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COMPULSORY  
EXAMINATION

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC  
CHIEF COMMISSIONER

COMPULSORY EXAMINATION

OPERATION WITNEY

Reference: Operation E19/1452

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 19 MARCH, 2020

AT 10.00AM

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

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THE COMMISSIONER: Mr Broad.

MR BROAD: Yes, Commissioner. This is the compulsory examination of Helena Miller who is at the back of the hearing room.

THE COMMISSIONER: Very good. Ms Miller, would you mind coming forward, thanks. Ms Miller, just take a seat there if you wouldn't mind. There's a couple of formalities I'll deal with and then I'll come to you shortly.

10

MS MILLER: Right.

THE COMMISSIONER: Now, I direct that the following persons may be present at this compulsory examination – Commission officers, including transcription staff; the witness, Ms Helena Miller.

20

I propose to make a direction under section 112 of the Independent Commission Against Corruption Act restricting the publication of information with respect to this compulsory examination. The direction will prevent those present today, other than Commission officers, from publishing or communicating information relevant to this compulsory examination. It will permit Commission officers to publish or communicate information for statutory purposes or pursuant to any further order made by the Commission. The direction may be varied or it may be lifted by the Commission without notification if the Commission is satisfied that it is necessary or desirable to do so in the public interest. I note that it is a criminal offence for any person to contravene a section 112 direction.

30

Accordingly I make a direction under section 112 in the following terms. Being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act that the evidence given by the witness, Ms Miller, the contents of any exhibits tendered, the contents of any documents that may be shown to her, any information that might enable Ms Miller to be identified and the fact that she has given evidence today shall not be published or otherwise communicated to anyone except by Commission officers for statutory purposes or pursuant to a further order of the Commission.

40

**BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT THAT THE EVIDENCE GIVEN BY THE WITNESS, MS MILLER, THE CONTENTS OF ANY EXHIBITS TENDERED, THE CONTENTS OF ANY DOCUMENTS THAT MAY BE SHOWN TO HER, ANY INFORMATION THAT MIGHT ENABLE MS MILLER TO BE IDENTIFIED AND THE FACT THAT**

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**SHE HAS GIVEN EVIDENCE TODAY SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO A FURTHER ORDER OF THE COMMISSION.**

THE COMMISSIONER: Ms Miller, we'll shortly commence the taking of evidence. To do that you need to either take an oath or an affirmation.  
10 What do you prefer?

MS MILLER: An affirmation.

THE COMMISSIONER: If you wouldn't mind just standing and I'll get my associate to administer that.

**Sensitive**

THE COMMISSIONER: Thank you. Ms Miller, would you just state your full name, please.---Helena Miller.

And your occupation?---Town planner/consultant.

10 Thank you. You may need to move slightly closer to that microphone and just speak up a bit so that we can hear it. Thank you.

Now, Ms Miller, you've been summonsed here to give evidence in this compulsory examination. I'll just say a few matters about the procedures so that you have a context in which you can understand going forward, the procedures and matters associated with it. Mr Broad, who appears as Counsel Assisting in this examination will shortly ask you some questions about matters about which the Commission is investigating. The Commission looks to witnesses summoned to assist the Commission to the fullest extent possible in this investigation. You're not legally represented  
20 by a solicitor or barrister, so I should make you aware of some of the provisions of our Act and that is to say that if a witness wishes to object to a question or to produce a document, they merely say they object and the purpose of that procedure being available to a witness is if evidence is given on objection, then the objection, then the evidence given in the compulsory examination can't be used in any other proceedings, criminal, civil, disciplinary or administrative proceedings. One exception being that the evidence can be used in respect of a witness in relation to any proceedings for an offence under the Independent Commission Against Corruption Act. One of the most obvious offences would be to give false or misleading  
30 evidence, that is perjury, then the evidence can be used in circumstances like that, or in relation to any offence under the Independent Commission Against Corruption Act.

But save for those exceptions, the objection means that the evidence can't be used in other proceedings. A witness is entitled to object, it doesn't mean you have to object, but as you are not legally represented I am outlining to you what your rights are so that you can make that decision. There is a procedure whereby if a witness does wish to object, that a declaration can be made that all questions, or all answers given are taken to  
40 be on objection. That's a practical way of dealing with it so that a witness doesn't have to object to every question to make the point. So I can make a declaration that that objection will apply to the whole of the evidence or part of the evidence. So, in other words, it's a right that a witness has, to object if they wish to, and it operates in that protective way I have mentioned. I think they're the main matters that I wanted to raise in relation to that so that you are aware, and it is quite open to you if you wish to indicate now that you do wish to object or if you don't wish to object, then it's open to you to do so during the course of the proceedings at any point, you can revise your

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position and say, "I wish to object to this evidence," but you can do that from the outset if you wish. Do you - - -?---I do object.

You do object, right.---I may as well, yeah.

That's fine. It is important that I emphasise, as I do with all witnesses who are called, that the obligation to answer all questions truthfully of course is complete, that is to say it's necessary that all answers are truthful, and I have emphasised before the need for witnesses to assist the Commission in the public interest in investigations. Very well.

Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by the witness, Ms Miller, and all documents or things produced by her during the course of her evidence at this compulsory examination are to be regarded as having been given or produced on objection and there is no need accordingly for the witness to make objection in respect of any particular answer given or document or thing produced.

20

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THE WITNESS, MS MILLER, AND ALL DOCUMENTS OR THINGS PRODUCED BY HER DURING THE COURSE OF HER EVIDENCE AT THIS COMPULSORY EXAMINATION ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED ACCORDINGLY FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

30

THE COMMISSIONER: Any other matters, Mr Broad?

MR BROAD: No, Commissioner.

THE COMMISSIONER: Very well.

MR BROAD: Thank you, Commissioner. Ms Miller, you are a town planner by occupation, correct?---Correct.

40

And in 2014 you were the principal of a firm called MG Planning, is that correct?---Correct.

Who else was – were you a sole practitioner or were you working other - - - ?---No, I have another director. Her name is Nicola Christine Gibson.

And whereabouts were you operating from?---From Drummoyne.

**Sensitive**

And on or about 10 November, 2014, you were contacted by a man by the name of Mark Therbridge?---Thebridge.

Thebridge?---Yep.

Who's also a town planner, is that right?---No, no, he's an architect.

10 An architect. And he was seeking your assistance in preparing a submission on behalf of a client of his to the Canada Bay Council, is that correct?  
---That's correct.

Ms Miller, you've produced some records to the Commission on a previous occasion in response to a notice to produce, including in those records are some notes you made of conversations with people connected with the matters under investigation, is that correct?---Correct.

20 I'll just give you a copy of the notes that you produced. There's a copy for the Commissioner as well. Thank you.

THE COMMISSIONER: Thank you.

MR BROAD: If you just have a look through them. They're the notes you produced, Ms Miller?---Yeah, I imagine they are, yes, all of them.

Yes?---Yep, they're mine, my handwriting.

30 And the original notes, where are they at the moment?---In my attic at home.

And you could produce those to the, the originals to the Commission if required to do so?---Certainly, yep. Yep.

Thank you. Now, I'm going to take you through the notes, or through relevant portions of the notes, the portions that relate to the matters under investigation and some other documents. But – and it may be necessary to get you just to decipher some of the words.---Sure, sure.

40 But if we could just start with the first page of the notes, and perhaps I should tender those notes at this stage, Commissioner.

THE COMMISSIONER: Yes, very well. The notes of Ms Miller will be admitted and become Exhibit 5.

**#EXH-005 – COPY OF NOTES PRODUCED BY HELENA MILLER**

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H. MILLER  
(BROAD)

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MR BROAD: And before I go to that, you would have a qualifications in town planning, is that correct?---Yes, I do.

And what are they?---I have a Bachelor of Urban and Regional Planning, and a Graduate Diploma in Natural Resources Law.

And how many years' experience do you have in the field?---I have close to 30 years' experience, now.

10 And have you worked in the public and private sector, or - - -?---I have, yes.

And in what capacity in the public sector have you worked?---I've worked for the ACT State Government in planning, and I've also worked for the Department of Planning in New South Wales.

And what years were they?---Oh, I've worked as a student planner for the ACT Planning Authority, and then when I graduated in - so from around '89 to '91. And then I worked from '91 to approximately '99, 2000, for the Department of Planning. And then from then worked in an architectural firm, and then started my own firm in 2001.

20 THE COMMISSIONER: What work were you involved in, in the Department of Planning, just generally speaking?---I've worked as a, a planner in the Queanbeyan office, looking after the Snowy River region, and then I worked in the North Sydney region in the Sydney office, before I left and went to the private sector.

MR BROAD: Now, if you go to the first page of Exhibit 5, the notes that you produced, I take it these are notes of a conversation you're having with Mr Thebridge?---That's correct.

30 Would this have been a phone conversation?---Yes. This is my, this is copies of notes from my daybook, which is where I write all my phone calls.

So these were - - -?---So these are all phone calls.

These are all phone calls?---Yep.

I see. And I take it that as people, as the person you're speaking to - - -?  
40 ---Oh, actually, I should qualify that. There may be some situations where I didn't have another notebook so I wrote in that. But mostly they're phone calls.

And as the person spoke, I take it, it was your practice to make a note of what they were saying.---Yeah, that's correct.

Is that what the notes reflect?---Yes, yep.

**Sensitive**

So, Mr Thebridge rang you on 10 November, 2014, in relation to two clients. One a [REDACTED] and another client John Sidoti.---That's correct.

THE COMMISSIONER: Who is Mark Thebridge?---He's an architect who I met when I worked in the private sector at Scott Carver Pty Ltd, and then he moved to a company called Group GSA, and he was I think an associate there, and I had a friendship with him when I worked at Scott Carver, and then a business relationship with him post that.

10 MR BROAD: Now, if we could just take you to the second point on the first page, and I'll just get you to go through the words you've written there. The first line is 120 Great North Road, is that right?---So where I've written to, yes, 120 North, Great North Road, yes.

THE COMMISSIONER: Some entries above that, but you're coming back to that, are you?

MR BROAD: Yes, I will, yes.

20 THE COMMISSIONER: Yes.

MR BROAD: The entries above that relate to the other clients that Mr Thebridge was introducing you to, isn't that correct?---Well, except for the bit that's circled and that relates to this site.

I see. Okay.---Which is why it's got a circle and an arrow.

Well, maybe we can go with that, go to that, the notes in the circle. If you could just read out what you've written there, please.---I've written, "Owner  
30 John Sidoti MP Parliamentary Secretary, Deputy Minister for Planning?"  
And then I've written, "Dealing with wife."

All right.

