



ICAC

INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES



**INVESTIGATION INTO
THE CONDUCT OF THE
LOCAL MEMBER FOR
DRUMMOYNE**

**ICAC REPORT
JULY 2022**



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Mr President
Mr Speaker

In accordance with s 74 of the *Independent Commission Against Corruption Act 1988* (the ICAC Act) I am pleased to present the Commission's report on its investigation into the conduct of the local member for Drummoyne.

I presided at the public inquiry held in aid of this investigation.

I draw your attention to the recommendation that the report be made public forthwith pursuant to s 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours sincerely



The Hon Peter Hall QC
Chief Commissioner

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Summary of investigation and results

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) was concerned with whether, between March 2011 and February 2018, the state member for Drummoyne, Anthony (John) Sidoti MP, improperly influenced, or attempted to improperly influence, any person or persons, and in particular the Liberal councillors on the City of Canada Bay Council (CCBC), to dishonestly or partially exercise any of their public official functions in respect of:

- advancing amendments to development controls affecting land between Second Avenue and Barnstaple Road on Waterview Street, Five Dock, and/or
- any rezoning of the land and/or any proposals to develop the land situated at:
 - 120 Great North Road, Five Dock
 - 122 Great North Road, Five Dock
 - 124 Great North Road, Five Dock
 - 2 Second Avenue, Five Dock.

In addition, the Commission’s investigation was concerned with whether, between 30 June 2011 and 30 June 2019, Mr Sidoti engaged in a breach of public trust by failing to make a number of pecuniary interest disclosures contrary to his obligations to do so under the Constitution (Disclosures by Members) Regulation 1983, the Code of Conduct for Members and the Ministerial Code of Conduct.

Corrupt conduct findings

The Commission found that Mr Sidoti engaged in serious corrupt conduct by, between approximately late 2013 and February 2017, engaging in a protracted course of conduct, involving the use of his official position as a member of Parliament and the local member for Drummoyne, to try to improperly influence CCBC Liberal councillors, Helen McCaffrey, Mirjana Cestar and

Tanveer Ahmed, to adopt and advance certain positions in relation to the Five Dock town centre that would benefit his family’s property interests in the area.

Despite his representations that he was acting at all times in the interests of his constituents, in particular, the business community and landowners in the Waterview Street block, the outcomes that he wanted those councillors to deliver were entirely directed to his private interest in increasing the development potential of his family’s growing number of properties in and around the Five Dock town centre. Those outcomes were also inconsistent with what had been determined by CCBC (informed by the recommendations of CCBC staff and the independent expert planning consultants engaged by CCBC following extensive community consultation) to be in the public interest.

Section 74A(2) statements

Statements are made in this report pursuant to s 74A(2) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of Mr Sidoti for the offence of misconduct in public office in relation to the course of conduct in which he engaged between approximately late 2013 and February 2017, involving the use of his official position as a member of Parliament and the local member for Drummoyne to:

- try to influence the Liberal councillors on CCBC to exercise their official functions partially in favour of planning outcomes that would favour his family’s property interests in and around the Five Dock town centre, and
- engage in a breach of public trust by representing that he was acting at all times in the interests of his constituents and the local community, when the outcomes he pursued in respect of his family’s

property interests were inconsistent with what had been determined by CCBC to be in the public interest.

Corruption prevention

Chapter 11 of this report is in two parts. The first part sets out the Commission's consideration of whether the current systems regarding the disclosure of pecuniary and private interests, and the management and declaration of conflicts of interest for members of Parliament, are sufficiently robust.

The second part concerns the local government sector and the integrity of council decision-making. It covers councillors' governance obligations, particularly in relation to lobbying, conflicts of interest and environmental planning issues.

The Commission makes 15 recommendations, as follows.

Recommendation 1

That the NSW Government, in consultation with NSW Parliament's Legislative Assembly Privilege and Ethics Committee and Legislative Council Privileges Committee ("NSW Parliament's designated committees"), amends the Constitution (Disclosures by Members) Regulation 1983 to require:

- the details of interests in trusts, including discretionary trusts and self-managed superannuation funds, to be disclosed as a standalone item
- the details of real property held by discretionary trusts, where a member of Parliament is a potential beneficiary, to be disclosed
- the details of the interests of immediate family members to be disclosed (noting the option to limit access to certain information for privacy reasons)

- the dispositions of interests to family members or other associates to be disclosed
- ongoing (within 28 days) requirements to update disclosures of interests, including for members leaving Parliament
- electronic databases to improve transparency of the registers.

Recommendation 2

That the Speaker of the Legislative Assembly, the President of the Legislative Council and the relevant parliamentary departments jointly ensure that the guidance material for members of Parliament is updated to provide details about their disclosure obligations pursuant to the Constitution (Disclosures by Members) Regulation 1983 (pending implementation of recommendation 1).

Recommendation 3

That NSW Parliament's designated committees include a clear, consistent and comprehensive conflict of interest definition in the Code of Conduct for Members. This review should include a consideration of the relevant definitions in the Ministerial Code of Conduct and any opportunities for achieving a consistent approach in regard to avoiding, recognising, disclosing and managing conflicts of interest.

Recommendation 4

That the NSW Government, in consultation with NSW Parliament's designated committees, amends the Constitution (Disclosures by Members) Regulation 1983 to provide for the mandatory registration of conflicts of interest by members of Parliament via the creation of a register for this purpose (noting the option to limit access to certain information for privacy reasons).

Recommendation 5

That the Speaker of the Legislative Assembly, the President of the Legislative Council and the relevant parliamentary departments jointly ensure that the guidance material for members of Parliament be updated to provide details about their obligations pursuant to clause 7 of the Code of Conduct for Members, on how to take reasonable steps to avoid, resolve and disclose a conflict of interest, and the registration of conflicts of interest (pending implementation of recommendations 3 and 4).

Recommendation 6

That the Speaker of the Legislative Assembly, the President of the Legislative Council and the relevant parliamentary departments jointly develop and/or update specific training and guidance material about the proper and improper exercise of power by members and undue influence, in line with findings made by this investigation.

Recommendation 7

That the Speaker of the Legislative Assembly, the President of the Legislative Council and the relevant parliamentary departments jointly develop and/or update specific training and guidance material about the improper intermingling of public resources with personal interests, in line with findings made by this investigation.

Recommendation 8

That the NSW Government considers the introduction of amending legislation to clarify that an applicable code of conduct in relation to a parliamentary secretary is a ministerial code of conduct prescribed or adopted for the purposes of s 9(3) of the ICAC Act.

Recommendation 9

That the NSW Department of Planning and Environment ensures any guidelines issued pursuant to s 23A of the *Local Government Act 1993* regarding the lobbying of councillors include advice about:

- the nature and frequency of meetings between councillors and interested parties, including the need to ensure transparency around these interactions
- how and where to report concerns about lobbying practices
- the receipt of submissions outside of formal processes, including the transmission of material to specific councillors in a way that excludes other councillors and staff

- councillors' attendance at staff meetings with parties interested in an outcome
- councillor representations to staff arising from lobbying interactions
- the lobbying of councillors by interested parties with whom they have a pre-existing relationship.

Recommendation 10

That the NSW Department of Planning and Environment updates the Model Code of Conduct for Local Councils in NSW to refer to any councillor lobbying guidelines and to reflect the substantive advice contained in the guidelines.

Recommendation 11

That CCBC adopts a policy regulating interactions between councillors and staff. The policy should cover councillor representations to staff arising from lobbying activities and the attendance of councillors at proponent meetings with staff.

Recommendation 12

That CCBC continues to provide conflict of interest training to councillors, at least on a biennial basis. The training should cover situations where councillors are lobbied by those with whom they have a relationship or association and the circumstances where this would give rise to a conflict of interest.

Recommendation 13

That the Department of Planning and Environment amends the Model Code of Conduct for Local Councils in NSW to generally prohibit councillors' involvement in matters where they have a pecuniary or significant non-pecuniary conflict of interest, beyond exercising the general rights afforded to a member of the public. An exception should be made in circumstances where a councillor reallocates or delegates their duties, refers interested parties to the appropriate way of making a representation or makes a complaint due to becoming aware of improper conduct.

Recommendation 14

That the Department of Planning and Environment amends the Model Code of Conduct for Local Councils in NSW to include provisions about the appropriate role of council workshops. In particular, it should be made clear that workshops cannot be used to transact council business.

Recommendation 15

That CCBC continues to offer planning training to councillors during each term on their obligations under the *Environmental Planning and Assessment Act 1979*, particularly regarding the consideration of planning proposals.

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to the NSW Government and the responsible minister, the NSW Department of Premier and Cabinet, NSW Parliament's Legislative Assembly Privilege and Ethics Committee and Legislative Council Privileges Committee, the Speaker of the Legislative Assembly, the President of the Legislative Council and the relevant parliamentary departments, the NSW Department of Planning and Environment and CCBC.

As required by s 111E(2) of the ICAC Act, the relevant public authority and/or responsible minister must inform the Commission in writing within three months (or such longer period as the Commission may agree to in writing) after receiving the recommendations, whether it proposes to implement any plan of action in response to the recommendations and, if so, of the plan of action.

In the event a plan of action is prepared, the relevant public authority and/or responsible minister is required to provide a written report to the Commission of its progress in implementing the plan 12 months after informing the Commission of the plan. If the plan has not been fully implemented by then, a further written report must be provided 12 months after the first report.

The Commission will publish the response to its recommendations, any plan of action and progress reports on its implementation on the Commission's website, www.icac.nsw.gov.au.

Recommendation that this report be made public

Pursuant to s 78(2) of the ICAC Act, the Commission recommends that this report be made public forthwith. This recommendation allows either Presiding Officer of a House of Parliament to make the report public, whether or not Parliament is in session.



Chapter 1: Background

This chapter sets out some background information concerning the conduct of the investigation and the public inquiry held by the NSW Independent Commission Against Corruption (“the Commission”). It also sets out the relevant duties and obligations of members of the NSW Parliament and local government councillors under their applicable codes of conduct.

How the investigation came about

On 12 September 2019, Jodi McKay, then leader of the Opposition, wrote to the Chief Commissioner to request that the Commission investigate allegations that Anthony (John) Sidoti MP, then a minister of the Crown, had used his parliamentary positions for personal benefit.

Ms McKay alleged that, earlier that day, Mr Sidoti had been asked a series of questions by a NSW Parliamentary Committee budget estimates hearing that highlighted a clear conflict of interest in relation to his property interests in Rouse Hill, close to the Tallawong Metro station, as well as his property interests in Five Dock, close to a potential future station for Metro West. She alleged that, in his roles as parliamentary secretary for portfolios including planning, transport, roads and resources, and finally as parliamentary secretary to Cabinet, Mr Sidoti would have had access to sensitive and privileged information about the likely location of metro stations that would not have been available to the public. She stated that Mr Sidoti had questions to answer about whether he used that information when making property acquisition and development decisions that stood to “reap him a personal fortune”.

Ms McKay alleged that, despite claiming on more than 100 occasions during the budget estimates hearing that he had complied with all of his disclosure obligations, Mr Sidoti had clearly failed to disclose his property interests as required under the Ministerial Code of Conduct (“the Ministerial Code”). She cited, as an example, his failure to disclose for five years his apparent purchase of a property

in 2007 at 120 Great North Road, Five Dock, close to a proposed metro station in that area.

On 12 September 2019, then-premier Gladys Berejiklian announced a review by the secretary of the NSW Department of Premier and Cabinet (“the DPC”) into allegations concerning Mr Sidoti’s conduct in connection with his property investments, including whether he had access to confidential information that was personally beneficial and his compliance with his disclosure requirements and other obligations as a minister.

On 13 September 2019, the Commission received a letter from the Hon Robert Borsak MLC, chair of the portfolio committee conducting annual budget estimates hearings that had heard evidence from Mr Sidoti the previous day in relation to his portfolio of sport, multiculturalism, seniors and veterans. In accordance with a resolution of the committee following the hearing, Mr Borsak referred the transcript of Mr Sidoti’s evidence to the Commission for investigation, with particular reference to comments made regarding interests held by Mr Sidoti in properties located at Rouse Hill and Five Dock.

The Commission determined to conduct a preliminary investigation of these matters on 13 September 2019 and, on 17 September 2019, the premier confirmed that she had suspended the DPC’s review at the Chief Commissioner’s request, pending the Commission’s investigation.

On 6 December 2019, the Commission determined to escalate the preliminary investigation to a full investigation. Evidence obtained by the Commission during its preliminary investigation also tended to indicate that Mr Sidoti may have sought to influence the Liberal Party councillors of the City of Canada Bay Council (CCBC), in the exercise of their official functions in connection with the council’s planning decisions about the Five Dock town centre, for the benefit of his family’s property interests in the area.

On that basis, the Commission proceeded to investigate whether:

- Mr Sidoti misused confidential government information relating to the Sydney Metro North West or Sydney Metro West projects in respect of any actual or prospective rezoning of, or proposals to develop, land owned by himself and/or his family at Rouse Hill and Five Dock
- Mr Sidoti attempted to, or did, improperly influence any person to dishonestly or partially exercise their official functions in relation to the disclosure of confidential government information relating to metro projects, or in relation to any actual or prospective rezoning of, or proposals to develop, land owned by himself and/or his family at Rouse Hill and Five Dock
- from the time he was elected to Parliament, Mr Sidoti had failed to comply with his various disclosure obligations as a member of Parliament, parliamentary secretary and minister about a range of pecuniary and other interests
- any CCBC councillor exercised their official functions dishonestly and/or partially in the course of advancing amendments to development controls affecting land on the western side of Waterview Street, between Second Avenue and Barnstaple Road, in Five Dock, to favour the interests of Mr Sidoti and/or his family
- Mr Sidoti attempted to, or did, improperly influence any CCBC councillor to exercise their official functions dishonestly and/or partially to favour his, or his family's interests.

- (i) *corrupt conduct, or*
- (ii) *conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or*
- (iii) *conduct concerned with corrupt conduct,*
may have occurred, may be occurring or may be about to occur.

The role of the Commission is explained in more detail in Appendix 1. Appendix 2 sets out the approach taken by the Commission in determining whether corrupt conduct has occurred.

The allegations against Mr Sidoti, if established, would involve a serious breach of public trust and misuse of public office. As the local member for the state electorate of Drummoyne, Mr Sidoti was responsible to his electorate and, more broadly, to maintain the public trust placed in him by performing his duties with honesty and integrity, respecting the law and institution of Parliament, and using his influence to advance the common good of the people of NSW.

The allegations that Mr Sidoti may have misused confidential government information for private benefit, that he had failed to make a number of pecuniary interest disclosures contrary to his obligations to do so, and that he had attempted to, or did, influence other public officials to exercise their official functions dishonestly or partially to favour his or his family's interests, were matters that would fundamentally affect the maintenance of public confidence in the integrity of government at both the state and local levels.

As the local member for Drummoyne, Mr Sidoti's constituents were the same as those served by the CCBC. In this context, Mr Sidoti had an even more significant responsibility to put the public interest in the council's plans for the revitalisation of the Five Dock town centre ahead of his own or his family's private interests in property development in that area.

Why the Commission investigated

One of the Commission's principal functions, as specified in s 13(1)(a) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"), is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply, that:

The Commission considered it to be a particularly serious matter to seek to bring pressure to bear on councillors to make decisions that may benefit a private interest but be contrary to the public interest.

In determining whether to investigate whether Mr Sidoti had attempted to, or had in fact, improperly influenced the Liberal Party councillors on CCBC, the Commission also took into account his status as a member of the NSW Parliament and senior member of the Liberal Party, with significant influence over the political fortunes of those councillors from his own political party. The Commission determined that it was in the public interest to investigate allegations that the integrity of local government decision-making processes and outcomes had been undermined by a member of another level of government.

Conduct of the investigation

During the course of the investigation, the Commission obtained information and documents from public authorities and other organisations by issuing 58 notices and summonses under s 21, s 22 and s 35 of the ICAC Act, interviewing witnesses and conducting 24 compulsory examinations.

The Commission executed search warrants at the residences of Helen McCaffrey, Mirjana Cestar, Tanveer Ahmed and Michael Megna, who were the Liberal Party councillors on CCBC at the relevant times, and secured communication devices, including computers and mobile telephones. The Commission also obtained access to call charge records for relevant periods under the *Telecommunications (Interception and Access) Act 1979*.

The Commission obtained all relevant documents from the clerk of the Legislative Assembly relating to Mr Sidoti's pecuniary interest declaration returns to Parliament and the premier.

After a detailed and thorough investigation, the Commission was unable to identify evidence that Mr Sidoti had misused confidential government information concerning the Sydney Metro North West or Sydney Metro West projects, which led him and/or his family to acquire an interest in properties at Rouse Hill and Five Dock located in close proximity to proposed metro stations. Accordingly, in April 2020, the Commission discontinued its investigation of these allegations.

Between approximately April and July 2020, as a result of the COVID-19 pandemic, the progress of the Commission's investigation into the remaining matters was delayed. Those remaining matters were particularised as follows:

1. whether, between 26 March 2011 and 6 Feb 2018, Mr Sidoti improperly influenced another person or persons to dishonestly or partially exercise any of their official functions in respect of:
 - (i) advancing amendments to development controls affecting land between Second Avenue and Barnstaple Road on Waterview Street, Five Dock, and/or
 - (ii) any rezoning of the land and/or any proposals to develop the land situated at:
 - 120 Great North Road, Five Dock
 - 122 Great North Road, Five Dock
 - 124 Great North Road, Five Dock, and
 - 2 Second Avenue, Five Dock
2. whether any public official, being a councillor of CCBC, exercised their official functions dishonestly and/or partially:
 - (i) in the course of advancing amendments to development controls affecting land between Second Avenue and Barnstaple Road on Waterview Street, Five Dock, and/or
 - (ii) in respect of any rezoning of the land and/or any proposals to develop the land situated at:
 - 120 Great North Road, Five Dock
 - 122 Great North Road, Five Dock
 - 124 Great North Road, Five Dock, and
 - 2 Second Avenue, Five Dock
3. whether, between 30 June 2011 and 30 June 2019, Mr Sidoti engaged in a breach of public trust by failing to make a number of pecuniary interest disclosures contrary to his obligations to do so under the Constitution (Disclosures by Members) Regulation 1983 ("the Disclosure Regulation"), the Code of Conduct for Members ("the Members' Code") and the Ministerial Code, including but not limited to:
 - the income received in connection with residential and commercial properties at 120, 122 and 124 Great North Road, Five Dock, and 13 Andrew Street, West Ryde
 - interest derived from term deposits made by The Staff Superannuation Fund and The Sidoti Family Trust
 - his interest in real property situated at 120 Great North Road, Five Dock, and 3A Byer Street, Enfield
 - his directorship of Betternow Pty Ltd.

The public inquiry

After taking into account each of the matters set out in s 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry for the purpose of furthering its investigation.

In making that determination, among the other matters specified in s 31(2) of the ICAC Act, the Commission had regard to the benefit of exposing to the public a number of important matters associated with the alleged corrupt conduct, including the obligations of members of Parliament to use their public office and the influence of that public office for the public benefit and not for the advancement of any personal or family benefit, to act with honesty and integrity at all times, and not to improperly undermine public processes or improperly interfere with the democratic processes of local government in the pursuit of private interests.

The Commission had regard to the importance of the pecuniary interest disclosure regimes for members of Parliament and ministers (including parliamentary secretaries) and considered that the alleged failures of Mr Sidoti to make disclosures as required called the transparency, openness and accountability of the parliamentary process into question.

The Commission also had regard to the seniority and importance of Mr Sidoti's position, as the local member of Parliament, relative to those members of his own political party who were councillors in the local government area that covered his electorate. It had regard to the seriousness of the allegation that he had used that senior and influential position to seek to pressure those councillors to act contrary to their statutory and other obligations to the council and the local community to serve fearlessly and independently.

The Commission took into account the seriousness of the allegation that Mr Sidoti sought to interfere in council decisions concerning development controls and zoning, these being local government decisions with particular potential for private interests to achieve great financial benefit at the expense of longstanding impacts upon liveability and public amenity for the local community.

Further, the Commission had regard to the significant corruption prevention issues raised by the investigation. These included issues concerning the integrity of council decision-making, the need to enhance transparency around the lobbying of councillors, and apparent deficiencies in the pecuniary interest disclosure regime for members of Parliament, parliamentary secretaries and ministers, particularly in relation to the disclosure of the interests of family members and interests relating to discretionary trusts and superannuation funds.

The Commission considered that, while the risk of prejudice to Mr Sidoti's reputation was significant and that there was some risk of prejudice to the reputation of other affected persons, particularly the former Liberal Party councillors at CCBC, there was also a risk from not holding a public inquiry. This was because many of the matters under investigation had already been the subject of public airing in the media before they were referred to the Commission. The Commission determined, therefore, that the public interest in exposing the conduct outweighed the public interest in preserving the privacy of the persons concerned.

The public inquiry was initially conducted over four weeks, from 29 March to 27 April 2021. Chief Commissioner the Hon Peter Hall QC presided over the public inquiry. Rob Ranken acted as Counsel Assisting the Commission. Mr Sidoti and 15 other witnesses were called to give evidence.

Nearly three weeks after the public inquiry had concluded, Mr Sidoti, through his lawyers, served on the Commission a statutory declaration made by Glen Haron on 12 May 2021. Mr Haron was the vice president of the Five Dock Chamber of Commerce during the period under investigation by the Commission. On 11 June 2021, Mr Sidoti's lawyers confirmed that their client wanted the Commission to take Mr Haron's statutory declaration into evidence in the public inquiry.

The Commission's standard directions for public inquiries and its guidelines pertaining to s 31B of the ICAC Act set out the procedure for any person seeking to place evidence before a public inquiry, including any exculpatory evidence that an affected person seeks to adduce which bears on the exercise by the Commission of its powers under s 74A(2) of the ICAC Act. Affected persons the subject of investigation are not at liberty to seek out and obtain evidence for the Commission's use without the Commission's permission to act in that way. During a public inquiry, proper procedure requires an affected person to bring any material that they contend is exculpatory to the attention of Counsel Assisting, as soon as practicable after the existence of the evidence, or its potential relevance to the investigation, becomes known. Counsel Assisting will, in consultation with the presiding Commissioner, determine whether such evidence requires further investigation by the Commission.

Issues concerning Mr Haron's statutory declaration required further investigation by the Commission and ultimately necessitated the re-opening of the public inquiry to hear evidence in public from Mr Haron, Lisa Andersen (Mr Sidoti's sister) and Mr Sidoti about those matters. Unfortunately, the COVID-19 pandemic again interrupted the progress of the Commission's investigation when Greater Sydney entered lockdown at the end of June 2021.

The public inquiry was re-opened and evidence was taken over three days, from 29 September to 1 October 2021.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence and identifying the findings and recommendations that the Commission could make based on the evidence. On 22 October 2021, these submissions were provided to all relevant parties, and submissions, including cross-party submissions, were received from three parties in response, with the last submission received on 9 December 2021. Counsel Assisting's final submissions in reply were received on 22 December 2021. All submissions received were taken into account in preparing this report. There were no requests that a summary of any submissions be included in the report pursuant to s 79(A)(1) of the ICAC Act.

Public office – duties, obligations and relationships

Mr Sidoti's parliamentary roles and background

Mr Sidoti joined the youth wing of the Liberal Party at approximately 15 years of age. He was a member of the Drummoyne branch of the Liberal Party for the 15 or 16 years prior to 2021.

He was elected as the Liberal member for Drummoyne at the NSW state election in March 2011. He won the seat with a significant swing to the Liberal Party. It was a seat that had been held by the Labor Party since 1962. His main opponent in the 2011 election was Angelo Tsirekas, then Labor mayor of the City of Canada Bay. Mr Sidoti was returned as the local member at the 2015 and 2019 state elections.

