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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION WITNEY

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 31 MARCH, 2021

AT 2.00PM

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

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

MR RANKEN: Commissioner, perhaps before, just before I call Mr Dewar, who is the next witness, given the further cross-examination of Mr McNamara this morning, perhaps if I could tender the record of interview with Mr McNamara that was conducted on 29 January, 2020, parts of which were referred to during the course of the cross-examination by my learned friend Mr Neil.

THE COMMISSIONER: Yes. I'll admit that then. What's the exhibit number?

10

MR RANKEN: That would become Exhibit 26.

THE COMMISSIONER: 26.

MR NEIL: Commissioner, could I just submit that parts upon which I cross-examined or any parts that can be shown to relate thereto should be admitted but not the entirety.

20

THE COMMISSIONER: Well, I hear what you say, Mr Neil, but I think I will admit it in its entirety. It provides context and I don't see any reason to exclude the rest of it, quite frankly. He has been here, I think most of the principal matters dealt with in that record of interview have been the subject of actual evidence given by him. I can't see any reason against just tendering the record of interview.

MR NEIL: If it please Your Honour, Commissioner.

THE COMMISSIONER: That will become - record of interview, 29 January, 2020, will become Exhibit 26.

30

**#EXH 26 - RECORD OF INTERVIEW OF TONY McNAMARA
DATED 29 JANUARY 2020**

THE COMMISSIONER: Yes.

MR RANKEN: Thank you, Commissioner. And then if I could call, I call Paul Dewar.

40

THE COMMISSIONER: Just before you go on, there is also the transcript of the compulsory conference of Mr McNamara. Do you want to deal with that now or not?

MR RANKEN: The compulsory examination of him?

THE COMMISSIONER: Examination, I should say.

MR RANKEN: That was not the subject of any cross-examination or referred to in the cross-examination.

THE COMMISSIONER: That's true.

MR RANKEN: So for that reason I limited my tender to - - -

THE COMMISSIONER: Okay. We'll leave it for the moment anyway. Mr Dewar?

10

MR RANKEN: Yes, if we could call Mr Dewar.

THE COMMISSIONER: Mr Dewar. Mr Dewar, do you take an oath or an affirmation?

MR DEWAR: Affirmation.

THE COMMISSIONER: I'll have my associate administer that, if you would mind just standing there.

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

MR RANKEN: Thank you, Commissioner. What is your full name?---Paul Leslie Dewar.

10 And what is your occupation?---I am the Manager of Strategic Planning at the City of Canada Bay.

THE COMMISSIONER: Mr Dewar, you're not legally represented here today?---No, I'm not.

I might firstly just as a matter of practicality, ask you to speak, when you do speak if you could just speak towards the microphone so it carries to the end of the hearing room. The other matter that I should deal with is to make you aware, if you're not already aware, of the provisions of section 37/38 of the
20 Independent Commission Against Corruption Act which entitles you to object as a witness to questions asked. The effect of that is that the evidence in response to questions, or it applies to documents that you might be required to produce, are produced under objection and can't be used against you in other proceedings in the future. You understand?---I do.

And do you wish to give evidence on objection?---I do.

Thank you. In relation to the evidence of Mr Dewar to be given in this part of the inquiry, pursuant to section 38 of the Independent Commission
30 Against Corruption Act I declare that all answers given by him, all documents and things, if any, produced by him in 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 the witness 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 HIM, ALL DOCUMENTS AND THINGS, IF ANY, PRODUCED BY HIM IN 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 THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Yes, Mr Ranken.

MR RANKEN: Thank you, Commissioner. Now, Mr Dewar, you just told us that you are presently the Manager of Strategic Planning at the City of Canada Bay Council. Is that correct?---That's correct.

And when were you appointed to that position?---In 2017.

10 And prior to 2017, were you employed by the City of Canada Bay Council?
---I was, yes.

And what was your role at the City of Canada Bay Council prior to 2017?
---I acted in the role of manager for two years from 2015 and prior to that I was the Coordinator of Strategic Planning at the City of Canada Bay.

And in your role firstly as Manager of Strategic Planning at the City of Canada Bay Council, to whom do you report?---The manager reports to the Director of Planning, Tony McNamara at that time.

20

Tony McNamara at the time, you mean at the time of 2017?---On my appointment, yeah, that's right.

And did Mr McNamara subsequently retire from the council in about 2018?
---That's correct.

And have you since then continued to report to the director but it's somebody else now?---That's correct.

30 Now, prior to taking up the role as the acting manager in your role as the Coordinator of Strategic Planning, is that correct?---That's correct.

Who did you report to?---The Manager of Strategic Planning at the time, being Marjorie Ferguson.

And did you have persons who reported to you at that time?---Yes, I had two personnel that would report to me.

40 And when did you first take up the position as the Coordinator of Strategic Planning?---I can't give you an exact date but I had been in the position for quite some time.

When you say "for quite some time" at which point in time? At the time you took up the position as being the acting manager or - - -?---That's correct, yeah.

When did you join the City of Canada Bay Council?---2001.

And was that in a town planning-type role?---I was a development assessment officer, yes.

Do you have any qualifications in relation to town planning or the role that you performed as a Manager of Strategic Planning?---Yes, I have a Bachelor of Environmental Planning.

And is that from the University of Western Sydney?---That's correct.

10 Now, can I ask you some questions about contact between council staff and councillors at the City of Canada Bay Council.

THE COMMISSIONER: Just before you go there, could you just outline in summary, what were your responsibilities in the role as manager of the Strategic Planning Team?---Sure. So my primary responsibilities are land-use planning and that essentially involves the preparation of Local Environmental Plans, Development Control Plans and Development Contribution Plans. The Strategic Planning Team also has other functions that are unrelated to land-use planning, being geographic information
20 systems and planning certificates.

All right, thank you. And again, if you would keep your voice up a bit, please?---Sure.

MR RANKEN: And also, Mr Dewar, like me you tend to speak quite quickly, so all of this is being recorded so that a transcript can be prepared. So if you can just try to - - -

THE COMMISSIONER: Just take your time. There's no need to rush it
30 and just keep your voice up, thank you.

MR RANKEN: So, I was going to move onto a topic about contact between council staff and councillors at the City of Canada Bay Council. Was there any policy or practice that regulated the contact between councillors and council staff?---I'm not aware of a written policy but there was, I guess, an informal rule that councillors would deal with directors and the general manager and not staff.

40 And is that a policy or practice that has, to your knowledge, been in play at the council since the time you commenced with it in 2004?---Yes, that's correct.

And has it continued to be the policy and the approach of council?---Yes, that's right.

But there has been no formalisation of it to your knowledge in any written document?---I'm not aware if there has been, no.

And how did you become aware of this practice or policy?---Just through my work experience at the council.

And what steps would you take in circumstances where a councillor might approach you directly?---Normally I would relay that contact to my director and then, depending on the advice I received, I would then either get the director to respond or, with his permission, I would respond to the councillor.

- 10 And to your knowledge, what is the reasoning or the rationale of that policy and practice?---My understanding is it's to keep separation between the political realm of council with the operational.

As in staff being the operation side of it, and the councillors being the political side, is that what you're saying?---That's correct.

And did you see that, or did you understand that to be to ensure the integrity and impartiality of the work that was done by council officers?---Yes, indeed.

20

Now, you understand, do you, that one of the things this Commission is interested in this public inquiry, the circumstances relating to the Five Dock Town Centre Urban Design Study and associated planning proposals?
---Yes.

And the Urban Design Study, if I might call it that, and associated planning proposals, were they something that fell within your area of work whilst you were a coordinator initially?---Yes, that's correct.

- 30 And then also while you were the Manager of Strategic Planning?---Yes.

And dealing first with the early stages of it, you understand that there was an economic analysis that was undertaken by HillPDA?---Yes.

And that that resulted in a strategy document, one of the key recommendations of which was to look at the urban design of the Five Dock Town Centre and get reports from an architectural firm and urban design firm. Is that correct?---That's correct.

- 40 And one of the firms that was involved in that aspect was ARUP and subsequently an offshoot from ARUP being Studio GL?---That's right.

And in the course of 2013, Studio GL and ARUP, working together with HillPDA, prepared the Urban Design Study and a report was ultimately produced in about October of 2013?---Yes.

Over the course of 2013 whilst the design study was being undertaken by those firms, did you in your role as a Coordinator of Strategic Planning have

any involvement in it or was it just simply left to them to do it?---No, I was, I was very involved in the preparation of the study. I was project managing that project.