THE COMMISSIONER: That's the owner of a property, then it says, "Owner." It doesn't say what property but it just, that's your note, is it, that he's a property owner in effect?---I've written, I've probably just written down exactly what the person on the other end of the phone said to me, so I haven't clarified. I mean I've written "Owner," I don't know whether that's  
40 actually the case, I haven't seen, at that point in time I have no knowledge of who the actual owner is, other than what someone's telling me.

MR BROAD: And, "Dealing with wife," was that what you were told? ---I think that's what he said he was doing, dealing with his wife.

Right. Mr Thebridge was dealing with Mr Sidoti's wife at that point in time?---Yes, that's what I was told.

**Sensitive**

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H. MILLER  
(BROAD)

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Right. And then there's an arrow going down the page and if you could just read out the entry next to the arrow.---So I've written, "120 Great North Road, John Sidoti's site, block split in half to east, residential to west, mixed use."

Yes.---Or, "MU," but it means mixed use. "Wants to change so zoning extends to the street behind. Also owns a lot at the rear. Mark Thebridge to prepare diagrams, do a fee proposal and send a list of diagrams required."

10 Right. And you're quite a diligent note-taker. Would that would have reflected the core substance of the conversation you had with Mr Thebridge on that occasion?---Yes. I'm a, when you say diligent note-taker, I'm sporadic. I try and be diligent but I'm probably not as diligent as I should be, but I try and write down everything that's, that's said to me and my interpretation of it.

So did you understand from your conversation that you were being asked to prepare a submission on behalf of the Sidotis?---Yes.

20 And was that something that Mr Thebridge had indicated, that a submission was required for the council in relation to the properties?---Yes.

And did Mr Thebridge indicate who you'd be, who from the Sidoti group you'd be dealing with?---Not that I'm aware of at that time, no.

Did you find out subsequently, who, who was your main contact person?  
---My main contact was Mr Thebridge, but then I, post the beginning of the project once the fee proposal was accepted, I believe I was given the names of the actual owners who I understood to be the parents of John Sidoti. And  
30 then I think in the first time I invoiced I was, put the invoice in their name but it was told, I was later then informed that actually the land was owned in a company, in two company names and so it was split between the two company names, which is Anderlis Pty Ltd and, I'm sorry, the other name escapes me.

Was it Deveme Pty Ltd?---Yes, that's right, yeah.

40 But it's true to say, is it not, that over time most of your dealings were with John Sidoti?---On phone calls and emails, certainly directions came from him, but my understanding was that he was operating on behalf of his parents.

Right. And who gave you that understanding?---I think it, I think he did or maybe it was, I, I think part of that exchange around who I should invoice for the work was when I was given the names of the parents as the owners and then the names of the companies, so then it was sort of, I understood that it was the companies that I was preparing the submission on behalf of, but I was certainly liaising with Mr Sidoti.

**Sensitive**

At any time when you were acting in relation to this matter did you ever have any conversation with Mr John Sidoti's parents?---No.

Did you ever receive any instructions from Mr Sidoti's parents?---No.

Instructions came from him. Is that correct?---That's correct, yeah. And, and Mr Thebridge.

10 And Mr Thebridge.---As the architect.

So you were able to prepare a submission shortly after 10 November, and if I could take you to exhibit, volume 1, which is Exhibit 1, page 279.

THE COMMISSIONER: These will come up on the screen.---Oh, okay. Great, thanks.

MR BROAD: If you'd like a hard copy, Ms Miller, please indicate and we can provide you one.---That's okay if it's on the screen, yeah.  
20

So this is an email on 21 November. So this is about 11 days after your first contact with Mr Thebridge, he's forwarding a copy of the submission to the council. And if we can go to the next page.---Yep.

Maybe we can just scroll through slowly so that Ms Miller can see and satisfy yourself that that's the submission that you prepared?---It looks correct, yeah.

Looks correct, yes.  
30

THE COMMISSIONER: Just go back to the first page again and just hold it there. No, sorry, the next page. Yes, thank you.

MR BROAD: Now, you were able to produce this submission in a relatively short timeframe, about 10 or 11 days. On what did you rely to prepare this submission?---On what did I rely?

Well did you, was it a case of accessing the documents from the council website or obtaining documents from Mr Sidoti or Mr Thebridge? How did you go about preparing the submission?---Well, I was given the lot and DP numbers from Mr Thebridge, I believe, and I was advised what the land was that was to be considered in the submission and then I looked at the draft instrument and formed a view on what, what the submission should address.  
40

So that was the draft planning controls that were going through council at that particular point in time?---Yes that right. Yeah.

**Sensitive**

Which were available on the council websites?---Yeah, all public information, that's right. And so then I came up with a suggested submission to have the land included into the draft instrument and put together an argument, a formal planning argument, about why that land should be included and, and, and that, and formulated the submission. It's, yeah, it's something I do on a regular basis.

10 On a regular basis. And did you need to speak with Mr Sidoti, John Sidoti, in order to prepare this submission or were you simply able to rely upon your perusal of the various documents you've identified?---I can't recall. It was a long time ago now, I don't remember whether I spoke to him or not.

But there doesn't appear to be any note in - - -?---If I had spoken to him, it would have been in my notebooks, yep. Most likely.

20 And it's clear from this page, page 281 of Exhibit 1, the introduction of your submission that what you're arguing for is a rezoning, so a change from its then zoning, which was residential 3, medium density, to a B4, which was mixed use?---Ah hmm.

A change to the planning control, so a 17 metre height limit and a change in the floor space ratio to 2.5 - - -?---I think it's 27 metre height limit.

THE COMMISSIONER: Sorry, what was that?---Yeah, the point 3 says, "The proposed split zoning would result in a," just reading this, "Adjoining the mixed use only, land can be potentially developed for 3:1 and maximum height of 27 metres."

30 MR BROAD: Right.--- I haven't read the whole thing again. As I said, it's been a while but I'm not sure what I said about height but, yeah, certainly we, the, my view was that it was, to split the zoning mid-block was an unusual situation and not what had happened elsewhere in the town centre and that there had, that the draft instrument was actually including other land to the rear road boundary and that that would be a better result from a planning perspective than what they proposed in this draft.

And in fact, the four arguments that you refer to are set out in, on the first page here.---Yeah, yep, that's right. Yep.

40 And as you say, that was a standard part of your role as a town planner when you were engaged by a client was to come up with arguments as to why planning controls and zonings should be changed.---Well, if I agreed with that position, and from a planning point of view obviously I, oh, are, there are many occasions when people have asked me to make an argument about something and I've disagreed with it, and so I haven't done that. But in this case, I did agree that it made sense for that land to be included into the mixed-use zone. And so I was happy to prepare that submission. Obviously, it, it's our company reputation every time we put a submission

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together, so I put submissions together on the basis of what my professional experience is and my understanding of, and, and knowledge.

If I could just take you to page 260 of Exhibit 1. I think before the submission that you prepared was sent to council, you'll see that you sent an email to Mr Thebridge noting that the company names were incorrect, that you'd spoken to Sandra. That's Sandra Sidoti, is that correct?---Yes.

And that's the wife of John Sidoti?---I think so, yeah.

10

And she asked that you forward – well, she asked that the submission that you had prepared be forwarded to John, for his okay before lodging?---That's correct.

So he was the one who had to check it and indicate he was satisfied with it before it was to be lodged, that's correct, is it not?---That's correct, yes.

If you go to your handwritten notes, and go to the next page, there's an entry on 20 February, 2015, and it begins, "Paul Dewar."---Ah hmm.

20

Can you just read out the words you've written under that particular entry, please?---"Five Dock Town Centre, Canada Bay Council," it's "Re Five Dock Town Centre, Canada Bay Council." TCB means to call back, so I've left a message. Obviously he's called back. And then, "It was exhibited late last year, they're reviewing the submissions, 125 individual submissions and a 400-signature petition. General view from the community was that the height was too much." I've written, "Specific, few site-specific issues, I imagine, urban design looking at the site." Oh, "Urban design's looking, oh, they have an urban designer looking at site-specific requests. Receive advice from the urban designer by the end of February, so they're likely to expect to receive that by the end of February, and then do a report to council in March. It's unnecessary to meet at this stage. Standard public meeting. Oh, so for a standard public meeting, the invites are issued on Thursday, Friday, for the following Tuesday, so likely meetings the first Tuesday and the third Tuesday of March."

30

So you had rung Mr Dewar to find out, well - - -?---Where it was up to.

Where it was up to.---Yep.

40

You'd, MG Planning had, you had put in a submission on behalf of the Sidotis. You wanted to know what was happening.---On, I, on behalf of the two companies, yes, that owned the, owned the land.

The two companies, yes.---And I wanted to know, yeah, what, what the response to the submission was, whether, what council's view was and what the likely timing was for a report to be prepared and sent up to council.

**Sensitive**

Now, council's urban designer was a firm called Studio GL.---That's correct.

And that was, the principal of that firm was a woman by the name of Diane Griffiths? You are - - -?---I don't know.

- - - aware of her?---I don't think so. I don't think so, no. I don't know her.

You don't know her.---No.

10

No, okay. Had you heard of Studio GL at that time?---No.

You hadn't, okay. Mr Dewar indicated that the, in this phone call that the public, who had put in submissions were concerned about the heights of buildings that had been proposed in the plan, which was to alter the LEP and that was something that was of a concern to the public. Did you communicate that to Mr Sidoti?---I don't recall.

20

You don't recall.---I'm not sure whether it's in any of my email communications or not. Possibly, probably. I probably would have, it's something I would normally do, let the client know what the, or the client's representative know what the response, just to let them know that I am liaising with the council and finding out what's happening and where it's, what the issues are.

30

Just if you go back to those handwritten notes, just above the entry that records the conversation you had with Mr Dewar, there's a reference to Mark Thebridge. Could you just read out what you've written there, please?---"Mark Thebridge, John Sidoti trying to find out with Department of Planning and Environment, released end February."

What do you say that notes refers to?---Oh, I can't recall.

Is that indicating that Mr Sidoti had himself made enquiries with planning to find out the progress of his submission?---Not, not the submission I wouldn't think. I would think it would be more around a Gateway Determination for the LEP.

Oh, I see, right.---But I'm not sure why it says, "Released end February."

40

If we could move forward in time to June 2015 and by that date, Studio GL had had an opportunity – this is the urban designer acting on behalf of the council – they've had an opportunity to review the 124 submissions that had been received as a result of the public exhibition, including the submission that you put in and they've reviewed the submissions, they prepared a report, an exhibition outcome report, and they provided that to council staff. Council staff have prepared an agenda report for the upcoming council meeting on 2 June, 2015, and that agenda report is, as a matter of course, made publicly available prior to the meeting, that's correct?---Yes.