From 22 June 2011 to 6 March 2015, Mr Sidoti chaired the Parliamentary Privilege and Ethics Committee and was the deputy chair of the Social Policy Committee. Thereafter, he held the following parliamentary positions:

- parliamentary secretary for planning, from 17 October 2014 to 28 March 2015
- parliamentary secretary for transport and roads, from 24 April to 26 August 2015
- parliamentary secretary for transport, roads, industry, resources and energy, from 26 August 2015 to 23 January 2017
- parliamentary secretary to Cabinet, from 1 February 2017 to 23 March 2019.

Following the 2019 state election, Mr Sidoti was appointed minister for sport, multiculturalism, seniors and veterans in the second Berejiklian ministry, with effect from 2

April 2019. He stood down from his ministerial duties on 17 September 2019 pending the Commission's investigation.

Mr Sidoti resigned from Cabinet and moved to the crossbench as an independent with effect from 3 March 2021, following the Commission's announcement of its public inquiry into the matters the subject of this report.

Prior to his election to the NSW Parliament, Mr Sidoti was a councillor on Burwood Council between September 2008 and September 2012. He served as the mayor of Burwood from September 2009, until stepping down to contest the state election in March 2011, remaining a councillor even as he took up his position as the local member for Drummoyne in Parliament.

Between 1992 and 2008, before entering politics, Mr Sidoti worked as the functions manager of the family-owned function centre, Castel D'Oro, located at 120 Great North Road, Five Dock. Mr Sidoti, his parents (Richard Sidoti and Catherine Sidoti) and his wife, Sandra Sidoti, ran a successful business at the function centre until 2008 and his parents' retirement.

The Members' Code

The Members' Code was first adopted in May 1998 and is adopted at the commencement of each Parliament. It applies to members of both the Legislative Assembly and the Legislative Council and is an "applicable code of conduct" for the purposes of s 9 of the ICAC Act.

Section 8 of the ICAC Act describes types of conduct being in the general nature of "corrupt conduct". Under s 9 of the ICAC Act, however, conduct of the type described in s 8 will not amount to "corrupt conduct" unless it could constitute or involve:

- (a) a criminal offence, or
- (b) a disciplinary offence, or
- (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or
- (d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament—a substantial breach of an applicable code of conduct.

Accordingly, the effect of prescribing the Members' Code as an applicable code of conduct is that a suspected substantial breach of it may be investigated by the Commission and, if substantiated, give rise to a finding of corrupt conduct.

Members' Codes were adopted by NSW Parliament in May 2011, May 2015 and May 2019, shortly after Mr Sidoti was elected and then returned to Parliament on two subsequent occasions. The obligations under the various

iterations of the Members' Code remained unchanged during the period under investigation by the Commission.

In March 2020, NSW Parliament adopted a revised version of the Members' Code. It introduces new duties and obligations in relation to the proper exercise of power and goes substantially further than previous iterations of the Members' Code in codifying the prohibition against the improper use of a member's influence for the furtherance of their private interests or those of their family members or business associates. As an example, clause 2(c) of the revised Members' Code provides that:

A Member must not knowingly and improperly use his or her influence as a Member to seek to affect a decision by a public official including a Minister, public sector employee, statutory officer or officer of a public body, to further, directly or indirectly, the private interests of the Member, member of the Member's family, or a business associate of the Member.

The revised Members' Code also clearly stipulates, in relation to conflicts of interest, that:

Members must take reasonable steps to avoid, resolve or disclose any conflict between their private interests and the public interest. The public interest is always to be favoured over any private interest of the Member.

Members shall take reasonable steps to draw attention to any conflicts between their private interests and the public interest in any proceeding of the House or its committees, and in any communications with Ministers, Members, public officials or public office holders.

While directly relevant to the matters under investigation by the Commission, it is important to note that these prohibitions in relation to improper influence and conflicts of interest did not apply to Mr Sidoti *in their codified form* at the relevant times. The Commission is satisfied, however, as discussed later in this report, that these were always the inherent requirements of Mr Sidoti's public office as a member of Parliament and that the later codification assists to inform and clarify the content of the duties and obligations of that office.

The Members' Code in place at the relevant times was not as onerous or proscriptive as that which is currently in place. In relation to conflicts of interest, it only required members to take all reasonable steps to declare any conflict of interest when such might arise between their private financial interests and decisions in which they participated in the execution of their office. The matters under investigation by the Commission, while they do concern Mr Sidoti's conduct in public office, do not include decisions taken by Mr Sidoti in the execution of that office within the meaning of the Members' Code.

The pecuniary interest disclosure regime for MPs

In addition to observing the Members' Code, all members of Parliament must comply with requirements relating to the disclosure of their pecuniary interests in order to prevent potential conflicts of interest between their public and private activities. The pecuniary interest disclosure regime is established under s 14A of the *Constitution Act 1902* and the Constitution (Disclosure by Members) Regulation 1983 ("the Disclosure Regulation"), which has been current since 17 December 2010. The application of this regulatory framework is the subject of more detailed discussion in chapter 2, which deals with the allegation that Mr Sidoti failed to make a number of pecuniary interest disclosures as required, and chapter 11, which deals with associated corruption prevention issues.

The Disclosure Regulation requires members to make a primary return disclosing their interests at the beginning of their term in Parliament and an ordinary return by the end of September every year thereafter, covering the period of 12 months ending on 30 June in that particular year. Supplementary ordinary returns are required by the end of March and generally only require members to indicate any changes that have occurred during the six-month period from July to December of the preceding year. In effect, therefore, members are required to disclose their pecuniary interests every six months. A member may also make a discretionary disclosure at any time. These may be lodged with the clerk at any time before the member is next required to lodge an ordinary or supplementary return, but only if the member considers it appropriate to do so.

The Register of Disclosures ("the Register") by members of each House of Parliament is compiled by the clerk of that House and is available for inspection by the public or as a tabled paper on Parliament's website. Sections 122(2) to 122(4) of the ICAC Act provide that the Commission may use the Register for the purpose of any investigation into whether or not a member of Parliament publicly disclosed a particular matter or as to the nature of any matter disclosed, and for the purpose of any finding, opinion or recommendation concerning the disclosure or non-disclosure.

The matters that members are required to disclose in their primary, ordinary and supplementary returns are listed and defined in Part 3 of the Disclosure Regulation. In summary, they are:

- real property – the postal address or title particulars of all property in which the member has an "interest", defined to mean any estate, interest, right or power whatever, whether at law or in equity, in or over the property, and the nature of the interest (clause 8)

- sources of income – income from sources other than Parliament, including income from an office held in a corporation, a partnership or trust, or for a service provided under a contract, agreement or arrangement (clause 9)
- gifts of a cumulative value of more than \$500, but not if the donor was a relative of the member (clause 10)
- contributions to travel – of a value of more than \$250 (including flight upgrades) (clause 11)
- interests and positions in corporations – for example, stocks and shares, directorships (including a description of the principal objects of each such corporation) (clause 12)
- positions held in unions and professional/business organisations, whether remunerated or not (clause 13)
- debts – of cumulative value of more than \$500, excluding home and other bank loans and debts to relatives (clause 14)
- dispositions of real property, whereby the member obtained or retained, wholly or in part, the use and benefit of the property, or retained the right to reacquire the property at a later time (including the creation of a trust, the grant of a lease, or the release of a debt in respect of property) (clause 15)
- engagement to provide a service involving the use of the member's parliamentary position (clause 15A).

A member may also, at their discretion, disclose any direct or indirect benefit, advantage, or liability, whether pecuniary or not, which is not required to be disclosed by Part 3 of the Disclosure Regulation, but which the member considers might appear to raise a conflict between their private interests and their public duty as a member of Parliament.

The Ministerial Code

As set out above, Mr Sidoti was a parliamentary secretary in various portfolios on an almost continuous basis from 17 October 2014 to 23 March 2019, being the majority of the period investigated by the Commission. Parliamentary secretaries have such functions as the premier determines from time to time. In practice, they assist the premier and/or the relevant ministers in their exercise of their functions and, in particular, with their parliamentary functions.

As a parliamentary secretary, Mr Sidoti was obliged to comply not only with the ethical standards and pecuniary

interest disclosure regime applicable to all members of Parliament, discussed above, but also with the ethical standards, internal governance practices and disclosure requirements of the Ministerial Code.

The effect of the Independent Commission Against Corruption Amendment (Ministerial Code of Conduct) Regulation 2014, which commenced on 20 September 2014, was to insert the Ministerial Code as an appendix to the Independent Commission Against Corruption Regulation 2010 and prescribe it as an applicable code of conduct for the purposes of s 9 of the ICAC Act. This means that a substantial breach of the Ministerial Code by a minister of the Crown may give rise to a finding of corrupt conduct under the ICAC Act. The requirements of the Ministerial Code did not change over the period under investigation.

The Ministerial Code expressly applies to parliamentary secretaries, other than Part 1 and Part 5 of its Schedule, which relate to prohibited interests and employment after leaving ministerial office, respectively. Other than in relation to those parts of the Schedule, the definition of a minister in clause 11 of the Ministerial Code includes a parliamentary secretary. For the purposes of the discussion that follows, any reference to a minister is to be taken to include a parliamentary secretary.

The preamble to the Ministerial Code states that it is essential for the maintenance of public confidence in the integrity of government that ministers exhibit, and be seen to exhibit, the highest standards of probity in the exercise of their office and that they pursue and be seen to pursue the best interests of the people of NSW to the exclusion of any other interest.

The preamble lists a number of key responsibilities, including maintenance of the public trust and duties to act with honesty and integrity and to advance the common good of the people of NSW. It notes that ministers also have a responsibility to ensure that they do not act in a way that would place others, including public servants, in a position that would require them to breach the law or their own ethical obligations.

Relevant clauses of the Ministerial Code required that Mr Sidoti:

- must not knowingly breach the Schedule to the Ministerial Code (clause 4)
- must not knowingly issue any direction or make any request that would require a public service agency or any other person to act contrary to the law (clause 5(1))
- in the exercise or performance of his official functions, must not act dishonestly, must act only in what he considers to be the public interest, and

must not act improperly for his private benefit or for the benefit of any other person (clause 6)

- must not knowingly conceal a conflict of interest from the premier and must not, without the written approval of the premier, make or participate in the making of any decision or take any other action in relation to a matter in which he is aware he has a conflict of interest (clause 7).

The Ministerial Code provides that a conflict of interest arises if there is a conflict between the public duty and the private interest of the minister, in which the minister's private interest could objectively have the potential to influence the performance of their public duty. A minister is taken to have a conflict of interest in respect of a particular matter on which a decision may be made or other action taken if:

(a) any of the possible decisions or actions (including a decision to take no action) could reasonably be expected to confer a private benefit on the Minister or a family member of the Minister; and

(b) the nature and extent of the interest is such that it could objectively have the potential to influence a Minister in relation to the decision or action.

The Ministerial Code defines a "private benefit" as any financial or other advantage to a person, other than a benefit that:

(a) arises merely because the person is a member of the public or a member of a broad demographic group of the public and is held in common with, and is no different in nature and degree to, the interests of other such members, or

(b) comprises merely the hope or expectation that the manner in which a particular matter is dealt with will enhance a person's or party's popular standing.

Part 2 of the Schedule sets out the disclosure requirements in relation to pecuniary and other interests which applied to Mr Sidoti, in addition to his obligations as a member of Parliament, from the time he first became a parliamentary secretary on 17 October 2014. The application of this additional disclosure regime is the subject of more detailed discussion in chapters 2 and 11 of this report.

In accordance with these disclosure requirements, Mr Sidoti was obliged, on becoming the parliamentary secretary for planning on 17 October 2014 and thereafter, to provide the premier a copy of any pecuniary interest return at the same time as he provided it to Parliament, and a notice in writing of any pecuniary and other interests of his immediate family members which he would be required to disclose as a member of Parliament

if the relevant interests were instead his. Relevantly to the matters under investigation, Mr Sidoti was therefore obliged as a parliamentary secretary to disclose to the premier his wife's pecuniary and other interests. Those disclosure obligations were ongoing and the disclosures made were kept on the confidential Ministerial Register of Interests held by the DPC. A breach of the requirements, if committed knowingly, would amount to a breach of the Ministerial Code.

Part 3 of the Schedule to the Ministerial Code, concerning conflicts of interest, required Mr Sidoti, from 17 October 2014 onwards, to promptly give notice to the premier "of any conflict of interest that arises in relation to any matter", even if he had previously disclosed the relevant interest in accordance with the disclosure requirements of Part 2 of the Schedule.

From October 2014 onwards, Mr Sidoti was advised of his obligations under the Ministerial Code by a letter from then-premier Mike Baird and reminded of them from time to time by letters from the general counsel of the DPC.

The enforcement of the requirements of the Schedule to the Ministerial Code, including any sanctions for a breach, is a matter for the premier.

Is the Ministerial Code an applicable code of conduct for the purposes of s 9 of the ICAC Act?

It is undoubtedly the case that the Ministerial Code itself applies to parliamentary secretaries and sets out the ethical standards expected of them and the internal governance practices, including the pecuniary interest disclosure regime, with which they are obliged to comply. There is a real question, however, about whether the Ministerial Code is an "applicable code of conduct" in relation to parliamentary secretaries for the purposes of s 9 of the ICAC Act, such that a substantial breach of the Ministerial Code by a parliamentary secretary could, if substantiated, give rise to a finding of corrupt conduct under the ICAC Act.

Section 9(3) defines "applicable code of conduct" to mean, in relation to:

(a) a Minister of the Crown—a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations, or

(b) a member of the Legislative Council or of the Legislative Assembly (including a Minister of the Crown)—a code of conduct adopted for the purposes of this section by resolution of the House concerned.

Parliamentary secretaries are not mentioned at all. On a plain reading of this section, therefore, the “applicable code of conduct” in relation to Mr Sidoti, at least between October 2014 and April 2019, for the purposes of s 9 of the ICAC Act, can only be the Members’ Code.

However, even if not an applicable code of conduct for the purposes of s 9 of the ICAC Act in relation to parliamentary secretaries, the Commission considers that the Ministerial Code, like the most recent iteration of the Members’ Code, can assist to inform and clarify the content of the duties and obligations of Mr Sidoti’s public office under general law principles and is therefore relevant to the common law offence of misconduct in public office, discussed further below.

Mr Sidoti’s public office as the member for Drummoyne

The state electorate of Drummoyne is a district of approximately 25 square kilometres situated entirely within the local government area served by CCBC. As the local member, Mr Sidoti’s constituents were therefore one and the same as the council’s constituents.

In their electorate, members of the NSW Parliament receive requests for assistance and information and try to resolve problems and complaints brought to them by local residents. They refer these issues to the local federal member, relevant state ministers or local councillors, meet with local organisations, businesses, media and government departments to ascertain their needs, and make representations to government on behalf of local organisations and individuals. Local members support the provision of local services and facilities from government funds, are involved in local functions and meetings and support local organisations and events. They also attend political party branch meetings.

From the time of his election to Parliament in March 2011, Mr Sidoti’s electoral office has been located at 128 Great North Road, Five Dock, in the area of the town centre that is the particular focus of the Commission’s investigation. He resides with his family in the Drummoyne area.

Mr Sidoti’s parents are also local residents in the CCBC local government area and the Sidoti family owns a number of other properties in, and adjacent to, the Five Dock town centre, which are the subject of the Commission’s investigation and discussed in later chapters of this report.

Mr Sidoti’s relationship with the Liberal councillors

Mr Sidoti agreed during the public inquiry that, from time to time, constituents would raise issues with his office that were more within the purview of local government than of state government. His role as the local member involved liaising with councillors or, through his staff, with council staff about these matters. He said that he would generally ring the councillors himself and agreed that, depending on the issue, it would not necessarily matter which political party the councillor belonged to, noting that he had a “decent professional relationship” with some Labor councillors and would regularly refer issues raised by constituents, particularly to former Labor mayor, Mr Tsirekas, and to Labor councillor, Tony Fasanella.

When Mr Sidoti was first elected to represent Drummoyne in March 2011, there were three Liberal councillors on CCBC; namely, Mr Megna, Ms McCaffrey and Ms Cestar. Dr Ahmed was elected as a fourth Liberal councillor in September 2012.

Mr Megna joined the Liberal Party in 1973 and was a councillor on Drummoyne Council between 1987 and 2000 before its amalgamation with Concord Council to become CCBC. He has served on the latter council continuously since 2004. Mr Sidoti gave evidence that he has known Mr Megna for most of his life; their respective parents had come to Australia from the same part of Italy and the two families were close. Mr Sidoti said that, if he wanted something fixed quickly, he would call Mr Megna, who was self-employed and himself based in the Five Dock area, so very accessible.

Ms McCaffrey has been a member of the Concord West branch of the Liberal Party since around 1995. Before joining the Liberal Party, she served as a councillor on Concord Council between 1990 and 1995, representing a local group called the Reform Association. She was elected to CCBC as a Liberal councillor in 2004, alongside Mr Megna, and served continuously on that council until the local government elections in September 2017. She served as deputy mayor from approximately September 2015, and then mayor from approximately June 2016, following the departure of Mr Tsirekas, who resigned for an unsuccessful tilt at the federal seat of Reid for the Labor Party before being re-elected mayor in September 2017.

Mr Sidoti gave evidence that he had known Ms McCaffrey since her days on Concord Council in the early 1990s, when his parents were looking to build a function centre in that local government area. Mr Sidoti said that Ms McCaffrey was particularly active in the Concord community and their paths would have crossed as a result, but he agreed that their relationship was

principally the result of them both being members of the Liberal Party.

Mr Sidoti's social contact with Ms McCaffrey, over the period in which she was a councillor on CCBC, was primarily at Liberal Party events or community functions he attended in his capacity as the local member and she attended as a councillor. He described her as a "good person" who "took her job very seriously".

Ms Cestar joined the Liberal Party in 2001 and was a member of its Drummoyne branch until sometime in 2019. Mr Sidoti was also a member of that branch. Ms Cestar was elected as a councillor on CCBC in 2008 and served until the local government elections in September 2017.

When Ms Cestar joined CCBC, both the federal and state seats were held by Labor and the council was Labor-dominated. She told the Commission that when Mr Sidoti was elected in 2011, it was a wonderful time for the Liberal Party and she agreed that his victory increased his standing within the party.

Ms Cestar said her relationship with Mr Sidoti was not social, but based on their political party connection. As a councillor and member of the Liberal Party, she considered it her obligation to assist with the campaigning activities and fundraising events of both the state and federal members, and she did so when asked.

From time to time, Ms Cestar would also have contact with Mr Sidoti about council matters when he had received representations from local residents. She said that these representations mainly related to matters such as parking, footpaths and trees, which Mr Sidoti would typically forward to Mr Megna to deal with, but she would sometimes be copied in. She said that it was very rare that Mr Sidoti would contact her, or to her knowledge, her fellow Liberal councillors, about matters raised by the local community concerning planning issues.

When asked whether Ms Cestar was well regarded as a councillor, as far as he could see, Mr Sidoti responded "I think so, yeah".

Dr Ahmed joined the Drummoyne branch of the Liberal Party some time in 2011 and was elected as a fourth Liberal councillor on CCBC in 2012. Dr Ahmed acknowledged Mr Sidoti as an important support and source of advice to him during his nomination and election process.

Mr Sidoti gave evidence that he had always enjoyed a very professional and cordial relationship with these councillors.

CCBC remained a Labor-dominated council until sometime in June 2016, when Mr Tsirekas resigned as mayor and Ms McCaffrey replaced him. The Liberal councillors, with Ms McCaffrey's casting vote as mayor, enjoyed the balance of power until the local government

elections in September 2017. This relatively brief period during which the council was Liberal-dominated was the particular focus of the Commission's investigation.

The councillors' role, duties and obligations

A council is a body politic and councillors, as the elected representatives, comprise its governing body. Section 232 of the *Local Government Act 1993* ("the LGA") provides that a councillor is accountable to the local community for the performance of council and that their role is as follows:

- (a) to be an active and contributing member of the governing body,*
- (b) to make considered and well informed decisions as a member of the governing body,*
- (c) to participate in the development of the integrated planning and reporting framework,*
- (d) to represent the collective interests of residents, ratepayers and the local community,*
- (e) to facilitate communication between the local community and the governing body,*
- (f) to uphold and represent accurately the policies and decisions of the governing body,*
- (g) to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor.*

Section 8A of the LGA provides guiding principles for councils in the exercise of their functions generally, and in relation to decision-making and community participation. Important principles applying generally to the exercise of their functions include that councils should provide strong and effective representation, leadership, planning and decision-making, and act fairly, ethically and without bias in the interests of the local community.

In relation to decision-making, relevant principles include that councils should recognise diverse local community needs and interests, should consider the long-term and cumulative effects of actions on future generations and that decision-making should be transparent, with decision-makers accountable for decisions and omissions. Councils should actively engage with their local communities through the use of the integrated planning and reporting framework and other measures.

As a starting point, s 439 of the LGA requires every councillor, member of staff and delegate of a council to act honestly and exercise a reasonable degree of care and diligence in carrying out their functions under the LGA. Section 440 of the LGA provides that a council

must adopt a code of conduct applicable to its councillors, members of staff and delegates. The code of conduct adopted by a council must incorporate the provisions of a model code of conduct prescribed by the regulations. A council can enhance or strengthen, but not dilute or weaken, the standards prescribed under the model code in their adopted code of conduct.

The Model Code of Conduct for Local Councils in NSW (“the model code”) is prescribed under s 440 of the LGA and the Local Government (General) Regulation 2005. It sets the minimum ethical and behavioural standards of conduct for all council officials in NSW, provides guidance to council officials and local communities about these expected standards, promotes transparency, accountability and community confidence in the integrity of a council’s decisions and the functions it exercises, and in the institution of local government.

On 19 February 2013, CCBC adopted a code of conduct for the purposes of s 440 of the LGA, which remained in force over the period of time that is the subject of the Commission’s investigation. The general conduct obligations of council officials of particular relevance to the matters investigated by the Commission were the requirements to:

- consider issues consistently, promptly and fairly and deal with matters in accordance with established procedures, in a non-discriminatory manner (clause 3.4)
- take all relevant known facts (or those of which they should be reasonably aware), and no irrelevant matters or circumstances, into consideration when making decisions and have regard to the particular merits of each case (clause 3.5)
- not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting (clause 3.9).

The CCBC code of conduct defines a binding caucus vote as:

...a process whereby a group of councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the council or committee irrespective of the personal views of individual members of the group on the merits of the matter before the council or committee.

This does not prohibit councillors from discussing a matter prior to considering it at a council or committee meeting, or from voluntarily holding a shared view with other councillors on the merits of a matter.

The CCBC’s code of conduct requirements in relation to the management of conflicts of interest are also relevant to the matters investigated by the Commission. The code of conduct defines a conflict of interest as existing where a reasonable and informed person would perceive that a council official could be influenced by a private interest when carrying out their public duty. Any such conflict of interest should be avoided or appropriately managed, with the onus on the council official to identify the conflict and take the appropriate action to manage the conflict in favour of their public duty.

A private interest can be of two types: pecuniary or non-pecuniary. A pecuniary interest is defined in the CCBC code of conduct as an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. A non-pecuniary interest is a private or personal interest that does not amount to a pecuniary interest as defined and commonly arises out of family, or close personal relationships, or involvement in sporting, social or other cultural groups and associations.

The CCBC code of conduct expressly states that the political views of a councillor do not constitute a private interest. However, it also provides an example of a significant non-pecuniary conflict of interest as potentially arising where an affiliation between the council official and an organisation, sporting body, club, corporation or association is particularly strong.

Any conflict between a non-pecuniary interest and a council official’s public duty is required to be disclosed fully, in writing and as soon as practicable, even if the conflict is not significant. If such a conflict has been disclosed, it must be managed by either removing the source of the conflict, either by divesting the interest or reallocating the conflicting duties to another council official, or by having no involvement in the matter, including taking no part in a debate or vote on the matter.

The CCBC code of conduct also provides that a council official must not use their position to influence other council officials in the performance of their public or professional duties to obtain a private benefit for themselves or someone else. That requirement will not be breached, however, where they seek to influence other council officials through the appropriate exercise of their representative functions.