And what did that involve from you in terms of project managing, what sorts of things were you doing to assist the study and have it move along?
---So I was liaising with the lead consultant. Assisting them with the engagement and consultation activities that they undertook.

10 If I could just hold you there. The lead consultant was who?---Diana Griffiths.

And you said community engagement and consultation process.---Yes.

What sort of community engagement are you referring to?---There was broad-ranging engagement for that particular study. There was face-to-face meetings, workshops, online engagement and open days in public spaces.

20 And so did you have an intimate involvement with the organisation of the particular events?---Yes. We, we assisted with their, the coordination in relation to their, to the undertakings in terms of making them happen on the ground.

But were Studio GL ultimately responsible for identifying what sort of engagement activity should be conducted?---Yes, that's correct.

30 And did they explain to you the reasons why the particular engagement they saw as being a beneficial thing for the study?---Yes. They made recommendations about what would have the furthest reach in relation to getting the greatest amount of feedback.

So that means trying to achieve the greatest amount of participation in the work of the study by the community?---That's correct.

And these community engagement activities did they occur over a number of months?---Yes, many months.

40 And what was the situation, as the various activities were undertaken, feedback was received, was it, and then was that then digested and did that then feed into further community engagement activities or was there just a straight-out plan from the beginning that was progressed from day one to day whatever and then a report produced?---So the engagement was initially about seeking feedback about what people liked and didn't like about the centre, so it was very broad. And once they received that advice, they then developed some ideas which they sought further feedback on, so there was that second round. And then once they got feedback on those ideas, they produced their report, which was then also publicly exhibited. So there was multiple opportunities for people to have input.

Now, the public exhibition of the report, was that done in a sense in a draft, this is a draft report before it was actually presented to council? Or was that something that happened or after it had been presented to council?---I believe we reported the draft to council seeking their endorsement to exhibit it which was then done.

10 So that third part of public exhibition or third round of engagement occurred after the matter had come before council and council had an opportunity to consider the report?---That's correct.

And that occurred in the sense that the report was I think dated 10 October of 2013 and it came before the council on 26 November of 2013 at which time the council endorsed it for the public exhibition?---Yes.

And does it sit with your recollection that that public exhibition occurred over December 2013 and January 2014?---Yes. To the best of my recollection, yes.

20 And what was the purpose of going through this further public exhibition of the report now that it had been produced?---The report had a lot more detail about the recommendations that were being made in relation to improvements to the town centre. So it was to share those ideas and recommendations with the community and seek feedback on those ideas.

So that meant, did it, that the community were able to make submissions to the council regarding the report and what was being proposed in it?---That's correct.

30 Now, one of the recommendations in the report was concerned with questions to do with floor space ratio?---Yes.

Now floor space ratio is a concept that you are well acquainted with as a town planner, is that correct?---Yes.

And at the time, that is prior to the Urban Design Study being conducted, the existing floor space ratio for the town centre was 2.5:1 across the town centre, is that correct?---That's right.

40 And was that a floor space ratio that applied to that part of the – well, the town centre, I should say, was considered to be that which was zoned as B4 mixed-use?---Yes.

So when one refers to a floor space ratio of 2.5 applying across the town centre, that was limited to that which was within the B4 mixed-use zoning? ---That's correct.

And during the course of the preparation of the design study and the report, this is before the report actually was put out for public exhibition, was there some feedback received from the community suggesting that there ought to be an increase in the floor space ratio?---We got a lot of feedback on the study. I think the majority of feedback we received is that they did not want to see a significant increase in height or density.

10 And is that something that is inconsistent with an increase in the floor space ratio?---Yes. That, that, increasing the floor space ratio would result in an increase in height and density in most cases.

In most cases, is it?---Yeah.

And it was the case, was it not, that ultimately the recommendation of Studio GL, if I can use Studio GL as the shorthand for the persons who prepared the report, was that the existing floor space ratio of 2.5 should remain?---That's correct.

20 Now, following the public exhibition, a number of submissions were received by the council, and were you involved in digesting those submissions and preparing further reports for council so that they could appreciate the submissions that had been made and the position that the council staff were going to take in respect of those?---Yes, I was.

And did you do that to assist in the preparation of a report for council in advance of the next meeting that it was to have, where the Urban Design Study and associated planning proposals were to be considered?---Yes.

30 Was it part of that process?---Yes. It was to inform the next stage of the project.

And no doubt to assist the councillors in terms of their understanding as to what the public feedback in relation to the public exhibition of the design study and associated planning proposals?---That's right.

40 That's one aspect of it, of a way of informing councillors of that detail. Was it also the practice of at City of Canada Bay Council that from time to time when significant matters were coming before the council for consideration that there would be things known as councillor workshops?---Yes.

And this particular design study and the associated planning proposals, would you consider that to have been a significant matter that would likely come before the councillors as part of a councillor workshop?---Yes, I would.

And did you participate in councillor workshops relating to the Urban Design Study?---Yes, I did, but largely as an observer.

Was that because at this early stage – and let’s perhaps confine ourselves at this point to early 2014, just following the public exhibition of the Urban Design Study. At that time Ms Ferguson was the Manager of Strategic Planning. Correct?---That’s correct.

And whilst you were the Project Manager, was she the person whose name was effectively put to the reports that would go before the councillors?
---That is correct, yes.

- 10 And ultimately obviously Mr McNamara as the Director of Environmental Planning, he would be informed of any detail of those reports. Correct?
---Yes.

Now, do you recall attending a councillor workshop in early April 2014 at which the Five Dock Town Centre Study was, there was a presentation about that to the councillors?---Yes, I do.

- 20 And did Marjorie Ferguson present to the councillors about the Urban Design Study at that workshop?---I believe it would have been either Marjorie or the consultant, Studio GL, but as far as I can recall it was Marjorie.

And was it a lengthy workshop?---It would have been one of a number of items on the agenda but I remember there being a substantial amount of discussion around the Five Dock Town Centre Urban Design Study.

And how well-attended was it by the councillors?---I don’t remember how many were in attendance but I remember the majority were in attendance.

- 30 Were you aware at that time two councillors had in fact identified that they had a pecuniary interest in the matter and wouldn’t be able to be involved in any decisions regarding it?---Yes, I remember that.

And do you recall that they were Councillors Megna and Councillor Fasanella?---Yes, that’s right.

And do you recall whether either of those councillors were present at that workshop?---I recall that they declared their interest and left the room.

- 40 So they had been at the workshop at some point, but as soon as the item came up for discussion they declared their interest and left the room?
---As far as I can recall, that’s correct.

And so they then weren’t available for the considerable discussion that you said occurred about the design study.---Yes.

To the best of your recollection, what was the main topics that were up for discussion and were of interest to the councillors?---Essentially revolved

around I think three issues, the first being there needs to be more amalgamation of land so as to encourage redevelopment, and to facilitate that outcome the councillors were advocating for more height and more floor space ratio.

So they're the three. So they're in fact related.---They're all connected, that's correct.

10 All connected. The main one being how do we encourage amalgamation of sites and the other two effectively being the two ways in which they could be worked together to achieve that outcome.---That's correct.

Are you able to assist us by identifying the councillors who were advocating for those matters?---I know that Councillor Neil Kenzler was the most vocal councillor in the room, however I recall that there was a lot of consensus that more needed to be done in relation to encouraging development.

20 And when you say a lot of consensus, are you able to identify which other councillors?---I don't remember.

But certainly Councillor Kenzler's name, he stands out as being particularly vocal about it.---Yes, he, he had the most to say.

What was he saying about it?---There's too many small fragmented sites and if we wanted to see real change we had to see those sites consolidated and the way that we should achieve that outcome is by providing more opportunity for height and floor space.

30 And you, having been the project manager on the Urban Design Study and having worked closely with the experts and your involvement with the community engagement activities that had been undertaken as part of the study, did you have a view about these views that were being expressed and whether or not they were consistent with the sense of what was in the public interest arising out of the study?---I was concerned about this discussion. It was a very different approach than the expectations of the community in relation to what they wanted to see in Five Dock. As I just said, we had gone through a very broad-ranging consultation process and this is not what the community told us that they wanted to see in Five Dock. So, this was going in a, in a, in a different direction and it was also therefore inconsistent
40 with the recommendations of Studio GL.

And councillors obviously were raising it and discussing it, but was there any suggestion that they were directing council staff in any way during the course of this workshop as to what recommendations should be being made to council regarding the further progress of the Urban Design Study and associated planning controls?---Yes. In my opinion, that - - -

In what way?---The, it, it was implied that staff were to implement what was being requested. It, it wasn't a suggestion, it was, "This is what's going to happen." That's the way I recall that discussion.