**Sensitive**

I'll just take you to that report, the report prepared by council. It's in Exhibit 3, page 377. It should appear up on the screen.---Yep.

And I take it you would, of course, when it was publicly released, you would have had an opportunity to read this?---Yes.

And you would have obviously been interested in reading this to find out how your submission had been received?---Yes, yep.

10

And you can see from the executive summary that a large portion of the submissions expressed concern about the proposed eight-storey height limit. And you'll recall that that proposed eight-storey height limit was inserted into the draft plan as a way of incentivising development on certain sites in the Five Dock area. Do you recall that?---Look, to be honest, I haven't looked at the detail again since it's a long time ago now, so I don't remember the actual mechanism that was put into the draft.

20

But do you recall - - -?---But I remember it was, it was to increase density within the Five Dock town centre and to encourage development to happen.

But the eight-storey height limit, it wasn't proposed that that would apply across the whole town centre?---No.

30

There were certain areas. One of the areas was the property owned by the two companies that you were acting for, 120 Great North Road. At that point in time that particular site was to benefit from this particular incentive clause, the eight-storey height limit. Do you recall that?---Certainly the land that is on the Great North Road frontage, yes, yes.

Certainly not the - - -?---No.

- - - land that you were - - -?---Not the area - - -

- - - the subject of your submission.---No.

That was not part of the - - -?---No.

40

- - - planning proposal, that's correct, isn't it?---Yes.

You can see in the third paragraph of the executive summary there's a reference to the exhibition outcome report, which is the report prepared by Studio GL, and they're recommending that the number of sites that would benefit from the eight-storey height limit should be reduced.---Ah hmm.

And if you can go to page 381, the agenda report also deals with the specific site submissions, including the submission that you made.---Yes.

**Sensitive**

And you can see at the second dot point on that page there's a reference to two submissions received in relation to the land on Waterview Street between Barnstaple Road and Second Avenue?---Yes.

And that would have included your submission?---Yes.

And submissions from another resident on Waterview Street.---Yes.

10 Right. What appears below that is a summary of Studio GL's review of your submission and the other submission.---Ah hmm.

20 I can take you to their report, but the effect of their review of your submission was that in their view that there was no public benefit in extending the zoning or rezoning of the Five Dock Town Centre to include the western side of Waterview Street.---I'm not sure that they said there was no public benefit, I think what they said was that it wasn't appropriate because there was a heritage-listed house in Second Avenue and also that a number of the properties were strata-titled residential flat buildings so they wouldn't have development potential to be redeveloped, and also I think the other issue was around vehicle access.

Yes. Well, I might take you to their report. It's at page 441. And if you just have a quick look at that.---Ah hmm. Ah hmm.

So they've examined the arguments that you presented on behalf of the landowners and rejected those arguments.---That's correct.

30 And in particular if I could draw your attention to the box at the bottom of the page which is dealing with the argument about urban form. It's clear from the text that what Studio GL are recommending is that the area 1 incentive, which is the eight-storey height limit I referred to earlier, should be removed from the property along Great North Road and that would ameliorate the adverse amenity impacts on Waterview Street.---Ah hmm.

So that was Studio GL's recommendation which was picked up by council staff in the agenda report.---Yes.

Correct?---Yes. That's my understanding, yes.

40 So the matter went to council for consideration on 2 June, 2015, and before I take you to the minutes of that meeting I just want to draw your attention to some other documents. Go to page 415 of Exhibit 1, volume 1. And that's a request to address the meeting made by you. Correct?---Yes.

And that's as a result of a request from Mr Sidoti that you attend the meeting and give a presentation?---Yes, I think, I believe so.

**Sensitive**

In fact if you go to the third page of your notes, I'm sorry, the fourth page of your notes, it's 2 June, 2015.---Ah hmm.

If you could just read out what you've written there.---2 June?

Yes, 2 June, yeah.---I've just written, "John Sidoti re Five Dock Town Centre LEP," and the phone number.

10 Right. Does that mean that you have, he's rung you or you've rung him?  
---Unclear.

You can't say. No.---No.

Okay. But in any event you accept that he would have asked you to attend the meeting for the purposes of giving a presentation on behalf of - - -?  
---Yes.

- - - the landowners?---Yes.

20 Which in fact you did?---Yes.

You recall that?---Yes.

And if you could go to page 416 of Exhibit 1, these are your speaking notes for the presentation.---Oh, yeah, yeah.

And they're, basically you're reiterating the points you made in your November 2104 submission.---Ah hmm.

30 If you could go to the next page, page 417, the first dot point on that page, you note that council hasn't accepted the arguments that you've put.  
---Ah hmm.

And the second dot point, and you also note that council's now proposing to remove that incentive clause from your client's property.---That's correct.

40 And the last dot point on the page you're requesting council consider rezoning the western side of Waterview Street B4, which is the mixed use, and retain that incentive clause along Great North Road.---Yes.

And that's consistent with the instructions you were given by Mr Sidoti, John Sidoti?---Yes, well it's consistent with the submission that we made and, yes.

What was Mr Sidoti's state of mind at this point of time, given that the council was against you and not only in terms of Waterview Street but also there was the prospect of losing the eight-storey height limits on Great North Road, what was Mr Sidoti's reaction to - - -?---I can't recall. I don't,

**Sensitive**

I, I don't remember Mr Sidoti being particularly perturbed by any of it and when you say losing it, I think it was obviously just a draft, it wasn't something that was a given, so it was never something that the landowners had, and I think that part of - - -

10 Well, the prospect of it was slipping away.---The prospect, yes, yes. I think part of our submission, you know, in a sense our submission did highlight that there would be an issue having that height immediately adjacent to 8.5 metres, hence we were suggesting there's two ways to deal with that, you either reduce the height or you take in the rest of the land. Our suggestion was that we take in the rest of the land to include it and make the transition in the street, the street, the road, rather than mid-block transition, and obviously council's urban designers didn't agree with that. We were, I was still of the view that it was an appropriate thing to include that land and so we were obviously trying to get the councillors to suggest that that be reconsidered.

20 Right. Did you actually ever meet Mr Sidoti in person or were all your dealings with him over the phone?---I have to admit, I, I cannot remember. I definitely spoke to him on the phone. I, I have been racking my brain to remember whether I met him in person and I unfortunately don't have a very good memory and I actually can't remember. I know I went to a couple of, oh well, two council meetings. I don't think he attended either of those and there was a suggestion of a meeting with the mayor and I have been trying to recall whether that happened. I haven't got any notes of that.

THE COMMISSIONER: Do you remember the mayor's name at the time?  
---Oh, I know the mayor's - - -

30 Who was the mayor?---His name's Angelo – actually, I can't remember his name. I know who he, I know who he is just because I live in the, I worked in the area and, but I, I actually honestly cannot remember whether that meeting ever happened or not. And it may sound like a cop-out but I actually was very sick in 2014 and I had some cancer treatment and apparently it's quite common for your memory to not be that great straight after that. So, it was the next year after that and I'm, yeah, my memory is not terrific.

40 MR BROAD: Well, in any event, if you can just go to page 486 of Exhibit 3, these are the minutes of council meeting and you can see they record that you presented on behalf of the two companies and then council went on to resolve – and the resolutions were consistent with what had been recommended by council staff in the agenda report.---Ah hmm.

And you recall attending this particular meeting?---Yes.

**Sensitive**

I think you said that. I think after the meeting – if you go to page 418 of volume 1, Exhibit 1. I think this is an email you sent to Mr Thebridge the day after the meeting, where you just give a report as to what occurred.  
---Yep.

If I could take you to your handwritten notes, if you can go to the entries on 3 June, 2015. So, if you go to the entry that begins, “Paul Dewar”.---Sorry, what date are we - - -

10 3 June, 2015. So this is the day after the council meeting on 2 June.---Oh, okay. So, yep.

Can you just read out what you’ve written there, please?---“Paul Dewar, submission how constraints may be,” I think addressed but I didn’t write it. “Block diagram massing but more justification how manage existing buildings while development 28 days.”

20 All right. So this is the conversation that you’ve referred to in your email to Mr Thebridge?---Yes.

Can you just tell is, what’s a block diagram?---A block and massing diagram would be a diagram which would identify a building envelope for development. So it may include setbacks from the heritage item, what the height and form may be of any sort of development opportunity on the site. So, so creating an envelope.

30 Yes. And if you can go to Exhibit 1, page 558 and if you can just go to the – there’s an email from Mark Thebridge to Sandra Sidoti beginning, “Hi John,” so it’s clearly to John Sidoti. This is at the bottom of the page. This is not an email that was sent to you by the way, this is another email. But if you can just go to the next page, 559, I think there's discussion there about preparing a second submission.---That’s correct.

Which is what you eventually end up doing, correct?---Yes, yes.

If you go to Exhibit 2, page 17, you’ll find a copy of the second submission that you prepared.---Ah hmm.

40 And this is, you’re forwarding a copy to Mr Sidoti at his electorate office, correct?---Yes.

And if you go to the next page and then the following page and I think, on this occasion, you added some further arguments to buttress your case?---To address the issues that were raised in the Studio GL response to the submission.

So one of the things that was done was to obtain a report from a heritage expert?---Ah hmm.

**Sensitive**

Someone from a firm called Futurepast Heritage Consulting?---Yes.

Who examined the heritage site, 39 Waterview Street, and came to the view that it didn't have a significant heritage value?---That's correct.

If you could go to page 45 of Exhibit 2, you'll see that a copy of the report was sent to council. On 31 July, you sent a copy to council and copied it to Mr Thebridge, if you go to the next page.---Ah hmm.

10

If you go back to the report on page 21, and in summary, I think you made a number of additional submissions, one you relied upon the report from the heritage consultants which said that the property didn't have the heritage value that was once thought?---Ah hmm.

And secondly you, on page 22, you made reference to the strata properties that were on the site and you argue that that was no impediment to developments because of the possibility that there would be new legislation passed, the effect of which was to allow for the sale of a strata block, if 75 per cent of owners agreed.---That's correct.

20

Was that an argument you believed in?---I, I would have to read the actual detail to see what I said. Do you want me to do that.

Maybe if you could do that. If you go back - - -?---Can we go to the next page?

Yes.---Would you take me to figure 1?

30

Yes, okay.---Yep, so I think what I am saying is that the State Government is looking at addressing the issue of redevelopment of strata properties, at that point in time, there was a bill which was to change that to the 75 per cent, and that what I've said is that in light of that, and also in light of the fact that the council's identified a number of other strata properties for a redevelopment potential that it shouldn't be seen as an impediment to the future development of that land.