During his public inquiry evidence, Mr Sidoti agreed that he understood, from his time on Burwood Council, that it was important that councillors made decisions in respect of planning matters impartially, independently and on the basis of what was considered to be in the public interest. He said that he was, “pretty well informed at the time”, about the content of the code of conduct that applied to

him as a council official on Burwood Council. That code of conduct was adopted by Burwood Council on 22 July 2008, in accordance with s 440 of the LGA.

The code of conduct that applied to Mr Sidoti during his time on Burwood Council, while similar in most respects to the CCBC code of conduct discussed above, did not contain the same prohibition against binding caucus votes as applied to the Liberal councillors in this matter. Nevertheless, Mr Sidoti agreed in evidence that the key principles in the codes of conduct for both councils were likely to have been similar, specifically:

- integrity – that council officials must not place themselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties
- selflessness – that council officials have a duty to make decisions in the public interest
- impartiality – that decisions must be made on merit and in accordance with the council official's statutory obligations when carrying out public business.

Mr Sidoti agreed that any conduct directed to undermining a councillor's ability to act in accordance with these key principles would be a very serious matter.

Duties of public office – general principles

(i) public trust

Both Mr Sidoti, as a member of Parliament and parliamentary secretary, and the Liberal councillors of CCBC, were public officials at the relevant times. As well as the applicable duties and obligations set out in the various codes of conduct and other statutory requirements, discussed above, they were obliged to comply with the fundamental overarching principle attaching to public office, namely, the public trust principle.

In general terms, members of the community rely on and trust their public officials to act honestly, impartially and disinterestedly and not use their official position for personal advantage.

While the members' and the ministerial codes of conduct and the disclosure obligations of members of Parliament and ministers of the Crown, including parliamentary secretaries, do not define the totality of the obligations of a member of Parliament, they give effect to the foundational principle that public office is a public trust and public officials are trustees whose duty is always to favour the public interest over their own.

A key tenet of representative democracy is that all of the powers of government are derived from, ultimately belong to, and may only be exercised for, and on behalf of, the public. Persons entrusted with such power therefore owe a fiduciary duty of loyalty to the public.

The Hon Professor Paul D Finn (later a judge of the Federal Court of Australia) has written extensively on the public trust concept and describes it in the following terms:

Public officials occupy positions of public trust. Lawful remuneration and entitlements apart, they hold their positions and the authority these confer not for their own benefit but for the benefit of the public whom, ultimately, they serve.

Though their conduct in office can be regulated, variously, by employment obligation, constitutional/political convention, the standards set by professional bodies and by the general law, they are, as trustees (or fiduciaries), to be expected to serve the public honestly, impartially and disinterestedly. This is their fiduciary duty of loyalty.

As public office commonly provides (though in varying degree) the opportunity to use official power and position to serve interests other than the public's interests – and particularly those of the official himself or herself – the object of the fiduciary duty imposed on officialdom is to foreclose the exploitation of that opportunity. The duty exacts loyalty in the public's service by proscribing conduct either which is deemed to be disloyal or, in some instances, which can have the appearance of, or tendency to, disloyalty.

As Bathurst CJ noted in *Obeid v R* [2017] in relation to the offence of misconduct in public office:

Members of Parliament are appointed to serve the people of the State, including their constituents and it would seem that a serious breach of the trust imposed on them by using their power and authority to advance their own position or family interests rather than the interests of the constituents who they are elected to serve, could constitute an offence of the nature of that alleged.¹

In *R v Boston*, Isaacs and Rich JJ made the following apposite remarks about the duty of members of Parliament:

It is an everyday experience that members of Parliament can and do in many legitimate ways materially and honourably aid the Administration by

¹ NSWCCA 221 at [62].

assistance and advice outside the walls of Parliament. This unofficial aid to the conduct of public business is in effect a recognized adjunct to his parliamentary position, and ceases with it. But if intervention by a public representative be impelled by motives of personal gain, if it be the outcome of an agreement based on some pecuniary, or what is equivalent to a pecuniary, consideration and constituting the member a special agent of some individual whose interests he has agreed to secure—interests that are necessarily opposed pro tanto to those of the community—the whole situation is changed. To apply some words in Wilkinson v. Osborne in the judgment of Isaacs J., he who had been appointed to be a sentinel of the public welfare becomes a “sapper and miner” of the Constitution. The power, the influence, the opportunity, the distinction with which his position invests him for the advantage of the public, are turned against those for whose protection and welfare they come into existence.²

These remarks have been cited with approval in a number of recent cases concerned with the fundamental obligations of a member of Parliament,³ including by Bathurst CJ in *Obeid v R*,⁴ who also described the following, contained in a direction by O’ Bryan J in *R v Clarke*,⁵ as a “useful formulation of the duty”:

When a man accepts a position of trust and confidence under the Crown he undertakes duties the pure administration of which is of the utmost importance to the community in which he lives, and the law requires from such a person a very great care in the exercise of his office and he should never put himself into a position in which his own interests may point one way, and the duties which he has undertaken for the Crown point in the opposite direction.⁶

It is important to note, however, that a breach of public trust by a public official requires more than mere inadvertence or error. Bad faith, or the elements of awareness of the existence of the duty and of wilfulness, are required.

² (1923) 33 CLR 386 at (402-403).

³ *McCloy v State of NSW* [2015] HCA 34, at [169]-[171]; *Re Day (No 2)* [2017] HCA 14, at [49]-[50], [179], [269].

⁴ [2017] NSWCCA 221 at [68].

⁵ (1954) 61 ALR 312 at 313.

⁶ at [72].

The criminal law operates with respect to conduct that departs significantly from the standards of probity expected of public officials, that is, conduct involving dishonesty or the conscious use of official power or position for private, partisan or oppressive ends, and that is so contrary to the purposes for which power and position are entrusted to officials as to warrant condemnation in a criminal prosecution. The common law offence of misconduct in public office is discussed further below.

(ii) conflict of interest

In common law terms, a conflict of interest and duty arises where a public official possesses, obtains or seeks to obtain a personal interest (invariably economic) in a matter falling within the scope or ambit of the official function they are entrusted to perform as an official. The interest must also be one capable of influencing the exercise or performance of an official function. The identification of the scope of official duties or functions of office in a particular case is therefore fundamental in determining whether a conflict between public duty and private interest has arisen or could arise.

Where an actual conflict between duty and interest arises, culpability will be determined by reference to a number of factors, including:

- the nature and extent of the conflicting interest
- whether there has been any disclosure of the interest and, if so, the extent of disclosure and the identity of the person(s) to whom disclosure was made
- the nature and level of involvement and the importance of the official’s role in the decision or action – that is, the influence that the official had upon the decision or action taken
- where a public official is aware, or is taken to be aware, of facts giving rise to a conflict of interests the fact of non-disclosure of the “conflict” may itself constitute evidence of a culpable state of mind.

In general terms, the criminal law may operate in the event that the above-mentioned criteria are satisfied and there is a consequent benefit or advantage to the private interests of the public official.

Mr Sidoti’s family acquired significant property interests in the CCBC local government area over the period of time investigated by the Commission. The Commission is satisfied that, in circumstances where Mr Sidoti was seeking certain planning outcomes in relation to the Five Dock town centre that would have benefited his family’s property interests, at the same time as being the local member for the area, a conflict necessarily arose between

his pursuit of his family's private interests and his duty as a representative of others, to act in the public interest.

The content of Mr Sidoti's duty to act in the public interest included, "an obligation to act according to good conscience, uninfluenced by other considerations, especially personal financial considerations".⁷

The Commission is satisfied that, as the local member, Mr Sidoti had a duty always to be mindful of the potential for a conflict between his own or his family's private interests and those of his constituents and always to act in the best interests of his electorate or, in other words, to have a "single-mindedness for the welfare of the community".⁸

The Commission is satisfied that the question of what constituted the public interest in relation to the Five Dock planning matters that are the subject of this investigation was one for the councillors to determine each time the matters came before them for a vote. It was theirs to determine impartially, selflessly and free from any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties.

A primary obligation held by Mr Sidoti in appropriately managing the conflict of interest between his family's private interests in planning decisions involving the Five Dock town centre and his duty to act in the public interest as the local member when engaging with CCBC councillors in relation to these matters, was the appropriate disclosure of the nature and extent of his personal interest in these same matters.

The Commission is satisfied that it would be one thing to engage private consultants to represent the private property interests of his family and then to have no further involvement with the matter. But it is quite another matter for the local member to continue to purport to represent the interests of his constituents in a matter in which he has an undisclosed vested interest, and to engage in a course of conduct that included dealing with the Liberal councillors who could vote on the matter to achieve an objective that would work against the public interest.

While Mr Sidoti was not the decision-maker in relation to matters concerning the Five Dock town centre, the Commission's investigation examined, in particular, his use of his public official position to seek to influence those decisions made by the Liberal councillors to achieve particular planning outcomes that would benefit his family's interests.

⁷ *Re Day (No 2)* [2017] HCA 14 per Kiefel CJ, Bell and Edelman JJ at [49].

⁸ *R v Boston* (1923) 33 CLR 386 per Isaacs and Rich JJ at 400.

As will be discussed in subsequent chapters of this report, Mr Sidoti's position as the state representative of the same constituents served by CCBC gave him considerable access to the Liberal councillors, and it lent considerable weight to his representations about the purported interests of those constituents. In this way, his official position had the significant capacity to influence and even interfere with the decision-making processes of the relevant Liberal councillors and the exercise of their public official functions.

Misconduct in public office – common law principles

The common law offence of misconduct in public office has a long history and can be traced back to the early 18th century. However, the settled formulation of the elements of the contemporary offence is as stated by the Victorian Court of Appeal in *R v Quach*.⁹ The offence is committed where:

- (1) a public official;
- (2) in the course of or connected to his or her public office;
- (3) wilfully misconducts himself; by act or omission, for example, by wilfully neglecting or failing to perform his duty;
- (4) without reasonable excuse or justification; and
- (5) where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.

The misconduct in public office offence is broad and may be constituted by a range of activity, but it is well established that it involves the intentional or deliberate abuse of official power or authority, or abuse through wilful neglect. Mere non-feasance is not enough. There must be some form of malfeasance or misfeasance involving an element of corruption, but while dishonesty is a common feature of the offence, it is not a necessary element.¹⁰ It has been said that:

*...there must be an element of culpability which is not restricted to corruption or dishonesty, but which is of such a degree that the misconduct impugned is calculated to injure the public interest.*¹¹

⁹ [2010] VSCA 106 at [46].

¹⁰ *R v Dytham* [1979] 3 All ER 641 at 643.

¹¹ *Question of Law (No 2 of 1996)* (1996) 67 SASC 63.

Relevantly to the matters investigated by the Commission, the abuse may not involve the misuse of a specific power attaching to a particular office, but instead involve the misuse of an official position for the purpose of influencing or inducing another official, who does possess the relevant power or authority, to act corruptly. However, while the misconduct does not have to be by the public official acting as such, it does have to have the requisite serious quality of meriting criminal punishment in light of the nature and importance of the public objects served.¹²

As observed by Redlich JA in *R v Quach*:

*In my opinion the relevant misconduct need not occur while the officer is in the course of performing a duty or function of the office. Certain responsibilities of the office will attach to the officer whether or not the officer is acting in the course of that office. Where the misconduct does not occur during the performance of a function or duty of the office, the offence may be made out where the misconduct is inconsistent with those responsibilities. . . the misconduct must be incompatible with the proper discharge of the responsibilities of the office so as to amount to a breach of the confidence which the public has placed in the office, thus giving it its public and criminal character.*¹³

In relation to the mental element of the offence of misconduct in public office, the motive with which the public official acts is relevant to determining whether the public's trust is abused by the conduct. A public official will be criminally liable for the offence where they misconduct themselves wilfully; that is, where they know that a particular act or omission is wrong, but intentionally proceed to commit it, or refuse to perform it.

It is generally the case that the power or functions conferred upon public officials, or inherent in their offices, exist for the benefit of the public and are subject to express or implied obligations or duties to use them for that purpose. What the public interest requires by way of the exercise of public power depends upon the circumstances including the nature of the office, the nature of the power and the conditions or limitations on it.

The question of what constituted the public interest in relation to the planning decisions for the future of the Five Dock town centre is addressed in chapter 3 of this report. In chapter 10, Mr Sidoti's conduct (discussed in chapters 4 to 9) in seeking to advance his private interest in respect of his family's Five Dock properties while purporting to represent the interests of his constituents in Five Dock,

is analysed by reference to his public duties, the common law principles concerning conflicts of interest and breach of public trust and the common law offence of misconduct in public office in the context of the Commission's findings concerning corrupt conduct.

Witness credibility

During the course of this investigation, the Commission heard evidence from a large number of witnesses, a number of whom gave evidence on more than one occasion. Aside from independent or objective evidence against which the credibility of witnesses may be assessed, including contemporaneous notes or other records, such as emails and text messages, evidence given by disinterested witnesses, the incontrovertible facts and the probabilities involved, the Commission has had regard to other factors in determining the credibility of a witness and the evidence they gave. These factors include witness demeanour, the responsiveness or otherwise of answers, a reluctance or otherwise to make appropriate concessions, whether the evidence given was direct or obfuscatory, and whether the witness was cooperative or argumentative.

Assessments as to witness credibility and reliability are important factors for the Commission to consider in properly weighing the evidence and making findings of fact that are available on that evidence. Witness assessments are included in the relevant chapters of this report.

¹² *Obeid v The Queen [2015] NSWCCA 309* at [141].

¹³ [2010] VSCA 106 at [40].

Chapter 2: Mr Sidoti's failure to declare pecuniary interests

This chapter examines whether, between 30 June 2011 and 30 June 2019, Mr Sidoti failed to make pecuniary interest disclosures contrary to his obligations to do so under the Disclosure Regulation, the Members' Code and the Ministerial Code.

Disclosure obligations – the law

As a member of Parliament from March 2011, Mr Sidoti has been continuously subject to the disclosure obligations set out in the Disclosure Regulation. From the time he was first appointed a parliamentary secretary in October 2014, until he went to the back bench in September 2019, he was also subject to the additional disclosure requirements in the Ministerial Code. These obligations are directed to preventing conflicts between a member of Parliament's public duties and their private activities and interests.

From March 2011, Mr Sidoti has been required to lodge an ordinary and a supplementary return each year to keep Parliament apprised of his disclosable interests on an ongoing basis (approximately every six months).

In addition, from October 2014 to September 2019, Mr Sidoti was required to provide information to the premier, for inclusion in the confidential Ministerial Register of Interests maintained by the DPC, as follows:

- a copy of the most recent return provided to Parliament (a continuing obligation)
- notice in writing to the premier setting out the particulars of any events that have occurred since that return was lodged that would need to be disclosed in the next parliamentary return
- notice in writing to the premier of any pecuniary and other interests of any immediate family member, including, relevantly, those of his wife, that he would be required to disclose if the relevant interest were instead his.

For the purposes of its investigation, the Commission obtained all relevant documents from the clerk of the Legislative Assembly and the DPC relating to Mr Sidoti's pecuniary interest declarations to both Parliament and the premier from the time he was first elected to Parliament. The Commission also obtained ownership, legal, financial and taxation records relating to the Sidoti family properties and trust and superannuation fund structures in which Mr Sidoti and his wife may have had disclosable interests.

What interests was Mr Sidoti obliged to disclose?

Tony Zaccagnini has been the accountant for members of the Sidoti family for over 30 years. He gave evidence during the public inquiry that, over that time, he has provided accounting and taxation services for Mr Sidoti's parents, Richard Sidoti and Catherine Sidoti, and for Mr Sidoti and his wife, Sandra Sidoti, in the nature of annual financial accounting, preparing personal income tax returns, setting up trust and corporate structures, and attending to the financial affairs of the corporate entities that act as trustees of the trust structures set up for the family.

The Sidoti Family Trust

On 9 November 1988, Mr Sidoti's parents, registered Deveme Pty Ltd as a company in NSW. Mr Zaccagnini said that the main purpose of this company became to act as trustee for the Sidoti Family Trust ("the Family Trust"). The Family Trust was established in 1992 for the purposes of the purchase by Mr Sidoti's parents of the property at 120 Great North Road, Five Dock, and the function centre business known as Castel D'Oro, which was conducted in that building. When 120 Great North Road was purchased in the name of Deveme in November 1992, the company became the holder of the legal title to the property as trustee of the Family Trust. Mr Sidoti's

parents settled on a discretionary family trust structure for the land and business purchase to provide asset protection and flexibility.

Richard Sidoti and Catherine Sidoti remain the directors and shareholders of Deveme, and Deveme remains trustee of the Family Trust. The Family Trust's general beneficiaries are Richard Sidoti and Catherine Sidoti and the persons related to them: their children, their children's spouses and their grandchildren.

The Commission is satisfied that Mr Sidoti was not obliged to disclose the fact that he and his wife were general beneficiaries of the Family Trust, nor to disclose the Family Trust's assets. That is because neither he nor his wife had any defined or enforceable entitlement to the income or assets of the trust, but merely the right to be considered until such time as Deveme, as trustee of the Family Trust, exercised its discretion to make a distribution of income or capital to the beneficiaries. A disclosable interest only arose when Mr Sidoti or his wife received a distribution from the Family Trust.

The Deveme Pty Ltd Staff Superannuation Fund

In 1992, Deveme also established the indefinitely continuing superannuation scheme known as the Deveme Pty Ltd Staff Superannuation Fund ("the Super Fund") for the purpose of providing superannuation benefits for its employees. The members of the Super Fund on its establishment were Richard Sidoti, Catherine Sidoti and Mr Sidoti and Deveme was its first trustee. Sandra Sidoti married Mr Sidoti in March 1994 and, as an employee at the family's function centre, became a member of the Super Fund.

As a result of legislative change requiring all members of a superannuation fund to be trustees and all trustees to be members, in March 2000, Deveme was replaced as the trustee of the Super Fund by its members, who by

then were Richard Sidoti, Catherine Sidoti, Mr Sidoti and Sandra Sidoti.

Mr Zaccagnini agreed that he provided advice to the incoming trustees about their appointment at the time, including the fact that, while they had legal title to the Super Fund's property and powers to deal with its assets, they could only exercise any such rights or powers for the benefit of the Super Fund's members. Mr Sidoti and his wife remained as members and trustees of the Super Fund until April 2019, when they elected to roll their benefit out of the Super Fund into a retail fund and approached Mr Zaccagnini to request that he arrange for that to occur.

120 Great North Road, Five Dock

In November 2007, as trustee of the Family Trust, Deveme sold 120 Great North Road to Mr Sidoti, his wife and parents, in their capacity as trustees of the Super Fund, for \$2 million. Each of these four trustees signed the contract for the sale of land as transferees on 13 November 2007. From that point, Mr Sidoti was one of four registered proprietors, including his wife, of 120 Great North Road, albeit he held that title as a trustee of the Super Fund. That remained the situation until he and his wife elected to roll their superannuation benefits out of the Super Fund and transferred the legal title to the property to Mr Sidoti's parents on 18 June 2019.

In 2008, Mr Sidoti entered local government as a councillor on Burwood Council. That year, his parents also retired. In July 2008, the function centre at 120 Great North Road was leased to tenants for five years, with an option to renew for two further five-year terms.

Mr Sidoti and his wife, along with his parents, signed the original lease as lessors in July 2008, signed to execute a variation of the lease in February 2012, and to execute a new lease for five years on 1 July 2013. At the end of that lease, a short-term lease was entered into with a church group, which was due to expire in mid-2021.

Under clause 8(1) of the Disclosure Regulation, Mr Sidoti was obliged to disclose in a primary return and an ordinary return the address of each parcel of land in which he had an interest and the nature of the interest in each such parcel of land. However, under clause 8(2)(b), he was not required to disclose the interest if he had it only in his capacity as a trustee and he acquired the interest in the ordinary course of any occupation not related to his duties as a member of Parliament.

The Commission is satisfied that while Mr Sidoti held the interest in 120 Great North Road in his capacity as a trustee of a self-managed superannuation fund, he did not acquire the interest in the ordinary course of an occupation not related to his duties as a member of Parliament. He was a member of the Super Fund and therefore a beneficiary of any property held by the fund.

122 and 124 Great North Road, Five Dock

On 1 May 2015, Deveme, acting as trustee of the Family Trust, purchased the property at 122 Great North Road. This property was tenanted when it was purchased by Deveme and a three-year lease with the same tenant was registered by Deveme on 1 April 2016. From 1 May 2015 to at least April 2019, therefore, the Family Trust received income from this property.

Evidence obtained by the Commission indicates that in around July 2017, Deveme, as trustee of the Family Trust, offered to purchase 124 Great North Road, immediately next door to the two properties it already owned. Settlement occurred in December 2017. That property was also tenanted and continued generating income for the Family Trust until 2019.

2 Second Avenue, Five Dock

On 15 September 2014, the Anderlis Investment Trust and its corporate trustee, Anderlis Pty Ltd ("Anderlis"), were established. Mr Zaccagnini told the Commission that this was on the instructions of Mr Sidoti's mother and that the trust was initially set up for the benefit of Mr Sidoti's sister, Ms Andersen. The general beneficiaries of this trust, however, were the same as those of the Family Trust. Shortly after it was registered, Anderlis purchased the property at 2 Second Avenue, Five Dock, on 13 October 2014. This was a residential property located in the block directly behind the family's property at 120 Great North Road. Just eight days after that purchase, Richard Sidoti and Catherine Sidoti replaced their daughter as the directors, secretary and shareholders of Anderlis.

The Commission is satisfied that Mr Sidoti was not obliged to disclose to Parliament or the premier an interest

in 122 Great North Road, 124 Great North Road or 2 Second Avenue, Five Dock, nor in any income earned by the two family trusts from these properties. As noted above, his disclosure obligations to Parliament and the premier in relation to the family trusts and their assets was limited to the disclosure as income of any distributions made to him or his wife by the trustees of these trusts. Recommendations concerning the widening of the disclosure obligations of members of Parliament to include the assets of, and income earned by, discretionary trusts are addressed in chapter 11.

By December 2017, the Sidoti family, through the corporate structures of Deveme and Anderlis, acting as trustees of two Sidoti family trusts, owned a total of four properties immediately adjacent to each other in Five Dock: three facing Great North Road and one behind. As will be discussed in chapter 6, two of these properties were purchased during, and one a short time after, the period in which amendments to the Local Environmental Plan (LEP) concerning the Five Dock town centre were under consideration by CCBC. The proposed amendments to the LEP would have a significant impact on the development potential and value of the Sidoti family's property interests in the area.

The question of whether Mr Sidoti owed a duty to disclose his family's interests in the Five Dock properties to the Liberal councillors when making representations to them about planning matters that would affect those properties, is a separate question that is addressed in chapter 10 of this report.

13 Andrew Street, West Ryde

In 2002, in its capacity as trustee of the Family Trust, Deveme purchased a property at 13 Andrew Street, West Ryde. It held the property until selling it sometime in 2016 for \$6,860,000. Mr Zaccagnini agreed that the proceeds of this sale would have been recorded as a receipt in an accounting for the Family Trust and, at the year's end, there would have been a distribution of the capital gain. He agreed that this may have involved a larger distribution being made to a trust beneficiary, who was not gainfully employed, than to a beneficiary, who was receiving an income, to minimise the tax payable as effectively as possible.

Reflecting this situation, in the 2015–16 financial year, Sandra Sidoti received a distribution from the Family Trust of \$720,000. A net capital gain of \$360,000 was declared as income in her personal tax return and by Mr Sidoti, as his spouse's income, in his personal tax return for that financial year.

The Commission is satisfied that, while Mr Sidoti, as a general beneficiary of the Family Trust, had no disclosable

interest in this trust asset, he did have an obligation to disclose the special distribution received by his wife in the 2015–16 financial year as a result of its sale, as discussed further below.