And what was it that gave you that sense, that it was, "This is what you need to do"? Did a councillor say actually in expressed terms, "You need to actually go away and come up with recommendations that are going to achieve this particular end"?---Yes, that's how I remember it.

10 Do you remember which councillor it was who made that direction?---I, I, I can only remember Councillor Kenzler but I, I, I know that there was, there was very, I can't remember any dissenting voices in the room.

And, I mean, did they identify any basis in terms of planning, any proper planning basis for the particular position they were advocating as far the amalgamation of site using increase floor space ratio and increased heights?---I remember a lot of general discussion around, "Five Dock is dying, it's very tired. We need to really shake things up and allow a lot more development." So it was very general, it wasn't addressing the, I
20 guess, very detailed considerations in the Urban Design Study. It was, it was more blunt.

But what about figures. Like, you've talked about increased floor space ratio and increased heights and amalgamation of sites. What about the parameters of that? I mean, how high, how much of an increase in floor space ratio or what kind of size of a site would be sufficiently large to attract such a bonus, if I could call it that?---There were numbers expressed but I, I just don't remember what they are, sorry.

30 And were they numbers that were expressed by councillors?---Yes.

And when they were expressed, were they expressed by reference to any particular planning principles?---No.

Just numbers picked out of the air, as it were?---Yes.

As far as you could tell?---Yes. I had no idea where this had come from. It, we had gone through a very extensive and, process to get to where we were and all of a sudden these ideas seem to have come out of left field.
40

Now, given the manner in which this had been raised and your concerns about it and about the fact of it being almost tantamount to a direction to the council staff, did you do anything about that?---I did.

And what did you do?---I wrote an email to myself.

And for what purpose did you write an email to yourself?---At that time, I was contemplating lodging a complaint.

And lodging a complaint to who?---The Office of Local Government.

Now, I wonder if we could bring up on the screen page 367 of Exhibit 24. Do you recognise this email?---I do.

Now, firstly, the address from is your work address at Canada Bay, is that correct?---That's correct.

10 And is the email address to which you forwarded it, is that your personal Gmail account?---Yeah. It's usually the account I send spam emails to.

Understand. And there is a text, some of the text is in black but above it is some text in blue saying "Department of Local Government, Locked Bag 3015, Nowra, New South Wales, 2541". Is that the address to which you were contemplating forwarding this email or were you going to forward it in terms of a letter?---At this stage it was just me contemplating where I could send it, but I never did send this letter.

20 You never sent it?---No, I did not.

And why was that?---I reflected on this matter over the next few days and I spoke to my manager at the time, Marjorie, and I decided that I would, I would not pursue this matter.

And so what was it that you told Marjorie and what was it that Marjorie told you that led you to not send the letter?---I think we just talked about what had occurred at the workshop and what options we had available to us to address the issues that are raised, that were raised by the councillors and I think – I, I formed the view myself, Marjorie didn't direct me in any way, that councillors are entitled to raise issues which then we have to address.

30

THE COMMISSIONER: And you're talking about particular issues raised in the workshops.---That's correct.

What would be the primary issues that you're now referring to here?---The amalgamation. The suggestion that an amalgamation incentive is needed.

And were there particular councillors who were at the vanguard as it were or leading the charge, I can put it that way, in terms of being vocal in abdicating in relation to that matter?---The only one I could recall is Councillor Neil Kenzler. I couldn't, the other - - -

40

Councillor?---There were councillors who spoke at that meeting in favour of this approach but I cannot remember who they were.

MR RANKEN: Can I ask you this about this topic of amalgamation. Given your intimate knowledge of the Urban Design Study process that was

undertaken by Studio GL, prior to this workshop, councillors' workshop in April of 2014 was this topic of amalgamation something that had come up for consideration during the course of the study?---There was only one individual who raised this idea.

And who was that individual?---Joe di Giacomo. He was the President of Five Dock Chamber of Commerce.

10 And insofar as he raised it did you understand him to be raising it as the President of the Chamber of Commerce?---That's the circumstances in which we liaised with him.

THE COMMISSIONER: Is he a property owner?---He is also a property owner of land on Great North Road.

In Drummoyne?---I don't know if he owns land in Drummoyne. He owns a site in Five Dock.

20 So did he own property in the area within the ambit of the GL urban study? ---Yes, he did.

Well, how would you be able to distinguish whether he was there in his personal capacity as distinct from his capacity as an officer of the Chamber of Commerce?---Ah - - -

Well, you couldn't I suppose.---Yeah. It's a fine distinction. He was the representative for that group and we liaised with him on that basis.

30 Thank you.

MR RANKEN: Did you understand during the course of the study that, when he was raising this issue of amalgamation, he was talking on behalf of the members of the Chamber of Commerce?---Yes, that's, that's the way he expressed it.

So whilst it may also have been his own personal view it represented that, he was also representing the views of other persons with an interest in the Five Dock area?---That's correct.

40 So to that extent, would it be fair to say, that it wasn't necessarily treated as a lone voice as opposed to a voice that was representing at least some members of the community?---That's right. We, I recall Studio GL having a specific meeting with Mr di Giacomo because of his status as a leader of the business community in Five Dock. So he was given greater attention than others might have been.

For that very reason that he was representing more than just himself. ---That's correct.

And in terms of the – so do we take it then that in the preparation of their report, Studio GL, perhaps in consultation with HillPDA, did turn its mind to the question of amalgamation and incentives for development or incentives for amalgamation?---They certainly looked at lot size and what an appropriate lot size might be.

10 And when you talk about what an appropriate lot size would be, in what sense?---I think one of their ultimate recommendations was that development in Five Dock be permitted to go up to six storeys if there was a site area of 1,000 square metres, so they had turned their mind to this issue.

And so was that already in the study, was it, that you should allow up to six storeys if you have a 1,000 square metre block?---Yes, as far as I can recall, yes.

20 And to your knowledge was that based on, amongst other things, an economic analysis of the profitability of doing such a development? ---Yes. I believe HillPDA reviewed the report and confirmed that that would achieve a feasible development outcome.

So when it came to the councillor workshop on 8 April, 2014, it wasn't a situation where this question of how to promote development by or promote amalgamation of lots had not been the subject of consideration by the independent experts.---Sorry, can you repeat that?

30 So by the time it came to the workshop on 8 April, 2014, it wasn't the case that this had not been previously considered by the independent experts. ---That's correct.

The question of amalgamation.---That's right.

But what was being suggested by the councillors at the workshop was that the amalgamation, there should be a greater incentive for amalgamation by a greater floor space ratio and greater heights.---Yes.

40 Now, in terms of the amalgamation incentive that Studio GL had recommended for blocks, to get blocks of 1,000 square metres, that did not involve any change to the FSR?---No. They recommended that the FSR be maintained at 2.5:1.

But the height be increased to six storeys.---Yes, that's correct.

And prior to that what was the height limit?---I recall it was, I think it was four or five storeys, five storeys, I can't remember, sorry.

Now, I appreciate that you discussed your concerns with Marjorie Ferguson and independently came to the view that there are alternative ways that you

might be able to address the issue so that you could be assisting the council and the councillors. So those alternative ways, were they matters that you discussed with Ms Ferguson?---Yes.

10 And so what were the alternative ways that you decided to employ in order to address the issue so that your concerns were allayed?---So we were trying to work with the requests made by the councillors at that workshop, and rather than just recommend bonus height and floor space, we also included a couple of other parameters that development would have to satisfy before they would be eligible for an increase in floor space, and those parameters were a minimum frontage requirement and design quality criteria that would have to be addressed as part of any future development application.

20 That notwithstanding, and appreciating that you, as a result of those discussions and coming up with that approach, you decided not to go forward with making a complaint to the Department of Local Government. Did you continue to have concerns about the ability for councillor workshops to be used by councillors as a way to provide directions to council staff?---I may have had those concerns but I, I, I can say that it was an isolated incident and subsequent workshops did not proceed as that one had. So it wasn't, it wasn't a common outcome from workshops. It was an exception to the rule.

30 So following the workshop, you prepared a memo for the councillors, participating with Ms Ferguson, I think. And if we could go to page 368 of Exhibit 24. This is actually an email from Ms Ferguson to you saying that, "I have started. Please feel free to improve," and there's an attachment memo, "LEP clause for councillors." And if we go to the next page, this is a memo that was being drafted by Ms Ferguson and she was – did she forward it onto you then for you to then workup and improve upon?---Yes.