40

Was that an argument that Mr Sidoti had brought to your attention?---I'm not sure. I don't think so. I, I was certainly aware that that was on the cards. It's an issue for planning generally, and so it would have been something that when the Studio GL report identified that as one of the major reasons why that land shouldn't be included, it would have been an issue that we would have, I would have imagined I would have immediately thought, well, this is meant to be addressing just that issue, so we should look into that.

**Sensitive**

So other than these two additional points I think the rest of your submission was a reiteration of the points you'd made in your earlier submission?---I think that's correct, yeah, pretty much.

10 THE COMMISSIONER: Could I just raise this? The overall context in which the question of rezoning was being examined, the context was essentially that which the Five Dock Town Centre urban study program envisaged, and we could see it on the diagram that was on the screen a moment ago, the area which the potential rezoning would occur. The land in question where Mr Sidoti's property was located was at the periphery of that potential rezoning area, wasn't it?---Um - - -

At the very periphery, at the - - -?---Oh, not that, I don't think - - -

Was that the north or the south end, Mr - - -

MR BROAD: It was - - -?---It's to the north.

20 It was to the north.

THE COMMISSIONER: North, yes.---But it's, it's, it's not really at the, completely at the periphery, because it's sort of like a, a strip shopping centre and it extends all the way to, to Lyons Road essentially. And so there is land to the north of that, as well - - -

But it was at the extremity, anyway, of the potential rezoned area, wasn't it?---Well, the town centre extends a maybe - - -

30 Well, perhaps it - - -?---Another, at least another block to the north of that, so, oh, it's in the northern half of it, yes. But I wouldn't say it's at the, at the extremity. It's not right at the edge.

And the main shopping centre area envisaged that would be redeveloped under this study was down in the southern section of the proposed rezoning area, wasn't it?---Yes, oh, sort of, yeah, where the square is, yeah.

40 So apart from whatever particular features might present planning challenges or need for consideration as to controls in the area, which Mr Sidoti's area, land was, the driver for rezoning was something that arose out of the proposed Five Dock Town Centre study, urban program, wasn't it? I mean, the driver for council proposing any rezoning was being, was associated wholly with the urban study that had been done for a new town centre.---Yeah, so I think what council had identified was that the town centre was, you know, lacking, and falling into a bit of, struggling to survive commercially compared to other centres, and losing a lot of tenancies and, and they identified through that study an opportunity to revitalise the town centre.

**Sensitive**

And that was the public benefit issue or public interest issue in doing a redevelopment, to enliven the vitality of the area and so on.---Yeah, I think so, make it more competitive, make it more of a centre for the people of the Five Dock area so it had more offerings, it provided more jobs, provided more housing, all of those things that we generally, town centre studies do or intended to do when you've identified an issue or a problem.

10 In this case the planning department of council had determined that to extend it further to incorporate the area in which Mr Sidoti's land existed, would not have public benefit. Essentially that's, in summary, the view the planning department had come to, wasn't it?---I think that, I think, I think there's a few different ways to look at that. I think basically they were, the study had been done, they had identified land that they, that they thought was suitable to expand the town centre. Some of that land was in exactly the same situation as this land, in that it was a split zoning in the middle of a site, a middle of a block, and so they, in my reading of their assessment they discounted the inclusion of this half of the block on the basis of these constraints. They weren't saying, I didn't read anything, I don't recall reading anything that said there was no public benefit in actually expanding it, I think they were saying, more saying that the constraints of that land 20 meant that it wasn't suitable to be rezoned and so, and so, and so we put the argument that, well, those, we tried to address those constraints and say that they weren't real constraints. I think there is another argument which is around how much land do you rezone and how, how much do you expand it and where do you expand it, and, and if you extend that too far you start to lose the concentration of development potential, if you like, because you've got too much land which is available so it doesn't all happen in the area you want it to happen. So yes, I think, I think they did, council's planning department did take the advice of Studio GL and agree that it shouldn't be 30 rezoned to expand the mixed-use zones.

What I'm putting in summary, we'll avoid going into the detail of it because it's not right at the centre of what we're concerned with in this investigation, but my understanding is that the planning department independently of Studio GL had formed the view that the area beyond the proposed rezoned area shown on the diagrams at that time did not have sufficient public benefit to warrant an extension such as to provide for a mixed-uses rezoning, and that later Studio GL, following their examination, formed the same view. Now, do you take issue with that, that what I'm putting to you 40 is that in terms of public benefit the assessments of both the planning department and Studio GL were very much against there being any public benefit to extend the rezoning into to permit a mixed-uses development in that area. Do you recall whether that was - - -?---Yeah, look, I don't, I - - -

- - - your appreciation of what they were saying?---Yeah, I don't know that that's the case because otherwise why would they have identified the land on, on Great North Road, 120, as land which was appropriate for the incentive uplift in the first instance? So the fact that it was identified in the

**Sensitive**

10 first instance made it clear that they thought that that land was suitable for an uplift and suitable for redevelopment potential. Our concern from a planning point of view was that if you do that, you then create a situation where this twenty-seven metre height limit, 3:1 FSR on Great North Road causes a significant interface issue with land immediately behind it with no road separating it, which is actually 8.5:1. So it provides an opportunity, and as I said before, it means you then either decide, well, that's too high because the interface is too much, or you change the other, take the other approach and go, well, we'll take that land in as well and increase the density on that as well.

Well, I should say in fairness to you, you haven't – or have you, re-read the reports of the town planning department?---No, I haven't.

20 Or of Studio GL?---I haven't, no, I haven't. But that was my understanding that, you know, it, they identified 120 Great North Road in the first instance for an incentive. So they're saying, okay, well this area is suitable for higher density developments and then you've got to question, well, why do we have 8.5 metres immediately adjacent to that?

MR BROAD: Well, maybe I can assist, maybe on this point. If the witness could be shown the Studio GL report, which was reviewing this second submission and it's found at page 564 of Exhibit 3. It's the second box where Studio GL go through the arguments that you have made.---Ah hmm.

And you can see the final sentence is, "It provides little public benefit," in their view to rezone that site.---Yes, yes.

30 But the second last paragraph, the land use conflict, which you relied upon in making your arguments was being addressed by removing the eight-storey incentive clause from 120 Great North Road. So they were addressing that argument that you had made in that particular fashion, correct?---That's correct, yeah.

And they were noting that the area that you had made, the area along Waterview Street, the subject of your submission was further away from the core of the central part of Five Dock?---Yes.

40 So they had addressed your arguments and rejected them?---Yes.

For what would appear to be on the basis of a thoughtful consideration of your points, would that be a fair thing to say?---Well, I, yeah, I think they've considered the points and they disagree, yep.

At this point in time, so that particular page I took you to from the Studio GL review was prepared on 9 October, 2015. So this was in preparation for the next council meeting, which was on 20 October, 2015, where this particular issue was going to be reconsidered again by council. Before that

**Sensitive**

meeting took place, you had a phone call with Mr Sidoti. If you can go to -  
- -

THE COMMISSIONER: The pages of this book haven't been numbered but we are looking at October, is that right?

MR BROAD: It's the 6<sup>th</sup> of October. It's an entry on 6 October and the first line is, "John Sidoti."

10 THE COMMISSIONER: See if we can find it. Yes. Have you found that reference?---Yes.

MR BROAD: I wonder, Ms Miller, if you could just read out that entry, please.---"John Sidoti," and then there's a phone number, "Marjorie Ferguson and Paul Dewar, who are the council officers," so I'm not sure if that means he had spoken to them or, I'm not clear.

20 THE COMMISSIONER: Sorry just before the name Marjorie Ferguson there's a mark there. Is that anything of significance?---No, it's just an asterisk.

Okay.---"Councillors keen to move amendments. Motion to extend zoning and another street on the opposite side, Fairlight Street." I've got, "7, three Lib, three Lib, one Greens," so that's the councillors' breakdown, "All supportive except the Green." "Workshop, they had a workshop last week. Ring to set up," which I think is a meeting. "Work around," I imagine diaries. I've written, "Confidentiality, three Libs, three Lib councillors upset. Owner of the house supportive. Tradesperson. Waterview two hour parking, no residential parking scheme, no garage, has put in submission." 30 So I think that refers to the owner of the heritage house, being a, being supportive of the rezoning and that that person is a tradesperson and has an issue with parking in his street and no, he has no garage and has put in a submission to include, to agree, supportive I guess that he wants the land rezoned, agreed the land should be rezoned as well.

MR BROAD: So these notes you've taken though, you're recording the words that Mr Sidoti is saying to you over the phone?---Yes.

40 As best you can.---As best I could, yeah.

So let's just go back to the beginning. The first two lines, "Councillors keen to move amendments. Motion to extend zoning and another street on opposite side, Fairlight Street." Tell the Commissioner what, what Mr Sidoti was telling you during that part of the conversation.---Oh, I believe what he was saying was that he understood that the councillors are keen to amend the rezoning to include both the subject land and - - -

**Sensitive**

To the Waterview Street land?---Yes, and the equivalent land on Fairlight Street.

Well, Fairlight – I might just assist you there. If you could be shown a map, page 179 of Exhibit 3, and if you could just blow up the map a little. You can see above, you can see above Second Avenue, between Second Avenue and Barnstaple Road, there's the area of Waterview Street which is the subject of your submission.---Ah hmm.

10 The opposite side, another street on the opposite side, was that not a reference to the area bounded by Henry Street and West Street?---Yeah, yes, that would have been my, that was my first thought.

And then Fairlight Street, if you look down the bottom, Fairlight Street - - -?  
---Is down there.

Is down there. So - - -

20 THE COMMISSIONER: That's near on the map where it says Ramsay Road.

MR BROAD: Ramsay Road.---Mmm.

THE COMMISSIONER: At the very bottom.

MR BROAD: So these were three sites outside of the proposed rezoning.  
---That's correct. I think I've obviously written Fairlight Street.

30 But Fairlight Street, it's not on the opposite side of Waterview Street.  
---No, I think that's, I think that's three, as you say, three areas.

Three areas.---Yeah.

And then he's given you a breakdown of the political affiliation of the seven councillors.---Yeah.

“All supportive except the Green.” All supportive of what?---I think of extending the zoning to include those three areas.

40 And then, “Workshop last week.”---I gathered they had had a workshop last week and that's what they had come up with.

Right. Were you surprised at that, given what had occurred in council on 2 June 2015, where your submission to extend the zoning into Waterview Street had been rejected by the planners and council had voted accordingly?  
---I don't think I reacted, I think I just, that was just what I was being told.