Betternow Pty Ltd

In 1998, Mr Zaccagnini was involved in the registration of a company by the name of Betternow Pty Ltd for Richard Sidoti and Catherine Sidoti. On 15 July 2014, it became the corporate trustee for JAFS Investment Trust (“JAFS”), which was an investment trust set up by Mr Sidoti and Sandra Sidoti for their own immediate family. At the same time, Mr Sidoti and his wife replaced his parents as the directors and sole shareholders of Betternow. Mr Sidoti gave evidence that the purpose of re-activating the company in July 2014 was for the purchase, as trustee of JAFS, of a 10% share in a five-acre parcel of land at Rouse Hill with a group of other people, with the long-term plan of residential property development.

Clause 12 of the Disclosure Regulation requires members of Parliament to disclose the name and address of each corporation in which they had an interest or held any position on the primary return date or at any time during the ordinary return period. They are required to disclose the nature of the interest or position held and a description of the principal objects of each such corporation, although not if they have already made a disclosure about the same matter when disclosing sources of income under clause 9. As discussed below, Mr Sidoti did not make full disclosures about the nature and extent of this interest until 2019.

3A Byer Street, Enfield

Evidence obtained by the Commission establishes that, on 28 November 2011, Deveme entered into an option agreement for the purchase of 3A Byer Street, Enfield. Deveme, ostensibly as trustee of the Super Fund, nominated a property developer to exercise the option on its behalf in July 2012, thereby earning a profit of over \$350,000 on the exercise of the option and purchase of the property by the nominated developer in September 2012.

As discussed above, the evidence establishes that, by November 2011, Mr Sidoti and his wife, along with his parents, and not Deveme, were the trustees of the Super Fund. However, the Commission is satisfied that Mr Sidoti did not acquire a disclosable interest in the option agreement concerning 3A Byer Street, nor was he required to disclose its disposition at a profit because, albeit he was one of the four trustees of the Super Fund at the relevant time, the relevant interests were acquired and disposed of by Deveme.

Distributions from the Family Trust

The financial and taxation records of the various corporate and trust structures of the Sidoti family and the personal taxation records of Mr Sidoti and Sandra Sidoti indicate that, subsequent to Mr Sidoti’s appointment as a parliamentary secretary in October 2014, distributions were made to his wife from the Family Trust, as follows:

- \$22,000 for the 2014–15 financial year
- \$720,000 for the 2015–16 financial year, being a share of the capital gain from the sale of the West Ryde property
- \$36,999 for the 2016–17 financial year
- \$67,000 for the 2017–18 financial year
- \$50,000 for the 2018–19 financial year.

These distributions were effectively recorded as journal entries in the Family Trust’s accounting and Sandra Sidoti did not actually receive any money in any bank account over which she had control. For each of the above-listed financial years, Sandra Sidoti lodged personal income tax returns in relation to these disbursements.

Clause 9 of the Disclosure Regulation provides, relevantly, that a member of Parliament is required to disclose each source of income that the member received at any time during the ordinary return period. In relation to income from a trust, clause 9(2)(e) requires disclosure of the name and address of the settlor and the trustee.

Following Mr Sidoti’s appointment as parliamentary secretary in October 2014, throughout the period under the Commission’s investigation, Mr Sidoti was under the additional and continuous obligations imposed by clauses 6(1)(c) and 7(1)(c) of the Ministerial Code, to provide a notice in writing to the premier of any pecuniary and other interests of his immediate family members, the disclosure of which would be required under the Disclosure Regulation, if the relevant interest were instead his. Relevantly, therefore, this obliged him to disclose to the premier, on an ongoing basis, all sources of income received by his wife. Details concerning the disclosable pecuniary and other interests of immediate family members are kept on the Ministerial Register of Interests.

Mr Sidoti’s disclosures

120 Great North Road

Records obtained from the DPC indicate that, despite being a registered proprietor of 120 Great North Road since 13 November 2007, Mr Sidoti did not disclose any interest in relation to that property until, on 4 November 2014, following his first appointment as parliamentary

secretary, Mr Sidoti wrote to Mr Baird, then premier, to make a number of discretionary disclosures "in the interest of good governance".

Relevantly, he then advised the premier that his parents owned 120 Great North Road, and 2 Second Avenue, Five Dock, and that there was, at the time, a proposal for the Five Dock town centre LEP on exhibition. Consequently, he wished to exclude himself from "any correspondence or discussions that may lead to a conflict of interest". He had advised the same potential conflict of interest to the then minister for planning on 24 October 2014. These disclosures were not publicly accessible.

On 4 November 2014, Mr Sidoti made another discretionary disclosure, advising that he was a member of a Super Fund, which had invested in a unit trust that held the following investment properties:

- 120 Great North Road, Five Dock
- 2 Second Avenue, Five Dock
- 13 Andrew Street, West Ryde
- 13/21 Arncliffe Street, Wolli Creek.

He also disclosed that he had invested in a personal trust fund called JAFS Investment Fund, which had invested money in a property at 38 Cudgegong Road, Rouse Hill. There is no evidence that this discretionary disclosure was made to Parliament and it therefore remained confidential and not publicly accessible.

In light of the evidence set out above, this disclosure was inaccurate in a number of respects. First, it did not indicate that he was one of four trustees of the Super Fund and therefore one of the four registered proprietors of 120 Great North Road, along with his wife and parents. Secondly, only the Wolli Creek property was held by a unit trust in which the Super Fund had invested – namely, the Southern Han Wolli Creek International Unit Trust – in which the Super Fund had invested \$500,000. The other two listed properties were owned by Sidoti family discretionary trusts of which he was a general beneficiary, namely, the Anderlis Investment Trust and the Family Trust. Thirdly, he and his wife were the directors and shareholders of a company, Betternow, which had invested in the Rouse Hill property in its capacity as the trustee of JAFS.

Between the end of 2014 and the end of 2016, Mr Sidoti disclosed no changes to his or his immediate family's pecuniary and other interests to Parliament or the premier.

In February 2017, the DPC reminded parliamentary secretaries, who had been re-appointed, of their continuous disclosure obligations under the Ministerial Code and requested that they review their pecuniary

and other interests and those of their immediate family members, and disclose any changes or confirm that there were none to be made. On 30 March 2017, Mr Sidoti wrote to the premier and confirmed that since his last update, there had been no changes to the pecuniary or other interests of himself or his immediate family that required disclosure.

Records obtained from the DPC indicate that, on 4 April 2017, Mr Sidoti completed two discretionary return forms and provided both of these to the premier, but only one to the Parliament. In the return form which he also lodged with Parliament, Mr Sidoti indicated for the first time since entering Parliament, that he had an interest in 120 Great North Road in his capacity as one of four trustees, with his parents and wife, of the Super Fund.

In the discretionary return form that was only provided to the premier, "in the interests of full transparency", Mr Sidoti indicated additionally, that:

- his parents, through Deverme as trustee for the Family Trust, had an interest in 122 Great North Road, Five Dock
- his parents, through Anderlis, as trustee for the Anderlis Investment Trust, had an interest in 2 Second Avenue, Five Dock
- he and his wife, through Betternow, as trustee for the JAFS Investment Trust, had a 10% share in "Rouse Hill".

As at 4 April 2017, therefore, Mr Sidoti's disclosure to the premier of property interests held by himself or his family, either directly or through a superannuation or family trust arrangement, was accurate. This disclosure was not publicly available.

During the public inquiry, Mr Zaccagnini gave evidence that, when Mr Sidoti first entered Parliament, he was not approached for advice and had no conversations with Mr Sidoti about the positions he held as trustee or company director and what might need to be disclosed to Parliament. In relation to Mr Sidoti's position as one of the registered proprietors of 120 Great North Road in his capacity as trustee, Mr Zaccagnini said Mr Sidoti never asked whether it was a matter that he ought to disclose to Parliament. He said they had never had a conversation about Mr Sidoti's understanding about his ownership of that property, but also that he had never advised Mr Sidoti that he did *not* own that property.

Sandra Sidoti told the Commission that she first became aware of various trust structures set up by the Sidoti family in 2017 and that, before that time, she had not been aware that she was listed as a beneficiary of any of them, nor of any income that may have been disbursed by those trusts to any beneficiaries. She said that she became

aware of these matters in 2017, when another member of Parliament raised the fact that her husband's name was listed as one of the registered proprietors of 120 Great North Road, Five Dock. She said that she was not aware that she was also listed as one of the registered proprietors of that property.

Sandra Sidoti said she was aware there was a family superannuation fund that she was part of because she worked for her in-laws at their function centre, but she did not know who the fund's original trustee was, did not recall when she was appointed a trustee, and nor did she have any understanding at the time that she was becoming a trustee of the Super Fund. Sandra Sidoti said there were occasions when Mr Sidoti's mother told her and her husband that the accountant was coming over and they needed to be there too, to sign documents, and they just did what they were told to do and did not ask questions.

Sandra Sidoti said she was not aware that the documents that her parents-in-law told her she needed to sign were legal documents, but she understood that they were tax-related. In relation to the contract for the sale of land for 120 Great North Road, which she signed in November 2007 as one of four transferees with her co-trustees of the Super Fund, she claimed not to have read it at the time she signed and not to remember the document or whether she had any knowledge or understanding of what it was she was signing. She said she never read the documents her in-laws needed her to sign, but just did what they asked as a "dutiful daughter-in-law".

Mr Sidoti's evidence about these matters was similar to his wife's. When Mr Sidoti and his wife worked in the family business operating out of 120 Great North Road, between 1992 and 2008, they managed the functions and front-of-house matters, while his parents were back-of-house, as chefs. As to the management of the business' financial matters, Mr Sidoti said that his wife attended to the banking and Mr Zaccagnini, in consultation with his parents, prepared the necessary financial accounts.

Mr Sidoti gave evidence that he was unsure when he first found out about the Family Trust although it was possibly sometime during the course of his employment at the family's function centre. He said, however, that he did not know that he, his sister and his wife fell within the definition of general beneficiaries under the Family Trust, and claimed that he did not discover that he was a beneficiary under that trust until 2019.

Mr Sidoti also gave evidence that he had no knowledge before 2017 that he was a trustee of the Super Fund and that he did not recall ever agreeing to appointment as a trustee, nor undertaking any tasks in his capacity as

a trustee. He claimed that it was only as a result of the Commission's inquiry that he discovered he had executed or signed documents in his capacity as a trustee of the Super Fund, and that he had no knowledge at the time he was signing those documents that he was doing so in that capacity. He said he thought he had been signing his tax returns. He also said he thought he was just signing what he was required to sign, in his role as a son and employee.

Once he ceased employment in the family business and became a member of Parliament, Mr Sidoti said he believed that what he was doing when he was signing documents in the nature of taxation or financial records was just "signing whatever tax minimisation scheme was set up to do for the family".

Mr Sidoti agreed that when he became a member of Parliament, he became acutely aware that he had to be very careful in relation to the disclosure of income, assets and interests in property and that there were certain obligations on him to make sure that matters that had to be disclosed were attended to. He said that he sought advice as to the extent of his disclosure obligations from his accountant when he first entered Parliament, and that Mr Zaccagnini was mistaken when he gave evidence that Mr Sidoti made no such enquiries of him.

Mr Sidoti said that he thought all that he owned was his family home with his wife and he vividly remembered calling Mr Zaccagnini in 2011 in relation to the set up of the trust and Deverme and his obligations. He recalled seeking confirmation that he was not involved in this set-up in any sort of way that could get him "into trouble" and Mr Zaccagnini telling him, "You're not in any position to make decisions". Mr Sidoti said that in response to his accountant's advice, "I went on my way".

Mr Sidoti told the Commission that, in relation to Deverme being the initial trustee of the Super Fund, he is "still not fully aware of the entire set-up. It's confusing...the word trustee and beneficiary, I wouldn't know what it meant back then, to be honest with you". Mr Sidoti then gave the following evidence about when he first became aware of those concepts in relation to his own position:

Trustee I became aware of when, in 2017 it was brought up in Parliament, and I only became aware fully of the beneficiary factor when this Commission started and I got legal advice to look through all the documents and they explained that I had beneficial obligations and disclosures I had to make.

Mr Sidoti said that, from the time he entered Parliament in 2011 until 2017, he had only a "very broad" understanding of the concepts of a trustee and a beneficiary and had not had any occasion to consider these concepts in matters that came before him as a parliamentarian prior to 2017.

Mr Sidoti gave evidence that he had no understanding when he signed the contract for sale of 120 Great North Road in November 2007 that he was doing so in his capacity as a trustee of the Super Fund, or that, in doing so, he would become a registered proprietor of that property. He thought he was facilitating a better tax outcome for his parents on their retirement. Mr Sidoti also said he had no understanding when he signed a lease document in relation to 120 Great North Road in July 2008 that he did so in his capacity as one of the lessors of the property. He said he thought he was signing "a family document".

Mr Sidoti agreed that he kept signing documents if his parents directed him to, totally unaware of and uninterested in what they were about, even after he had entered Parliament. He said that, when documents were presented to him by his accountant or parents, he had no reason to believe they were anything different from what he had signed for a very long time, concerning his parents' financial arrangements and about which he did not think he had any disclosure obligations. He said that he read all of his parliamentary disclosure documents very thoroughly because they were associated with himself and his wife, but in relation to documents for his parents, he understood he was signing something set up entirely for them and therefore totally irrelevant to Parliament.

Mr Sidoti agreed that he had signed a further lease executed by himself, his wife and his parents in respect of 120 Great North Road in December 2013, by which time he had been a member of Parliament for almost two years, but he maintained that he had no idea that he was one of the property's registered proprietors.

Mr Sidoti gave evidence that the event that triggered his understanding of what a trustee was occurred in 2017, after he had been in Parliament for six years. During Question Time, the then leader of the Opposition, "was waving a document around". He had obtained all of Mr Sidoti's public disclosures to that date and had seen Mr Sidoti's disclosure of his parents' property in 2014, when he became parliamentary secretary for planning. A title search of 120 Great North Road indicated that Mr Sidoti himself was on the title, which meant he had been obliged to disclose that interest. Mr Sidoti said:

And hence that's when I became aware and I immediately sent text messages that day, I remember clearly, to both my wife and Tony saying 'Please explain. How am I involved, what's going on here?' And Tony then rang the Department of Premier and Cabinet and spoke with the Premier's office. And that same night, I was sent an email from Tony explaining how I should have disclosed everything, and had a whole set-up of trusts, disclosure – trusts, superannuation funds, trustees, beneficiaries to which properties, and, and that was very clear.

Disclosures concerning the Sidoti family's Five Dock properties

On 13 July 2017, Mr Sidoti made a disclosure to the premier relating to three Five Dock properties owned by his parents, including 120 Great North Road, in relation to which he described himself as being its trustee. He stated in writing:

A resolution to change the LEP of which these properties are a part has now been forwarded to the Department of Planning in which a number of property owners dissatisfied with Councils decisions are seeking a review under the Act.

The Department of Planning being a State Government instrument and for the sake of total transparency and being a Parliamentary secretary I want to bring the above to your attention. I do not want to be perceived in any way of my position influencing any outcome that any other citizen may be entitled too [sic].

On 17 July 2017, he sent a further email, attaching what he described as the "submission on behalf of 6 property owners of which I am a trustee to one". The attached submission in fact related to six properties, three of which were owned by the Sidoti family.

On 27 July 2017, the DPC's general counsel wrote to Mr Sidoti to acknowledge his disclosures to the premier and to advise that it would be prudent to keep the premier updated in writing about the progress of the application for review of the planning proposal lodged with the NSW Department of Planning and Environment on behalf of his parents and other land owners. In addition, the letter advised Mr Sidoti:

You should also ensure that you have no involvement in the review process other than as a member of the public, and that any involvement in the review process is no different in nature and degree to the involvement of other members of the public.

On 6 October 2017, Mr Sidoti disclosed to the premier that his parents' company, Deveme, acting as trustee for the Family Trust, had an additional property interest in 124 Great North Road, Five Dock. On 17 April 2018, Mr Sidoti disclosed in writing to the premier that the process to change the LEP for his parents' properties at 120 and 122 Great North Road and 2 Second Avenue, Five Dock, had been completed, with a planning study having been undertaken by CCBC and the staff recommendation having been adopted at a council meeting on 5 December 2017.

The significance of the disclosures made by Mr Sidoti to the premier, apparently to manage any perceived conflict

of interest in relation to his family's property interests in Five Dock, is discussed in chapter 10 of this report in the context of his use of his position to attempt to influence the outcome of council's decision-making on amendments to the LEP.

Betternow

Following Mr Sidoti's appointment to the ministry, on 10 April 2019, the DPC's general counsel specifically directed him to make the required disclosures to the premier pursuant to the Ministerial Code.

In response to that direction, on 22 May 2019, Mr Sidoti disclosed for the first time, in a letter to the premier, that he and his wife were the sole directors and shareholders of Betternow. He had disclosed, on an ongoing basis since September 2014, that Betternow, as trustee for his personal investment trust, JAFS, held a 10% share in land in Rouse Hill, but he had never before disclosed, as required, that he and his wife were directors of and shareholders in Betternow. In this letter, he sought rulings from the premier in respect of his interests in his family trust, JAFS, and the Super Fund for which he was one of four trustees.

Mr Sidoti also provided a letter to the premier dated 17 May 2019 from his accountant, Mr Zaccagnini, who advised that, as at 30 April 2019, Mr Sidoti and his wife had resigned as trustees of the Super Fund and their benefits were being rolled out into a retail fund. Mr Zaccagnini further confirmed that Mr Sidoti and his wife had been directors and shareholders of Betternow since 15 July 2014; a company that acted as trustee for their private family investments, which at that time only consisted of a share of the previously disclosed Rouse Hill property.

Family Trust distributions to Sandra Sidoti

Mr Sidoti never made a disclosure to the premier, as required by the Ministerial Code, of the income received by way of distributions from the Family Trust to his wife, even though such income was declared both by his wife in her tax returns and by himself, as his spouse's income, in his own personal tax returns, from the 2014–15 financial year onwards.

Mr Zaccagnini gave evidence that he generally prepared the personal tax returns of Mr Sidoti, his wife and parents at the same time. He agreed that, from the time Mr Sidoti entered Parliament in 2011, his tax returns were relatively straightforward because his only source of income was his parliamentary income. Mr Sidoti was required to include details of his wife's income in his tax returns and, between 2011 and 2019, her only income was in the form

of distributions from the Family Trust. Mr Zaccagnini said that he prepared the returns and took them to Mr Sidoti's parents' house where he met with members of the family to take them through the documents and ensure they understood what they were signing. As Mr Sidoti became increasingly difficult to "nail down", only his wife was there and she took the returns home, got them signed and sent them back.

Mr Zaccagnini agreed that, in addition to the family members' personal tax affairs, he went through the financial statements of the relevant trustee companies in relation to the distributions that were made to various beneficiaries that financial year, as those made from time to time to Mr Sidoti's wife would have to be included in both her and her husband's personal tax returns. While Sandra Sidoti did not receive the distributions as funds in a bank account, but rather as amounts "journalled" to a beneficiary loan account giving her "a right to that money at a point in time", the distributions were still required to be recorded in her personal tax returns as taxable income for the particular financial year.

Mr Zaccagnini agreed that the \$720,000 distribution to Sandra Sidoti in the 2015–16 financial year, which reflected part of the proceeds of sale of the Family Trust's property in West Ryde, was made to minimise the amount of capital gains tax that would be payable, but that Sandra Sidoti would still be required to pay some personal income tax in respect of what was quite a significant amount of money. Mr Zaccagnini said that it was likely, because it was his usual practice, that he would have gone through Sandra Sidoti's tax return with her that year and explained that to her, although he does not have an independent recollection of doing so.

Sandra Sidoti gave evidence that she had absolutely no idea about the distributions from the Family Trust from 2013 onwards, nor about the beneficiary account in her name. She said that none of the funds had ever been received into a bank account operated by herself and her husband and she had no knowledge of the distribution in 2016 of \$720,000. She said there had been no conversations about their true financial position with the accountant, even subsequent to the discovery in 2017, which had caused them both some shock – that she and her husband were the registered proprietors of 120 Great North Road with his parents.

Sandra Sidoti agreed that she received no income other than distributions from the Family Trust and that there was otherwise no cause for her to complete a tax return but for the fact of there being such distributions. She claimed that she is now aware that her in-laws used these distributions as a tax minimisation device but that, at the time she signed the personal tax returns prepared for her by Mr Zaccagnini, she trusted her accountant and

did not question what income she had apparently received to necessitate a tax return.

Sandra Sidoti told the Commission that the completion of her husband's tax returns involved Mr Zaccagnini leaving the prepared returns, flagged where Mr Sidoti was to sign, for her to take home. Sandra Sidoti told her husband that Mr Zaccagnini had asked him to sign the returns so they could be lodged and, once they were signed, she sent them back to the accountant in an overnight express.

Sandra Sidoti told the Commission that she had no recollection, either upon his being appointed parliamentary secretary or a minister, of her husband discussing with her the need for him to disclose details of any income she received, nor any discussions at all about the implications of those appointments for the disclosure of financial details in general. She said that "disclosures were a matter for John and what he did in the workplace".

In relation to the sale of the property in Andrew Street, West Ryde, in the 2015–16 financial year, which resulted in a significant capital gain, Sandra Sidoti gave evidence that, while she was aware of the sale, she had no conversations with her husband about the fact that a significant distribution of \$720,000 and a net capital gain of \$360,000 was being recorded on her tax return. She claimed to be unaware of both the distribution of that amount and how it was recorded on her tax return. She agreed that she signed her tax returns without reading them.

During the public inquiry, Sandra Sidoti was taken to a letter addressed to herself and her husband from Mr Zaccagnini concerning the assessment of the Australian Taxation Office (ATO) following the lodgement of her personal income tax return for the 2015–16 financial year. The amount of tax said to be payable on her income for that year was just under \$147,000, due by 21 March 2017. Sandra Sidoti said she had never seen and had no knowledge of the letter and consequently had no conversation with her husband about it. She said she had no knowledge whether the tax bill was paid by anyone, but it was not paid by her.

Mr Sidoti gave evidence that he did not recall it ever being brought to his attention that there was significant income that his wife needed to account for in her tax return. He accepted that he knew that he was required to disclose the details of any income received by his wife, including income received by way of distribution from a trust. He claimed, however, not to have known anything about his wife's receipt of income from a trust, whether as cash in the bank or otherwise, until the public inquiry. He claimed that the first time he had ever heard that, following the sale of the West Ryde property in 2016, his wife had lodged a tax return disclosing a significant capital

gain of \$360,000 in accordance with her obligations to the ATO, was that day when his wife had given evidence.

Mr Sidoti said that if he had known of his wife's income, he would have declared it. He agreed that he knew his wife was putting in tax returns every financial year from 30 June 2015 onwards and that she was not gainfully employed during those years, but he did not think that meant she must have been receiving income. He thought it must have been to do with his parents' arrangement and that his wife may have had an obligation to sign things to do with companies, although he was not sure which company would require her to sign documents relating to its tax affairs.

He agreed that the only company she was involved in as an officeholder was Betternow, of which he was also a director, but he claimed that he did not look at the financial statements of that company because, as a member of Parliament, he had no time to do anything else. He said he never thought about what his wife might be doing in respect of the company, was never there when his wife was signing her tax returns, and did not think about the fact that some of the documents that the accountant brought around to sign every year included his wife's own personal income tax returns.

Mr Sidoti agreed that he did not turn his mind to the possibility that there might be disclosure obligations that he needed to attend to in order to discharge his responsibilities as a parliamentary secretary and minister, and said he did not do so because he was working "ridiculous hours". He accepted that the duty of disclosure was an extremely important one as a member of Parliament, and particularly as a minister, and that he should have given it his attention no matter how busy he was.

In relation to his own personal tax affairs, Mr Sidoti agreed that Mr Zaccagnini would often attend on his parents and wife when he was not present and leave documents for him. He said he briefly looked at these, but not in any detail before signing them. He said there was not much to check because the only income he had was his parliamentary wage. He agreed that, as with the documents he executed as trustee of the Super Fund, discussed above, his income tax return forms, completed by his accountant, were also documents that he signed without really reading. When asked by Counsel Assisting whether there are any documents he actually reads before signing, Mr Sidoti responded that he reads all documents except for those ones.

