other council
30 staff members about interactions that they may have had with Mr Sidoti regarding the Urban Design Study and the question of rezoning?---Not the -- the only comment I can recall is when I just made a passing comment to Mr McNamara that John had spoken to me about the fact that the, that site had been left out and he couldn't understand why and Tony said, "Yes, I have heard that," or something along those lines. "Yeah, I have heard, I have heard about that as well."

And that was something you told us about yesterday afternoon as well, in that that was a passing comment you had made to Mr McNamara after this
40 interaction that told us about on the Australia Day of 2017?---Yeah. That, I'm, I'm pretty sure it was, that, that was the day.

So does that mean that you are not aware of any other interactions that either council staff members or councillors had had with Mr Sidoti regarding the Urban Design Study and the question of the rezoning of the Waterview Street site prior to January of 2017?---Yeah, I can't recall that, that, yeah, I'd spoken to, to anyone who, who specifically raised, raised that.

So I want to then go back in time a little bit and I want to go back to October of, sorry, yes, October of 2015. Now, you were aware, were you not, that after, just by way of some general chronology, after the public exhibition in December 2013 and January 2014, the matter ultimately came back before council in May of 2014, was adjourned for some consideration of heights and setbacks and the like, and then ultimately it was determined that the matter ought to go to a Gateway Determination, that is the Urban Design Study and the associated planning proposals? Do you recall that?
---That's normally the process. I don't necessarily recall the timing of it all.

10

And one of the things that came out of the Gateway Determination was that the matter needed to be put out for further public exhibition once it was received from - - -?---Yeah, that's the normal process.

And that further public exhibition occurred in – I'm trying to find my notes – in about June and July of 2015, or you don't have a clear recollection of exactly when that all occurred?---No, I haven't got a clear recollection of the timing of that.

20

At some point though prior to your interaction with Mr Sidoti on the Australia Day of 2017, did you become aware however that Mr Sidoti had engaged planners who were making representations on his behalf in respect of the Waterview Street site?---Yes. At the council meetings where the item was up for discussion, planners representing Mr Sidoti were in attendance and planning consultants and put their view as to the, to the rezoning of that area in, in each of those council meetings that I can recall in the lead-up.

And did you ever meet with those town planners, that is other than at the council meetings?---No, I never met with those.

30

Were there any approaches to council either to tee up a meeting with yourself or other staff at council?---I seem to recall there was a meeting that was proposed with the, with I think it was the mayor and the chief, our chief town planner, Tony, and the planning consultant from, from, representing John and I think yeah, that, that was, that was proposed at some stage, I can't remember exactly when, but that seems to, to ring a bell, yeah.

Do you know whether or not that meeting actually ultimately occurred or did not occur?---No, I don't. I don't. I don't know if it did.

40

So perhaps if I could take you then to some emails. This is at page 738 of Exhibit 24. I just want to draw your attention to the email at the bottom of that page, which I accept was not sent to you but was sent from Mr Pavlovic, who is described in his signature block as The Manager, Health Building and Environment. You knew Mr Pavlovic?---Yes.

And he's just sent an email to Mr McNamara saying, "As discussed John presented to the council today", and the reference to John, if you see the subject is "John Sidoti".---Yes, I do.

So would you agree that that reference to John is most likely a reference to Mr Sidoti?---Yes, I do.

10 "He presented to the council 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." And if we move up the page, Mr McNamara has forwarded that email on to you, asking what you thought of that.---That's correct, yeah.

And did you have a view about what was being proposed, the idea of Mr Sidoti and his town planners meeting not with yourself or with Mr McNamara but in fact with a member of Mr McNamara's team, Mr Dewar?---I think I, I responded back that, with a view that it should be a written submission or something along those lines. I think that was, but I can't see that email that - - -
20

Perhaps if we go to the previous page, which is page number 737, and scroll to the bottom of that page. This is your response to Mr McNamara that you understand that "Angelo", that's a reference to the Mayor, Angelo Tsirekas. Correct?---Yeah, that's correct.

30 "Suggested to Sidoti that the Five Dock plan was planning driven and any submission needed to have a planning base of further consideration." Is that what you mean by what you just told us about suggesting that there be some written submission that should be put forward by the planner?---That's correct.

And then you go on, "The heritage property, strata unit access et cetera were matters that needed to be addressed. If the planner that John has engaged can address these issues to Diane's satisfaction", and just pausing there Diane is?---Diane was Diane Griffith from Studio GL.

40 Then it goes on to say, "then perhaps the area can be reconsidered. I would suggest that if they present a case it will receive independent consideration by the consultant who will make a recommendation to council." Now, the reference to consultant there, was that a reference to Diane Griffiths and Studio GL?---Yes, it was.

So your suggestion there was rather than there be a meeting that there should be some written submission put forward on behalf of Mr Sidoti's interests by the planners acting on his behalf?---That's correct.

Now, I want to move forward to, a little bit further forward in October of 2015, and did you become aware at any time that there was a draft

resolution that had been prepared by Mr Dewar at the request of Mr McNamara in advance of the upcoming meeting that was to be held on I think 3 November of 2015, relating to the possibility of reconsidering the rezoning of three areas, including the Waterview Street site?---Yeah. I, I can't specifically recall that, but I know that Mr McNamara in the evidence he gave said that he brought that to an executive committee meeting the following morning after that workshop and advised us, and that was Tony's normal practice or all our normal practices was to go through the items of the workshop or the council meeting or whatever. So I can't recall that, but
10 it more than likely did occur at that meeting.

But do you recall that up to that point there had been some consideration and indeed some further consideration of the possibility of rezoning, particularly that area of Waterview Street on the western side between Second Avenue and Barnstaple Road, which had been consistently found to not have any public benefit?---Yeah, that's right. The, the council had not seen that there was any, any benefit in upzoning it from R3 to B4.

And when Mr McNamara brought this to the executive team's meeting, I
20 understand that your evidence is that you don't have an independent recollection now as to the matter being raised?---That's correct.

Did Mr McNamara though raise it at an executive team meeting, any concerns about the manner in which a resolution, or he was being asked to draft resolution for council by one of the councillors, and specifically Councillor McCaffrey, and the fact he felt that it was because of some pressure that was being brought to bear on Councillor McCaffrey?---Yeah, no. I, I can't recall that conversation between Tony at the executive meeting
30 at all.

And when you say you can't recall, does that mean, are you saying that your recollection is that it didn't happen or is it you just simply don't recall one way or the other?---I'm, I'm not saying it didn't happen because that was the normal, the normal process, as I said, after those meetings, we'd discuss issues that had come out of that and if that was certainly an issue that came out, Tony would have brought it to that meeting. I just don't, don't recall the, the fact that, what he talked about at that meeting. I, I know that that resolution was drafted because it was, Paul Dewar drafted that for Tony and that came forward at the council meeting.
40

As to the circumstances in which it was drafted and what Mr McNamara might have said about those circumstances, you are unable to recall what they were?---Yeah, yeah. That's correct.