**Sensitive**

THE COMMISSIONER: So you weren't thinking back - oh, 2 June, the councillors - - -?---Who knows what may have happened between 2 June and, are we now, four months later. There may have been a whole lot of work done. I know that there was, certainly in the council staff discussions that I had had prior to that second submission, they had indicated a willingness to look at it. I obviously hadn't talked about the other sites but on our site, they indicated that they, they had a willingness to consider whether that land should be extended, so we'd done a, obviously an additional submission and I obviously had seen what Studio GL's response was but I don't know what may have transpired in between those - - -

Is this right that prior to 6 October, you had never heard of any suggestion of the other two sites being considered for inclusion in the rezoning?---Not that I'm aware of, no.

No. So this had, it seems, emerged since your submission was put in?---Well, I, I can't, I can't say. I - - -

As far as you know, anyway.---Yeah. I was focused on my site and the work that I was doing. I wasn't focussed on what was happening, other than the arguments which related to the fact that land was in a similar position on other parts of the council - - -

But just to be clear about it, doing the best you can, I appreciate time has moved on. You were never instructed or it was never suggested to you that these other two sites could be of some use on the question of rezoning the Sidoti land?---I, I didn't have any involvement with the other sites at all.

And your note indicates that, according to Mr Sidoti, the councillors were actually keen, that is to say more than interested, they were keen to move amendments. Is that how you took it?---That's what I have written, well that, I would have written the words that were spoken to me.

And based on what he said to you, apart from the Greens councillor, all councillors were supportive of the amendments to which he referred earlier, is that right?---That's what I've written.

And later in the conversation, you've got the words there, could you just read them for me? "Ring to set up," what?---Well, "Ring to set up." I think that is a meeting.

What's that word before "around"? "Ring to set up," - - -?---Oh, work around, which I think would mean work around people's timeframes usually. Like their timetables, whether they're able to meet, timeframes.

What's your interpretation - I withdraw that. What's your understanding of the word, is it, "confidentiality"?---It is. I, I - - -

**Sensitive**

What's the context of "confidentiality"? What did he say?---I have no idea.

Well, could those words go together, "Ring to set up, work around confidentiality"? Is that how it should be read?---I wouldn't think so.

10 Well, what other meaning could be given to the words, "work around," well, if the words are read together, "work around confidentiality"? What would, did you have any understanding of what he was talking about?---Look, it's a long time ago. I think if I had, if the two words, if the "work around" and "confidentiality" were part of the same sentence, I would have written them underneath each other and when I move across to the left that means it's a new point. So that's my interpretation of that but I can't be certain. I think "work around" would have been working around someone's diary to, to set up a meeting.

Let's take confidentiality as a word sitting by itself.---?---Yeah. I guess I - - -

20 Sorry, I'll just finish. Underneath it it's got, "Three Lib councillors upset." So can you understand now, or reconstruct in your recollection of, if you have to, or whether you do remember, that there was some confidentiality around three Liberal councillors being upset? Does that mean anything to you now?---None, nothing at all, sorry.

30 Well, we've earlier seen reference by Mr Sidoti, according to your note, to councillors being keen and here at the end of the note we've got actually councillors being upset. That is to say, some sort of emotional component in the reaction of three Liberal councillors. Does that ring a bell with you? Any, can you assist us in what he was talking about?---No. I'm afraid I can't - - -

Bit hard to reconcile, isn't it?---It is, but I have no - - -

No, you can't contribute to that - - -?---I can't, I can't recall, I can't recall - -

- - - fund of knowledge on this, on - - -?---No.

All right. Okay.

40 MR BROAD: It would seem to have some connection with what's been spoken before in the conversation.---Well, it's in the same conversation, so - - -

It's in the same conversation.---I don't know whether confidentiality relates to the, the breakdown of the support for that amendment, whether that's about, you know, don't, that, that - I don't know. I, I really don't know.

**Sensitive**

Is that word “confidentiality” or “confidentially”? Can you just double-check?

THE COMMISSIONER: Oh, maybe it’s “confidentially”, or what do you say?---Yeah, actually, it looks like “confidentially.”

I see.

MR BROAD: Isn’t Mr Sidoti - - -?---Yeah.

10

- - - telling you something that is information of a sensitive nature that he doesn’t want others to know about?---Possibly.

And it’s about the three Liberal councillors.---Being upset?

Yes.---I - - -

20

In connection with the, with what’s being discussed concerning Waterview Street and the other two sites.---It, it doesn’t make sense to me, because prior to that, it says, “all supportive, except for the Greens,” so - - -

But as he was talking, you were writing the words he was using.---Yeah, that’s all I can tell you, what I’ve written. I don’t recall what, anything more about what that means.

Was there any other occasion when he spoke about the three Liberal councillors?---Not that I recall.

30

Is it possible that it was a reference to the three councillors being upset about the motion to extend the zoning?---It’s possible, I don’t know.

You just don’t know.---Nah.

Okay, thank you. If you go to the 9 October notes, there’s a note involving what appears to be a conversation with Tony McNamara.---Ah hmm.

Could you just read that out, please?

40

THE COMMISSIONER: Did you know Tony McNamara at this time?---I - - -

Had you dealt with him before?---I know of him, I don’t know him personally, no.

Well, what was his position, as you understood it?---Oh, I think he was the Manager of Development and Planning.

Of?---Development and Planning. I’m not sure exact title, but - - -

**Sensitive**

Okay.---Tony McNamara, “Studio GL design study, all work on exhibition for public comment, have received a number of submissions. Written comp study. GL to review options along the way. A workshop, they’ve undertaking workshops. And then it’s going to council next meeting on 20 October. No more consultation rounds. Waterview Street. Not inclined to have,” oh, “no inclined,” I think that should be “not inclined to have more rounds of submissions. Concerned. Internal discussions with council.”

10 MR BROAD: Did he, can you recall what he was concerned about?---I, I don’t recall. I imagine he was concerned just to get the thing finished, because it had taken such a long time.

Yes, because he’s indicated he’s not inclined to have any more rounds of submissions about Waterview Street, is that - - -?---Or about anything, any, about the, about the LEP amendment, I think - - -

20 Because it’s been going on for a number of years by then.---Yeah. Yeah. So I gather it was really a, a matter of, it’s, yeah, he’d be concerned just to finish the project and, and get a result, I imagine.

And you were ringing him to find out how your submission was going, I suppose, is that correct?---Um - - -

That was the purpose of the call?---Yes, I imagine so.

Yeah. I note the time.

30 THE COMMISSIONER: Yes, I see it’s 11.30. We normally take a morning tea break. So we’ll adjourn for about 15 minutes, and Mr Broad, I’m sure, will tell you where you can get a cup of coffee or something like that in the meantime. I’ll adjourn. In 15 minutes we’ll resume.

#### **SHORT ADJOURNMENT**

**[11.31am]**

THE COMMISSIONER: Yes, Mr Broad.

40 MR BROAD: Thank you, Commissioner. If we could take you to Exhibit 2, page 80, please. This is an email from council staff just indicating that the agenda for the 20 October meeting is going to be released on the Friday, 16 October. If you go back one page to page 79 you’ll see that you emailed that to John Sidoti, just indicating him that the meeting’s about to be scheduled.---Yep.

The report, the agenda report would be released on the Friday.---Ah hmm.

**Sensitive**

And made publicly available. You would have obtained a copy of the report upon its release, this is the report for 20 October?---Yes.

THE COMMISSIONER: The email of 15 October from Mr Sidoti refers to a one-page summary. Do we have that?

10 MR BROAD: Yes, we do have that, and I'll take the witness to that, Commissioner. But before I do, just in relation to that point, before I take you, Mr Sidoti has requested a one-page summary and this is for the purpose of giving it to the councillors for the meeting on 20 October, and you did prepare such a summary and I'll show it to you in a moment.---Ah  
hmm.

Do you recall doing so?---Not specifically but I imagine I would have.

20 But before you did provide or did prepare that summary and provide it to Mr Sidoti, I think you did it a day or so later, but you responded on the same day to Mr Sidoti saying, "Sure." Sure indicating that you were prepared to provide him with a summary. Correct?---Ah hmm.

Then you say, "Do you have any details of the other properties the councillors are looking to include?"---Yep.

Now, "As it's probably better to talk about the broader approach, not just Waterview Street." Now, I take it that's, when you say that the other properties the councillors are looking to include, that's a reference back to the conversation on 6 October?---I imagine so, about the - - -

30 About the three - - -?--- - - - opposite site across the other side of the road and the Fairlight Street.

And the Fairlight site. And you want the details of those other properties as it's better to talk about the broader approach, not just Waterview Street, so you're talking here about the presentation that you've going to give on the 20<sup>th</sup>?---Yes.

40 And it's better to talk about the broader approach. What do you mean by that?---I think I mean that if there's a, if there are, if there is an appetite to expand the town centre to include those three areas, what is consistent about those three areas and why are those three areas suitable for inclusion in the town centre, so I needed to understand what those areas were and what the, what the rationale would be to include all three areas into the town centre.

As part of the strategy, to use a strategy on your part to present a convincing argument to the councillors at the meeting on 20 October?---Well, to, to understand what those other areas were, whether there was a likelihood that, whether there was consistency between those three areas from a planning

**Sensitive**

perspective and in which case is there a consistent argument about why the three should be included.

If you go to page 81 and there is Mr Sidoti's response to your request for information about the three areas. He refers, he doesn't give you any information about the third area but he identifies the second area between East Street - - -?---And Henry.

10 - - - and Henry Street, but did you undertake any inquiries, any investigation yourself in relation to that area?---Yeah, I would have looked at that area to understand what, what it, what it - - -

20 Well, what would you have done?---I would have looked at the draft instrument to see what its, what was proposed for that area, I would have looked at just the, the plans to see whether there was a consistent, whether it was sort of an equidistant from the actual core part of the town centre or whether it was, and whether it sort of on a plan matched the Waterview Street in terms of its sort of characteristics, to understand why that was being included as well.

He didn't provide you with any - - -?---Potentially included as well.

- - - any details about the third area, or certainly not in that email.---Not that I know of, but I think we already had established it was Fairlight Street on the, in the telephone conversation.

30 But did you obtain any more details as to the whereabouts of that third site other than Fairlight Street? Fairlight Street's a rather long street.---I don't recall. I imagine it was pretty obvious where they were talking about. Fairlight Street may be a long street but it's only a certain part of it which is adjacent to, immediately adjacent to the town centre.

Well - - -?---But I might be wrong.

If you go to page 104, please. So this is the Monday, 19 October. This is the day before the meeting. You attach the draft one-pager for comments. ---Ah hmm.