Mr Sidoti was taken to his own tax return for the financial year ending 30 June 2016, which included in it information that his wife had received income in the amount of \$360,001. He gave evidence that he may have

seen this figure but could not recall, but in any event, it did not mean anything to him because his wife would not have that amount of money. He agreed that this was a document requiring his personal responsibility as a taxpayer to declare the truthfulness of its contents. He accepted that he should have checked to make sure his declaration was correct; however, he also stated that he would have done that if he had done his own tax, but that is why he had an accountant.

Mr Sidoti was taken to the letter from Mr Zaccagnini to himself and his wife dated 27 January 2017, about the assessment of tax payable following the lodgement of Sandra Sidoti's tax return in the amount of almost \$147,000. He agreed that the letter was most likely received by him as it was addressed to both of them but said that he did not recall receiving the letter, or having a debt of that amount under his wife's name, and he did not know how the debt was paid.

Did Mr Sidoti knowingly fail to disclose certain interests?

The Commission is satisfied that the evidence establishes that Mr Sidoti failed to declare his interest in real property situated at 120 Great North Road, Five Dock, from the time he entered Parliament in March 2011 until 4 April 2017, contrary to his obligation to do so under the Members' Code and the Ministerial Code.

The Commission does not accept Mr Sidoti's evidence that he did not become aware that he was a trustee of the Super Fund until 2017, nor that, when he signed documents in his capacity as a trustee, he had no knowledge of the fact that he was doing so in his capacity as a trustee, and nor that he only had a very broad understanding of the concepts of trustee and beneficiary prior to 2017.

The Commission is satisfied that Mr Sidoti knew he was a trustee of the Super Fund, knew that the Super Fund owned 120 Great North Road, from 2007 acted in relation to that property in the capacity of a person with a legal interest in that property, and had more than a cursory understanding of the concepts of trustee and beneficiary well before his disclosable interest in 120 Great North Road was exposed in Parliament in April 2017.

This is because the Commission accepts Mr Zaccagnini's evidence that, in around March 2000, when it was necessary to change the structure of the Super Fund to make all members trustees, he provided advice to the incoming trustees, including Mr Sidoti and his wife, about their appointment, including the fact that, while they had legal title to the Super Fund's property and powers to deal with its assets, they could only exercise any such rights or powers for the benefit of the Super Fund's members.

The Commission is also satisfied that it is clear from the documents that Mr Sidoti executed in his capacity as a trustee of the Super Fund, including the contract for purchase of 120 Great North Road, the associated transfer document, and a number of leases and variations to leases over the years between 2007 and 2018, that he was signing them in his capacity as a person with a legal interest in the property.

The Commission is also satisfied that, in July 2014, when Mr Sidoti and his wife sought the assistance of Mr Zaccagnini to establish their own discretionary family trust, JAFS, and nominated that trust's general and remainder beneficiaries, Mr Sidoti had, or at least must have then acquired, more than just a cursory understanding of the concepts of trustee and beneficiary.

Likewise, the Commission does not accept Mr Sidoti's evidence that, when he entered Parliament in March 2011, he sought Mr Zaccagnini's advice about his disclosure obligations and was told that all he owned was his family home with his wife. The Commission accepts Mr Zaccagnini's evidence that Mr Sidoti did not seek his advice about such matters.

The Commission notes Mr Sidoti's own evidence that, following the exposure of his legal interest in 120 Great North Road by the then leader of the Opposition during Question Time in April 2017, Mr Zaccagnini emailed him that night, "explaining how I should have disclosed everything, and had a whole set-up of trusts, disclosure – trusts, superannuation funds, trustees, beneficiaries to which properties, and, and that was very clear".

The Commission is satisfied that, if Mr Sidoti had asked for that advice in March 2011, as he claims, Mr Zaccagnini would have provided the same "very clear" explanation he provided in April 2017 in relation to Mr Sidoti's interest in 120 Great North Road and his need to disclose it, as well as advice consistent with his explanation to Mr Sidoti when he became a trustee of the Super Fund in 2000, and when Mr Zaccagnini assisted in the establishment of JAFS in 2014.

The Commission is also satisfied that, on being appointed a parliamentary secretary in October 2014, the DPC had written to Mr Sidoti to clearly explain his obligations under the Ministerial Code. The discretionary disclosure made by Mr Sidoti on 4 November 2014 indicates, for the first time, that Mr Sidoti, rather than just his parents, had an interest in 120 Great North Road, albeit he inaccurately described his interest as consequent on his superannuation fund's investment in a unit trust that held the property, rather than as a legal interest in the property itself in his capacity as trustee of the Super Fund.

The Commission is satisfied that Mr Sidoti had knowledge of a relevant disclosable interest in the property at

120 Great North Road and that his failure to disclose it accurately to the premier, or at all to the Parliament, before it was exposed in April 2017, was deliberate.

Mr Sidoti failed to make any disclosure to the premier of the income received by his wife by way of distributions from the Family Trust, despite being obliged to do so from the time he was first appointed a parliamentary secretary in October 2014. The Commission accepts the submissions of Counsel Assisting, that Mr Sidoti's claims to a lack of any knowledge, understanding or appreciation of the fact that Sandra Sidoti had received such income, are not credible.

While the Commission accepts that the distributions from the Family Trust were not in the form of "money in the bank", the evidence is clear that the distributions were income that was included as his spouse's income on Mr Sidoti's own personal tax returns.

The Commission is satisfied that, following his appointment as parliamentary secretary in October 2014, Mr Sidoti was in no doubt that he needed to pay close attention to the important matter of complying strictly with the disclosure requirements of the Ministerial Code. The Commission therefore does not find it acceptable, nor does it accept, that Mr Sidoti could claim that he reads every document carefully before signing, *except* those financial and legal documents relating to the tasks he was required to undertake as a trustee of his own Super Fund, and in relation to his own personal income tax returns. The Commission does not accept that, in circumstances where his own personal tax returns indicated that his wife had received income he needed to declare, Mr Sidoti did not know that his wife had received income that he needed to disclose to the premier under the Ministerial Code.

The Commission finds that Mr Sidoti's consistent assertion of ignorance in relation to the nature and extent of the matters he was obliged to disclose, and pay careful attention to, is implausible for a member of Parliament, parliamentary secretary and a then minister of the Crown. The Commission rejects that assertion.

If it were true, Mr Sidoti's failure to make the basic necessary enquiries about the full nature and extent of his pecuniary interests until at least 2017, when he had been a member of Parliament for six years, is of itself very serious and deserving of censure. If it is false, which the Commission finds, that is even more serious.

The Commission is satisfied that the evidence establishes that Mr Sidoti knew that he had to disclose income received by his wife and knew that his wife was receiving income that necessitated the lodgement of her own personal tax returns, a declaration on his tax returns and that resulted in a tax debt of almost \$147,000 that was

required to be paid and was paid. In those circumstances, the Commission is satisfied that his non-disclosure of this income was deliberate.

The Commission considers there is insufficient evidence to establish that Mr Sidoti's non-disclosure of his and his wife's directorship and status as stakeholders of Betternow from 15 July 2014 until 22 May 2019 was deliberate in circumstances where he had consistently disclosed a 10% interest in the property in which Betternow, as trustee for JAFS, their discretionary family trust, had invested, and which was its only investment.

Corrupt conduct

The Commission's approach to making findings of corrupt conduct is set out in Appendix 2 to this report.

First, the Commission makes findings of relevant facts based on the balance of probabilities. The Commission then determines whether those facts come within the terms of s 8(1), s 8(2) or s 8(2A) of the ICAC Act. If they do, the Commission then considers s 9 of the ICAC Act and the jurisdictional requirements of s 13(3A).

Relevantly for this matter, in the case of subsection 9(1)(d), the Commission considers whether, in the case of conduct of a minister of the Crown or a member of a House of Parliament, the facts as found constitute a substantial breach of an applicable code of conduct.

The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

The Commission is satisfied that Mr Sidoti's deliberate failure to disclose his interest in 120 Great North Road from the time he entered Parliament in March 2011 until that interest was exposed in April 2017, and his deliberate failure to disclose the income his wife received by way of annual distributions from the Family Trust, as he was required to do under the Ministerial Code, from the time he was appointed a parliamentary secretary in October 2014, is conduct that comes within the meaning of subsection 8(1)(c) of the ICAC Act. This is because these failures constitute or involve a breach of public trust.

As set out in the previous chapter, the obligations set out in the Disclosure Regulation, the Members' Code and the Ministerial Code give some content to the foundational principle that public office is a public trust and public officials are trustees whose duty is always to favour the public interest over their own. The public have a reasonable expectation that their elected representatives will fully comply with their obligations of disclosure, particularly when those obligations are directed towards preventing a conflict between the private interests of the public official and his or her public duties.

The Disclosure Regulation not only requires that members of both Houses of Parliament lodge regular returns, disclosing certain interests, such as real property, interests and positions in corporations, income, debts and gifts, it also requires that each clerk compiles and maintains a Register of Disclosures for their respective Houses. The purpose of the Register of Disclosures is to promote greater transparency, openness, and accountability in the parliamentary process. A failure by a member of Parliament to make disclosures, as required, calls the transparency, openness and accountability of the parliamentary process into question.

However, whether Mr Sidoti's failures to make certain pecuniary interest disclosures could amount to a substantial breach of an applicable code of conduct, for the purposes of s 9(1)(d) of the ICAC Act, is another question. As discussed in the previous chapter, while Mr Sidoti, as a parliamentary secretary on a continuous basis in a number of portfolios from October 2014 until joining the ministry in April 2019, was subject to the additional disclosure regime of the Ministerial Code from that time, pursuant to s 9(3) of the ICAC Act, the applicable code of conduct was the Members' Code.

The Commission is not satisfied that Mr Sidoti's failure to disclose his legal interest in the property at 120 Great North Road until April 2017, was sufficiently serious to constitute a substantial breach of the Members' Code. The Commission finds that Mr Sidoti's interest in the property was held as one of four trustees of a superannuation fund of which he became a member through his employment at his parents' function centre business from 1992 to 2008. While he was one of four registered proprietors of the property and undoubtedly had an interest to disclose, and the Commission is satisfied that the failure to accurately and publicly disclose his interest in the property prior to April 2017 was deliberate, it was a somewhat indirect interest that was ultimately declared.

The Commission is satisfied that Mr Sidoti's failure to disclose income received by his wife by way of distributions to her from the Family Trust was a breach of his obligations under the Ministerial Code. However, as discussed in the previous chapter, because Mr Sidoti was not a minister of the Crown at the relevant time, the Ministerial Code was not an applicable code of conduct in relation to him for the purposes of s 9(1)(d) of the ICAC Act.

As the Commission is satisfied that Mr Sidoti's conduct does not constitute a substantial breach of an applicable code of conduct and does not otherwise come within s 9, the Commission finds that Mr Sidoti's failures to comply with his disclosure obligations do not amount to corrupt conduct for the purposes of the ICAC Act.



Chapter 3: Revitalising the Five Dock town centre

This chapter examines CCBC’s plans to revitalise the Five Dock town centre and the processes, including extensive community engagement, involved in producing the Five Dock Town Centre Urban Design Study (“the Urban Design Study”) with its recommendations about how to give effect to the community’s vision for the area. This chapter also sets out some basic planning law concepts needed to understand the processes involved in designing and implementing a significant local government planning matter in the public interest and the impact of some of the key recommended changes on the private property interests of the Sidoti family in the Five Dock area.

Local government

The system of local government operating in NSW is described in the *Constitution Act 1902* (“the Constitution Act”) as being one under which:

...duly elected or duly appointed local government bodies are constituted with responsibilities for acting for the better government of those parts of the State that are from time to time subject to that system of local government.

Under the Constitution Act, local government is clearly subordinate to the state and is not sovereign:

...the manner in which local government bodies are constituted and the nature and extent of their powers, authorities, duties and functions shall be as determined by or in accordance with laws of the Legislature.

Local government is a creation of state government, established by it to exercise delegated state powers. If the LGA was repealed, the councils constituted by it would cease to exist. Even though it is legally subordinate to state government, however, local government is a distinct sphere of elected governmental administration or activity in its own right.

Local government has both “legislative” and “administrative” functions. While councils in NSW do not have the power to make by-laws (unlike councils in some other states), they still have the power to initiate certain types of subordinate legislation, including LEPs under the *Environmental Planning and Assessment Act 1979* (the “EP&A Act”), discussed below, and local approvals policies under the LGA.

Councils exercise administrative functions both on their own behalf and on behalf of, and at the request or direction of, the state and federal governments. Local government is fundamentally locally orientated, however, and has responsibility for a wide range of governmental functions for the clearly identified “local” part of the state it serves.

The NSW planning system

As discussed in chapter 1, people occupying public office, whether elected or appointed, discharge duties and perform functions. In doing so, they are required to make decisions. The public expects, and the law requires, that they do these things impartially in the public interest. In reaching decisions, they must not take into account matters pertaining to their own interests, or other irrelevant considerations, including the purely private interests of others seeking to benefit from them.

Perhaps the most important decisions, and certainly the most controversial, that councils have to make have to do with planning laws that control the use and development of land. Planning decisions have significant impacts on peoples’ lives and may also involve considerable financial gains or losses for affected individuals. Planning matters are particularly challenging because of the need for councillors to assess what is in the best interests of the community when there may often be competing interests at play. The challenge lies in having to balance and accommodate the community interest, the often

competing interests of individual landowners or groups of landowners, and compliance with the requirements of relevant planning laws.

It is necessary to describe, briefly and simply, the planning laws, policies and processes that applied to CCBC's development of planning proposals associated with its plans for the Five Dock town centre, in order to understand council's obligations in that regard and the points along the progression of these proposals to which Mr Sidoti's efforts to influence outcomes were most directed.

In NSW, the primary law setting up the planning framework and regulating land use is the EP&A Act. The EP&A Act has been amended multiple times over the period under investigation by the Commission, namely, between 2013 and 2018, and thereafter. However, the content of the key provisions and parts of the EP&A Act, discussed below, has remained the same over the period in question and to the present. References to particular sections of the EP&A Act in the following discussion are references to those sections that currently apply, with the sections that previously applied at the relevant times indicated.

Part 3 of the EP&A Act provides the statutory framework for the contents and preparation of environmental planning instruments (EPIs), including state environmental planning policies (SEPPs) and LEPs, which guide the process of development and regulate competing land use. Development cannot be approved or carried out in breach of an EPI made under Part 3 of the EP&A Act.

An EPI can be made for the purposes of achieving a wide range of planning objectives under the EP&A Act, including promotion of the social and economic welfare of the community and a better built environment, the orderly and economic use and development of land, the delivery and maintenance of affordable housing, and good

design and amenity of the built environment.¹⁴ Part 3 of the EP&A Act lays down compulsory procedures for the preparation of EPIs with an emphasis on public consultation in conformity with another of the EP&A Act's objects, namely, to "provide increased opportunity for community participation in environmental planning and assessment".¹⁵

At the top level of planning controls are SEPPs, which deal with matters of state environmental planning significance. They are prepared at state government level and are made by the governor. Beneath them are LEPs, covering individual lots or whole municipalities and reflecting local issues. These are prepared at the local government level, but are usually made by the minister for planning (or delegate), unless the minister authorises council to make the proposed instrument. They are now standardised across all NSW local government areas in accordance with requirements under the EP&A Act.

Each local government has its own LEP, which does the following four main things:

- zones land to specify what development is permissible without consent, permissible only with consent, or prohibited in the zone (for example, "residential", "mixed use" or "rural")
- identifies whether a particular property (heritage item) or the area it is situated in (conservation area) has heritage significance and whether therefore extra design care needs to be taken when planning any changes
- identifies special matters for consideration, such as specific environmental issues, including flooding, bushfire, acid sulfate soils and

¹⁴ Sections 1.3(a), 1.3 (c), 1.3 (d), 1.3 (f), 1.3 (g) of the EP&A Act (previously s 5).

¹⁵ Section 1.3(j) of the EP&A Act.

environmentally sensitive land that may limit the extent or location of development on a site or area

- identifies the principal development standards controlling the size and form of development. While these standards may vary by local government area, common and relevant standards are maximum building height, setbacks and maximum floor space ratio (FSR). FSR is the floor area that is able to be built compared to the total area of the site,¹⁶ and is commonly used to estimate the development potential of a site and therefore its value.

In addition to the statutory EPIs, there are non-statutory, or policy instruments, called development control plans (DCPs). These are also made at local government level and contain more detailed planning and design requirements than LEPs, which they are intended to complement. The design and planning issues that DCPs cover include:

- building design, siting and size
- access to sunlight
- view sharing
- landscaping
- car parking
- heritage
- stormwater treatment and waste management
- fences and walls.

The procedure for making them, which includes a community consultation process, is set out in Part 3 of the EP&A Act, but, unlike LEPs, they do not need to be approved by the minister. They are designed to provide guidance in giving effect to the aims and achieving the objectives of the land zoning of any applicable EPI, do not have statutory force and there is therefore some flexibility in their application.¹⁷

Planning instruments, both statutory (such as LEPs) and policy (such as DCPs), are implemented by the:

- assessment of permissible proposals against the various provisions contained in that instrument through the development application process

- deterrence of proposals, which are prohibited under that instrument.

The statutory framework for the development application assessment process is provided by Part 4 of the EP&A Act. In the vast majority of cases, applications are assessed and determined by local government authorities, taking into account the provisions of any applicable EPI and DCP, the likely environmental, social and economic impacts of the development, the suitability of the site, any submissions and the public interest.¹⁸ Part 4 thus complements Part 3 by providing the rules under which the planning instruments prepared under Part 3 are given practical effect.

LEPs

Under s 3.31 of the EP&A Act,¹⁹ an LEP may be made in each local government area by a local plan-making authority, who is either the minister or, more usually, the council for its local government area, if authorised to do so by a process known as a “Gateway determination”, discussed further below.

The first step in making an LEP, or amending an existing LEP, is for the council to prepare a document called a “planning proposal”,²⁰ which explains the intended effect of the proposed LEP and sets out the justification for making it. Its audience will include both those responsible for deciding whether the proposal should proceed, as well as the general community, and it must be concise, clear, technically competent and include an accurate assessment of the proposal’s likely impacts. It should be supported by technical information including maps and investigations where relevant. It must contain details of the community consultation that is to be undertaken on the planning proposal.

It is important to note that a planning proposal is not a development application and therefore does not consider the specific detailed matters that should form part of a development application. It is a standalone component of the development process. The council and the community must be confident that the proposed planning controls suggested by the planning proposal are acceptable as an appropriate outcome in that location, regardless of any subsequent approval or refusal of any future development application.

¹⁶ For example, an FSR of 0.5:1 would allow a floor space of 500m² for a site area of 1,000m².

¹⁷ Section 3.42 (previously s 74BA). See also <https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Your-guide-to-the-DA-process/Getting-started/The-planning-system>.

¹⁸ Section 4.15 (previously s 79C).

¹⁹ Previously s 53 and s 53A.

²⁰ Section 3.33 (previously s 55).

Throughout the course of preparing the proposed LEP, the planning proposal itself may evolve. That is particularly the case with complex proposals, such as the ones with which the Commission's investigation is concerned.

After preparing a planning proposal, the council may forward it to the minister. The minister (or delegate) makes a number of preliminary decisions known as the Gateway determination (referred to above). These decisions include determining:

- whether the planning proposal can proceed, with or without variation
- whether it should be resubmitted for any reason, including if further studies should be undertaken or information obtained
- the minimum period of public exhibition of the planning proposal, or that no such public exhibition is required because of the minor nature of the proposal
- any consultation required with state or Commonwealth public authorities which may be adversely affected by the proposed instrument
- whether a public hearing is to be held into the matter by a specified planning body, such as the Independent Planning Commission
- the timeline for completing the stages in making the proposed instrument
- whether the council is authorised to make the proposed instrument and any associated conditions to be complied with.²¹

The purpose of the Gateway determination is to ensure there is sufficient justification early in the process to continue to commit resources and time to a planning proposal and to stop those proposals without strategic planning merit from proceeding. In some cases, it will be necessary to undertake technical studies or carry out consultation with government agencies to justify or clarify different aspects of a planning proposal. As long as the issues giving rise to the need for such investigations and an approach for addressing the issues are identified in the planning proposal, the investigations do not need to be carried out before the Gateway. The Gateway determination will confirm the studies and consultation required and the timeframe for these to be completed.

The EP&A Act sets out the community consultation requirement for planning proposals and these are determined or confirmed as part of the Gateway determination. During the set period for community

consultation, which is usually 28 days for LEPs subject to a Gateway determination, the planning proposal must be made publicly available.²² Any person may make a written submission about the planning proposal during the period of community consultation and if community consultation has been required, the LEP is not to be made unless the community has been given an opportunity to make submissions and those submissions have been considered.²³

Once the Gateway determination and community consultation have occurred, the council reviews the public submissions and decides whether to proceed with the proposal, revise the proposal or not proceed with the proposal at all. If the council decides to proceed on a revised proposal, a revised planning proposal is forwarded to the minister and there is another Gateway determination following the requirements described above.²⁴

The minister (or delegate) can decide to make the LEP, in the terms the minister considers appropriate, or the minister can decide to defer making the LEP and specify the procedures to be followed before it is made, or decide not to make the LEP at all.²⁵ Once the LEP has been approved by the minister, it is published on the NSW legislation website and becomes law.

In October 2012, in the interests of fairness and accountability, two review mechanisms were introduced for the Gateway process, namely, rezoning reviews and Gateway reviews. Importantly, only the *proponent* of a planning proposal, which, in the matter under investigation by the Commission, was CCBC, is entitled to seek a review.

Five Dock Town Centre Urban Design Study

Background

The City of Canada Bay local government area is situated in the inner west of Sydney, about six kilometres from the Sydney CBD. It comprises 18 suburbs, including Five Dock. The Five Dock town centre, which is the area with which this investigation is primarily concerned, is an approximately 800-metre section of Great North Road, forming a "main street" town centre surrounded by predominantly medium- to low-density residential areas.

²² Schedule 1: Community participation requirements (previously s 57).

²³ Section 3.34(8) of the EP&A Act.

²⁴ Section 3.35 of the EP&A Act (previously s 58).

²⁵ Section 3.36 of the EP&A Act (previously s 59).

²¹ Section 3.34(2) of the EP&A Act (previously s 56).

In 2008, *Futures Plan 20* was developed through a community consultation process as a long-term direction for the City of Canada Bay. The strategy was updated and publicly exhibited in early 2013. The updated strategy document distilled the following four key “themes” of the vision for the local government area, each with a number of goals and directions to help successful delivery:

- active and vibrant
- sustainable spaces and places
- innovative and engaged
- thriving and connected.

The strategy stressed the importance of town centres in fulfilling the needs of the local community within a relatively small area and in contributing to a sense of identity, history and community life. To that end, the strategy identified the need to enhance and support town centres such as Five Dock’s, by caring for its streets, parks and civic spaces, celebrating the character of its built form and local heritage, and paying attention to the spaces and infrastructure that facilitated the connectedness of the local community. The vision stressed the importance of effective engagement between council and the community and the particular importance of considering the many and diverse stakeholders of town centres such as Five Dock’s, which are by their nature highly contested spaces.

The City of Canada Bay Local Planning Strategy 2010–2031 (the “LPS”) was developed in 2009 to provide a long-term direction for the planning of the area and assist decision-making. One of its key purposes was to ensure that the Metropolitan Strategy for Sydney and the subregional strategy for Sydney’s inner west were considered at a local level. In summary, the LPS was concerned with:

- the locations for future housing and employment lands and intensification
- the changing social needs of the City of Canada Bay community, including an ageing population and affordability
- protection of heritage items, conservation areas and the natural environment
- protection of prominent view corridors
- ensuring that planning for land use and transport occurred in an integrated manner.