Including as to whether or not the request had come from Councillor McCaffrey and why she had asked for that resolution to be drafted?---Later on, after that meeting when it was drafted and, and given to Councillor

McCaffrey, I was aware that she had a draft resolution that she may put to the council meeting.

THE COMMISSIONER: Mr Ranken, can I just get this clear? You started this last segment by referring to the possibility of three sites being investigated, that's the three sites which includes the Waterview Street area?

MR RANKEN: That's correct, yes.

10 THE COMMISSIONER: And then you asked the witness whether he recalled concerns of Ms McCaffrey being raised because of pressure. Now, I just wonder whether we're getting to a situation where the witness may be talking about a different event, which is the events surrounding the resolution that was drafted or not. I just want to make sure that the witness is following chronology as to the event you're asking him to focus on, that's all.

MR RANKEN: So perhaps I'll take you to the particular resolution that was drafted that I'm talking about and the circumstances that we understand
20 relate to that.

THE COMMISSIONER: In any event – I'm sorry to interrupt again. We're talking about the period in October 2015, is that right?

MR RANKEN: That's correct, yes, yes.

THE COMMISSIONER: Very well. Perhaps your reference to three sites earlier is not relevant to this particular line of questioning, is that right

30 MR RANKEN: No, it is.

THE COMMISSIONER: It is, all right. You take your course.

MR RANKEN: Perhaps if we could bring up page 959 in Exhibit 24. That's the email from Mr Dewar to Mr McNamara attaching the draft resolution, and if we go to the next page, 960, we can see the highlighted portion is the actual draft resolution which was seeking that a separate report be prepared to investigate the zoning and development controls for those three sites. The first one of course is what I have been referring to as
40 the Waterview Street site, being that western part, western side of Waterview Street between Barnstaple Road and Second Avenue, the other two sites were in different locations on the periphery of what had been identified as the core of the town, the urban, the town centre of Five Dock. Correct?---Yeah, that's correct.

And this was the draft resolution that Mr McNamara spoke to you about at an executive team meeting. Correct?---Well, I can't recall that, yeah, I don't recall that particular conversation.

But you accept that he - - -?---Yeah, I accepted that - - -

- - - would have discussed it with you?---That he would have discussed it, yeah.

10 And you don't recall him as to whether or not he raised any issues about the circumstances in which he had been asked to arrange for the resolution to be drafted and particularly that it was Councillor McCaffrey who had requested it and that she had done so after some pressure of some sort.---Yeah, that's right. No, I don't recall that conversation at all.

But you were just telling us before that you did become aware that Councillor McCaffrey did have a draft resolution to that effect that she was proposing to have put before the council.---That's right.

20 And how did you become aware of that?---Well, from what I recall, before a meeting, if councillors have a draft resolution, they generally used to give it to the secretary who was bringing up the, the, the resolutions on the, on the screen.

And who was the secretary?---Yeah, we had three or four that used to rotate. I can't recall exactly who would have been on that, that evening, but that was the normal procedure that they would have that ready and if the councillor called for it, then they would be able to bring it up on the screen.

30 And so would you learn of or did you learn of this resolution that Councillor McCaffrey was proposing to put forward from the secretary, because the secretary had been told of it by Councillor McCaffrey?---I, yeah, I, I, I can't recall who, who told me but I was aware that that was there ready to be brought up at the council meeting if she called for it.

40 And how far in advance of the council meeting would this have occurred? Ordinarily if a councillor wanted to have a particular resolution being able to be brought up in the way you've described, was there some sort of time, a cut-off point that they had to have it in by?---No. It could happen within five minutes of the meeting started, if, if that was, you know, what they wanted to, wanted to do and ask, yeah, we could have it organised for them five minutes before the meeting started.

And just incidentally, when you were the general manager of the City of Canada Bay Council, were meetings of council electronically recorded? ---Yes, they were.

So there were audio recordings made of the proceedings?---No, there was no, there was no audio recordings.

So by electronically recorded what do you mean?---I mean like, minutes were typed up and brought up on the screen and once they were moved and seconded it was all recorded on the screen and then the girls were able to, you know, virtually have it all ready to go for, for the resolutions.

So what you're referring to is the preparation of the minutes would occur at the time with someone typing it up and putting it up on the screen so it could be, that could be dealt with very quickly, but they wouldn't necessarily type up verbatim who said what.---No, that's right.

10

So there's no running transcript, as it were, of what was said or discussed at the meetings, just the topic, the fact that persons may have addressed. Correct?---Yes.

The fact that certain councillors may have declared a pecuniary interest and absented themselves. Correct?---Yeah.

And the time that that may have occurred.---Yep.

20

And the details of the resolutions or motions that were passed but, but not successful. Correct?---That's right. Who moved them and who seconded them, yes.

And the details of who voted in favour and who voted against, correct? ---That's correct, yep.

And the detail of motions that were moved and passed and became resolutions?---That's, that's correct.

30

But other than that, no other records made of what occurred in the meetings?---No.

40

This may be a difficult matter for you to answer, Mr Sawyer, but did there come a point where you were surprised at all at the fact that the issue of the rezoning of Waterview Street site was still a matter that had not been put to bed, as it were?---The, the matter, I think, in – it, it had been going for quite a while and there was motions moved that tend to extend, extend that, that whole process. The, I suppose the, the thing was there was, seemed to be a lot of time between council meetings when these matters were brought back to council for further determination. By the time that it went out on public exhibition, they, they analysed the submissions, they prepared a report and they put it back to council. There was quite a time lapse between meetings to deal with, with the, the findings of the, of the submissions and the, and the report and the recommendations of the officers. So, it seemed to, it seemed to drag on and on.

But as part of this particular issue in terms of the rezoning, there were numerous additional reports that were obtained by council from its experts, correct?---Correct.

And that of itself would have involved additional expense and time, correct?---Yeah, correct.

10 And was that of any concern to you that this issue about the rezoning of Waterview Street just seemed to still keep coming back for further consideration by the council?---It was probably, at the time, it was, it was, yeah, probably a concern that we hadn't finalised it but I must say also during that time, we were told we were going to amalgamate with other councils, and so it, other things competed with that as a priority as far as what the council had to do. So it wasn't, wasn't like it was, you know, the, the top priority at the time, that we were preparing, trying to prepare for that, that to happen.