40 So this is your response to his request. He says, "That's great, thanks, Helena. Cheers." And if you go to page 106/107, just go through, are you satisfied that's the one-pager you prepared?---Looks like it.

If you could just go to the first page of the one - well, it's actually a two-pager, not a one-pager. The first page identifies the two sites but not the third site.---Ah hmm.

Does that suggest that you didn't actually have any details about the third site at that point in time?---Possibly, yeah. But I think possibly also it's, this

**Sensitive**

site, this West Street site was more relevant in that it's a more sort of equivalent-type location to the site that we were looking at.

10 What do you mean, "equivalent type location"?--In terms of its, where it sits in the town centre. So it's essentially the, sort of equidistant from the – how do you explain it? It sort of flanks and fills in a bit of an extension of the town centre, so the actual, the area that is zoned B4, up to West Street, it's filling in that bit out, all the way out to Henry Street and the same on the eastern side, this site, our, the site that we were looking at, Waterview Street, it's filling out that bit all the way up to Barnstaple Street. So it's sort of like a consolidation, it's an, an obvious extension of the B4 zoning. On a, like a mirror image, if you like.

It creates a symmetry. If you develop Waterview Street, then to develop Henry, West Street area it creates a symmetry. But that in itself is not a reason to develop.--No, no. I'm not saying it is, I'm just saying that they're like sort of similar locations. They're also, the other, the other - - -

20 Well, just the one location is on the opposite side of the town centre from the other, that's the only similarity, isn't it?--Well, no. I think the other similarity is that the western site, the West Street site is actually, there's a, sort of arbitrary boundary which is not a road boundary, it's actually just a, a lot boundary that, and then there's, and so you transition from B4, where you see the red square, straight into the R2 zone in that case, rather than the R3 zone, across a fence, essentially. There's no road. So one of our core arguments was that usually when you do zoning changes, you do them along, on a road rather than say, you use the road as part of the transition to, to, sort of, take up some of the transition difference between, in height and in land use. So it's a similar situation there, albeit that it's in a horizontal rather than a vertical sort of transition.

30 When you prepared this one pager, were you aware that Studio GL had already considered the prospects of rezoning this area bounded by Henry Street and West Street, had considered it and had rejected doing so on the grounds that to do so would have provided little public benefit? Were you aware of that as at 19 October?--I can't say, I'm, I'm not sure. I maybe have looked at that, I may, I don't recall.

40 If you go through the key reasons, there's no reference to – well, let's go through the key reasons.

THE COMMISSIONER: Just before you – nobody's being critical of you, understand. What we're only trying to ascertain is this, and perhaps if we go back to square one. I think if we go to 81 for the moment, we'll come back to this one page or two page statement in a moment. Could we go back to 81? Perhaps go back to 79, if you wouldn't mind, please. In your email, the second one from the top, 15 October, 2015, 11.24am, you said, "Do you have any details of the other properties", I can understand you

**Sensitive**

asking, the reason for that, “the other properties the councillors are looking to include?” So what information did you have that it was the councillors who in fact were looking to include these properties?---I think the phone call that we just previously spoke about, which - - -

So that was from Mr Sidoti?---Yep.

So that was based on something he said that you understand the councillors were looking at these properties?---Yes.

10

All right. So that it - - -?---Well, and I’m not, I, I understand also from that that there was – if we go back to – yeah, that also said, he also said that there was a workshop last week. So I imagine that that workshop would have involved the council staff as well as potentially Studio GL, I - - -

20

So now the councillors were, on your understanding of what Mr Sidoti said, were interested to include these other properties, you understandably wanted to know, you wanted some information so that you could then evaluate how these properties could be used in the argument or in the submissions for Mr Sidoti.---Or, or if there was an argument, if there, if there was any - - -

If there was one.--- - - - any comparable reasons between the two.

Well, that’s right. I think you’ve touched on a few, that you wanted a plan of the area, whether it was equal distance, for example. That is, East Street and Henry Street.---Yep.

30

And you wanted to, in effect, investigate, or be able to utilise information as to – which would demonstrate the utility or the suitability of these three areas as being further reasons to extend the rezoning. Is that right?---Mmm, I think, I think - - -

All right, you wanted to - - -?---I got lost in there, sorry.

You wanted to know something about these three areas.---I wanted to understand where, where they were, and whether there was any consistency between the areas that had implications for the rezoning of the Waterview Street site.

40

Right, yes, exactly.---Yep.

And my note of what you put was similar to what you’ve just said is, why are these three areas suitable. That’s my note of what you said before. ---Why or why not, yeah, yeah, are they.

Or not, yes.---Yep.

**Sensitive**

Well, then, these other areas having, as it were, newly come into the picture, called for consideration of matters such as you identified a moment ago. So, it doesn't seem from the email chain we've looked at so far that Mr Sidoti himself was able to provide you with any information which would assist you in your task of evaluating these three properties on the issue. And if that's right, then no doubt you were keen to get it from some source. Is that right?---I think I was just trying to understand what the areas were.

I understand that.---Yeah.

10

You were, but you were seeking information, obviously.---Yes.

Did you ever get it?---Well, I think in the next email that we just looked at before, it did say the area between East and – oh, sorry, West, East Street and Henry Street, Five Dock. Says the pocket excluded from East Street to Henry Street, Five Dock. That area will then match the part left out on Waterview Street. So that, that's the information that I received.

20

Yes, but did you get any more information on that, that what the councillors, why the councillors were now looking at it?---Um - - -

And what were the features about it that it was catching the eye of the councillors?---Not that I know of. I can't recall.

No, well, I - - -?---I think I, I think I looked at them, and, and, and thought, well, the East Street/Henry Street site is comparable to the Waterview Street site, in my view, from a planning perspective. It has that same issue, in terms of the transition. And so utilised those, that, that as another argument for why the two areas should be rezoned.

30

Did you have any information – if not from Mr Sidoti, from any other source – that the councillors in fact were not looking at these other areas, including East Street and Henry Street?---Oh, did I – I'm sorry, could you repeat that?

No, I'm saying, did you have any information, contrary to what you understood from Mr Sidoti, that the councillors had not raised these three areas and didn't show any interest at all in using them?---Not that I, I – no, I didn't know that. I only know what I was told.

40

Told. Mmm.---Yep.

MR BROAD: I'll just take you back to the one-pager.

THE COMMISSIONER: Yes, I'm sorry I took you off course.

**Sensitive**

MR BROAD: No, that's fine. It's just page 106. And if you could just have a quick look at the key reasons, and if you could go to the next page, please.---Ah hmm.

Would it be true to say that most of those, the majority of those reasons were directed at the Waterview Street site?---Yes.

And that was your real focus was the Waterview Street site?---Yes.

10 Do any of those reasons, are any of those reasons applicable to the site on the opposite side, the site bounded by Henry and West Street?---5 is, it's the same issue that I was talking about at the transition where you've got a mid-block zoning boundary rather than a public street zoning boundary. I imagine the strata laws issue would have – but I don't know what the, I don't know whether there's strata issues, strata properties in that other site as well, so that may well be relevant too, and if we could flip back to the page before, well, 1 is I think really about broadly speaking the town centre, so it's applicable to all.

20 THE COMMISSIONER: But you don't know, you're just speculating at the moment, it may, as you've indicated, or may not be - - -?---Yeah.

- - - similar to Waterview Street in terms of strata titles developments.---No, no. That's really more a broad issue around expansion of the town centre to actually revitalise the town centre and that, you know, it does take a long time to go through a town centre planning LEP process and we need to get it right, is what I was saying.

30 Mmm.---Subject, and the, and the land does equally represent a logical extension of the town centre, so I think 1, 2, 3 is specifically about Waterview Street but equally applies, it's the same as 5 really.

40 So is this the position after the question of the three areas raised by Mr Sidoti, he didn't provide you with any further assistance on those three areas and nor was there any information available to you at this time in the time you had about the properties in terms of why they might be relevant to the question of rezoning the Water Street site?---I think I, once he identified which land we were talking about I looked at that land, I don't know how much research I did into that, I can't recall, but I did on the face of it think that it looked like an equivalent sort of comparable situation, so included that into this one-pager.

MR BROAD: And the recommendation on the second page of the one-pager - - -?---Two-pager.

- - - that recommendation is directed to, well, it's focussed on Waterview Street.---Well, it's purposed broadly because it's actually talking about both sites, but it is - - -

**Sensitive**

THE COMMISSIONER: No, but it says, no, no, listen. Look at the last line, "It is recommended that council amend the LEP to include the subject land."

---Yeah, so if you go back to the page before, can you just go up to the top, it says, "Request amendment to draft LEP controls to include," and then it includes both land on the western side of Waterview Street and block between Second Avenue and Barnstaple Road and land on the eastern side of West Street to the south of Henry Street. So the subject land is the land shown yellow.

10

MR BROAD: And you wouldn't have had an opportunity to speak to the landowners in Henry and West Street area to see whether they wanted their land rezoned B4?---I didn't do that, but I may well have looked at whether there were other submissions on in respect of that land. I don't recall.

Well, as I indicated - - -?---I mean I, it's not - - -

- - - there were submissions and they were considered by Studio GL and I think in the previous year, 2014, had been rejected.---Okay.

20

You're not sure whether you were aware of that at the time?---I'm sure I would have looked at it but I don't recall.

Thank you. So if we just go back a few days, so we go back to the Friday, 16 October, when the agenda report is released, and I'll just take you to the agenda report. It's found at page 499 of Exhibit 3. And this is the report dealing with the submissions most of which were concerned about the eight-storey height limit and the impact that would have and you recall that Studio GL had recommended that the height limit be reduced.---Ah hmm.

30

And that the incentive clause be – which was the eight-storey height limit, the suggestion was that that should be reduced just to a number of select areas within the Five Dock Town Centre, which excluded the property at 120 Great North Road. And if you go to page 504, again, council is setting out essentially the views of Studio GL, concerning your submission and one other submission about Waterview Street and I took you to Studio GL's review of your submission earlier in this evidence.---Ah hmm.

40 So they're following Studio GL's advice and they're not supporting essentially the argument that you have made?---Yes.

And so you would have become aware of that on 16 October, as would Mr Sidoti?---Yes.

Yes. So your prospects at that point in time were not looking good, on the Friday?---No, not – well, not according to - - -

**Sensitive**

Based on the advice that was being provided to the councillors, would you agree with that?---Yes.

If you could just go back to your handwritten notes. If you go to the notes on 18 October, and so that's a Sunday. So that's two days after the agenda reports has been released.---Ah hmm.