Now, of the things that she has referred to in that memo, and this is in the second paragraph – well, perhaps firstly, in the first paragraph Ms Ferguson has referred to the fact that, following the councillor workshop on 8 April, "An LEP clause has been written to encourage the consolidation of lots in the Five Dock Town Centre and also to ensure design excellence is achieved." So the purpose of this memo was to address that particular, that very issue that was raised in the councillor workshop, correct?---Yep, yes.

40 And the draft clause that she's proposed here, and she's summarised in the second paragraph, "The draft clause would be included in the Canada Bay Local Environment Plan 2013, and would permit a floor space ratio of," think it's supposed to be 3:1, or 3.0:1, "on sites of any area over 2,500 square metres." Now, can I ask firstly, from where did the floor space ratio of 3:1 come?---I, I don't remember, I'm sorry.

And what about the area of 2,500 square metres?---I believe that may have been a number referenced at the workshop but I, I, I, I can't recall the detail.

Was there any consultation between either yourself or Ms Ferguson with the experts following the council workshop when you were preparing and trying to work on this draft clause about the feasibility of it and whether or not it was a good idea at all, or did you just go about it without any input from the experts at this point?---I don't believe we tested the feasibility of this clause. However, I did discuss the implications of such a clause with Studio GL.

10 Perhaps before we to go to what Studio GL's view was, as expressed to you, can I just draw your attention to one other aspect of the clause, which is that in the final paragraph on that page where it says, this about halfway down that paragraph, "It is recommended that a maximum height of 27 metres be included in the clause. This equates to eight storeys and is 11 metres, or three storeys, over what is proposed in the balance of the centre. And FSR of 3:1 and a height of 27 metres is a generous bonus for amalgamation of sites." You would agree that I have read that correctly?---Yeah, that's very generous.

20 So this was in the context of sites that could have an area of 2,500 square metres in order to qualify in the first instance, correct?---Yes.

Which is quite a large site before you can go at an FSR and an increased height?---For a place like the Five Dock Town Centre, which is comprised of many small sites, it's a very large area.

30 Would it be most likely an amalgamation that would be unlikely to be achieved, of 2,500 square metres?---It, it, it makes it very – it's a very high bar that has been set. There is, there is a handful of sites that might be able to achieve this but on balance, I, I, I, I suggest it would be very difficult.

The other thing that's referred to in this draft inter-office memo at the bottom of the page is a copy of the City of Sydney Competitive Design Policy which is referred to as being attachment 2 to the memo. What was the purpose of including that as an attachment to this memo?---I recall Marjorie and I talking about the fact that if, if buildings were to be taller we had to ensure that suitable arrangements were in place to deliver design excellence and the City of Sydney had an approach that we thought might be able to be applied to the Five Dock centre.

40 This was part of the approach that you've told us about by how you were going to deal with the direction that had come from the councillors in the council workshop.---That's correct.

Then if we could go to page 371. This is attachment 1, which is the draft clause, and in particular I just want to draw your attention to the clauses to be inserted after 4.42e which are 2f and 2fa. "Despite subclause 2 the maximum floor space ratio for development that has a site area of 2,500 square metres on land identified as area 5 on the floor space ratio map must

not exceed 3:1, and development consent must not be granted to development to which this clause applies unless a competitive design process has been held in accordance with clause 6.8 in relation to a proposed development.” Is that correct?---Yes.

And the proposed clause 6.8 then follows. Is that based on the City of Sydney’s Competitive Design Policy that clause?---I believe there are elements of it that are, are applicable to the City of Sydney but we may have taken some licence in the drafting.

10

No doubt to make it more applicable to the centre which you were dealing with.---That’s correct.

Now, the matter was to come before the City of Canada Bay Council on 20 May of 2014 and could we go to page 382. For the purposes of that council meeting, a report was prepared by Marjorie Ferguson or with her as being nominated as the author. Did you though have some input into this report? ---Yes, I believe I would have had input.

20

Was that the way things were done in your particular division, that perhaps you would do a first draft or you would have input into the drafts and - - -? ---Yes, I would definitely assist with the drafting of a report and Marjorie would review that, make changes and add value where she saw fit.

If we could go to page 383. There’s a subheading about a little over halfway down that refers to Public Exhibition and then there is a description as to what occurred as far as the public exhibition of the Urban Design Study and planning proposals between 1 December, 2013 to 31 January, 2014 and it outlines there the various community engagement activities that were undertaken as part of that public exhibition. Correct?---Correct.

30

And at the bottom of that page we see that council received 31 submissions, and going over the page, a summary of those submissions with comments in response to each of the submissions was provided as an attachment to the report. Now, I’ll come back to this report in a moment but I just want to go to that attachment briefly. If we could go to page 389. This is the attachment to the report and I appreciate it’s quite small, we may need to increase the size. Did you have any role or involvement in the preparation of this table that summarises the submissions that were received in response to the public exhibition and includes a response from the council staff? ---Yes. I believe I would have written this document.

40

So this is in a sense your document that was prepared to assist Ms Ferguson in terms of the information she was providing to the councillors.---That’s correct.

Can I then – I’ll take you perhaps, if we could start with on this issue of floor space ratios and the like. Could I take you to item number 17, which

is on page 394. It's the bottom table. And do you see that was a summary of the submission that was received from Mr Paul Antonatos?---Yes.

Did you know who Mr Paul Antonatos was?---No, I did not.

One of the things he has said is, "It is my opinion that the FSR should be increased to 3.5:1 and that this would give all stakeholders an incentive to rebuilt and consolidate sites." Do you see that?---I do.

10 And the response to that particular matter was that the FSR for the Five Dock Centre is currently 2.5:1, and then you've mentioned some detail about the fact that, "When determining an appropriate FSR it is necessary to balance various needs. These include the viability of development, design quality, amenity impacts and the relationship of new development with the surrounding context." And you set out some of the concerns that had come out of the design study following consultation with the local community, and they include, "Elongated buildings with poor distribution of floor space across sites which would result in squat buildings that have poor orientation with adjoining sites."---Yes.

20

"And poor privacy and overshadowing outcomes due to building orientation, limited provision of open space areas within sites, and limited opportunity to provide high quality solar penetration and cross-ventilation into units." There's then some further points you make about improvements that could be done through building envelope, aspects of the building envelope, and better design outcomes, and you also add that, "In addition to the recommendations of the study, it is recommended that on larger sites where amalgamation has occurred with a minimum of 1,500 square metres, additional height should be permitted allowing eight storeys." Now, and over the page it's indicated that, "Further consultation on the draft clause will occur when the planning proposal is placed on public exhibition," and that "Feasibility testing undertaken revealed that it is profitable to develop to an FSR of 2.5:1 while still achieving a reasonable market value." Do I take it that reference to the feasibility testing is not in respect of the proposed bonus provision of 3.3:1 FSR and an increased height to eight storeys, but rather what had already been considered by Studio GL? ---That is correct.

30

40 Now, and just continuing, if we could go to submission number 20, which is on page 396. This is the gentleman you referred to before, Joe di Giacomo, and his number 2 point that he wished to make was that, "Appropriate incentives such as an increase in FSR to 3.5:1 to make development viable should be considered." Now, essentially that's the same issue that Mr Antonatos was raising.---Yes.

And your response is to see 17(2) response above, which I've already taken you to. So in the response there, there's a reference to this increased floor space ratio and increased height in a context of developments or sites that

have 1,500 square metres, not 2,500 square metres. Are you able to assist us in terms of why it was or how it was that the position had changed from what was originally expressed in the memo that Ms Ferguson had been drafting and what is expressed here in the response and the draft clause?
---My recollection is that Marjorie and I had a discussion about what was possible or achievable, and through those conversations we reduced the minimum lot size.

10 In a sense, were you effectively accepting that you probably were setting the bar too high at 2,500 square metres?---Yes.

So that it would achieve what the councillors were seeking to achieve?
---That's correct.

But do I take it then that it wasn't at the suggestion of any councillor that the figure of 1,500 square metres was included?---No, it wasn't.

20 And again, did Studio GL have any input into this draft clause and the parameters of it?---I don't believe they assisted with the drafting of the clause but Studio GL did assist council with testing what a building with this floor space ratio and height might look like in terms of its envelope and design.

And was that done in some subsequent report at a later time or was it done as a result of you drafting this clause before the matter was to come before council?---I don't remember the timing, I just remember the report being prepared.

30 And to the best of your recollection, what was the outcome of that testing in the report?---It showed that, oh, that Studio GL recommended that the envelope should be staggered so as to reduce the visual impact of taller development.

And when you say staggered, do you mean by way of setbacks (not transcribable)- -?---And particularly upper-level setbacks.