20 I understand. But did you have an understanding as from where the push to reconsider the Waterview Street site zoning was coming?---Well, well, I, I would have, I think I, I thought – when, when I listened at the council meetings, there were certain members of the community who, the gentleman from 39 and at 41, who had, had issues that they raised and spoke about and also the consultant for the, representing the owners of the properties of, of 120 and those properties in Waterview Street, who kept putting up alternative scenarios for that. And with those scenarios keep arising to try and resolve those. I can understand how some councillors may want to explore those further. So, yeah, I, I just looked at it as being part of the process.

30 Now, I want to move forward through to 2016. Sorry, just bear with me. And this is in relation to the matter when it came before the council for consideration in August of 2016. Do you recall that by that stage there had been a further consideration by Studio GL of the three sites as had been resolved by the council in November of 2015 and that report had come back in March of 2016 and there had also been some further feasibility study done by HillPDA concerning the possibility and the profitability of any development of the relevant sites? Do you recall that?---Yes, I do.

40 And in respect of leaving the other two sites to one side and just focusing on the Waterview Street site, in respect of that site there were effectively two options that had been proposed or considered by Studio GL, one in which it was proposed that you might remove the heritage listing for number 39. Correct?---Yes.

And another in which number 39 would not be, the heritage listing would remain.---That's correct, yeah.

And in respect of those options, neither of those options recommended that there be a rezoning of that area, the Waterview Street site, as B4 mixed-use?---That's correct.

THE COMMISSIONER: Put it the other way, did the report recommend against rezoning, Mr Ranken?

MR RANKEN: Sorry, did the report essentially - - -

10 THE COMMISSIONER: What was the position that, in respect of the two options, conclusion was there should be no rezoning from residential?

MR RANKEN: Yes, that was the effective of the report, that as far as those two sites were concerned there should not be any rezoning from it being an R3 medium-density residential to being B4 mixed-use.---Yes, that's correct.

And that had been a consistent position that had been taken by both the independent experts engaged by council and also council staff?---That's correct.

20

And that was primarily because of the fact that the core of the town centre was further to the south?---That's correct.

And the majority of the parking areas were further to, were at the southern end of the centre?---Yeah, they were.

And so insofar as it was a pedestrian town centre, having further development up further north meant that there was much further for people to walk?---Yeah, the walkability aspect was, was a keen, a key criteria in, in that.

30

And what also was a part of that was the fact of the relatively low-density residential aspect of development around those areas towards the north? ---Yes, towards the north.

Now, I want to move actually through to February 2017, which was the final consideration by the council, and you've told us about the interactions that you had with each of Councillor McCaffrey and Councillor Cestar in the lead-up to that meeting. And that meeting effectively was the point at which the matter was finalised as far as the council resolutions on and consideration of the rezoning of the Waterview Street site. Is that correct? ---Yeah, that's correct.

40

And if we just go to the recommendations of the council. Firstly, actually I might just by way of background – when it came before the council in February 2016, it had in fact been deferred from the previous year, from December 2016?---It came to council in 2017.

So 2017.---Yes.

February 2017.---Yeah, it had been deferred from that, that meeting, yes.

And there had been a request immediately prior to the meeting in December of 2016, a request from the planners acting on behalf of the Sidoti family interests requesting that the matter simply be deferred. Do you recall that?
---I don't recall that but I, I have heard that in, in Mr McNamara's evidence.

10 So perhaps if we go to page 1315. That's an email from Mr Dewar to Mr McNamara with a memo regarding Waterview Street site, Waterview Street. Do you see that?---Yes, I do.

And if we go to the next page it details some issues to do with the exhibition outcomes.---Yeah, okay.

And there was also an email – perhaps I need to take you to the email from Mr Matthews from Pacific Planning, which is at 1314 I think. If you scroll down to the bottom of that page. It's the wrong email. Is that 1314? Sorry,
20 I meant if we go to 1313, the previous page, that's an email from James Matthews to Yolanna Boyle and Mr Dewar, copy to each of Councillors McCaffrey and Megna and Matthew Daniel, who I understand is a person associated with Mr Matthews and is part of his firm, Pacific Planning.
---Yeah.

You don't know, you're not able to say one way or the other?---I have seen Mr Matthews, he's presented at the council. Mr Daniels I didn't know was, I'm not aware that he was at the, at the council connected to that, but - - -

30 And then you see that in that email, the final paragraph on that page, "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 recommendations that will have a significant impact on the type and level of development that may occur across the block in the future."
See that?---(No Audible Reply)

And as far as the landowners are concerned that he's referred to, they're identified towards the top of that email where it says, "I am representing the
40 views of 2 Second Avenue and 37, 39, 41 and 43 Waterview Street."---Yes.

And then did you understand that 2 Second Avenue was owned by an entity that was associated with Mr Sidoti's family?---Yes, I did.

And if we could then go to 1320. Can you see down the bottom of that page it's effectively the same email that I took you to before from Mr Matthews to Mr Dewar.---Yes.

And Mr McNamara has then forwarded an email, forwarded a response to all of the councillors, but also copying it to yourself.---Yes.

And do you recognise the other names to whom the email copied to were other members of the executive team?---That's correct.

10 And what he has suggested there is 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 what James considers flawed and inequitable planning outcomes. May I respectfully suggest that the basis for all recommendations has been well and truly canvassed in the various reports, despite not suiting all landowners, and that 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." Correct?---Yes.

20 Now, do you recall receiving this email?---Not, not specifically but it's addressed to me, so I did, I did receive it.

And effectively, would you agree that, what Mr McNamara was saying was, "Look, we've already dealt with all of this. If they want to – this should just proceed as per the recommendation, and if the landowners want a different outcome, they should submit their own planning application."---Yes. That's correct.

30 Now, as I think you've agreed, the matter was deferred in December of 2016 and then it came back before the council in February of 2017. If we could just briefly go to the recommendations as far that the council staff had forward. If you go to page 1371. That's the first page of the report. And if I could then ask you to go to page 1379, and you would have recognised that the initials of the report author were PLD, which is Mr Dewar.---Mr Dewar, yes.

40 And effectively there are five recommendations at page 1375 that, "A planning proposal and associated development control plan be prepared to implement the recommendations of the exhibition outcomes report prepared by Studio GL dated 26 November, 2016."---Yep.

"That the planning proposal include the removal of heritage item number I486, that being the dwelling the house at 39 Waterview Street, Five Dock, from schedule five of the Canada Bay Local Environmental Plan, 2013." You understand that was the removal of the heritage - - -?---Of the heritage item at 39, yes.