Among other matters, the LPS recognised the limited availability of affordable and public housing in the Five Dock area and suggested that an increased capacity for residential dwellings along Great North Road could be made more feasible with changes to planning controls, such as increasing densities and decreasing parking requirements.

The LPS also recognised the importance of protecting Five Dock’s concentration of employment in its town centre, which then contained over 400 businesses. It recommended that the revitalisation of local centres that were well served by public transport, such as the Five Dock town centre, should focus on improving the quality of urban design. It suggested that the DCP should be reviewed to ensure that any new development was of appropriate bulk and scale and facilitated a reduction of private car usage and an increase in the utilisation of public transport.

The Canada Bay DCP, effective from March 2008, provided the planning controls needed to ensure a high standard of design in the local government area, including building envelope controls and site-specific design controls for key areas including the Five Dock town centre. The relevant controls for the town centre provided that the desired future character of Great North Road required:

- building on the existing, small-scale, intimate character by developing appropriate building forms and heights
- encouraging an active mix of uses to create a dynamic neighbourhood area, including retail, residential and recreational uses
- ensuring that any alterations and additions were in scale and character with the conservation and heritage values of the area.

Other relevant controls for the town centre recognised the low-scale character of the streetscape, the need for FSRs to be appropriate to achieve a consistent density of development and streetscape, the need to protect the amenity of the surrounding residential neighbours of the commercial buildings facing Great North Road and the need for parking and access for service vehicles for those commercial businesses not to alienate the street or conflict with the pedestrian space.

In 2012, CCBC commenced the process of preparing a draft LEP for the local government area to amend the existing LEP 2008. The Canada Bay LEP 2013 was gazetted in July 2013. As in the previous LEP 2008, the Five Dock town centre was zoned B4 mixed use. The objectives of B4 mixed use zoning are to provide a mixture of compatible land use and to integrate suitable business, office, residential, retail and other development in accessible locations, so as to maximise public transport patronage and encourage walking and cycling.

The building height limit for the town centre in the previous LEP 2008 was set at 15 metres, which generally allowed for four levels, and the FSR was set at 2:1. The new LEP 2013 maintained the maximum height of buildings at 15 metres but increased the FSR to 2.5:1,

to allow higher density and yield for any new development in the area.

Tony McNamara was the director of planning and environment for CCBC between 2004 and 2018, and came to that position with some 30 years of experience in town planning. During the public inquiry, he gave evidence that there was a view that the Five Dock town centre was not thriving and did not enjoy the economic activity and vibrancy of other centres within the local government area. He shared the view of council that it was worth investigating what actions could be taken to revitalise and reinvigorate the town centre.

One of the actions taken by CCBC was to engage independent consultants, HillPDA, to prepare the Five Dock Town Centre Strategy (“the Town Centre Strategy”), in order to identify actions and priorities to enhance the economic vitality and viability of the town centre, focusing on these issues from an economic perspective.

The Town Centre Strategy, completed in 2012, identified the need for a range of improvements to the town centre to increase its economic vitality, and recommended consideration of public domain upgrades, the creation of spaces for evening and cultural events, the potential for a second supermarket, opportunities for additional public parking, and a review of the LEP and DCP controls to encourage investment.

Mr McNamara told the Commission that the Five Dock town centre is “basically a large village” and there were issues identified with the size of the existing centre, namely, that the stretch of Great North Road zoned B4 mixed use, which ran in a linear fashion for approximately 800 metres, was too big for a village. In addition, an undersupply of major retail in the centre and the need for an additional shopping centre and improved public parking were identified. The Town Centre Strategy recommended that the focus should be on developing the southern half of the existing town centre as a more well-serviced village centre with B4 zoning for retail in that location.

Mr McNamara said that the Town Centre Strategy had also looked at the issue of whether greater building height and FSR were needed to generate economic activity in the centre, but the opinion of HillPDA was to the effect that increasing these controls would increase the dollar value of land, which may actually deter development and investment in a smaller village centre such as Five Dock. Council staff, accepting that advice and being of the view that the existing FSR in the centre was underutilised in any event, decided that 2.5:1 should remain the maximum FSR.

One of the key recommendations of the Town Centre Strategy was to consider the town centre from an integrated design perspective to ensure that any potential changes to the existing planning controls in the LEP or

DCP relating to building scale, density and height were carefully considered. To that end, and building on previous strategic planning work described above, in 2013, CCBC commissioned HillPDA, the engineering company, Arup, and the urban design consultancy agency, Studio GL,²⁶ to undertake the Urban Design Study. According to Mr McNamara, the Urban Design Study’s purpose was to take the Town Centre Strategy advice and turn it into a document that added greater detail and understanding.

CCBC’s brief for the Urban Design Study required it to provide recommendations and the mechanisms to implement them, in order to:

- enhance the economic viability and vibrancy of Five Dock
- achieve a high standard of sustainable development
- improve the visual and aesthetic qualities, amenity, liveability and attractiveness of Five Dock
- provide a community focus in Five Dock
- identify opportunities for council-owned land
- ensure that building envelopes respect the height, scale and massing of surrounding buildings.

In providing its recommendations, the Urban Design Study was also required to engage the community effectively throughout their preparation.

Mr McNamara agreed that the task was a substantial one. As well as the practical benefit to council of having some of the work involved contracted to external consultants, he said that council was looking “for the best expertise available, independent of council staff”, including expertise in economic analysis, urban design and the application of community consultation tools. As well as the range of technical skills brought by the consultants, he explained that there was a credibility associated with using well-recognised, big companies with a big reach within the state and further abroad.

The Commission is satisfied that CCBC’s engagement of independent consultants to prepare the Town Centre Strategy and Urban Design Study in 2012 and 2013 was undertaken in the context of larger planning strategies for metropolitan Sydney, the inner west and Canada Bay that had been happening prior to and at the same time as these events.

²⁶ Studio GL was a new urban design company established by Dianne Griffiths, previously the key urban designer at Arup, an engineering company with urban design expertise. This report uses a reference to Studio GL as shorthand for the persons and agencies responsible for preparing the Urban Design Study and subsequent studies and reports for council.

The Commission is satisfied that, in relation to the work done to plan for the revitalisation of the town centre of Five Dock, CCBC was engaged in the development of a local planning strategy that was explicitly consistent with broader planning policy objectives and actions. Its use of the independent consultants HillPDA, Arup and Studio GL was designed to provide practical and technical expertise to complement that of council staff, but also to provide a necessary degree of independence and credibility to such a substantial project being undertaken in the public interest.

Community consultation

Mr McNamara told the Commission that a significant amount of community consultation informed the Urban Design Study, including public meetings at the library, displays and stalls set up in Fred Kelly Place, in the middle of the town centre, and an online tool for people to make comments about areas for civic improvement. Council staff were heavily involved in the process, which took place over many months. He explained that the idea was not to grow a bigger centre around the existing one, or even to change the nature of the centre, but to identify the matters that the community really valued in the centre and look at ways of improving it, going on to say:

...it really wasn't an exercise in how to maximise real estate values. It was about how to better service that community and enhance the position of Five Dock without trying to transform it into something very very different.

Paul Dewar was CCBC's coordinator of strategic planning from 2001 until he assumed the position of manager in 2015. As such, he was responsible for project managing the Urban Design Study for CCBC, liaising with the lead consultant and assisting with the community engagement and stakeholder consultation activities. He told the Commission that Studio GL was responsible for identifying the sort of engagement activities that should be conducted and made recommendations about what would have the furthest reach and garner the greatest amount of feedback from the community.

The Urban Design Study itself noted that community/stakeholder engagement activities, including a number of community participation events, stakeholder workshops for business owners and local residents, and presentations to councillors and the Five Dock Chamber of Commerce were conducted between May and July 2013. The aim of these activities was to provide CCBC with an engagement program that was "transparent, broad and inclusive".

The key community aspirations captured from the extensive consultation process were the desire for the

town centre to be community-focused and its public domain improved, but that its friendly village feel, strengths and other assets be maintained and its local heritage celebrated.

Mr Dewar told the Commission that a lot of feedback was received from community members, the majority of which was to the effect that they did not want to see a significant increase in height or density in the town centre.

The Urban Design Study recommendations

The Urban Design Study was finalised in October 2013 and a substantial report was provided to CCBC. It made a number of detailed design-related recommendations directed at improving the amenity and appearance of the town centre's public domain, increasing pedestrian safety, access and parking, and extending public spaces. Of particular relevance to the Commission's investigation, because these were the matters of interest to the Sidoti family and Mr Sidoti in particular, were the Urban Design Study's recommendations about changes to the planning and built form controls in the Canada Bay LEP and DCP to facilitate new and better quality development in the town centre, and an expanded B4 mixed use zone.

(i) extending the town centre

The original Five Dock town centre area that Studio GL was commissioned to study was the area zoned B4 in the Canada Bay LEP 2013. The study itself recommended protecting for future needs by expanding the width of the centre core and creating three additional areas for B4 mixed use zoning. It noted that the B4 zoning allowed flexibility for a wide range of residential, commercial and retail uses and was preferable to the B5 or "commercial core" zoning used in other centres in Sydney to protect retail by not permitting residential use. B4 zoning would permit residential development, which is often more attractive to investors, while allowing the retention of good quality retail spaces in the centre core.

The study proposed that additional areas along West Street, south of Henry Street, between Garfield Street and Kings Road, and along Waterview Street, south of Second Avenue, be rezoned mixed use (see map on page 45).

At the time the Urban Design Study was conducted and finalised in October 2013, the only property owned by the Sidoti family in the Five Dock area was the function centre at 120 Great North Road, which had been purchased in 1992. It was located within the town centre. At the time it was purchased, the land at 120 Great North Road had included the property at 39 Waterview Street, behind the function centre.

Figure 2: Map of Five Dock Town Centre Study Area



Figure 1. Five Dock Town Centre study area

In 1994, the land was sub-divided and a right of way easement was added at the back of both properties to separate them.

In 1997, the property at 39 Waterview Street was transferred from Devene to Mr Sidoti and Sandra Sidoti, being the house where they had lived since their marriage in March 1994. It was sold to Sean Durkin in 2004.

The property at 39 Waterview Street was heritage listed at the time the Urban Design Study was undertaken and finalised. It fell within the block along Waterview Street, between Second Avenue and Barnstaple Road, and was outside the town centre's B4 zoning.

The effect of the town centre boundary, which in this respect was a zoning boundary in place in the Canada Bay LEP 2008 and maintained in the subsequent LEP 2013, was that the entire block between Second Avenue and Barnstaple Road, bound by Great North Road to the west and Waterview Street to the east, was split. The properties in that part of the block facing Great North Road were zoned B4 (mixed use), and the properties behind, in that part of the block facing Waterview Street, were zoned R3 (medium density residential).

It is important to observe that the Urban Design Study did not determine to exclude this area from the town centre's zoning, or to split the zoning of this particular block. Those zoning decisions had already been made and given effect in Canada Bay's 2008 and 2013 LEPs. What the Urban Design Study did not do was identify the block along Waterview Street north of Second Ave as an additional area to consider for rezoning B4.

Mr McNamara explained that the reason for not considering an extension of the town centre further north from Second Avenue was that the studies to that point had identified the need for more retail within the lower half of the town centre and, ideally, a second supermarket there to keep expenditure from "escaping" from Five Dock to other centres, particularly Burwood. Along with a second supermarket, it was identified that the necessary public parking should be located in the southern half of the town centre. The recommendation was to include that land on Waterview Street below Second Avenue in the expanded town centre, which would include a laneway between Great North Road and Waterview Street, and to enable that area to develop additional commercial floor space.

Mr McNamara said that, as well as being considered unnecessary, there were issues with extending the town centre to the block north of Second Avenue, including a heritage property (at 39 Waterview Street) and a strata title property (at 45-47 Waterview Street), which would create issues in being difficult to redevelop, and there was also no laneway through it.

Fundamentally, Mr McNamara explained, the exercise was not to make the town centre bigger, but to grow it only where it was necessary, which was in the bottom or southern section. To keep extending the centre north of Second Avenue to Barnstaple Road would create "a real confusion" as to where the centre was. As the town centre was predominantly a pedestrian centre, and as its car parks were consolidated in the southern part, any growth of the centre in a northerly direction would reduce comfortable walking access from the available parking.

Mr McNamara explained that the other areas proposed for an extension of B4 zoning, namely on the western side of Great North Road towards West Street and an area to the south-west of the existing town centre, were recommended to enable better access from a local primary school to the town centre via a dedicated laneway, and to include an area already containing commercial activity adjacent to the council car park, respectively.

Contrary to the submission made on behalf of Mr Sidoti that no one knows why the authors of the Urban Design Study decided to add certain additional areas to the area they were originally commissioned to study, and not others, and that witnesses who might have been able to explain the issue were not called to give evidence, the Commission is satisfied that the Urban Design Study report itself and Mr McNamara provide clear evidence of the rationale for these decisions.

(ii) achieving the FSR

The Urban Design Study report identified a number of factors that may have a negative impact on the potential of a site to achieve its FSR, including development controls relating to parking, setbacks, heritage, overshadowing and building height. Feedback from developers and investors in the area suggested that development conforming to the existing DCP controls in Five Dock struggled to achieve the maximum FSR of 2.5:1. For that reason, the Urban Design Study recommended changes to the DCP and height controls to make it more possible to achieve that 2.5:1 density.

Mr McNamara told the Commission that the reality with new development is that it tends to consist of commercial or retail on the ground floor and residential on the first floor and above. Because residential development needs to adhere to requirements, including setbacks, air, light and fire controls, it tends to be set back at the front and the sides. Effectively, therefore, with a height control of three-to-four storeys, it is very hard to achieve the maximum FSR with mostly residential development. In recognition of this, the Urban Design Study recommended maintaining the FSR, but increasing maximum building heights.

The Urban Design Study recommended a one-metre increase in height limit in the town centre from 15 to

16 metres (up to five storeys) to enable the requirement of a higher ceiling height for ground level retail of 3.6 metres. It also suggested that, on larger sites, in excess of 2,000 square metres, an additional storey should be considered (six storeys), to a 19-metre height limit, with architectural care taken to avoid adverse impacts on bulk and scale, privacy and overshadowing.

The Urban Design Study also recommended that any additional storeys above the maximum street wall height of 14 metres should be set back a minimum of six metres from the street and designed to recede by being darker in colour and/or lighter in construction. These recommended controls would result in taller but slimmer buildings than the bulky three-storey buildings created by the existing DCP controls.

Mr McNamara told the Commission that the community concerns that emerged during the Urban Design Study were about height and density and the overshadowing of streets, footpaths and parks caused by very tall buildings. The urban design process was a way of interpreting these community concerns into development controls and mitigating any potential negative impacts from them.

The urban design process was also concerned with the so-called “edge controls” between an area that had been up-zoned for commercial or mixed use development and an adjoining area that had remained low density residential, to ensure a successful interface between them and to minimise negative impacts. That might need to occur where only one side of a street was up-zoned, or, as in the case of the Waterview Street site, where one half of the split block was zoned B4 and the other half was zoned R3.

Mr McNamara told the Commission that the situation created by the Waterview Street site meant that the maximum building heights available in the land zoned B4 would have to be addressed very carefully to ensure that no overshadowing issues were being created for the properties that were in the land behind, which was zoned R3. Detailed controls would also need to be incorporated into the DCP to require the upper storeys of buildings in the mixed use zone to be set back to enable solar access for the adjacent residential properties. He agreed that because there was no street separation between the properties facing Great North Road and those behind them in that block, the scope for developing those buildings was more constrained than for the properties in the similar block to the south, which was recommended for an extension of B4 zoning.

Mr McNamara also agreed that development scope for those buildings fronting Great North Road was constrained by the heritage item at 39 Waterview Street, noting that, while the heritage listing remained over that house, any future planning decisions taken in respect of development applications adjacent to that property would have to have regard to the heritage listing.

Council endorses the Urban Design Study

In preparation for the council meeting on 26 November 2013, CCBC staff prepared an “agenda report” that included a summary of the then-completed Urban Design Study’s rationale, phases of community engagement, methodology and recommendations. The agenda report noted that the framework of the Urban Design Study’s “recommendation report”:

...is bold in vision and transformative in nature without losing the village character that the community desires. This vision builds on the improvements implemented by Council over the last few years in collaboration with the Chamber of Commerce and the Five Dock Main Street Committee.

The agenda report recommended that the Urban Design Study be endorsed in principle as the way forward for the town centre and that it be placed on public exhibition to present the recommendations and enable community feedback. It recommended that a draft DCP that had been prepared for discussion purposes be exhibited with the Urban Design Study to provide further guidance about how the Urban Design Study could be implemented.

The agenda report noted that the outcome of the public exhibition would be reported to council in February 2014. A planning proposal to amend the Canada Bay LEP would be prepared for consideration by the council at that time, along with a DCP, a financial strategy and an implementation plan and, following CCBC’s endorsement of these documents, the planning proposal and associated documentation could be submitted to the NSW Department of Planning and Infrastructure for a Gateway determination to enable its public exhibition.

At the meeting on 26 November 2013, eight CCBC councillors – including the Labor mayor, Mr Tsirekas, the Greens deputy mayor, Pauline Tyrrell, the four Liberal councillors and two other Labor councillors – were present. Labor councillor, Neil Kenzler, sent his apologies.

As property owners within the Five Dock town centre, two councillors, Mr Fasanella (Labor) and Mr Megna (Liberal), declared a pecuniary interest in the Urban Design Study, and left the meeting when the item came up for discussion. From that time onwards, throughout the period in which the Urban Design Study and associated planning proposals remained on CCBC’s agenda, Mr Fasanella and Mr Megna would absent themselves from the chamber, or from council workshops, whenever these matters were under discussion.

The remaining councillors unanimously resolved to endorse the Urban Design Study for public exhibition, along with the draft DCP, and that a further report



be provided following that exhibition, advising of any submissions received and any further action to be taken.

Exhibition outcomes

The Urban Design Study was publicly exhibited from 1 December 2013 to 31 January 2014. This involved community engagement activities, including letters to, and meetings with, affected landowners, community meetings for residents and business owners and the relevant documents being accessible on CCBC's website. Thirty submissions were received from residents and one from the Five Dock Chamber of Commerce, which is discussed in the next chapter.



Chapter 4: The shopkeepers' vision or Mr Sidoti's?

This chapter examines Mr Sidoti's initial concerns about the Urban Design Study and his early attempts to influence the position taken in relation to it by the Liberal councillors on CCBC who could vote on any related motions.

Mr Sidoti's interests in the Urban Design Study

In the public inquiry, Mr Sidoti agreed that he would have been aware of the Urban Design Study commissioned by CCBC around the time it was being conducted because of his position as the local member, the location of his electoral office on Great North Road, Five Dock, and the fact that quite a number of community engagement activities were undertaken.

Mr Sidoti said he was aware of the impetus for the council's decision to undertake the Urban Design Study and that he shared the long-held concerns of the whole community about declining economic activity in the Five Dock town centre. He said it had "never gone ahead in leaps and bounds like other precincts in the City of Canada Bay" and that, while it had a lot of potential, it was "looking tired". He agreed that, as well as an interest in anything that might improve economic activity in his own electorate, he had an interest in the Urban Design Study because anything that was done in the Five Dock town centre may have an impact on his family's property interests. He agreed that he had a personal interest in the issue that was distinct from his interest as a member of Parliament.

However, Mr Sidoti told the Commission that he did not consider that his personal interest in the potential impact on his family's property interests in the area created any conflict with his obligations or duties as a parliamentarian in relation to the Five Dock town centre study and planning proposal. He said there would be a conflict if he were making the decisions, but he was not. He also disagreed that taking active steps to advance his family's property interests might conflict with his obligations

to represent the interests of the community at large, saying that he would always represent his community and have its interests at heart above anything else and "most definitely" above his family's property interests.

Mr Sidoti agreed that the purpose of the Urban Design Study was both to ascertain the views of the local Five Dock community about what it wanted for the town centre and to strike a balance between the community's desires for the look and feel of the town centre and measures to stimulate its economic activity. He agreed that these were not easy matters to resolve and accepted that this was one of the reasons why, over the course of 2013, CCBC engaged external consultants who were expert in urban design to undertake a study to come up with proposals that sought to meet these potentially competing objectives.

Mr Sidoti said that he read the lengthy report produced by HillPDA, Arup and Studio GL, although not in "intense detail". He grew up in Five Dock and was always interested in the area he considered a "cultural hub" and "wanted to see it go ahead". He denied that when he read the report he turned his mind to the impact it might have on 120 Great North Road. He said his interest was in relation to what it meant for the whole centre, not one specific property, saying "my community is first and foremost my priority". Mr Sidoti said that he thought the principles behind the report were sound, it was done for all the right reasons, and the report itself was fair.

Mr Sidoti saw the report's purpose as being to stimulate responses from the community, both favourable and unfavourable. He agreed that a major project such as this one, affecting as it did the whole town centre, should be conducted from start to finish openly, publicly and transparently.

He conceded that there was an extensive community engagement process, which involved meetings, workshops and community sessions with people and groups

with an interest in the town centre, including building owners, tenants, those who worked in the area or lived in the town centre, and with the Five Dock Chamber of Commerce.

Submissions were made on behalf of Mr Sidoti that, until his parents purchased the property at 2 Second Avenue, Five Dock, in October 2014, the family's property interests were not in conflict in any way with what had been proposed in the Urban Design Study. It was claimed that to the contrary, 120 Great North Road potentially *benefited* from the proposed changes, both directly, in that an extra floor was permitted, and the FSR moved from 2:1 to 2.5:1, and indirectly, in that other changes meant that it was easier to achieve the 2.5:1 FSR. The Commission rejects these submissions. As discussed in the previous chapter, the Canada Bay LEP 2013 was gazetted on 19 July 2013, before Studio GL's Urban Design Study had been completed. It was the new LEP that increased the FSR for the Five Dock town centre from 2:1 to 2.5:1 and the Urban Design Study did not recommend that it be increased further.

In addition, while the Urban Design Study recommended an increase of one metre – from 15 to 16 metres – to the height limit in the town centre, to enable higher ground floor levels for new developments, it was only on larger sites, in excess of 2,000 square metres, that consideration of an additional *storey* was recommended. The Sidoti family property at 120 Great North Road had a total area of approximately 620 square metres and was therefore too small to benefit from any bonus height proposed for developments on larger sites.

As outlined in the previous chapter, the Urban Design Study also sought to interpret community concerns about increased height, density and overshadowing by recommending development controls, such as setbacks, that minimised the negative impact of taller buildings on the public domain and any adjacent residential areas. As Mr McNamara explained to the Commission, the interface between 120 Great North Road in the B4 zone and the residential dwellings immediately behind it in the R3 zone meant that the development scope for that property would be more constrained than for other Great North Road fronting properties in blocks without split zoning.

The Commission is satisfied, contrary to the submission put on behalf of Mr Sidoti, that the development potential of the property at 120 Great North Road was not benefited as a consequence of the original recommendations of the Urban Design Study, other than by the possibility of a one-metre height increase and an allowance for ground level instead of basement parking in any new development.

The Commission is also satisfied that the evidence is clear that Mr Sidoti was not happy with the extent of these “benefits” and that it was what the property at 120 Great North Road missed out on as a consequence of the Urban Design Study recommendations that was the almost singular focus of his advocacy in relation to the Five Dock town centre, as discussed in this and the chapters that follow.

The Five Dock Chamber of Commerce

The evidence before the Commission establishes that the Five Dock Chamber of Commerce took an early interest in the Urban Design Study and actively engaged in the consultation process connected with its development. Members of the chamber's executive met with council staff in December 2013, during its public exhibition, to provide feedback on behalf of the local business community. This feedback had been discussed and formulated during the course of chamber meetings. The president of the chamber at the time was Joe Di Giacomo and the vice president was Glen Haron.

Mr Haron gave evidence in the public inquiry. He said that the relationship between the chamber and CCBC was a good one and agreed that it allowed for frank exchanges of ideas and views about topics that affected the Five Dock town centre. He agreed that a consultative approach was taken by the council in relation to the Urban Design Study.