40 Upper-level setbacks. What about in terms of the actual height that was being proposed of eight storeys? Was there any view expressed by Studio GL as to whether or not that was too high or - -?---I think it's safe to say that Studio GL didn't support that height. It's not what they originally recommended but they were obviously working based on what council's expectations were.

Now, when the matter – oh, sorry. Just before I go to the council decision itself, if we could go back to page 385, and the final paragraph, I'm just drawing your attention to the fact that, "A draft clause has been prepared for inclusion in the planning proposal that would permit a floor space ratio of 3:1 and a height of 27 metres or eight storeys on sites with an area of 1,500

square metres and a frontage of 20 metres.” So they’re the parameters that you and Ms Ferguson built in to ensure that you were able to give effect to what the councillors were asking from the council workshop?---That’s correct.

But in a way that was ameliorated.---Yes, with additional considerations.

And those addition considerations also included that consideration is given to matters such as bulk character and amenity impacts?---That’s right.

10

Now, at the council meeting on 20 May, 2014, the matter was actually deferred so that further consideration could be given to issues concerning height and setback. Do you recall that?---Yes.

But prior to that meeting on 20 May, I just want to take you to some email the Commission has obtained. If we could go to page 403. Now, this email at the bottom is not an email that was sent to you in terms of the particular email. It’s from Helen McCaffrey, who was one of the Liberal councillors on the council at the time, is that correct?---That’s correct.

20

To Ms Ferguson but copied to Mr McNamara. And do you see that Ms McCaffrey has said that “The Chamber of Commerce still want 3” and it’s supposed to read “3.5:1”. “Can this be achieved anywhere with a height of 27 metres?” Do you see that?---I do.

And then the email above it, it actually commences on the previous page, which is page 402. You see right at the bottom, that’s actually from you to Tony McNamara?---Can you scroll down to the next page? Yes, I do.

30

So do we take it, then, that Ms Ferguson has perhaps provided you with a copy of – or somehow forwarded the email that she received from Helen McCaffrey to you so that you could provide a response to Mr McNamara and inform him as to what the position was?---Yes, that would have been the case.

And we see your response on page 403 as to why you weren’t in support of an increase to 3.5:1.---Yes, I recall this email.

40

THE COMMISSIONER: Who in the community were the primary advocates for an increase in FSR?---The Five Dock Chamber of Commerce.

I’m sorry?---The Five Dock Chamber of Commerce, which is Joe di Giacomo.

Were there any other individuals, whether they held any official positions, or just ordinary residents, if I can use that expression. Are there other names that come to mind that you can identify being in support of increased FSRs?---No, I don’t, I don’t recall any, any other people.

Yes, thank you.

MR RANKEN: Yes, then if I could go back to page 402. Now, above your email to Mr McNamara is an email from Mr McNamara to Councillor McCaffrey but copied to both yourself and the general manager, Mr Sawyer. And I wonder if you might just read that email to yourself.---Okay.

10 Now, with your knowledge of both the planning department in which you worked and also the Five Dock Town Centre Urban Design Study itself, do you agree with the six points that Mr McNamara has made in his email to Councillor McCaffrey?---Yes, wholeheartedly.

And are there particular points that are of particular salience, in your view, about the issue? Those of the greatest significance?---The primary issue being the scale of development that would result from a floor space ratio of 3.5:1 would be out of step with the character and village atmosphere that the community was striving to achieve in that place.

20 And that was based on the feedback that had been obtained through the course of the community engagement activities that were undertaken as part of the Urban Design Study, is that - - -?---That's correct.

So is this a correct characterisation of it, that that was very much the strong view that was coming back from the community, that they wanted to maintain a village atmosphere in the Five Dock Town Centre?---Yes, that was the primary feedback council received.

30 THE COMMISSIONER: So in a sense, what had grown up is a dynamic in which there were two forces going in the opposite directions. You've got the, if I could call the group the residents, they didn't want to see high-rise extra development, and their voice was heard as constituting a majority of residents. As opposed to that, you get the other group, including the Chamber of Commerce-related people, who are pushing for more FSR, higher buildings, and here this is what gave rise to the tension. Is that right?---Yes, that's correct.

40 Obviously, more FSR, the greater the FSR, the greater the value of potential redevelopment.---Yes.

Simple as that really, isn't it? It comes down to that?---That's correct.

So it's a fairly, looking back on it now, a fairly straightforward task to be able to identify those who were urging, pushing, talking about, seeking increase in FSRs on the one hand as against the majority of residents in the other group?---Yes, it was all recorded so, yes, I agree.

How are we going for time?

MR RANKEN: I may not complete Mr Dewar today.

THE COMMISSIONER: All right.

MR RANKEN: That's why I glanced at the clock. It may be that we will require him for a little bit of time tomorrow morning. I'm hoping that I will get through a lot today.

10 THE COMMISSIONER: All right. Well - - -

MR RANKEN: I know Mr Megna has been present waiting to - - -

THE COMMISSIONER: There is at least another witness in waiting as it were.

MR RANKEN: Yes, there is.

20 THE COMMISSIONER: What should we do about that person, release them for the day?

MR RANKEN: I think - - -

THE COMMISSIONER: I take it you don't want to take Mr Dewar part heard, for example, and interpose any other witness at this stage?

MR RANKEN: No. I would prefer to complete Mr Dewar's evidence. I may be able to complete him today. I'm just - - -

30 THE COMMISSIONER: All right. Let's press on to see if we can finish Mr Dewar today if that's at all possible, and perhaps the next witness, who is waiting, can be allowed to leave and come back tomorrow morning, if that could be done.

40 MR RANKEN: Thank you, Commissioner. Mr Dewar, I wanted to also take you to, going back to the summary of the submissions that had been received, and I want to take you to another submission that had been received from a Ms Cassisi. And we find her, it's on page 390 of Exhibit 24. It's item number 5 is Silvana Cassisi of [REDACTED] in Five Dock. I appreciate it's some time ago now but [REDACTED] was on the western side of Waterview Street between Second Avenue and Barnstaple Road.---Yes.

And do you recall that one of the recommendations of the Studio GL Urban Design Study was that there be some increase to the area that was to be zoned B4?---Yeah, the B4 was not to be extended in that direction.

But there was some increase, in fact there was some increase up to Second Avenue but not beyond Second Avenue.---That's correct, yes.

For ease of reference if we could bring up the map on page 232 of Exhibit 24. Can you see in that map there is some areas that are bound internally by dotted lines?---I do.

232. And those areas are about the middle of the area that's bound in blue. But, well, I might say on the right-hand side, which is the eastern side and the western side.---Yes, I see.

And in the spot we referred to as the south-western corner as well.---Yes.

Now, on the eastern side, it included an extension of it to encompass an area that was bound by Waterview Street on the east and by Great North Road on the west, and Second Avenue at the north, correct?---Yes.

But not beyond there, and not up to Barnstaple Road.---That's correct.

20 Now, Ms Cassisi, do you understand, or would you accept from me, that number [REDACTED] was in that block along Waterview Street that was between Second Avenue and Barnstaple Road?---That's correct.

And going back to – if you could go back to page 390 and the summary of her submission to the council, the submission Ms Cassisi had made was that “The study should include properties along the western side of Waterview Street between Second Avenue and Barnstaple Road. This would improve the urban design outcomes delivered by the study.”---Yes.

30 And it's not actually expressly stated there, but did you understand that what Ms Cassisi was seeking to advance was that if you're including those properties, that they would be brought in within the B4 mixed-use zone? ---That's correct.

And that's reflected, is it not, in the response that you prepared, which says that “The study proposes to extend the B4 mixed-use zone surrounding the central core of the centre. These areas would benefit most greatly from the proposed investment and upgrade for the public domain.” And then you go on to say, “The core of the Five Dock Town Centre occurs around a natural ridge within the centre, and the area north and east of Second Avenue and Waterview Street is considered to be outside this core.” Now, just in respect of that aspect, what was the basis of that view? Was that something that came out of the community consultation as part of the Urban Design Study?---It was advice that came out of the Urban Design Study itself and the detailed analysis by Studio GL.

When you say detailed analysis by Studio GL, is that also including feasibility analysis by HillPDA or was it just Studio GL?---I think it was an urban design recommendation.

And it goes on to say, “Waterview Street north of Second Avenue has a predominantly low-rise residential character with a few constrained sites on the western side, including a heritage building and existing strata development.” Now, just in relation to that aspect of the response, there was number 39 Waterview Street had a heritage listing.---Yes.

10

And further towards the northern end of that block of Waterview Street, there was also a strata development, is that - - -?---That’s correct.