"That the planning proposal be submitted to the Department of Planning and Environment for a Gateway Determination and should the planning proposal

pass through Gateway, that it be placed on public exhibition, together with the draft Development Control Plan and draft Contributions Plan.” And finally, “That authority be granted to the general manager to make any minor changes to the planning proposal and draft Development Control Plan prior to finalisation of the Local Environmental Plan.” Now, if we could then go to the minutes of the meeting, which commence at 1409, perhaps if we go to the resolutions that were passed. This is the item being on the agenda and you obviously attended that meeting, because you’ve told us that the interaction you had with Councillor Cestar just prior to it, correct?

10 ---Yeah, that’s correct.

And there’s identified a number of people who addressed the meeting. Mr Matthews from Pacific Planning was one of the persons who addressed the meeting?---That’s correct.

Do you have a recollection as to what it was that Mr Matthews addressed the meeting about precisely or what he said?---No, I, I don’t. That was, I don’t know exactly what he was, what his position or presentation was about.

20

THE COMMISSIONER: Well, had he made a submission on this occasion you’d expected it to be recorded or referenced in the minutes of this meeting?---Sorry, Commissioner, he made a written submission - - -

I said if Mr Matthews had addressed the council meeting on this occasion that’s on the screen now, would there be some reference to the fact that he did so in the minutes?---Well, that’s, having his name there would, would certainly represent that he did address the meeting verbally with a presentation.

30

I see.---And there were, there were times at the meeting where people would hand up, if they hadn’t handed it in prior to the meeting, hand up their presentation or, or their, their submission. If they, if they had it there and wanted to hand it over to council they could do that at that meeting.

So the presentation you’d expect would either be in writing or oral presentation or both?---Oral. Yeah, that’s correct.

40 MR RANKEN: Now, if we go then to the actual resolutions. You can see the first two paragraphs are on page 1409 of Exhibit 24. And if we go to the next page there are four further paragraphs to the resolution and if I might suggest to you that paragraphs 1 through to 5 effectively replicate that which was recommended by council staff?---That’s correct.

Paragraph 6 of this resolution is, “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.” Do you have a recollection as to how it was that that paragraph came to be

included in the resolution that was moved by Councillors Cestar and Ahmed and ultimately passed on the casting vote of the mayor who was Councillor McCaffrey?---Yeah, Councillor McCaffrey inserted that last item.

And how do you know that from – how did that come about? Did you have some conversation with Councillor McCaffrey about it?---I had a conversation about that with her and asked her why. It was a bit unusual to, to put something like that in there and she, she more or less indicated that she wanted it to go in.

10

But did she say why she wanted it to go in?---No. She was, she just said, “I just want this to go in.”

THE COMMISSIONER: Sorry, I can't hear you. What did you say?
---Sorry. She said she just wanted this to go into the recommendation.

You were asked by Counsel Assisting as to why she wanted it to go in. Did she indicate why?---She didn't indicate, she didn't give a full explanation as to why but, yeah, I, I think the, the impression I got was that that was going to be line in the sand as far as council dealing with, with any more submissions regarding Waterview Street.

20

MR RANKEN: Now, this conversation you had with Councillor McCaffrey about that particular paragraph of the proposed resolution, when was that conversation had in relation to the meeting itself?---It would have been when we were, when she was preparing the, the motion or whatever and she'd added that in.

And when was that in relation to the conversation that you had with Councillor McCaffrey that you told us about earlier, which was on either the Wednesday or the Thursday prior to, was it part of that conversation?---I can't recall exactly. It was either, it was, yeah, it was around that time for sure but I don't know whether it was part of that specific conversation at that time in relation to the report or it came later and you can probably see that from Tony McNamara's memo that was a similar position to what he had put forward for council in the meeting of 20 December in his memo so -
- -

30

Did you have any conversations with any of the other councillors about this paragraph?---No.

40

Just with Councillor McCaffrey?---Yeah.

Was it often the case that – you obviously had fairly regular dealings with Councillor McCaffrey during this period that she was mayor. Would you have a similar level of contact with the other councillors in your role as general manager?---No, not the similar level as contact. The mayor, the mayor spent more time in the mayoral office on a daily basis than what the

other councillors would. They would only generally attend council if we had council meetings or, or workshops or, or whatever. So the main dealings were when the mayor was, was in the mayoral office and that might have been a couple of days a week.

10 So in terms of your contact with non-mayoral councillors, how frequent was it and generally what would it regard, like were there particular aspects of being a councillor that it involved or what?---They'd, as I said, like, if before a meeting they'd, they'd, they'd come in before a meeting and if they had any just general issues they wanted to discuss they'd, you know, make an appointment to come and see me and have a chat about different things that maybe some of the constituents had, had raised with them and asked me to, you know, if I could look into them for them. They, they'd, might make a phone call. If there was something that they wanted, wanted me to address or see if we had, someone had rang and asked them about, you know, even minor things, you know, broken garbage bins or whatever, you know, if we could work something out sort of thing. So, there were, there was phone contact but if, if they had an issue that they wanted to discuss or if they had come in before a meeting and they wanted to discuss it, they, 20 they would pop in and have a chat about it.

So does that mean then that the contact that you had with the councillors was fairly ad hoc, other than the mayor?---That's correct.

Just one moment. Yes, thank you, Commissioner, they're my only questions of Mr Sawyer.

30 THE COMMISSIONER: Just one matter. If we could have that document back on the screen, please, 1409. Next page. Thank you. After paragraph 6, the voting has indicated there, that is the Liberal councillors for and the others against. Paragraph 6, which was inserted at Ms McCaffrey's request, as you said, it talks about, "If the owners of property in the area have a belief," et cetera, "believe there is a better planning outcome." Were there any owners of property in the area, aside from the, what I might call, the Sidoti interests, who were unhappy with what's referred to as the planning proposal?---The, I, I think the removal of the heritage item probably resolved some of the issues that Mr Durkin at 39 had. So besides him, I, I would have thought not. Especially that, that resolution also contained or, or called into play a whole lot of other, a whole lot of other controls that 40 basically added a laneway to the rear of the properties down there, which was the missing link in laneways that serviced that Five Dock Town Centre. But the Great North Road, Great North Road had laneways that the council had proposed in the Urban Design Study from First to Second. There was existing laneways that went from Barnstaple to Rodd to Great North Road behind the properties in Great North Road. But because of the economic viability of this particular section of Waterview Street, that when it was initially assessed in the current environment, they, Hill PDA couldn't see that the viability, economic viability would allow it to be developed, so it