Mr Haron conceded that the chamber supported many aspects of the Urban Design Study, including its recommendations in relation to improving the public domain, improving the gateways to the town centre, increasing the width and height of the centre and increasing the residential accommodation provided in the centre. But there were some elements of the plan that were of concern to the chamber, and the December 2013 meeting with CCBC's manager of business, arts and place provided an opportunity to raise them, including the need to:

- create a “special” centre at the northern end of the town centre, to build on the existing medical businesses and operators already there
- increase the proposed FSR in order to promote development
- extend the widening of the Five Dock town centre around East Street, using the same mechanism that was used to expand the town centre B4 zoning along Waterview Street up to Second Avenue

- incentivise the aggregation of sites by providing an increased FSR for sites with a greater area.

Mr Haron agreed that the second and fourth of these points were linked, in that, if the same FSR were applied to all sites regardless of their size, there would be no incentive to aggregate sites, whereas, allowing a bonus uplift for sites larger than a set minimum could potentially achieve that outcome.

Mr Haron agreed that the business community was one of a number of different stakeholders with ideas about what should happen to revitalise the town centre and that, even among the business community, there was a very wide range of views, rather than a single or formalised vision about what should be done.

As well as meeting with the chamber executive team in December 2013, CCBC invited both individual and collective written responses from them concerning the Urban Design Study. This was “to ensure that all issues can be formally addressed by Council in their deliberations”.

On 30 January 2014, Mr Di Giacomo, in his capacity as president of the Five Dock Chamber of Commerce, wrote a response to CCBC’s manager of strategic planning concerning the Urban Design Study. He noted that:

...generally the report could be described as a good report and offers some great ideas and opportunities especially for the top end of Five Dock (ie Henry Street to Queens Road).

He reiterated that the chamber’s major concern was what he described as the “lack of vision and special consideration for the northern end of Great North Road”, identified as a 300-metre strip north of Henry Street up to Lyons Road.

Mr Di Giacomo’s letter set out a number of matters for the council to consider for this strip, including:

- an increase in the FSR to 3.5:1 for consolidated sites of 1,500 to 2,000 square metres to make development viable, rather than retention of the current FSR of 2.5:1
- quality redevelopment to make this area a commercial (for example, medical) hub, bringing greater employment to the area
- decontamination and redevelopment of the area at the corner of Lyons Road and Great North Road
- extension of the widening of the Five Dock town centre to improve opportunities for development at the northern end of Great North Road.

Significantly, as Mr Haron confirmed in evidence, the area indicated by Mr Di Giacomo as of particular concern to the chamber was north of Henry Street and also north of Barnstaple Road. It therefore did not include that part of the town centre in which the Sidoti family’s then sole Five Dock property, at 120 Great North Road, was located.

Mr Haron also made an individual submission following the public exhibition of the Urban Design Study, as a property owner in the town centre rather than explicitly as a member of the chamber. He commended Arup on the high standard of their report, in terms of its detail and the comprehensive way in which it had considered the issues. The key issues he raised concerned the need to increase the FSR from 2.5:1 to something closer to 3:1 and to increase heights to 19 metres, to allow six or seven levels on smaller sites, and up to 25 metres on larger sites.

Mr Haron also submitted that the study should go further in making the centre larger. He suggested an extension of the town centre to include areas to the west of East Street and to the west of Great North Road, between Garfield and Kings roads, for medium density and commercial development. Relevantly, Mr Haron also did not advocate the extension of the town centre to include the area along Waterview Street between Second Avenue and Barnstaple Road.

Mr Haron gave evidence that, personally, while he had hoped the Urban Design Study would be a vehicle to achieving some reinvigoration of the town centre, he was disappointed that council’s brief to its planning consultants had been about keeping the town centre a village, when he thought the objective should be bigger than that. His view was that, while the Urban Design Study’s methodology was fine, the actual outcomes “were aiming too low” and he believed that, consequently, its proposals would be ineffective to achieve the desired revitalisation of the town centre.

He agreed that he was obviously interested in the prospects for redevelopment for his own property, but said he was trying to take a broader view than self-interest. He agreed that he and his fellow members of the chamber were agitating for a bonus uplift in FSR to incentivise the aggregation of sites, rather than for a uniform increase in FSR for all sites regardless of size. He told the Commission that such an uplift, if adopted, would have no direct relevance to his own property interests because he had a very small site and no prospects of amalgamating with adjacent properties, having a heritage item on one side and a block of apartments on the other. He said that, although it was not feasible for him personally, and he accepted that, “it wasn’t about me. It was about Five Dock generally getting a great result”.

On 4 March 2014, Mr Di Giacomo wrote to Mr Sidoti to extend an invitation to him and, separately, to the then federal local member, Craig Laundy, to attend the next meeting of the chamber. In his letter, Mr Di Giacomo advised Mr Sidoti that the Urban Design Study was then in its final stages of being assessed by council and its consultants and described it as "a positive step towards Five Dock's evolution".

His letter reminded Mr Sidoti that there had been recent conversations with both he and Mr Laundy concerning possible state and federal funding for the clearing of a contaminated parcel of land formerly occupied by the Five Dock RSL and Bowling Club at 186 Great North Road. He advised Mr Sidoti that, with financial assistance from government, a greater impact could be made at the northern end of the Great North Road strip if the entire contaminated site could be cleared. He looked forward to hearing from Mr Sidoti about his attendance at the chamber meeting and about what steps could be made to progress the possibility of funds being granted to enable land clearing.

The Five Dock Chamber of Commerce meeting on 7 April 2014

The minutes of the Five Dock Chamber of Commerce meeting on 7 April 2014 recorded that Mr Di Giacomo, in welcoming everyone to the meeting, made special mention of the attendance of Mr Sidoti, Mr Laundy, and the CCBC mayor, Mr Tsirekas, as guests at the meeting and indicated that the purpose of the state and federal members' attendance was to discuss "the current issues that have been affecting small business, namely electricity and land costs".

The minutes recorded that another reason for the attendance of government representatives related to the finalisation of the Urban Design Study, with the meeting described "as another avenue for further recommendations prior [to] final approval of the Study and possibility of receiving funding support from State and Federal levels". The minutes noted that the Urban Design Study was expected to be approved by council at its meeting on 6 May 2014.

Consistent with Mr Di Giacomo's letter of invitation to Mr Sidoti, the minutes recorded that land adjacent to a residential development on the corner of Great North Road and Lyons Road was contaminated and that the chamber was seeking funding from the state government to clear the site, to enable the possibility of car parking facilities and opportunities for business to move to the northern end of Five Dock, including the potential relocation of Council Chambers there, to stimulate activity. In relation to the Urban Design Study, the chamber was concerned to see change that was viable

in the short term at both ends of Five Dock; that is, at the Lyons Road end to the north, as well as the Queens Road end to the south.

The minutes recorded that one of the many features of the Urban Design Study was:

...to look at consolidation and incentives to increase the floor space ratios ... One of the Chamber's recommendations was to rethink the consolidation aspect. Anything over 1500sqm to ensure quality development. Floor space ratio should be looked at. If it isn't increased, development will not occur.

Again, Mr Haron confirmed in evidence that what the chamber was advocating for was an increase in FSR for larger sites over 1,500 square metres as an incentive for site consolidation and that a uniform increase in FSR for all sites would provide no such incentive.

Mr Sidoti gave evidence that he attended and addressed the chamber meeting in his capacity as the local member. The minutes recorded that he spoke about a number of issues of wider relevance to the business community, including land tax, electricity prices and workers compensation and that he also spoke in relation to the Urban Design Study.

The minutes recorded that Mr Sidoti in fact spoke *against* what the chamber was advocating for the northern end of Five Dock, as not being beneficial to the whole of Five Dock. In contrast to the chamber's view, he told the meeting that he did not believe that any residential development proposed for the former Bowling Club site would help the commercial viability of the Five Dock strip and he noted that the contaminated Bowling Club site was not a state government obligation and that he "would rather see governments stay out of business and let business do what they have to do".

In relation to the Urban Design Study, the minutes recorded that Mr Sidoti made a number of points, including expressing the following views:

- *Five Dock density is far too low ...*
- *Attractive buildings can be built on small and large parcels of land. Variation is important. Not a one size fits all. 3:1 floor space ratio is required.*
- *Unless it is 3:1 and unless the LEP (Local Environmental Plan) marries with the DCP (Development Control Plans) the same problems will continue where you will not be able to reach your floor space ratio maximums with the height levels set. It will basically come down to a situation that will be at the discretion of Council.*

The position advocated by Mr Sidoti in relation to the FSR for the town centre was different from the position advocated by the chamber. When giving evidence at the public inquiry, Mr Sidoti confirmed that he considered the existing 2.5:1 FSR to be too low and that he thought that the Urban Design Study's proposal – that the same FSR as already applied to the predominantly two- and three-storey buildings then in the Five Dock area should also apply to buildings of up to five storeys – would cost a lot more and provide no incentive to development.

He also confirmed that his view was that an increase in the FSR was required regardless of the size of the block. He claimed that this was a view conveyed to him “by a lot of the smaller shopkeepers” and that he expressed that view on their behalf at the meeting. He conceded that the chamber was talking about larger blocks and a higher FSR, but claimed “a lot of the smaller shopkeepers were talking about smaller blocks, to redevelop smaller blocks”.

Mr Sidoti gave evidence that he recalled the meeting vividly and that it was “quite heated” with a number of “other shopkeepers” in attendance. He described a presentation about the Urban Design Study given to the meeting by a council staff member as one that:

... presented all these really nice pictures, you know, beautiful buildings and ultramodern designs with leafy trees and everything. And the problem was all these wonderful plans that were presented, the Chamber's view was that it would never happen by increasing the height by a metre or not changing the floor space ratio. Because the whole idea was it never changed, so how, how is all this vision going to happen when there's no changes and no, no incentives or it was just sort of a plan?

Mr Sidoti agreed that the minutes did not record the names of the other shopkeepers in attendance, but said that there were a lot of shopkeepers at the meeting and perhaps too many to list; Mr Haron was one, as was a local butcher. Notwithstanding the fact that there was also no record in the meeting minutes of a presentation being given by a member of council staff, he said he recalled it vividly because Mr Haron contacted him and they spoke later that evening. Mr Sidoti said that:

... everybody in the room wanted to talk about floor space. That was the elephant in the room and that was something that nobody was talking about from the council presentation.

Mr Sidoti was taken to the record in the minutes of the matters that the mayor, Mr Tsirekas, addressed at the meeting, which primarily concerned the Urban Design Study. The minutes recorded that Mr Tsirekas acknowledged at the outset the “good partnership” enjoyed between the council and the Five Dock Chamber

of Commerce and the council's support for the chamber's desire to “activate” Five Dock, its main street and surrounding areas. Mr Tsirekas also acknowledged the numerous meetings that had been conducted to date with businesses, residents and users who had submitted what they thought should be the future for Five Dock, and that all ideas had been considered.

The minutes recorded Mr Tsirekas as saying:

... lots of people have raised the issue of floor space ratio. Five Dock has had a very good floor space ratio, however no stimulation. Large developments required as well as smaller ones to stimulate the area.

Mr Sidoti said that the mayor only raised the issue of FSRs because it came up that night and Mr Tsirekas, as an elected representative, had to engage with his audience. Despite the fact that the issue was evidently addressed by the mayor, Mr Sidoti claimed that everybody *but* the council wanted to talk about it.

The Commission is satisfied that, in advocating for an increase in the FSR to 3:1 in respect of *all* sites in the town centre, regardless of their size, Mr Sidoti's position was inconsistent with the formalised position of the chamber, as advocated in its submissions and representations to CCBC, and as recorded in its meeting minutes. Mr Sidoti's position, if adopted, would have removed one of the key incentives proposed by the chamber to encourage the amalgamation and consolidation of sites. To that extent, the Commission finds that Mr Sidoti's view on this issue was not in accordance with the “vision” of the Five Dock business community as represented by the Five Dock Chamber of Commerce.

The Commission is also satisfied that the position Mr Sidoti advocated for at the chamber meeting was directed to the benefit of the only property his family owned in Five Dock at the time. At approximately 620 square metres, 120 Great North Road was too small to attract the increased FSR for sites over 1,500 square metres sought by the chamber. At this point in time, the family had not yet acquired the adjoining properties at 2 Second Avenue, 122 Great North Road and 124 Great North Road, which were purchased in October 2014, December 2015 and August 2017, respectively, and so there was not yet any prospect of amalgamating sites to attract an uplift in the FSR.

There is no evidence before the Commission that Mr Sidoti ever disclosed that, in advocating for a position different from the chamber on this issue, he was in fact advocating for a change that would benefit his family's property interests. The Commission does not accept that, in addressing the chamber on this issue as the local member of Parliament, Mr Sidoti was merely representing the views of “a lot of smaller shopkeepers” who had

conveyed concerns to him. There is no indication in the detailed minutes of the meeting that Mr Sidoti was making representations on behalf of a section of the local small business community with a divergent view from their own chamber of commerce.

The Commission does not accept the submission that it was sufficient for the purposes of disclosure that those present at the meeting, including the mayor and (unnamed) members of the small business community, would have known of the Sidoti family's interest in 120 Great North Road. That is not to the point. The Commission finds that Mr Sidoti was using his official position to advocate for a position that favoured his private interest without disclosing that that was what he was doing.

The Commission finds it telling that Mr Sidoti did not champion the major concern of the chamber, as expressed in its submission to council and at this meeting, namely, the "lack of vision and special consideration for the northern end of Great North Road" and he also did not champion the chamber's push for an increase in the FSR to 3.5:1 for consolidated sites of 1,500 to 2,000 square metres to make development viable. Nor was the position Mr Sidoti advocated consistent with Mr Haron's individual position, which the latter clarified was about increasing the FSR for larger sites to incentivise aggregation and stimulate development for the benefit of Five Dock as a whole, even if it would have had no relevance to his own personal property interests.

The Sidoti family's property at 120 Great North Road would not benefit from the chamber's position on FSRs if adopted. Unlike Mr Haron, however, Mr Sidoti advocated a uniform increase in FSRs regardless of site size that was not directed to incentivising the aggregation of sites to stimulate development. The Commission is satisfied that the primary focus of Mr Sidoti's representations about the Urban Design Study at this meeting was directed to the benefit of a private interest and not to the benefit of the business community of Five Dock and the revitalisation of the town centre as a whole.

Where were the Liberal councillors?

Mr Sidoti gave evidence that, while the Labor mayor, Mr Tsirekas, and the Labor councillor, Mr Fasanella, attended and addressed the chamber meeting on 7 April 2014, he did not recall Mr Megna (a chamber member, local businessperson and councillor, like Mr Fasanella) being present and said "that was half the problem". Asked to explain, Mr Sidoti said that the "problem" was that there was no representation from the Liberal councillors at that Five Dock Chamber of Commerce meeting.

Mr Sidoti told the Commission that immediately after the meeting, he was "berated" by a group from the chamber, including its vice president, Mr Haron, who asked him, "Where are the Liberal councillors? This is the party that's meant to represent small business. Where are they?". He said that Mr Haron asked him to arrange a meeting with the Liberal councillors and, what prompted him to email them as soon as he got home that night, was the view of the chamber, and particularly of Mr Haron, that they "were missing in action" and should have been there.

Mr Sidoti said it was also his view that the Liberal councillors should have been at the chamber meeting because the Urban Design Study was a major plan for the next 20 years and they should have been informed about it. He said there was nothing in particular he wanted the councillors to be aware of, other than "the main stakeholder views there from the Chamber of Commerce".

Mr Sidoti claimed there was "a lot of aggression in the room", the main reason for which was the absence of the Liberal councillors and disappointment from the chamber that only two Labor Party councillors had made the effort to be at what was an important meeting. This was also the main reason he went home after the meeting "rattled".

He conceded, however, that he did not know whether the Liberal councillors had even been invited to the chamber meeting, and that, if they had not, that could be the explanation for their non-attendance, rather than a lack of interest on their part. His evidence about this matter changed on the last day of the public inquiry, however, as discussed in the next chapter.

Mr Sidoti seeks to form "a united stance"

At 9.02 pm on the evening of the chamber meeting, Mr Sidoti sent an email from his parliamentary email address to Ms McCaffrey, Ms Cestar, Mr Megna and Dr Ahmed. He wrote:

I would like to organise a meeting day or night over the next week at a time convenient to all in the presence of the Five Dock chamber of commerce President and Vice President to discuss the Five Dock urban study and the very misleading statements by council staff in an attempt to sell the business community of Five Dock a pup.

Please be well informed on this subject and challenge the thoughts of the staff. The survival of the centre is at play.

His email was signed "John Sidoti MP".

The next day, Mr Sidoti emailed the four councillors, again from his parliamentary email address, to suggest possible dates and times for a meeting to be held at his office, and wrote:

Can we meet over the next 7 days to form a united stance for the Five Dock town centre urban study that will be voted on on the 6th May council meeting.

Further email exchanges between the councillors and Mr Sidoti, and an electronic calendar entry, indicate that a meeting was arranged for 7 pm on 16 April 2014 at Mr Sidoti's electoral office in Five Dock, and that Mr Di Giacomo and Mr Haron would also be attending.

During his evidence, Mr Sidoti was unable to identify any matter concerning the Urban Design Study about which council staff had made any misleading statement. He said that he meant "no slur" on council staff in his email to the Liberal councillors. He said it was a private email and he regrets the wording used. He described the words "very misleading" as "dramatic" and denied he meant them, saying:

Well, I know, but I, I wrote it, so I know what I, what I meant. You don't. I know what I mean there. And what I mean there is that I wouldn't have used those words in hindsight, "very misleading statements". What it was referring to was glossy photos, but that's all they are, because they will never become a reality, and I wanted the Chamber of Commerce to be content at least that they put their view across, and then what they did was their business.

Mr Sidoti told the Commission that "misguided" might have been a better word than "misleading". He said that the whole presentation by council staff about the Urban Design Study given at the chamber meeting "was based on a false pretext", explaining "you can't achieve what they're asking without talking about or changing the FSR ... it was a pup in that regard. It wasn't correct". Mr Sidoti said he expressed himself "unprofessionally", but what he wanted to impress on the councillors was that they should be well informed because council was "selling the community something that's false".

While Mr Sidoti conceded he had no planning or urban design qualifications or experience, no experience in economic feasibility analysis and no alternative feasibility analysis in respect of the town centre to hand, he did not accept that all he had was his unqualified personal view that what was being presented was misleading. Mr Sidoti asserted, "my unqualified role is to represent the views of the community, and that's what I was doing, to well inform the councillors. That's my unqualified position as an MP".

He agreed that by this he meant he was representing to the councillors who were not at the meeting the views of the Five Dock Chamber of Commerce, or "the shopkeepers". Mr Sidoti readily accepted that he did not send his email to the Liberal councillors as a private citizen or constituent of the council, but rather in his capacity as a member of Parliament.

In relation to the "united stance" Mr Sidoti referred to forming with the councillors in his email on 8 April 2014, he told the Commission that what he meant was "to see if there's common ground" on the town centre and to know where they stood in relation to the Urban Design Study. Mr Sidoti agreed that the words "form a united stance" in their plain meaning involved coming to an agreement or a position held by all of them, but claimed that was not his intention and "it was probably the wrong choice of words".

Mr Sidoti denied that he had strong views about the Urban Design Study and the need to increase the FSR to 3:1, and that he wanted to express those views to the Liberal councillors to get a united stance with them on those views. He said he just wanted them to meet with the Five Dock Chamber of Commerce and have a discussion so that they had "the same opportunities as anyone that was present on the night".

He said his intention was for the councillors to "form common ground because to date, the Five Dock Chamber of Commerce, the business owners, and the shopkeepers had no idea where the Liberal councillors stand on this issue". He asserted that, as the author of those words, he knew what he meant, but he agreed that again, the actual words he used did not carry the ordinary meaning associated with them. In answer to the question about what business it was of his to make a request for the Liberal councillors to meet with the chamber, Mr Sidoti responded that, "as the local member and as part of the same team I thought that it was important that they heard feedback from all sources".

Mr Sidoti denied that he wanted the councillors to achieve "common ground" in respect of the FSR issue for the town centre, claiming he "just wanted them to meet, full stop, to meet with the Five Dock Chamber of Commerce, nothing further, nothing more". He said he wanted them:

... just to discuss the town centre and see if you can, where you stand on this in relation to the community. The community wants to know what your view is because you've been absent from small business.

Mr Sidoti acknowledged that that particular sentiment was nowhere expressed in his email to them, but said "well I wrote the email, so I know what I, what I was intending to do".

Mr Sidoti gave evidence that Mr Di Giacomo, Mr Haron and the Liberal councillors, other than Mr Megna, attended the meeting he organised at his electorate office on 16 April 2014. Mr Sidoti introduced them all and they went and sat down in his meeting room. Mr Haron asked him to come into the meeting, but Mr Sidoti declined, saying that the meeting was for the Five Dock Chamber of Commerce to express *their* views, not his, and he felt that those views should not be expressed in his presence. He said he was just keen for the councillors to hear the views of one major group of stakeholders and he had already heard what the chamber had to say. He claimed that it was up to them to find the "common ground", not him.

Mr Sidoti said that he was not aware of what was discussed in the meeting, but understood that there were some presentations, including an explanation from Mr Haron about sunlight, given his expertise in lighting, and eventually he came to understand from Mr Haron that the councillors "had a very limited understanding of anything to do with buildings and town planning".

Mr Haron, on the other hand, told the Commission that he had concerns about the propriety of a meeting with the Liberal councillors being held at Mr Sidoti's office in circumstances where Mr Sidoti's family had property interests in the area, but he said he agreed to the meeting proceeding at that location, as Mr Sidoti suggested it should, because he understood that Mr Sidoti would not be attending the meeting. He agreed that it was immediately recognisable to him that, because of the Sidoti family's property interests in the area, Mr Sidoti should not attend any such meeting, in order to "do the right thing and be seen to be doing the right thing". Contrary to Mr Sidoti's evidence, Mr Haron said he told Mr Sidoti to leave, in order for them to get on with the meeting and avoid any conflict from Mr Sidoti remaining.

Mr Haron told the Commission that he and Mr Di Giacomo, along with Ms McCaffrey, Ms Cestar and Dr Ahmed, attended the meeting which did not commence until Mr Sidoti had left the room. Mr Haron told the Commission that, while at the time he had no concerns about attending what might be described as a private meeting with the Liberal councillors about the Urban Design Study, more recently, he had come to the view that there should have been more openness in order, again, to do the right thing and be seen to be doing the right thing.

Mr Megna gave evidence that he was certain he did not in fact attend the meeting arranged by Mr Sidoti with the other Liberal councillors, Mr Di Giacomo and Mr Haron, although he could not explain why he had apparently indicated an agreement to be part of such a meeting. Mr Megna agreed, given his declared pecuniary interest in the matter, that it would not have been appropriate for

him to discuss the topic with the other councillors and he said, "we didn't caucus on it or decide that there was a view that we should be taking on it".

Mr Megna agreed that councillors are required to act impartially, to vote only with the public interest in mind and not to caucus and have united stances on matters. He also agreed that it would not be appropriate for a local member of Parliament with a pecuniary interest in the matter to engage with Liberal councillors in order to have them vote as a bloc in respect of the Urban Design Study.

Mr Megna agreed in evidence that Mr Sidoti's allegation that council staff had made "very misleading statements ... in an attempt to sell the business community of Five Dock a pup" was a serious allegation against them, but he said that Mr Sidoti never explained what he meant by this and he took Mr Sidoti's strong language as just "venting".

Ms Cestar also agreed that it would be a serious matter if council staff were making misleading statements to councillors regarding the Urban Design Study, but said that at the time, she would have taken Mr Sidoti's accusation "with a grain of salt". Ms Cestar agreed that it was not uncommon for Mr Sidoti to make claims such as the ones set out in his email and that it was part of the political rhetoric she was used to seeing from him. She conceded that, if there was any substance to the allegations raised in Mr Sidoti's email, they should have been of interest to all councillors, not just the Liberal councillors, but said that concern did not register at the time.