And what are the particular problems that are posed by an existing strata development being on that block?---Given the number of owners within that particular complex, it would add a further constraint to redevelopment and change.

20

Do you know how many owners there were in that particular strata development?---Not off the top of my head. I, I don’t recall.

Are you familiar with the particular site?---I am. I believe it’s a two-storey townhouse-style development.

And do you know how many townhouses there are in that development?---It’s in the order of eight. Eight, eight or so apartments.

30

And then finally, just continuing on, “Rezoning land outside this central core to additional land B4 mixed-use would have fewer benefits and is therefore not recommended.”---Yes.

And again, is that based on the expert opinion from Studio GL and the design study?---Yes, and also my own opinion.

That’s also your own as a town planner?---That’s correct.

40

Now, over the course of the actual design study itself, that is prior to the report being presented to council in November 2013, had this issue of possibly extending the B4 mixed-use zone further north of Second Avenue, had that been raised in the public consultation activities?---I don’t recall it being raised before this time.

So this is the first occasion on which anybody had raised the possibility of actually extending the B4 mixed-use beyond Second Avenue?---Yes. To my recollection, yes.

And would you accept from me that at least as at the date of the preparation of this summary of submissions, this was the only submission that was

advocating the extension of that B4 mixed-use zone?---Yes.

Now, on 20 May, 2014, when the matter was considered by the council – and perhaps if we could go to the minutes at page 405, or commencing at page 405. That’s the first page. If we go to page 406, you can see that item 3 is the outcome of the exhibition of the Five Dock Town Centre Urban Design Study. And then if we go to page 407, you can see that the declarations of pecuniary interest include each of Councillor Fasanella and Councillor Megna in relation to item 3.---Yes.

10

And then turning to 408, the minutes record the fact of Councillors Fasanella and Megna declaring their interest and leaving, but it also records the details of persons who addressed the council.---Yes.

And can I ask this? It doesn’t record you as having been present at this meeting. Were there occasions that you did actually attend council meetings, particularly when this study was being discussed?---I would often attend council meetings as an observer, sort of in the gallery, when I had items that related to my work plan.

20

And to the best of your recollection, did you do that on each occasion that this particular study was before the council?---Yes.

So is it likely then that you actually attended this particular meeting of council?---Yes.

And also, given the circumstances in which you and Marjorie Ferguson had come to draft the additional bonus clause, if I could call it that, did you have a particular interest in seeing how that was dealt with at the council level?

30

---Yes. I, I, I was interested in the study generally but, yes, that aspect was also relevant.

And the recommendation that you and Marjorie Ferguson had in fact proposed was that the Five Dock Urban Design Study be endorsed and the planning proposal for it be submitted to the Department of Planning and Infrastructure for a Gateway Determination?---Yes.

That is incorporating the draft clause for the bonus provision as well?---Yes. As, as, as a draft clause.

40

As a draft clause. Obviously when a matter goes to – you’re familiar with the Gateway Determination process?---Yes.

And a matter goes off to the Department of Planning and the minister or his or her delegate then will make a Gateway Determination that it can proceed, subject to usually conditions of further public exhibition. Is that right?

---That’s correct.

So in the event though, as you can see on this occasion, the matter was deferred to consider issues of height, setbacks, overshadowing, mix of development and the amenity of the surrounding residents. Do you see that?---I do.

10 Do you recall what it was or how it was that this was the resolution that passed, notwithstanding the recommendation from yourself and Ms Ferguson, that in fact the Urban Design Study be submitted and the planning proposal be submitted for a Gateway Determination?---I don't recall the circumstances led, that led to this item being deferred.

And you can see there are a number of persons who actually addressed the council, one of whom is in fact Mrs Cassisi, although she is referred to as Ms Cassisi?---Yes.

Given that the resolution refers to, amongst other things, mix of development, could that refer to the possibility of rezoning?---If it relates to uses and mix, then in all likelihood it relates to zoning.

20 So is it possible that in fact part of this might have been as a result of things that Ms Cassisi had raised during the course of the meeting, in her address? ---Perhaps, I do not know.

You just don't recall one way or the other. Okay. The matter next came before the council on 24 June, 2014, and another report was prepared, the author of which is identified as being Ms Ferguson. And perhaps if we could go to that report at page 416 of Exhibit 24. So that's the first page of the report. What I want to take you to is at page 417. You can see about almost halfway down the page there's a heading or subheading of
30 Extension of B4 Mixed-Use.---Yes.

And it identifies the areas that were identified by the study for an extension of the B4 mixed-use zone around the central core of the centre.---Yes.

40 And then beneath those three areas identified it says, "It was suggested that council consider extending the area of land being rezoned to the northern end of Waterview Street." Does that assist you in terms of your recollection as to whether or not it may have been in fact Ms Cassisi who had raised it at the council meeting on 20 May and then it had resulted in it being deferred and then being considered again in June of 2014?---The summary of submissions would have stated who had raised that particular request.

And I think you agreed with me that the only person who would raise it in that summary of submissions was Ms Cassisi, Mrs Cassisi.---Yeah, but I can't say whether that was the reason the item was deferred. I don't, I don't know.

In any event, that was one of the matters that was plainly required to be considered by council staff in relation to before the matter could come back before council in June of 2014.---Yes.

Now, following the meeting in May of 2014, was there any contact between yourself or others in your department with Studio GL to discuss this particular issue about the mixed-use zone?---Not that I recall.

10 So do we take it that you assisted, as was usually the course, Ms Ferguson in the preparation of her report to the councillors in advance of the June meeting?---Yes.

So are the views that are expressed then under this subheading concerning the consideration of rezoning that part of Waterview Street, do they reflect your own professional views and those of Ms Ferguson?---Yes, that would be correct.

20 And again though, this report would be provided to Mr McNamara?---Yes. He would review it and sign off on it before it was published on the agenda.

So presumably it effectively represents the views of the council staff. ---The collective views, that's correct.

The collective views, yes. And your views were based, were they, upon the conclusions of the independent experts in the Urban Design Study?---That's correct.

As well as your own independent professional views.---That's right.

30 Is that the case?---Yes.

And in particular as to the views that you've expressed, you've said, "The northern part of Waterview Street between Second Avenue and Barnstaple Road," by the way, am I pronouncing that correctly, is it Barnstaple or is it - -?---Barnstaple.

40 Barnstaple. "Was not identified for rezoning as it is located outside the central core of the centre, contains few constrained sites, including the heritage item and existing strata development, and would necessitate the extension of the proposed Waterview Lane to facilitate improved access. Rezoning land outside the central core would provide fewer benefits and is therefore not recommended." Correct?---Yes.

Can I just ask about necessitating the extension of the proposed Waterview Lane to facilitate improved access. Was it necessary for there to be a change in zoning in order to extend the proposed Waterview Lane? Or could that have been done without actually changing the zoning? ---Extending the lane is not contingent on the zoning change.

But the zoning change, or any development as a result of the zoning change, would be contingent on there being an extension of, there being able to extend the Waterview Lane.---Any increase in density or floor space ratio should be accompanied by improved access, such as a lane.

And improved access by way of an extension of that lane would obviously provide some public benefit?---Yes.

10 But would also provide private benefit as well?---If it unlocked additional development capacity, yes.

Now, so ultimately the recommendation from the council staff was that there not be an extension of that B4 mixed-use north of Second Avenue, correct?---That's correct.

Now, when the matter came before the council meeting on the 24th of June of 2014, it was ultimately determined unanimously that the matter should be referred to the Department for a Gateway Determination?---Yes.

20

So at that point the councillors, all councillors who were present and able to vote had actually rejected, the idea of extending the B4 mixed-use zone? ---Yeah, they had agreed with the officers' recommendation.

Now, just moving through the chronology briefly if I can for a moment, the Gateway Determination was ultimately made by the delegate of the minister on 25 September, 2014. Does that sound about right to you for - - ?---Yes.

30 You would accept that?---That sounds right.

And one of the things that was required under the Gateway Determination was that the matter be submitted to some further community consultation in a public exhibition of the planning proposals.---Yes.

That's pretty standard, would you accept?---That's standard practice.

And the purpose of that is to allow the community, is it not, to provide further submissions in relation to the particular planning proposals that are being put forward.---Yes, exactly.

40

And in due course it was publicly exhibited between 21 October, 2014 and about 17 November of 2014. Again, I don't expect you to have a - - ? ---They sound correct to me.

That sounds about the right kind of timeline?---Yes.

And then were you involved in that process of public exhibition?---Yes, I was.