was excluded. With this resolution, that more or less, I think, looked at, well okay, that might not be economically viable now but this urban study is going to be in DCP and LEP is going to be place for 10/15 years. Things can change. If things do change, what controls have we got to ensure that development on that Waterview site is done in a, in a proper and, and planner manner. So the changes that option 2 brought in, what they did was, they gave a public benefit with the laneway. That was identified as the missing link. They transitioned the development from Great North Road, where it was five storeys. Initially the, the owners of the properties in
10 Waterview Street on the western side were concerned about the amenity impacts of having potentially seven storeys on their back boundary. That was reduced to five, but what the, the DCP now was going to say was that in Great North Road they could have five, stepped down to four, have a laneway. You could have four storeys at the back of your property in, in Waterview Street and you would have to step down to three at the street, but that three storey could only be 10 metres high -- the previous height was eight and a half -- and it had to be set back six metres and all access into those properties on Great North Road and Waterview Street had to be via the laneway. The laneway had to be in place to allow it to develop. Which,
20 the issues that the residents then had in Waterview Street, which were traffic and parking, would be in some way addressed by, by having the laneway where people would access it. And because you could only have pedestrian access from the development that would occur in Waterview Street, on the western side, all the driveways on that side would become redundant and would create more parking. So, the vision for longer term, that was included in that option. In my view it wasn't economically viable in this point of time, and it may never be economically viable depending on what happens in the future. But if, if it did become developable, there were controls in place that would deliver a, a, a, pretty good outcome for that
30 area.

Right. Yes, thank you.

MR RANKEN: Nothing arising from the Commissioner's question.

THE COMMISSIONER: Yes, very well. We'll take the morning tea adjournment, Mr Sawyer. We'll resume at midday and we'll continue then. Very good. I'll adjourn.

40

SHORT ADJOURNMENT

[11.47am]

THE COMMISSIONER: Now, Mr Ranken, you've finished examining?

MR RANKEN: I have, yes, I have.

THE COMMISSIONER: Yes. Now - - -

MR RANKEN: Mr Neil doesn't appear to be in the hearing room at the moment.

THE COMMISSIONER: Mr Neil is not here.

MR RANKEN: No.

10 THE COMMISSIONER: So I'll call for any application to cross-examine Mr Sawyer. Is there anybody here who wants to make application to cross-examine? I take it nobody's asking for that.

MS BULUT: Commissioner, would you like me to make an enquiry of Mr Neil? I believe he's just outside in the conference room.

THE COMMISSIONER: Well, if you would do that.

MS BULUT: I'd be - - -

20 THE COMMISSIONER: Otherwise I'll adjourn for a short time until he returns, but if you wouldn't mind making that enquiry.

MS BULUT: I'll make that enquiry. I'll certainly do so.

THE COMMISSIONER: Thank you. I'd be grateful.

MR NEIL: My apologies for being late, Commissioner.

30 THE COMMISSIONER: That's all right. That's all right, Mr Neil. Mr Neil, do you wish to apply to cross-examine Mr Sawyer.

MR NEIL: Yes, I do, Commissioner.

THE COMMISSIONER: Very well. Yes, I grant leave.

MR NEIL: Thank you. Mr Sawyer, could I just ask if the witness be shown, Commissioner, page 737 of Exhibit 24. This is, at the end of the page, your response to the email we see at page 738 from Mr McNamara. Correct?---That's correct.

40

And I should say, sir, would you understand that I act for Mr Sidoti?---Yes, I do.

Thank you. So that the position you took in your response was that if there were matters such as heritage issues that were put in some form of written document, they could be the subject of further consideration. Is that right? ---Yeah, that's correct.

And would that include issues such as problems that might arise from strata properties in the block?---I think if it was any planning-related matter that that would, that could be included in that presentation, that would be considered.

All right. Any planning matter. Thank you. Now, in the – could I ask if the witness might see page 1313. Now, there in about the centre of the page, Mr Matthews is saying that he represents the views of 2 Second Avenue and 37, 39, 41 and 43 Waterview Street. Do you see that?---Yes, I do.

10

And the, going a little further on to 1320, at the foot of that page there is what appears to be a repetition of Mr Matthews’ letter at 1313 and above that at page 1320 we see Mr McNamara’s views expressed about Mr Matthews’ submission to the councillors. Correct?---That’s correct.

And at the last sentence Mr McNamara says, “Rather than deferring this item, may I suggest the item be adopted as further 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.” Do you see that?---Yes, I do.

20

Now, if we go to 1379, as my learned friend Mr Ranken has shown you, we see the council staff recommendations set out 1 to 5. Do you see that?---Yes, I do.

And then if we go to 1410, we see that the recommendations are repeated in 1 to 5 but there’s the addition of number 6. Do you see that?---Yes, I do.

Now, do I understand your evidence earlier to be that number 6 in substance represents the position that Mr McNamara had outlined in the last three lines of his advice to councillors at page 1320?---It’s, yeah, it was in Mr McNamara’s email.

30

Thank you. And in substance it’s repeated in item 6 on page 1410?---That’s correct.

Now, I think you’ve also given some evidence about interested persons but if we look at 1419 – sorry, 1409, 1409, the page before 1410, do we see that amongst the people who addressed the council on 7 February, 2017 included Ms Cassisi. Do you see that?---Yes, I do.

40

And was she the owner of [REDACTED]?---Yes, I understand that she was the owner of [REDACTED].

And did you understand her to favour B4 for the block?---I’m not sure what her position was in relation to the zoning.

What did you understand her position was in relation to any other aspect of the block?---I think her, my understanding was her position related to the impact of the amenity on her property in relation to the B4 zoning on the other side and, and she wanted to see how that could be best resolved.

Mr Durkin is shown as speaking. Was he 39, the heritage property?---Yeah, that's correct.

10 Thank you. And Mr Matthews made a presentation. Do you see that?
---Yes, I do.

On behalf of can we take it the persons he said that he was representing in his message, his email?---Sorry, he was - - -

Did you take him to be expressing views on behalf of those owners that he had set out in his memorandum to the council? 1313, if we go back to that please.---Yeah, thank you. Yes, that's, 39 is mentioned in that email.

20 THE COMMISSIONER: Did you have any idea that prior to 5 December, 2016 Mr Matthews was in fact prior to that date acting on behalf of properties 37 and 39, 41?---No, I didn't. Mr, Mr Durkin had on a number of occasions represented himself at, at council when this matter arose and spoke on his behalf on the impact that the B4 zoning in Great North Road was going to have on his property, but I wasn't, I don't recall that Mr Matthews was representing him before that.

30 Can I ask you this also. As to the final proposal that was eventually passed by council, it made provision, as you explained just before the morning tea break, for impacts on houses in Waterview Street and the stepping back and limiting height, were those measures, in particular those measures, such as to address Ms Cassisi's concerns that she had earlier raised?---It would have certainly helped the amenity issues because I think from memory the Great North Road properties had to step down from five to four as they got towards the rear boundary of their sites.