10 And if you could – the notes starts, “John Sidoti.” If you could just read - - -?---“Defer LEP amendments. Give spiel holistically. Three recommendations. Get rid com. Added FSR.”

20 THE COMMISSIONER: Sorry, could you just give me that again? Three - - -?---Recommendations. I think that says, “Get rid com,” but I don't know what that means. “Added FSR. 120 Great North Road and 2 Second Avenue. Also own 122 Great North Road, 37 Waterview Street. Big issues.” And then I think it says, “Just deal with the big issues and that you're available for questions.” And then, “Richard and Catherine Sidoti.” “Law just passed Lower House.” So that's around the issue of the strata, the 75 per cent strata redevelopment. It says, “Waterview Street, no heritage order.” It says, “Light,” I think, or something. “Italian renovation.” I think that's really around what the heritage item is actually like rather than what its values are. “Across the road, office. Take six storeys on heritage façade.” Tack six storeys on heritage facade, I think that should say. Not my best notes.

MR BROAD: Can I just take you to – just go back to the beginning of that note. You've got, “Three recs,” three recommendations.---Ah hmm.

30 And underneath it's got, well you thought it might, the words might be, “Get rid.” I'm wondering whether that word, rather than “get” is an abbreviation of the word “extension” and I am suggesting that because of you go back to the very first page - - -?---Sorry, can you say, say – you think it's an - - -

Well, rather than the word, rather than “get”, could you have written there an abbreviation of the word “extension” or “extend”?---No.

40 I'm only saying that because if I take you back to the very first page of your notes, if you go back to the very first page, and you go to point 2, where you've got “wants to change so zoning,” and then you told us that word was “extend”. And it just seems to me, Ms Miller, that that word is very similar to - - -?---No, I don't - - -

- - - the word I'm drawing your attention to.---I don't think so.

You don't think so?---No.

### Sensitive

No.---I mean, it's clearly – in my writing, the e-x-t dot is clearly “extension” on the first page. I mean, this looks, it's definitely a g-e-t.

Okay. So you think it's “get rid”?---I don't know. “Com”, I don't know what that means. “Communication”, “com”, “get rid com.” “Commercial”?

Is it not “commercial”?---Could be “commercial”. So, hence, potentially consider whether it could be residential only, not commercial, with the added FSR.

10

THE COMMISSIONER: Just ask you then, just above that, we start again, the first thing noted after Mr Sidoti's name is “defer”. And then there's an arrow. And then it says, is that “LEP amendments”?---Yes.

All right. What do you understand that was saying?---I think that's saying, at the meeting, request a deferral. Don't, don't - - -

And - - -?---Request a deferral to consider further, rather than have it determined.

20

Right. And then what's the next word is “give”, is it?---“Give spiel.”

“Give spiel.”--- “Holistically.”

What's that indicating?---I think that's just deal with the big issues.

Hmm?---Just deal with the big issues, the broader issues.

I see.---The - - -

30

So defer in order for that to happen, is that what you understand you say? ---No, I think this is around what I should, what, what he is asking me to present.

For you to prepare, I see.---Yep.

A presentation.---Yep.

And then, so “give spiel”, and then the next line is what?---“Holistically.”

40

Hmm?---“Holistically.”

“Holistically.” I see. And you may have touched on this, I'm sorry if you have and I'm repeating it, but “three recommendations” is that meant to be? ---Yes.

**Sensitive**

What's that mean? What's that a reference to?---I think that's around, in the, in your presentation, just make three recommendations, just cut it back to three things that you want.

It'd be hard to do that, wouldn't it, until you know what you're going to say.---Well, I think that's the – certainly when you're talking at a council meeting to councillors, it's always good to keep it short and sweet, what, what it exactly it is that you're asking for, so they're very clear. And I think that's what that's saying.

10

So when – so did you take this, him to be saying that there will be a deferral, and what, you would be there and giving a presentation, or, what, how's this work?---For me, this reads as if my presentation would be requesting a deferral. Mmm, I don't know whether, I don't know whether that's the case, but that's in my understanding of reading that, that's - - -

MR BROAD: If I – mmm.

20 THE COMMISSIONER: Did that happen though? Did you go and present a case for a deferral?---I can't recall, I, I have - - -

There's no sign that you did, but I just wondered if you had any recollection.---Yeah. I don't have any recollection of that, no.

No. So - - -

MR BROAD: Isn't it the – sorry to interrupt you, Commissioner.

30 THE COMMISSIONER: Yes, no, you go ahead.

MR BROAD: Isn't it the case that that one-pager was in fact your speaking notes for the meeting?---Yes.

There's no, obviously there's nothing in that one-pager - - -?---That, no.

- - - where you're asking the council to - - -?---So can you just remind me what date I prepared that?

40 Yes. You sent it to Mr Sidoti on 19 October, at about around 20 past 10.00 in the morning.---Okay.

So that's the Monday.---All right. So you're probably correct then, it probably is not asking me to ask for a deferral, but that it is likely that it would be deferred.

THE COMMISSIONER: So, it sounds pretty definite, there's going to be a deferral. Do you know how he knew that would take place?---No.

**Sensitive**

MR BROAD: Did he explain to you why there would be a deferral?---No.

Was it obvious why, given the recommendations of council staff and the agenda report, which had been released on the Friday?---I think it would, yeah, I don't know. It wasn't - - -

Did it occur to you that - - -?---I think I was told that it would be deferred and that's what I've written.

10 But you must have considered, well, why is he deferring it – sorry, I withdraw that question. You must have considered why is it being deferred?---Well, I imagine it would have been deferred to allow for further consideration of the issues and the, and the submissions et cetera. So - - -

THE COMMISSIONER: But there had been extensive consideration over the years up to this time.---There had been, yes, you're right.

20 So why defer it again and have another look at it? Anyway, you don't know, you just, you can't recall - - -?---I didn't, I, yeah, I - - -

- - - whether he said anything about that?---No. I would have written it down if - - -

MR BROAD: This is the first time that you'd heard about deferral, it's certainly the first time that - - -?---As far, as far as I can recall. As far as I can recall. It's a long time ago.

But it doesn't appear in your notes prior to this date.---No.

30 You've also recorded, "Also owned 122 Great North Road and 37 Waterview Street." What was he indicating there? I mean, should we just take that at face-value, that he owns, that he owned those properties, or his family or family companies own those properties?---Yeah, I think so. I think that's what I was advised.

Well, you attended the meeting on 20 October. Do you recall that?---Yes.

40 And can you remember your giving a presentation to the councillors?---I, I don't remember explicitly but I'm sure I did, yeah.

And was it along the lines of the one page that you'd prepared?---Yes, it would have been.

It was, would have been, yes.---Yep.

And what do you recall about the resolution passed at the meeting, if anything? Can you remember what was passed?---No, I don't recall.

**Sensitive**

Can you remember the position taken by the councillors at the meeting?  
---No, I don't recall.

THE COMMISSIONER: All done and dusted pretty quickly?---I don't recall.

You don't recall?---Yeah, I don't. I go to a lot of council meetings.

10 MR BROAD: Well, I can take you to an email that you sent to Mr Sidoti,  
which was considered a report to him about the meeting. It's at page 117 of  
Exhibit 2. And this was sent the day after the meeting so it was clearly fresh  
20 in your memory at the time?---Ah hmm.

Maybe just have a read of that.---Ah hmm.

Go to the following page. If you could just go back to the first page. So it's  
clear, according to your recollection of the meeting, that Helen McCaffrey,  
Councillor McCaffrey foreshadowed a motion to defer consideration of the  
20 planning proposal subject to receipt of this further report. So that would  
have come as no surprise to you - - -?---No.

- - - given what Mr Sidoti had told you - - -?---Yes.

- - - two days prior.---Yeah.

Does that help you recall that part of the meeting?---I, I, no, only, only what  
it says, yeah.

30 So she foreshadowed that motion, which I note wasn't referenced in the  
agenda papers for that meeting, so this was a motion out of the blue.  
---Right.

The speakers gave their presentations, including yourself.---Ah hmm.

And then according to your email, the motion was passed and then amended  
to include advice on the pros and cons of the additional sites that you've  
given evidence about.---Ah hmm.

40 Do you recall that occurring?---Not explicitly, but I gather it did because  
that's my summary.

And I note at the bottom of the email you refer to the fact that you spoke on  
behalf of the two companies, consistent with the points you've identified in  
your one-pager which is the evidence you've given.---Yeah.

Mr Sidoti responds, I think at the end of your email on the next page you  
indicate you're prepared to set up a meeting with the mayor?---Ah hmm.

**Sensitive**

Mr Sidoti responds - - -

THE COMMISSIONER: So what have you – sorry, just go back to that. What discussion had there been before between you and Mr Sidoti on the question of the meeting with the mayor?---Um, I - - -

Did he bring that forward or did you bring that forward?---Yes, I think so, I think there was a phone call where he suggested that that - - -

10 And that’s your best recollection?---Is that in the, in the phone call notes, do you know? What, sorry, what date are we - - -

MR BROAD: Well there was, it appears as if attempts were made to arrange a meeting on 27 October.---Oh, okay. So no. On the 21<sup>st</sup> John Sidoti called and asked me to arrange a meeting with the mayor whenever and he will fit in.

20 THE COMMISSIONER: So arranged meeting with the mayor whenever – what’s, sorry?---It says, “Will fit in.”

I see, will fit in. And why was he proposing a meeting with the mayor? ---I guess to put his case about why it should, Waterview Street should be considered to be rezoned. I don’t know.

And in the reply that’s on the screen, “Thanks, Helena, that would be great, ASAP. Tell the mayor’s secretary that Angelo is aware of it.” That signifies that he had – is this right - - -?---He’d already had some - - -

30 - - - that he had already spoken to the mayor, directly or indirectly, about having a meeting. “You should probably get Mark there as well.” Who’s Mark?---Mark Thebridge, the architect.

Sorry, Mark?---Mark Thebridge, the architect.

Oh, yes, yes. Well, did he discuss with you what sort of presentation or matter would be put to the mayor?---Not that I recall.

No, okay.---I think it was a discussion.

40 MR BROAD: Can you recall whether the meeting took place with the mayor?---I don’t recall.

Before I go to that particular meeting, in response to your email to Mr Sidoti on the 21<sup>st</sup>, he responds, “Well done.” So he was, he was clearly pleased with the outcome of the meeting on the basis of that?---Well, it sounded like it.

**Sensitive**

Well, did you talk to him around this time, can you recall?---No, I don't – well, I've written down when I spoke to him. I think he did call to, on the 21<sup>st</sup> to ask me to arrange the meeting with the mayor, but I don't recall whether he, anything else that was - - -

He was upbeat or he was particularly happy about the outcome?---No.