And what was the involvement that you had with that?---I would have coordinated the exhibition itself, so putting an ad in the paper, drafting letters to landowners, updating our web page, placing public exhibition material at local libraries.

10 And insofar as persons who may have put in submissions following the public exhibition of the Urban Design Study, were they specifically notified of the fact of the Gateway Determination and the planning proposals?---Was on exhibition?

Yes, that they were on exhibition. Or were they provided with direct information by way of email or something?---I seem to recall that we had a mailing list and we continued to inform those people that had previously shown interest in the study.

And obviously there was a closing date for a – or a deadline for the submission of any submissions.---Yes.

20 But were there occasions when people might put in submissions after the closing date but, provided it wasn't too long afterwards, the council, you would consider it?---Yes, we, we were generally open to considering late submissions if they were received before we had finalised our report.

Being finalising your report that would be prepared for council for the next occasion the matter was coming up before - - -?---That's correct.

30 So the deadline I think was 17 November, 2014, for submissions, but in fact the matter didn't come back before the council for further consideration until, I think until June of 2015. Does that seem to be quite a long time between the public exhibition and the matter coming back before the council?---It does.

Well, was there further – I mean, was there further work that had to be done possibly in relation to any submissions that were received on behalf of landowners and the like?---I recall the fact that we got any submissions in response to the exhibition of the planning proposal, many more than we had received following the exhibition of the study.

40 In relation to the exhibition of the study, there were 31 submissions that were 31 submissions that were actually received.---Yes.

And do you recall how many it was in relation to the actual exhibition of the planning proposals?---Not, not off the top of my head, no.

If I might just – this might assist with your recollection. If we could bring up page 501 of Exhibit 24. This is not a document that you were a party to and it's not your document, but you'll see it's an email from Helena Miller

to Catherine Sidoti and copied to a Mr Thebridge, but it does refer to the fact that the author, that is Helena Miller, had followed up with you as one of the council's planners, regarding the Five Dock Town Centre LEP amendments, and that you had received or advised that the council had received approximately 125 individual submissions and a petition comprising 400 signatures.---Yes, that sounds correct.

10 Now, just insofar as the petition is concerned, what was the thrust of the petition?---It was raising concern with the additional height that would have been provided through that bonus clause.

Was it specifically directed to the bonus clause aspect of it, or was it height generally or was it actually directed to that bonus?---It was height generally but it was the height that was achievable through the bonus clause. So even though the submission expressed it in terms of height, that height wouldn't be possible without the bonus clause.

20 THE COMMISSIONER: In your experience, is a response of 125 individual submissions a substantial response from the community?---Yes. For a planning matter, it's considerable.

30 MR RANKEN: And it's reported by Ms Miller there that, "In general, the view put forward by members of the public was that the increase in heights was too much and in addition received a few site-specific requests including ours." And I'll come back to the "ours" in a moment. "Paul has now referred the site-specific request to council's urban designer for advice." So is this the position, that there were general submissions made to the council in response to the exhibiting of the planning proposals. Some of those were on behalf of individuals, correct?---That's correct.

And those were dealt with, in one way, by council staff, by, what, perhaps synthesising the general themes that were coming out of it?---Yes, but I, I believe we would have also sent those individual submissions to Studio GL so they could understand the themes that were coming through.

40 But in addition to that, and that information being passed on to Studio GL, Studio GL were engaged to do some further work in to come site-specific matters?---Where a landowner had put in a submission that related to a particular outcome on a particular block or site, then, then we did seek the advice of our urban designers in relation to that request.

And what involvement would you have in that process, in terms of the site-specific matters that were going to Studio GL?---So obviously I was the person who referred the request to Studio GL. I, I may have discussed it with Studio GL, just generally, but ultimately it was Studio GL's advice from, well, based on their urban design expertise, that was sent back to council. I didn't, I didn't influence their opinion.

But would you also have discussions with the particular parties who were raising the site-specific request or persons acting on their behalf?---It was not uncommon for people to call me, including people who put in site-specific requests. I did not negotiate or I don't believe I met with these people. We simply assessed their submissions and responded through the formal channels.

10 And was one of the reasons why those site-specific requests were referred to Studio GL in order to ensure that there was an independent, impartial expert who was considering them and not the council staff themselves, or were there other considerations that bore upon that?---In part it had to, had to do with probity, but also due to the fact that Studio GL had produced the original Urban Design Study and they understood the principles and objectives of that study, and they were looking at all the submissions we received through that lens.

20 Now I just want to go back to this email, where it refers to the fact that the council received a few site-specific requests, "including ours". Could we go back to page 490, Exhibit 24. You can see that's an email from Mark Thebridge to council at Canada Bay, and it's copied to a number of persons, email addresses, one Sandra Sidoti, Helena – which I'd ask, that's Helena Miller. Do you know Helena Miller?---I believe I've spoken to her over the phone but I don't know her.

You've not met her in person at any time?---I don't recall meeting her.

John Sidoti, you know Mr Sidoti.---Yes, I know who Mr Sidoti is.

30 Do you know Sandra Sidoti?---No, I do not.

Do you know Mr Thebridge?---No, I do not.

In any event, this email was sent a little bit after the close of, the closing date for submissions a few days after 21 November.---Okay.

And if we move to the next page, as you see, it is a submission that has been submitted to the Canada Bay Council on behalf of two companies, Deveme Pty Ltd and Anderlis Pty Ltd.---Yes.

40 Did you know who owned or were responsible or associated with these companies?---I did not, no.

Do you recall receiving or was this – would you have seen this submission? ---Yes, I would have.

And does that mean you would have also read it and considered it?---Yes, I would have.

If we could go to the next page. In the introduction it refers to the fact that the owners of 120 Great North Road – and it has the lot and DP number – Deveme Pty Ltd, and 2 Second Avenue, Anderlis Pty Ltd, were you familiar at all with those two properties?---Yes, I was.

And who did you understand to be the owners of 120 Great North Road?
---The Sidoti family.

10 And what was the basis of your understanding of that?---It was common knowledge.

Common knowledge amongst whom?---The planning team.

Does that mean that as soon as you received this and read this report, you were aware that this was a report that was being put forward on behalf of the Sidoti family's interests?---Yes.

20 Notwithstanding the reference to the company names?---I knew that there was a relationship there, yes.

What about 2 Second Avenue? At the time of this report, were you aware as to who was the owner of - -?---No, not so much 2 Second Avenue, more the function centre on Great North Road.

So it's by reason of the function centre on Great North Road?---That's correct.

30 And one of the things that is being sought in the submission is an expansion of the B4 zone to include that land – as in the land between Second Avenue and Barnstaple Road on the western side of Waterview Street – as part of the B4 zone.---Yes.

40 Do you recall whether this was the only site-specific submission that sought, that was received in response to this public exhibition of the planning proposals that sought an extension of the B4 mixed-use zone to include that area, which I might refer to as the Waterview Street site?---There were multiple exhibitions of this planning proposal. I know we did receive other submissions that argued for this outcome, I just don't remember whether it was part of this particular exhibition period.

THE COMMISSIONER: Were the submissions on behalf of the same entities, Deveme and Anderlis or are you unable to say?---I believe we received other submissions on behalf of these entities, other exhibitions, but we also received submissions from other I think individual landowners in this block.

Do you remember which ones, what were the other individual ones?---I recall the owner of [REDACTED], which is Mr Durkin.

Mr Durkin.---And I think there was another gentleman, it may have been the son of Ms Cassisi, I'm not sure, but they weren't as detailed as this submission, they were just written letters.

MR RANKEN: And do you recall what Mr Durkin's issues were in terms of what he was raising?---Mr Durkin, I guess he prosecuted the case that there should either be no change, and therefore no impact on him, or his house should be delisted and everyone should be subject to change. So he,
10 hoe provided to potential pathways.

But did he express in his submission to the council any particular preference for either one of those outcomes?---I recall his position changing throughout the course of the process.

What do you mean by that?---He, he lodged numerous submissions and each time they were updated and amended, depending on his perspective at the time.

20 But did he start with one position and then end up at another position or what, was he going back and forth between two or - - -?---Back and, back and forth, back and forth, and sometimes he stated both in the one submission.

And what about the other person you referred to who you thought could possibly be the son of Ms Cassisi?---I just recall a letter. I'm not sure whether it was part of this exhibition or a subsequent exhibition, however a letter seeking change to that block.

30 Now, given the number of individual submissions that were received, does that perhaps explain the reason why it took some time before the matter could come back before the council because the need to get Studio GL back involved and preparing a further report about all of these issues?---Yes. I believe we synthesised the submissions, had Studio GL prepare a report, and we also prepared a revised planning proposal and Development Control Plan to reflect our position as to what changes should proceed based on the submissions we received.