And that was because of limiting any shadow effect.---That's correct.

Yes, thank you. I'm sorry, Mr Neil.

40 MR NEIL: Thank you, Commissioner. If we just – could the witness be shown page 1320. Now, we've looked at this before but I just want to ask you this. Near the top of the page we see this email is from Mr McNamara to all councillors with a cc to others, including yourself. Do you see that?
---Yes, I do.

Mr McNamara says, "Please find attached an email received today from James Matthews." So, and that is the email that starts towards the end of the

page, from James Matthews, Monday, 5 December, 2016, 1.30pm. Do you see that?---Yes, I do.

So can we take it that on 5 December, 2016, by virtue of that email being attached to the cc from Mr McNamara to you, you must have received a copy of Mr Matthews' email of 1.13pm, 5 December, 2016?---Yes, that's correct.

10 And would you have read it?---I can't recall if I read it or not.

In your ordinary course of business would you read such materials?
---Yes, I would.

And if you read it, you would have noticed that Mr Matthews was saying as of that date he was representing the views of 2 Second Avenue, 37, 39, 41 and 43 Waterview Street. Correct?---If you could just scroll up a bit on that. Is that on - - -

20 THE COMMISSIONER: Could we go back to the email for Mr - - -

MR NEIL: Yes, yes, there's a need to scroll up, yes, you're quite right.

THE WITNESS: Yeah, that's correct.

MR NEIL: All right. Thank you. Now, just going forward again to 1410. Now, is this the meeting before which you advised Councillor Cestar not to vary from the staff recommendations without, and I think your phrase was something along the lines of, "A proper planning basis."---That's correct.

30 Did you say to her that there should be something, words to the effect that it not vary unless there was planning merit and good planning grounds?
---Correct.

And we see that those who voted in favour, it's the case that they voted in terms of items 1 to 5, in accordance with the staff recommendations. Correct?---That's correct.

And Councillor Ahmed was Liberal, correct?---Correct.

40 Councillors Cestar and McCaffrey are also Liberal, is that right?
---Councillor Cestar and McCaffrey were, were Liberal, yes, that's correct.

Were Councillors Kenzler and Parnaby Labor?---That's correct.

And was Councillor Tyrrell Green?---Correct.

Now, Councillors Kenzler, Parnaby and Tyrrell voted against the staff recommendations, correct?---That's correct.

Can you recall if they put forward at the meeting any materials of planning nature contrary to the staff recommendations?---I would have to have a look at the meeting. Quite often they put up an alternative notice of motion and I'm not sure whether or not that was the case there.

But can you recall if they put up any report or any planning documentation or analyses or consulting report?---No, I can't.

10 All right. Now, if we go back a little to the meeting of 20 October, 2015, which commences at 941, and if the witness could be shown 944. We see there that, amongst others, Helena Miller of MG Planning Pty Ltd addressed the meeting. Do you see that?---Yes, I do.

And then resolved 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 alternate maximum height options presented in the consultant exhibition outcomes report, and that was passed five to one, correct?---Yeah, that's correct.

20

So both Liberal and Labor members voting for, correct?---Correct.

Now, shortly before the adjournment, you outlined to the Commission, as I understand it, some of the effects of the resolution that was voted for on the casting vote of the mayor at pages 1409 to 1410, if the witness might be shown 1410. You're familiar with one and two which are on the page before, are you not sir, or would you like to see them as well?---No, that's, that's okay. I'm familiar with those.

30 Thank you. Now, would the removal of the heritage order at number 39 provide either actually or potentially over the space of some years for a public laneway?---I'm not sure exactly where the, the laneway would, where it would run along the, the rear boundary but certainly, or whether, whether it was going to be across in the heritage property's rear yard there. The, the diagram is schematic of the, of the laneway. It doesn't give its exact position. It just shows it running virtually along the rear boundaries of the properties in, in Waterview Street and Great North Road and it does a bit of a kink where the strata properties are so that it's not, doesn't go through the strata properties so need the, the strata properties to all agree on it if it goes forward.

40

Could the witness, Commissioner, be shown page 1304 of Exhibit 24. Now, 1304, if you would have a look, is part of a report, and I just ask if the witness could be shown page 1284 which is, do you see that is the final report Exhibition Outcomes of Studio GL dated 29 November, 2016. Do you see that?---Yes, I do.

And that, if I ask the witness could be shown again 1409, that is the planning proposal document referred to in item 1, Studio GL dated 26 November, 2016. Correct?---Yep, that's correct.

And at page 1304 of that document is the laneway shown on the lower of the two diagrams, hatched red, the location of a potential laneway as you've described in your answer a short time ago?---That's correct.

10 Now, if such a laneway came into being it would be a public laneway. Is that correct?---That would be correct.

It would enable, as I think you've said in your early answer, access to the properties with their frontages on Waterview Street to be at the rear rather than the front. Correct?---That's correct.

That would involve some degree of at least of public benefit would it not? ---I would have thought so.

20 The public laneway of itself would involve some degree of public benefit would it not?---That's correct.

It would also enable more parking, did you say, if I'm right – correct me if I'm wrong – in Waterview Street?---Yeah, that's correct. The, if the access was from the rear laneway, if that did eventuate, the driveways in Waterview Street that service the western side properties could be made redundant and they could be replaced with parking.

Would that be of public benefit?---Yes, it would.

30 And would the laneway enable loading or unloading of goods, including commercial goods, from premises fronting Great North Road?---Yes, it would.

And would that assist to reduce exit and egress of vehicles and potential parking of vehicles in front of the properties on Great North Road?---It would certainly reduce the exit and entry of vehicles, having access from Great North Road into the properties that front Great North Road.

40 Would that be of public benefit?---I would have thought so.

And the, I think the proposal approved by the council on 7 February also – tell me if I'm right about this – would involve the houses on frontage of Waterview Street to be potentially increased in height from about eight metres to 10 to 14 metres. Is that right?---The houses – excuse me – the houses on Waterview Street were required to have a six-metre setback and a 10.5-metre wall height, and then have a further six-metre setback and then could have the four-storey setback on top of that. So the total setback of the top storey from the street would be 12 metres. So - - -

But did it involve an increase in the height?---Yeah, it increased the height. I think the height was 14 metres.

Would it also involve an increase in the number of storeys from two up to three or four?---Yes, it would.

10 And in summary, would the effect of the adoption of the proposal resolved on 7 February, potentially if developed as permitted, involve the block on the west side of Waterview Street north of Second Avenue becoming, in terms of planning, the same or virtually the same as the corresponding block on Waterview Avenue south of, Waterview Street south of Second Avenue?
---No, it wouldn't.