You can't recall?---No.

10 Well, if you go to page 121, it appears the meeting was arranged involving yourself, Tony McNamara, the mayor, Angelo Tsirekas and Marjorie Ferguson.---Ah hmm.

You don't recall the meeting, but if you go to page 131, if you could just have a read of that, please.---Yep. Sorry, what was the date of the meeting?

So the meeting, well, it appears to have taken place on the 27<sup>th</sup> of October, so this - - -?---Okay. This is the 30<sup>th</sup>.

20 That would have been the Tuesday. And what you're doing, you're attaching the agenda, it's an email to Mr Sidoti and you attach the agenda for the next council meeting.---Ah hmm.

Which is on the Tuesday, that's 3 November.---Yep.

There's a reference in the second paragraph to the - - -?---To the meeting.

To the meeting. So that would tend to suggest the meeting took place. ---Yep.

30 And that there was a, that you may have raised the issue about the fact that there was a resolution.---Yes.

An amended resolution.---Yes.

THE COMMISSIONER: Sorry to interrupt you, was Mark Thebridge a member of parliament, was he?---Mark Thebridge is the architect.

40 I'm just looking, this email went to drummoyn@ [REDACTED]. ---That's to John Sidoti.

And then it's got Mark Thebridge.---That's Mark's email address.

It's Mark?---No, they're two different email addresses there at the top.

**Sensitive**

Is it?---The top one, the Drummoyne one is to John Sidoti and the Mark Thebridge one is to Mark Thebridge. It's two different, so I sent that email to two people. "Hi, John and Mark."

I see. Okay. Yes, I'm sorry, Mr Broad, I interrupted you.

MR BROAD: That's okay. So it looks, based on that email, it looks as if a meeting did take place, and one of the things discussed at the meeting was the fact that, as far as you were concerned, there had been a resolution  
10 passed to investigate three sites, yet nothing had been done to action that.  
---Yes. Yes.

Does that ring a bell?---Yes.

It does?---Yeah, it does now, yep.

Was there a bit of a dispute about what the actual resolution was? Because if you go to the minutes of the meeting, the amendment that you refer to in the email is not recorded.---Yes. Yes, well, I think there is.  
20

There was a bit of a dispute, you recall that?---Yep. Yep.

THE COMMISSIONER: Mr Broad, what was the terms of the resolution passed?

MR BROAD: Yes, we'll get that, Commissioner. Just bear with me for a moment, please. Go to Exhibit 3, page 666.

THE COMMISSIONER: A very limited purpose.  
30

MR BROAD: Yes, yes.

THE COMMISSIONER: Reflected in that resolution.

MR BROAD: Yes. And I might add that these minutes were adopted as true and correct at the next meeting.---Mmm. I think, I think there was, I think I was questioning whether there was an audio recording of that minute, because my understanding is that, of the minutes, because my understanding of that, that that resolution is not correctly what happened at  
40 the meeting, otherwise I wouldn't have written it down.

Do you know whether there is an audio recording of- -?---No, I don't know.

You don't know. Well, it was clear that the meeting did take place on the Tuesday. If you go to your notes, go to 28 October. By the way, would Mr Sidoti have been present at that meeting in the 27<sup>th</sup>, on the Tuesday?---I think so. I don't know for sure.

**Sensitive**

You don't know. If you go to 28 October, the entry beginning, "Tony McNamara," if you could just read that out.---"Tony McNamara Canada Bay Council to call back." And then I have written, "Re. minutes. Inclusion of land in Waterview, East and Fairlight Streets in addendum report to council on the 2<sup>nd</sup> of the 11<sup>th</sup>."

10 So does that record an actual conversation or proposed conversation?---A proposed conversation. That's me making a note to myself about what I needed to say to him.

And I think if you go to the next page, 30 October, you call Mr McNamara again but he has to call back. Is that right? So you called Tony McNamara on 30 October?---Yes.

"TCB," to call back?---Yes.

20 Further attempts to call Mr Sidoti on 30 October and 5 November. What was your – after the meeting on 20 October, it appears that your involvement, or you became far less involved in this particular matter. Is that right?---Yes.

THE COMMISSIONER: So were you not required to do any work on the question of an analysis of the three properties that you referred to earlier? ---I was not asked to do - - -

Henry Street - - -?---Not asked to any further work.

30 No?---No.

So but you understood, did you, that based on the phone call anyway from Mr Sidoti, the reason why it was going to be deferred was to provide the opportunity to look at those sites insofar as it was relevant to Water Street and the question of rezoning?---Yes. And, and from my attendance at the council meeting, that was actually identified as one of the things that the resolution was meant to be amended to address.

40 And yet, so far as you know, you know nothing about whether it did in fact go forward?---No.

You weren't involved obviously.---No.

So, what happens to the report?

MR BROAD: Well, on 3 November, the meeting on 3 November, the resolution was passed, requiring council to investigate the three sites.

THE COMMISSIONER: On 3 November?

**Sensitive**

MR BROAD: 3 November, the next meeting on - - -

THE COMMISSIONER: We're coming to that anyway.

MR BROAD: Well I'll take you - - -

THE COMMISSIONER: Insofar as it's relevant.

10 MR BROAD: If you go to page 692, please.

THE COMMISSIONER: This volume 3 again, isn't it?

MR BROAD: Yes, Exhibit 3, 692. There are two parts but the relevant part is this one, yes.---Ah hmm.

But you weren't present at this meeting?---No.

20 And your involvement in the matter had stopped by then, you were no longer instructed to act?---I was, I believe at the Melbourne Cup that day, that, so I couldn't, I told Mr Sidoti I couldn't attend. I did ask him whether he needed my business partner to attend and I don't believe she was asked to attend at the, at the end of the day.

Well, if you go to page 690, Mr Thebridge did attend.---I think Mr Thebridge attended in lieu of us, yes.

30 Oh, I see. Right. And that ended your involvement after - - -?---Yeah. I don't recall, there may have been a couple of phone calls after that but otherwise, the, the only other thing was after that the owner of the heritage house approached us to prepare a submission and wanting to use the heritage report that had been prepared for the Second Avenue submission to support a case, or a submission for his land to be rezoned as well and I think I may have contacted Mr Sidoti at that time to ask whether he was comfortable with that report being used for that and I believe that was the last I've been involved.

40 THE COMMISSIONER: So we've been through the chronology, we have the report from the consultant, Studio GL, in June I think it was, wasn't it that - - -

MR BROAD: Yes, there was a report.

THE COMMISSIONER: Yes, further report.---In June of the following year?

MR BROAD: No, no, June 2015.---Oh, okay, okay, yeah, the previous, okay.

**Sensitive**

THE COMMISSIONER: Then the matter then proceeded to the point we get to October, seemingly starting to reach a conclusion after all this time, then rather quickly we get this deferral coming up which happened and that deferral has been put on the basis there was a need to examine the three sites to see whether or not in fact this would throw some light on whether or not there should be a rezoning consideration. The council in fact it seemed, subject to looking at what was the resolution, but in any event, from what your evidence is, seemed to be, it seemed to be represented that that was the reason for the deferral, to enable that to take place. Is that right?---No. I think there was, well, part of the resolution that did get through was around reconsideration of the heights.

Yes, but the other - - -?---Yeah, and then the other component was just - - -

The three sites issues was also part of the discussion.---Yeah, yeah.

And that had been the very matter and the only matter that Mr Sidoti had earlier signalled, provided notice to you that the deferral would be based on the three sites.---No, he didn't say that specifically, I think he said that it would, just categorically that it would be deferred.

That it was going to be deferred.---Yeah.

Somehow he knew. And so deferral having been granted, there was to be a report made then to give consideration to three sites and was that ever done?

MR BROAD: Yes, the report was done by Studio GL.

THE COMMISSIONER: That's right.

MR BROAD: But it was a report looking at the planning controls affecting the three sites, on the assumption that the rezoning or that there would be some alteration. So it was a report of that nature.

THE COMMISSIONER: Yes, I see, that's right, you remind me now, yes.

MR BROAD: Yes, and that - - -

THE COMMISSIONER: But you weren't involved, you weren't asked to be involved, you weren't retained by Mr Sidoti?---No.

Did that seem a bit strange to you, given that you had been involved right up to that point, and now we're entering a new, crossing a new threshold into this three sites examination, and you were not called upon to provide any services for the matter to be looked at and reviewed on following deferral? ---Yeah, I, I can't say, I accept there was - - -

**Sensitive**

Anyway, nobody explained to you - - -?---Nobody explained to me, there was no - - -

Phone call, or - - -?--- - - - implication that I hadn't done a reasonable job or anything else. It was just - - -

10 No, to the contrary, it seems that Mr Sidoti had been very happy with you at, as up to the date of the deferral having been granted.---Well, I don't, I, yeah, look, I don't know. All I know is that I'm a consultant, so I don't do work if I am not asked to do it.

No. But Mr Sidoti never rang you and said, "Look, thanks very much, we've decided not to bother going down this path anymore" - - -?---No.

- - - or communicated in any form?---No.

You just didn't hear any more?---No.

20 Is that it?---Yep.

MR BROAD: And when was the last time you spoke to John Sidoti?---Nah, it'd be the end of that year. I, I, I mean, my notes – I, as I said, I, I went through all of my daybook notes and I checked for any conversations and what you have is everything. So the last entry in this log would be the last time I spoke to him.

I see. I have no further questions, Commissioner.

30 THE COMMISSIONER: All right.

MR BROAD: I would ask, Commissioner, if you could make a direction requiring Ms Miller to produce the original of the notes, as they might become - - -

THE COMMISSIONER: Yes. Is there any trouble with that? You retain a copy of course, but it may be because of the copy of your notes, oh, it's fairly clear, but in parts it may be a question of these issues that we cannot quite read.---Sure, I don't have a problem with that.

40 It might be – you don't have an issue with that?---Nah.

Well, very well. So you'll hear from the Commission about it, and just - - -? ---I would ask that I have those notes returned when the Commission is finished with them.

Yes, that'll be done, they'll be secured, they'll be identified in our filing method here. They'll be given identification numbers so that there's – and then they'll be safely, securely stored and returned to you.---Okay.

**Sensitive**

Yes. That's it?

MR BROAD: Yes. That's it. Thank you, Commissioner.

THE COMMISSIONER: Ms Miller, thank you for your attendance here today. You are excused.---Thank you.

I'll adjourn.

10

**THE WITNESS EXCUSED**

**[12.50pm]**

**LUNCHEON ADJOURNMENT**

**[12.50pm]**

**Sensitive**