40 And what were the changes that council staff saw as being matters that should be changed as far as the planning proposals were concerned?---I believe at this point in the process we were recommending that the number of sites that were subject to that bonus height provision be reduced.

So rather than expanding the number of sites that could possibly get the bonus provision, you were actually looking at reeling back in the extent of that bonus provisions applicability.---That's correct. That's correct.

And that was based on what?---The substantial sentiment by the public in relation to their expectations about the scale and character of Five Dock.

And ultimately going to the Studio GL's supplementary report, that was prepared in March of 2015.---Yes.

Does that sound about right?---That sounds about right.

10 If I can find it. Sorry, May of 2015. Studio GL released its final report on 21 May, 2015.---Yes.

Would that sound about right?---Yes.

THE COMMISSIONER: Sorry, 21 May, was it?

MR RANKEN: 21 May. Perhaps if we could go to 568 of Exhibit 24. That's the first page of the exhibition outcomes report - - -?---Yes.

20 - - - for the Five Dock Town Centre planning proposal, and you can see the date there is the 21st of May. Can we go to page, in that report, could we go to page 600. And can you see that there, firstly, reducing the amount of area 1 sites. That's relating to that recommendation that you're saying in terms of reducing the number of sites that could qualify for the additional floor space ratio of 3:1 and the additional eight-storey height.---That's right, that's right.

30 And in particular, in relation to that, if we look at the key sites that should be changed, there's a reference to the block on the eastern side of Waterview Street between Barnstaple Road and Second Avenue. Now, does that appear to be an error? Should that be the western side?---It's a typographical error.

40 "This is not considered a good location to encourage amalgamation and increased height," again there's a typographical error there, "and FSR, as the interface between these tall buildings and the residential uses and the heritage item on Waterview Street is likely to be poor. This change also ensures future development more closely reflects the planning controls in this area on the opposite side of Great North Road." So if we were to bring up page 232 again, the area that they were talking about essentially was that area that is to the west of the blue line, between Second Avenue and Barnstaple Road. So it's really the north, the Great North Road fronting properties.---That's correct.

And what they were, so they were saying that those properties, regardless of what happens with zoning or anything like that, those properties should not be subject to the bonus.---Yes, due to the interface of the lower densities on the other side of that blue line.

So in fact part of the reason was, was that you've got R3 residential zoning right next door to it.---At a two-storey scale.

Yes. And also, as part of that, there was also the fact of the heritage-listed item in that area as well.---Yep, yes.

10 So is it fair to say that so long as that other part of that block – that is, that part on the western side of Waterview Street between Second Avenue and Barnstaple Road – remained zoned as an R3 residential area and the heritage listing remained, there could never be, if the proposal that was being recommended was adopted, there could never be a bonus height and floor space ratio for the Great North Road-fronting properties.---As, it, obviously if the R3 zone had more height or floor space ratio, we could revisit that idea, but that was not proposed so that's not what we recommended.

But also, but if the R3 area was rezoned as B4, that would likely lead to an ability, or would remove an impediment to the possibility of having a bonus provision like this apply.---It would be one less impediment, that's correct.

20 And is it also true that the removal of the heritage listing would be the removal of another impediment to that development?---That's correct.

Would there still – even if both those impediments were removed, if I can use that terminology, would there still be other impediments to the inclusion of that area for the bonus provision?---There would still be issues that would need to be addressed. Therefore – we did end up revisiting this area and I know we didn't recommend the bonus height provision be applied, so I can answer that question quite certainly.

30 THE COMMISSIONER: I'm sorry, I didn't hear your answer.---So, the question was whether the removal of the heritage item and what, what was the other issue? The - - -

MR RANKEN: And if it was able to be rezoned as B4, if you remove those two matters - - -?---Whether that alone would justify the bonus provision being applied. The answer is no. We wouldn't apply the bonus provision on those circumstances alone.

40 And is one of the reasons you wouldn't because the overwhelming view of the community was against such a bonus provision applying to far north of the core of the centre?---That's one of the reasons. We, we had never had an intention to extend the core of the centre to the north. So that was a, a consideration.

But when you talk about that intention, that was an intention that came out of the Urban Design Study?---That's correct.

As reflecting the views of the broader community of Five Dock?---That's correct.

And if you could go back to page 600. That's not the page I was looking for. Perhaps if we could just move to the report that was prepared for the council meeting that was to be held on 2 June, 2015. That commences at page 525. This report was actually prepared under your hand?---Yes.

10 This was in around about June of 2015, shortly prior to the meeting on 2 June. Had you taken over at this stage as the Manager of Strategic Planning or were you on the cusp of doing so?---I don't believe so I had taken over quite by this date.

20 One of the things it outlines there is that there was 124 submissions and a petition with 420 signatures that had been received in response to this public exhibition, and again the primary issue raised being relating to the proposed eight-storey height limit and the recommendations that we've already gone to in respect of reducing the number of sites that would be subjected to that. And if we go to page 529, there is, at this page there's a subheading of rezoning. This is the issue to do with some of the site-specific requests for rezoning. And the second dot point relates to the land between Barnstaple Road and Second Avenue on Waterview Street, and do you see there it refers to the fact that two submissions had requested the land be rezoned to be for mixed use. Now, one of those submissions was plainly the one that was put on behalf of Deveme Pty Ltd and Anderlis in respect of 120 Great North Road and 2 Second Avenue, correct?---Yes.

30 And the other one, is it fair to say you don't have an independent recollection now as to who that was?---I don't, I don't recall who it was.

That is two submissions out of a total of 124.---Yes.

40 And the view that's expressed here is that "The existence of the heritage-listed house and strata-titled residential flat building result in limited opportunity for change should the area be rezoned, and that future development would impact these properties and would be unlikely to resolve vehicular access issues for properties fronting Great North Road and Waterview Street." That last aspect is a reference to the need for an extension to the laneway, is that correct?---That's correct.

And it's recommended that the land retain an R3 medium-density residential use. So just if we could just finish this up by going to the council meeting, which is at 634 of Exhibit 24. We don't see your name as being, even though you were the person whose name is on the report, we don't see your name being there as being in attendance, but Ms Ferguson is and Mr Pavlovic is.---Yes.

Were they both members of the department in which you worked?
Obviously Ms Ferguson was.---Yes. Mr Pavlovic was likely to be acting
director at this time.

In place of Mr McNamara because he may have been on leave or something
like that?---That's correct.

So if we go to page 637, do you see that firstly there is the list of person
who addressed the meeting?---Yes.

10

And they include Ms Miller, representing Deveme Pty Ltd and Anderlis Pty
Ltd. Again you would have been in attendance even though you're not
listed as being in attendance, but at least as an observer.---Yes.

And do you recall what it was that Ms Miller submitted or addressed the
council about or you just assume it would have been consistent with what
was in their report?---I assume it would have been the same content as was
in her submission.

20

In any event, the matters that were raised in response to the public
exhibition were noted and the planning proposal was amended in
accordance with the recommendations of the council staff. Is that correct?
---Yes.

So as to effectively reduce the number of properties or sites that would be
able to get the bonus provision.---That's correct.

30

And is it not implicit in the amendments that were made to the planning
proposal that the suggestion of an extension of the B4 mixed-use zone
further north than Second Avenue was rejected by the councillors?
---Yes, it was not supported at this time.

If we just move over to the next page, and can we see, you can see there that
that resolution was supported by Councillors Cestar, Kenzler, McCaffrey,
O'Connell, Tsirekas and Tyrrell.---Yes.

40

They being all of the councillors who were present and able to vote when
one remembers that Councillor Fasanella and Councillor Megna had
declared their pecuniary interest.---Yes.

So the result of that was that it would then be required to be exhibited a
further time. Is that right?---That's correct.

And for what purpose would that further exhibition be?---Given we had
made changes to the plan, it was to seek feedback from the community on
those, on the revised plan.

So every time there is a change to the plan that's been exhibited, it needs to be re-exhibited again?---If the change is substantive, yes.

Commissioner, I note the time, if we - - -

THE COMMISSIONER: Yes. Mr Ranken, how much longer do you think you might be?

10 MR RANKEN: I think from this point on it will probably be about an hour I expect.

THE COMMISSIONER: Well, then Mr Dewar, I'm afraid we'll have to have you back here at 10 o'clock tomorrow. Yes, very well, I'll adjourn till 10.00am tomorrow.

THE WITNESS STOOD DOWN [4.04pm]

20 **AT 4.04PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.04pm]**