But it would at least adopt some of the additional characteristics that are available in that southern portion. Do you agree?---No, I don't.

20 Well, do you agree that in the terms of at least the items I put to you, if adopted in the subject area on the west side of Waterview Street between Barnstaple Street and Second Avenue, there are a number of public benefits. Do you agree?---I certainly agree to that.

Now, are there any other public benefits you can think of that I haven't thought of?---I think you, I think you virtually covered those.

30 THE COMMISSIONER: Can I ask you, when it was put to you that this area that's just been identified and the items mentioned in respect of them would make it equivalent to the southern sector of this area, more or less equivalent to it, and you said no. Why would it not be?---The B4 zone allows retail and commercial use. So the, the ground floor of a B4 zone would have shops and offices in it, which generate more traffic and, you know, more, more pedestrian movement, more, more of that intensity that what the R3 zone would do, which is residential. So even though they might have, you know, a, a similar envelope or a street frontage, the activity in the B4 zone would be expected to be higher. And given that the core of the town centre was always identified as being from Second Avenue forward, they didn't want to have that spread out, you know, extended beyond Second Avenue, trying to keep that expansion to that area.

40 All right, yes. Thank you.

MR NEIL: Thank you, Commissioner. But of course minds might differ as to whether that's a good thing, do you agree?---Not necessarily.

See, if the northern block on the western side of Waterview Street had the characteristics you have just discussed in evidence, but not the commercial B4 aspect, it might be considered by some members of the public to be a more desirable place to live. Do you agree?---The, the northern side might

be considered a more desirable place to live than the southern side? Is that what you're referring to?

Yes. If the northern side was allowed to be developed, potentially, along the lines we just discussed but it didn't have commercial at the bottom of the premises, it might be considered by some members of the public to be a more desirable place to live in. Do you agree?---I agree.

10 Thank you. Now, would you agree with this proposition, that the configuration that was ultimately adopted and allows the potential for the matters we've been discussing, was not a configuration ever considered, or the subject of any opinion, by Studio GL prior, at least, to November 2016? ---I think Studio GL, they did the investigation that resulted from the, the resolution of council back in 2015, November 2015, and the result of that recommendation was to look at the, the option two, and with that option two that was went to, that council adopted in August 2016, attached to that was a, a list of other planning controls that incorporate those things that I mentioned, and that was what council adopted.

20 In the GL report commencing at 1284, if the witness might be shown that, of 29 November, 2016. The recommendations are at 1304, is that correct? If we look at 1304. Do you see those recommendations?---Yes, I do.

THE COMMISSIONER: So 1304?

MR NEIL: 1304, Commissioner.

THE COMMISSIONER: Recommendations? Oh, I see. Summary of Recommendations. Yes. Thank you.

30 MR NEIL: Now, that was recommending up to, as you see the first paragraph, four storeys of 14 metres. Do you see that?---Yes, I do.

THE COMMISSIONER: That's the maximum building.

MR NEIL: Yes.

THE COMMISSIONER: Mr Neil, I've been loath to interrupt this line of questioning, but how does this assist on any issue I've got to deal with?
40 Because certain matters might be put forward, there's a public benefit here, a public benefit there and so on, as you've been doing. The council provided what I might call the Sidoti interests with multiple opportunities to put forward anything they wanted to say. Sometimes it seems that that invitation or opportunity was not taken up in terms of having a detailed report provided on matters such as you are now dealing with. Whether they were or whether they weren't, all of the matters that those whose interests in this area were said to be affected were given all the opportunity in the world to say what they wanted to say, weren't they?

MR NEIL: Well, Commissioner - - -

THE COMMISSIONER: Or were they? That's what I'm asking you.

MR NEIL: That's something that is not really capable of an answer at this stage, if there's more evidence yet to no doubt come as part of this inquiry, but I understand what you're putting, Commissioner, and I'd seek to in due course answer in the light of all the evidence, but at this stage I won't ask
10 any further questions.

THE COMMISSIONER: Very well. Well, I'm just raising the question as to how this is going to assist. It's not only the opportunities that might have been afforded to raise any matters for consideration. There is of course a line to be drawn between revisiting on the merits of planning matters – the witness doesn't profess to be a planner – and decide whether or not Studio GL or the ARUP and so on did look at that, did give way to this, did they consider that. That's not part of the function, as I see it, that I have to
20 indulge in and resolve. There was much consideration given at an expert level by outsourced consultants to deal with such issues. So it just seems to me that seeking to, as it were, to identify whether there might have been something overlooked by Studio GL or didn't give them sufficient weight is not something that's going to, at the end of the day, assist me. So I just simply raise it for consideration. I did not deliberately put any conditions or boundaries on your cross-examination, but as you know, the procedures of the Commission do entitle the cross-examiner to specify what is their particular interest, to identify the boundaries for permitted cross-examination. I haven't sought to do that because I wanted just to see what it was, what the subject matter was that you wanted to explore. It seems
30 having got to this point I should raise the matters I have.

MR NEIL: I appreciate that, Commissioner. I would certainly not seek to extend beyond any boundaries. One matter we would put is that the evidence we would say shows that there were changes to aspects of the various matters being put forward towards council. That it wasn't one set-in-stone position that was being repeated week after week and so on. That is one aspect that we would submit is important. And secondly, and in due course, the question surrounding particular votes on particular resolutions to some extent needs to be looked at in the content of what was actually in
40 reality being voted upon, but I can come to that in due course.

THE COMMISSIONER: All right. Thank you.

MR NEIL: Thank you, Commissioner.

THE COMMISSIONER: Thank you, Mr Neil. Yes.

MR RANKEN: Just one matter arising from cross - - -

THE COMMISSIONER: I'm sorry, is there any application being made?

MS BULUT: Yes, if I may take an application to ask Mr Sawyer one question arising from the cross-examination by Mr Neil.

THE COMMISSIONER: Arising from?

10

MS BULUT: The cross-examination by Mr Neil.

THE COMMISSIONER: What does the matter go to?

20

MS BULUT: It goes to the issue and the questioning that Mr Sawyer was asked in relation to Exhibit 24, page 1410, and specifically questions with respect to the identity of the councillors who voted for and against a particular motion. There was a line of questioning of Mr Sawyer as to whether the councillors who had voted against the motion had provided a basis for voting against, that is whether they had provided a planning merit-based explanation for voting against the motion, and the witness had answered, if I recall correctly, his answer was that he didn't recall and that at times there were countervailing motions put before the council. And I just wish to draw the witness's attention to the rest of that page and ask him one question with respect to that.

THE COMMISSIONER: Yes. Yes, very well, you proceed.

30

MS BULUT: Mr Sawyer, if I can ask for the document, Exhibit 24, page 1410 - - -

THE COMMISSIONER: Just for the benefit of the witness you might state who you represent.

MS BULUT: I represent Mr Sawyer, so he's certain to be familiar with me.

THE COMMISSIONER: I'm sorry, I'm sorry.

40

MS BULUT: Now, Mr Sawyer, you recall being shown this page by both Mr Ranken and Mr Neil?---Yes, I do.

And do you recall about the middle of that page it records that for the motion, and I should just state for the record, it commences on the previous page, 1409, and if I can just go to 1409 it may assist. You can see there it says, "Item 2." Do you see that?---Yes, I do.

And it says, "Exhibition Outcome and Changes to Planning Controls for Land on Waterview Street, Five Dock." The resolution that was ultimately

resolved, the motion I should say that was resolved, commences at about point 8 of that page, and it's numerated 1, 2. Do you see that?

---Yes, I do.

On the next page it continues to numbers 3 to 6, and then it records the councillors who had voted for and against, and then it records that the motion was passed on the casing vote of the mayor. Now, do you recall questions from Mr Neil with respect to the political affiliations of the councillors who had voted against that motion?---Yes, I do.

10

And do you recall Mr Neil asking you a question of whether Councillors Kenzler, Parnaby and Tyrrell had provided an explanation as to why they had voted against the motion?---Yes, I do.

And I believe there were some questions in relation to whether they had provided any reports or the like to support their position.---Yeah, the reasons for their position.

That's right.---That's correct.

20

And please correct me if I'm wrong, but I recall your evidence being that you don't recall them specifically raising any such matters.---Yeah. I felt that there may have been but I couldn't recall exactly, that's right.

Well, if I can just get you to keep reading on that page of 1410. You will see that the next paragraph says, "During the discussion of this item," now, do we take that at mean item 2 that I just took you to, the bolder text on the previous page?---Yes, I do.

30

It then says as follows. "A foreshadowed motion was moved by Councillor Kenzler." Now, just pausing there, Councillor Kenzler, I believe your evidence was, was a Labor councillor who had voted against. Is that right? ---That's correct.

It says there that it's recorded below, and then there is a different motion recorded, starts at number 1. I won't read it aloud, but it says there that after consideration of the various reports, and they of course are the reports relating to that exhibition, it then says, "The existing zoning and controls applicable to the site detailed in the reports remain unchanged for the following reasons." Can I just get you to read those reasons just to yourself. ---Yes, that's right.

40

And in terms of your use of the language "planning guides" and "planning merit" – or sorry – "planning grounds" and "planning merit", that was your phraseology, would you describe those reasons as planning grounds or planning merit?---Yes, I would.

And if you just go over to the next page, on page 1411, you will see that the motion continues onto numbers 2 to 5.

MR RANKEN: I just might object at that point. I think my friend might be mistaken. It's not my friend's fault, but if my friend looks back at 1410, at the bottom one will see that it's page 7 of the minutes of council meeting and then the next page is actually page 14.

10 MS BULUT: Oh, I see.

MR RANKEN: So, I think those (not transcribable)

MS BULUT: Yes. I'm very grateful. Thank you for that. No, I will – perhaps I'll just ask this question. I note that it ends there at 2 and it's not clear what follows, but do we take it from reading the above, that is the resolution that commences at 1409 down to the bottom of page 110, that by virtue of the first motion having been resolved in favour, that the outcome was that the alternate motion was therefore not successful?---Yeah, that's correct.

That's all the questions that I have, thank you, Commissioner.

THE COMMISSIONER: Yes, thank you, Ms Bulut. Anything arising?

MR RANKEN: Yes, Commissioner. And just following from that cross-examination by Ms Bulut, it was a point that I was going to pick up but there's one aspect of that. The four reasons, if we go to page 1410, the four reasons that are numerated that Ms Bulut asked you to read yourself, do you understand that they were reasons that were based on what's identified as the GL Studio Five Dock Town Centre Proposed Development Controls Report and the HillPDA Consulting Five Dock Town Centre Additional Site Feasibility Analysis?---Yeah. They look like they were extracted from those.

And effectively, what they were proposing – by virtue of paragraph 1 of this motion that was foreshadowed – was an adoption of, insofar as the Waterview Street site was concerned, what had been referred to as option 1 of Studio GL, which is to not remove the heritage listing of 39 Waterview Street?---Yeah. I, I, I believe that's right.

And so if I could just then take you to – perhaps I'll take you that report briefly, which is at 1010. That's the final report for the proposed development controls additional sites, which is the report that was referred to in that paragraph.---Yes.

And if we could go to 1028, in relation to land use zoning, this is the recommendations in relation to option 2. It refers to, "It is recommended

that the zoning remain R3 medium-density. B4 mixed-use is not recommended as it is not seen as desirable to increase commercial development away from Great North Road and the town centre core or locate businesses along this section of Waterview Street.” Do you see that? ---Yeah, that’s correct.

10 And if we could go back to page 1410. Looking at those reasons again, there’s the reference to, “The rezoning would encourage development outside the core of the town centre.” That’s reason number D.---That’s correct.

Which is essentially reflecting what has been identified in relation to that land-use zoning in the Studio GL report, correct?---That’s correct, yep.

20 And if we then go to the HillPDA Consulting report concerning the feasibility analysis. Could we go to page 1091? This is the conclusion. You can see up the top it says, “Five Dock Town Centre Additional Site Feasibility Analysis” and down the bottom right-hand corner it has the HillPDA’s page 34 of 43.---43, yes.

So this is the conclusion in that feasibility analysis that’s referred to in paragraph 1 of the resolution that was moved by Councillor Kenzler and I’ll just draw your attention to what is recorded there that “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. The option demonstrated project IRR, et cetera. The remaining 10 options were not feasible to develop.” Do you see that?---Yes, I do.

30 And if we then go back to page 1410 and the reason at subparagraph (a) is “The proposed development controls were not economically feasible in the market.”---Yeah, that reflects that.

So reflecting what was written in what was effectively the conclusion of HillPDA.---PDA, report, yes.

- - - in that feasibility analysis.---Yes.

40 Yes, thank you. That was the only additional questions I had to ask of the witness.

THE COMMISSIONER: Yes, thank you. Yes, Mr Sawyer. Thank you for your attendance. You’re excused.---Thank you, Commissioner. Thank you very much.

THE WITNESS EXCUSED

[12.56pm]

THE COMMISSIONER: Now, Mr Ranken, do you wish to start another witness or deal with that start after lunch?

MR RANKEN: Perhaps if we start after lunch with Mr Dewar.

THE COMMISSIONER: Yes, very well. Then I'll adjourn.

10

LUNCHEON ADJOURNMENT

[12.56pm]