Ms Cestar gave evidence that Mr Sidoti's representations "were very specific to this particular strip of road" and she did not receive calls from him "for meetings about roads or other matters within the electorate". She agreed that, when Mr Sidoti referred to forming a "united stance" in respect of the matter that would come before council on 6 May 2014, he was seeking a meeting to see whether or not she and her fellow Liberal councillors could form a united voting stance in respect of the matter.

Ms Cestar also agreed that Mr Sidoti had an interest in the very subject matter he was seeking them to have a united voting stance on. Ms Cestar said that at the time this was going on, there were "alarm bells", but she believed she knew her boundaries and would not cross them. She agreed that while she had concerns, she kept them to herself. She said that she would be hesitant to agree to a united stance on anything unless it was in the public interest. Ms Cestar had no recollection of a meeting with her fellow Liberal councillors and representatives of the Five Dock Chamber of Commerce at Mr Sidoti's electorate office.

Ms McCaffrey also did not recall attending a meeting arranged by Mr Sidoti with the president and vice president of the Five Dock Chamber of Commerce,

although she conceded it was a possibility she had done so. Similarly, Ms McCaffrey could not recall what were the “very misleading statements” by council staff referred to by Mr Sidoti in his email, or whether she raised the matter with him, although she agreed she would have been concerned at his accusation. Ms McCaffrey also agreed, however, that she would have understood what Mr Sidoti was referring to without actually asking him, namely, that he was not happy with the outcomes and recommendations in the reports resulting from the Urban Design Study.

Ms McCaffrey recalled that Mr Sidoti wanted the town centre area expanded to include property further down the strip and she knew that he wanted more floor space and height for properties she assumed were his. Ms McCaffrey agreed that she had a sense of exactly what it was that Mr Sidoti wanted to raise with the Liberal councillors when he called the meeting with them to form a “united stance” and that was his own family’s property interests in the area. She could not recall the Liberal councillors ever meeting as a group with any other constituent to hear about their private property interests in a particular matter.

In contrast to his fellow Liberal councillors, Dr Ahmed gave evidence that at no stage did he think any of Mr Sidoti’s representations were in any way linked to his private interests. He said that he interpreted Mr Sidoti’s actions at every stage as being based on his assessment of the interests of his constituents, and said he understood “without question” that Mr Sidoti’s representations were made in his capacity as the state member for Drummoyne. This included Mr Sidoti’s allegation that council staff were making “very misleading statements” about the Urban Design Study, even though Dr Ahmed readily agreed that council staff were very competent in relation to planning matters and always appeared to provide independent advice.

Dr Ahmed told the Commission that because he was a new councillor and “quite inexperienced”, he accepted Mr Sidoti’s “broad representation” that because it was a Labor-run council, “you can’t just swallow what council’s giving you, you know, without question”. Although Dr Ahmed accepted that as a councillor he was required to exercise his own independent judgment in relation to decisions and not be influenced by the fact that he was a member of the Liberal Party, nor caucus with other Liberal councillors to have united stances on matters, he nevertheless expressed the view that “there is still a political dimension to planning”.

Dr Ahmed said he did not think he could come to an opinion independent of the world view he held as a member of the Liberal Party, nor completely distance himself from the views of the local member, who was

“someone with a huge amount of planning experience and a huge amount of electorate experience as well”. That said, he thought that there was a “theatrical quality” to Mr Sidoti’s statement about council staff. He said that, while it was a representation the councillors would have taken notice of, he doubted it would have much influence and there was no way he would consider any of the staff being intentionally misleading. Dr Ahmed described CCBC as “a very cohesive and well-functioning council”.

Dr Ahmed said that his impression throughout, from the way Mr Sidoti presented his arguments, was that Mr Sidoti saw the Liberal councillors as:

... having underrepresented commercial or small business interests in the electorate, which the function, you know certainly as the Liberal representatives, it was, you know, to some extent it was our duty to do. That’s how I interpret his actions.

Dr Ahmed said he had been to “a Chamber of Commerce thing where there were a couple of people there talking giving me property and development tutorials” that had been arranged by Mr Sidoti. He thought that Mr Sidoti had been there too. He remembered getting what he described as:

... kind of property development 101 type tutorials about floor space ratios and when things became profitable or otherwise ... I remember getting impressed upon me that property in general had a moral worth, particularly for a variety of ethnic groups, if you like, as a part of aspiration and social mobility. Oh, you know, it was impressed to me that, you know, there was a place for property development and certain levels of controls that allowed it to occur more favourably.

Dr Ahmed did not think the other councillors were present at this meeting, having been unable to make it for whatever reasons.

The Commission rejects the submission made on Mr Sidoti’s behalf that asking the Liberal councillors to be well informed on a subject of obvious community interest and for them to think critically about matters put forward by council staff was “manifestly commendable”. It rejects the submission that Mr Sidoti’s use of phrases in his email of 7 April 2014, such as “very misleading statements” by council staff and their attempt to “sell the community a pup” was inconsequential in that the only part of the email the Liberal councillors paid any attention to was the exhortation for them to be “well-informed” and they disregarded the rest of his language in accordance with the way they usually received his “rhetoric”.

The Commission finds that, when Mr Sidoti alleged in his email to the Liberal councillors that council staff were

making “very misleading statements” and attempting to “sell the business community a pup”, he was engaged in more than a poor choice of words or mere rhetoric. The Commission finds on the evidence that there was no proper basis for Mr Sidoti’s allegations and that he was himself engaged in making misleading representations to the Liberal councillors. He did so in order to engender a sense of hostility in them towards the Urban Design Study and council staff recommendations in order to make them more receptive to the contrary position he would urge them to take on certain matters. After all, the purpose for exhorting the councillors to be well informed was expressly so that they could “challenge” the views of council staff.

The Commission finds that – just because all four Liberal councillors who received Mr Sidoti’s email appeared to accept Mr Sidoti’s baseless accusations against council staff as part and parcel of the way he conducted himself, dismissed what he said as mere “venting” or as having “a theatrical quality”, or took it “with a grain of salt” – does not render innocuous what Mr Megna described as Mr Sidoti’s use of “strong language”.

The evidence is clear that, at this early stage of the process, Mr Megna, Ms Cestar and Ms McCaffrey were well aware that Mr Sidoti had a personal interest in the Urban Design Study. They also clearly knew that he was unhappy with aspects of it as it affected his family’s private property interests in 120 Great North Road. The Commission finds that Mr Sidoti’s emails were directed to introducing a public interest dimension to his private concerns by representing that it was up to the Liberal councillors to “challenge” the thinking of council staff in order to protect their natural constituents, the business community, from being misled about the Urban Design Study and sold a “pup”.

The Commission finds that the words used by Mr Sidoti in his email to the Liberal councillors on 8 April 2014, requesting that they meet with him to “form a united stance for the Five Dock town centre urban study that will be voted on on the 6th May council meeting”, mean exactly what they say. Mr Sidoti’s attempt to distance himself from what was clearly an attempt to get the Liberal councillors to come to a united voting position before the next council meeting strains credulity.

The Commission does not accept Mr Sidoti’s evidence that he just wanted the councillors to hear feedback from the Five Dock Chamber of Commerce and for them, in turn, to let the chamber know where they stood on the Urban Design Study. The evidence is clear that Mr Sidoti wanted an increase in the FSR and the Urban Design Study did not recommend one. Despite the divergence in their views as to how an increased FSR should be applied, both the chamber and Mr Sidoti were in agreement

that there should be an increase. The Commission is satisfied that the chamber’s motivation was to incentivise development for the whole town centre whereas Mr Sidoti’s motivation was self-interest.

Mr Sidoti wanted the Liberal councillors to “challenge” council staff who were recommending that council adopt the Urban Design Study recommendations. Ms Cestar, Ms McCaffrey and Dr Ahmed understood that Mr Sidoti wanted the three Liberal councillors who could vote on the matter to form a united voting position. Both Ms Cestar and Ms McCaffrey understood that the position Mr Sidoti wanted them to come to was related to his family’s property interests in the area and his unhappiness at the impact on them of the recommendations of the Urban Design Study. Dr Ahmed, on the other hand, believed that the position that Mr Sidoti wanted them to unite on was one informed by their shared “duty” as Liberal Party representatives to represent commercial or small business interests in the electorate, which he was under the impression from Mr Sidoti they had been deficient in doing.

The Commission finds that, at this early stage, Ms McCaffrey and Ms Cestar were able to dismiss Mr Sidoti’s attempts to get them to adopt a united position in relation to the Urban Design Study, understanding the importance of maintaining their independence, mindful of their duty not to form a united stance unless they individually considered the particular position to be one that was in the public interest and aware that Mr Sidoti had a personal and pecuniary interest in the matter. The Commission finds that this is a likely reason for their failure to recall attending any such meeting arranged for them with the Five Dock Chamber of Commerce president and vice president by Mr Sidoti.

The Commission finds that Dr Ahmed, who was less experienced than his fellow Liberal councillors and clearly valued the political seniority, experience and opinion of Mr Sidoti, was far more susceptible to having his voting position influenced by him. He did recall meeting with members of the Five Dock Chamber of Commerce and he specifically remembered the importance of controls, including FSRs, that were favourable to development being impressed upon him at that meeting.

The evidence does not allow the Commission to make a finding that Mr Sidoti participated in the meeting he organised between the Liberal councillors and the Five Dock Chamber of Commerce president and vice president on 16 April 2014, beyond making arrangements for it to take place at his electorate office and introducing the participants to each other before leaving. Nevertheless, the Commission finds it a matter of concern that Mr Sidoti went so far as to arrange and facilitate at his own electorate office what may be described as a private

meeting between the Five Dock Chamber of Commerce representatives and the CCBC councillors from his own political party in circumstances where he had urged the latter to “challenge” the views of council staff and form a “united stance” in relation to the Urban Design Study, which was shortly to be voted on at a council meeting and in which his family had a private interest.

It is important to recognise, as submitted on Mr Sidoti’s behalf, that the CCBC code of conduct does not prohibit councillors from discussing a matter prior to considering the matter in question at a council meeting, or from voluntarily holding a shared view with other councillors on the merits of a matter. However, all four Liberal councillors were well aware that they were required to act impartially and independently and not to form united stances on matters before council. Those who were aware of Mr Sidoti’s pecuniary interest in the Urban Design Study also recognised that it was not appropriate for him to be trying to get them to form a united voting position in relation to it at the upcoming council meeting.

The Commission is satisfied that, by his emails to the Liberal councillors on 7 and 8 April 2014, Mr Sidoti was attempting to influence the independence and impartiality of the exercise of the councillors’ official functions when it came time to vote on the Urban Design Study at the next council meeting. The Commission finds that he was seeking to get them to oppose the Urban Design Study recommendation in relation to maintaining an FSR of 2.5:1 and to take a position contrary to that recommended by council staff.

The Commission is satisfied that, while Mr Sidoti represented that the position he wanted them to unite on was that of the “shopkeepers” of Five Dock, represented by the local chamber of commerce, the real position he wanted them to take was the one that would benefit his family’s property interests rather than the wider interests of the business community. That position, an increase in FSR *regardless* of the area of a site, was made explicit at the next meeting he arranged with the councillors, as detailed in chapter 6.

Chapter 5: Mr Haron's statutory declaration

This chapter deals with the statutory declaration of Mr Haron that was provided to the Commission by Mr Sidoti's lawyers, with a request that it be taken into evidence as exculpatory of Mr Sidoti, following the conclusion of the public inquiry. Investigation of the circumstances of the making of this statutory declaration and the matters it raised necessitated the re-opening of the public inquiry and necessarily delayed the finalisation of the Commission's investigation.

The kerbside encounter with Mr Haron during the public inquiry

On the last day of his public inquiry evidence, in response to questions from his own counsel, Mr Sidoti repeated his earlier evidence that the Five Dock Chamber of Commerce meeting which he attended and spoke at on 7 April 2014 was heated because there was "frustration on behalf of all the shopkeepers" at the absence of participation by the Liberal councillors in a very important meeting. He stated that, in complete contrast, the Labor mayor and Labor councillor, Mr Fasanella, were "fully active" at the meeting and fully informed. He insisted that the Liberal councillors should have been present.

As discussed in the previous chapter, Mr Sidoti had initially acknowledged that he did not know whether the Liberal councillors had even been invited to the chamber meeting and conceded that their absence may have been explained by the lack of invitation rather than a lack of interest on their part. However, on the last day of the public inquiry, Mr Sidoti asserted that he had recently learned that the Liberal councillors *had* been invited to the meeting after all.

Mr Sidoti said that he had bumped into Mr Haron in the first or second week of the public inquiry, and they had discussed the very meeting Mr Sidoti had arranged at Mr Haron's request between the Liberal councillors and the chamber president and vice president back in April 2014. In response to questions from his counsel, Mr Sidoti described that interaction as follows:

[Counsel]: *And how did you come to be discussing it with him?*

[Mr Sidoti]: *I think he was watching it. And I, I was walking the dog and he was driving past and he saw me and he pulled over, and he basically came out and said, he, he saw what answers I gave, that I didn't recall the meeting that took place, and he, and he basically said, "Are you silly or something? Have you lost your memory? You organised the meeting for us". And, and then I said to him, "But was I there? I just don't recall". He says, "Of course you were there". He says, "You organised it and then you stayed in your own office and you didn't come in, because you just organised it as stakeholders, because they hadn't attended the Chamber of Commerce, to, to, to, the invite sent to them, sent to them. And so that's why you organised the meeting, so they could be present and hear everything that went on at the meeting"*

...

[Q]: *And you're saying that he said to you just this month that the Liberal councillors had been invited. Is that what you're saying?*

[A]: *Yeah, that an invitation had gone to all elected representatives.*

[Q]: *Prior to then, you had no idea?*

[A]: *I didn't recall. I didn't, yeah.*

In re-examination, it was put to Mr Sidoti that, because he had only started giving evidence in the fourth week of the public inquiry, it was not possible for him to have had the claimed conversation with Mr Haron in the first or second week of the public inquiry about evidence he had not yet given, and that therefore he must have made up his evidence about the encounter with Mr Haron, and that it was false.

As outlined in chapter 1, following the conclusion of the public inquiry, on 17 May 2021, Mr Sidoti's legal representatives sought to have a statutory declaration, signed by Mr Haron on 12 May 2021, taken into the evidence before the Commission as exculpatory of Mr Sidoti. The Commission re-opened the public inquiry to investigate matters arising from that statutory declaration, including the circumstances in which it came to be made. Mr Haron, Mr Sidoti's sister, Ms Andersen, and Mr Sidoti were summoned to give evidence.

In his statutory declaration, Mr Haron stated that he had seen Mr Sidoti walking his dog in Drummoyne on a weekend in early April 2021, after the commencement of the public inquiry, and stopped to talk to him. He made the following assertions in relation to their conversation:

4. I have now been shown pages 1758, 1781 and 1782 of the transcripts of John Sidoti's evidence at the Public Inquiry. I agree that what is said by John Sidoti is correct at p 1758 of the transcripts, except that I did not say anything about seeing the answers John Sidoti gave. I have not seen any of John Sidoti's evidence as part of ICAC's live stream.

5. I believe I saw John and had the conversation referred to above, after either seeing or hearing of the evidence of one of the councillors of Canada Bay, but before John Sidoti gave his evidence. The conversation between myself and John was not "made up", as was suggested at transcript p.1782, with the one correction that I did not say anything about seeing the answers John Sidoti gave.

Significantly, Mr Haron's statutory declaration did not set out his own independent version of the substance of the conversation between himself and Mr Sidoti, but rather referred to, and adopted, the version of events given by Mr Sidoti as recorded on a specific page of public inquiry transcript.

Mr Haron told the Commission that he signed his statutory declaration before Mr Sidoti's brother-in-law, David Andersen, at a café in Chinatown on 12 May 2021. Mr Andersen, a solicitor, brought with him a copy of the statutory declaration for Mr Haron to sign and the pages of the public inquiry transcript referred to in it. Mr Haron had not read these pages of transcript prior to the meeting with Mr Andersen, but said that he did read them before signing the statutory declaration, to ensure they were in accordance with what he was signing.

Matters in the statutory declaration needing correction

In his evidence before the Commission, Mr Haron acknowledged that, having subsequently re-read his statutory declaration, there were some matters in it that he wished to clarify or correct. Mr Haron described "the key contentious point" in Mr Sidoti's evidence of their encounter and kerbside conversation in Drummoyne in early April 2021, as being whether Mr Haron had confirmed for Mr Sidoti that the Liberal councillors *had* been invited to the Five Dock Chamber of Commerce meeting in April 2014.

It is a matter of significance that Mr Haron conceded that he in fact had no knowledge about exactly who was invited to any meetings of the Five Dock Chamber of Commerce, including the meeting on 7 April 2014, because he was not involved in issuing invitations. He also agreed that the issue of whether or not the Liberal councillors had been invited to the Five Dock Chamber of Commerce meeting in question was not at the front of his mind during his conversation with Mr Sidoti, and said,

"Oh, I'm not aware ... as I previously confirmed, whether they were actually sent an invitation. They just weren't at the chamber meeting and that absence was noted".

Mr Haron told the Commission he did not remember telling Mr Sidoti that the Liberal councillors had been invited to the chamber meeting because it was not something he had direct knowledge of. He said that it was "probably unlikely" that he had.

Mr Haron's statutory declaration went on to describe the Five Dock Chamber of Commerce meeting on 7 April 2014 and the subsequent meeting organised at his request by Mr Sidoti with the Liberal councillors, as follows:

8. I recall the meeting was controversial and the heated debate ensued about the future of Five Dock. The issues of FSR and heights was raised and the proposals in the Five Dock Town Centre study was seen to be ineffective to achieve desired revitalization of Five Dock.

9. I personally expressed concerns to John Sidoti about the lack of, or non-attendance at the meeting by Liberal Party councillors. I also recall that they had been invited to the meeting as it was an important meeting about the town centre.

10. I recall after the chambers meeting in mid-April 2014 asking John Sidoti to organise a sit-down meeting with the Liberal councillors so we could voice our concerns.

Mr Haron conceded in evidence that describing the chamber meeting as "heated" may have been overstating matters and another word should probably have been chosen. He agreed that the meeting was conducted overall in a business-like and cordial fashion but said that there were parties present with differing views about the extent of development that should be pursued, including some residents from the tallest building in Five Dock (the Pendium Apartments) who wanted to preserve their views, and there was consequently "a lot of friction" and it "became quite emotional". He agreed that nowhere in the detailed minutes of that meeting was it recorded that there was any heated discussion or even any debate about any of the itemised matters concerning the Urban Design Study.

Mr Haron conceded that the assertion in his statutory declaration that he recalled that the Liberal councillors had been invited to the chamber meeting was also wrong, and that, although he expected them to be there and believed they would have been invited, he did not in fact know whether they had been or not. He conceded that the minutes of the meeting, likewise, did not record their apologies or the fact of their absence being noted. Mr Haron told the Commission that, while the statutory

declaration he signed on 12 May 2021, "probably had my input in it", it was given to him to sign already drafted.

Notes from the meeting with Mr Sidoti's solicitor

Mr Haron gave evidence that, at the end of his chance encounter with Mr Sidoti, he asked how Mr Sidoti was coping with the stresses of the Commission's inquiry, which had commenced the week before, and told him to let him know if he needed anything. Mr Sidoti asked whether he would mind being called by his solicitor. Mr Haron said that, a couple of weeks later, he was contacted by Mr Sidoti's solicitor who arranged for another solicitor from his firm to attend Mr Haron's office for a chat about matters related to the Urban Design Study, which seemed to be the particular focus of interest.

The evidence indicates that, sometime before 15 April 2021, while the public inquiry was underway, a female solicitor from the firm representing Mr Sidoti attended Mr Haron's office and recorded or made notes about their conversation. Mr Haron confirmed that the meeting concerned the substance of the evidence he may be able to give about relevant events in 2014 in connection with the Urban Design Study, including the meeting organised by Mr Sidoti at his request with the Liberal councillors. Mr Haron confirmed that he was not shown any documents during his conversation with the solicitor, nor was he left with any notes or documents pertaining to that conversation.

Mr Haron told the Commission that, a few days after the meeting with the solicitor, Mr Sidoti's brother-in-law, Mr Andersen, rang him and said he would be dropping a document to Mr Haron at his house. As Mr Haron was not available, the document was left with one of his daughters. At this stage, other than via telephone contact in the nature of short telephone calls to coordinate his receipt of the document, Mr Haron had not previously met Mr Sidoti's sister or her husband.

The Commission obtained a copy of the document that was dropped off at Mr Haron's house. It consists of 24 typed paragraphs in statement form, with numerous additions, deletions and annotations and a number of questions posed in the handwriting of at least three different authors. Mr Haron gave evidence that he did not recognise any of the handwriting, but that none of it was his. He agreed that the typewritten parts of the document appeared to be a record of the discussion he had with the solicitor who came to his office. He said that he believed all of the handwriting was on the document when he received it.

Mr Haron confirmed that, after he had spoken to Mr Sidoti's solicitor and another solicitor from the firm had

attended his office, he understood that he may be asked to provide some sort of statement or document that could be used in the Commission's public inquiry concerning Mr Sidoti. Mr Haron agreed that the document dropped off at his house by Mr Andersen had the appearance of the beginnings of a draft statement with particular suggestions as to changes that should be made to it, together with questions for him to consider with a view to including further information.

Mr Haron said that he got his assistant to copy-type the document with the handwritten changes included so that he could assess it and he did not read it in any detail before asking for that to be done. Mr Haron told the Commission that his assistant sent him a copy-typed version of the document on either 15 or 16 April 2021, but he did not open the email, or its attached document, until the day before the public inquiry resumed on 29 September 2021, and he commenced giving his evidence. He did not ever actually read the document in detail until being taken through it during his evidence before the Commission in the re-opened public inquiry.

Mr Haron confirmed that the handwritten changes to the typewritten parts of the document were not changes that he made and were not changes that were made as a result of him speaking with anybody and suggesting those changes be made. Importantly, the changes also did not reflect his actual recollection at the time.

Of particular significance to the Commission's investigation, the typewritten draft statement, apparently compiled by the solicitor following her meeting with Mr Haron, included the following paragraphs concerning meetings of the Five Dock Chamber of Commerce at the relevant time:

13. I recall seeing Megna, the mayor Angelo Tsirekas, Tony Fasanella and Neil Kenzler being the second in charge for labour [sic] and also a strategic thinker as well as John Sidoti from time to time.

14. I cannot [sic] any dates in particular in 2014 but I do recall meetings where the Urban Study was discussed. Prior to the meeting the committee was told that it was a topic to be discussed so that anyone who had something to say or wanted information could attend. I remember the Urban Study was on and off since 2011 and the meeting was held during a time the study was on.

15. The meeting where the Urban Study was discussed had about 30 attendees. I recall hearing the comments made by John in the minutes and I agree with those comments. During the meeting, there was a lot of division about vision. The proposals intended to keep things as they were and even though it was a 20 year plan, it was a plan made 20 years ago.

Looking around, it seemed Five Dock was staying as in [sic] and nothing was happening. People mostly driving through it rather than driving to it.

16. It was frustrating that Labour [sic] seemed to have their strategic thinker and liberals had no one, Megna and Sidoti attended but when it came to voting on such things they recused themselves saying "don't push too hard on this issue" and left liberals with no one to represent them.

17. On a few occasions, the Chambers said should get their own people in instead of relying on the liberals that were in at that time since they continued to recuse themselves and not take an active role, rather a passive one.

...

23. I asked John a few times to organise meeting with liberal members because Chambers needed to see where they were at. What their thoughts were. We were becoming frustrated because Megna and Sidoti couldn't vote at the meetings that were occurring.

Handwritten amendments and additions to these paragraphs were made on the document delivered to Mr Haron's house. Relevantly, as well as minor grammatical amendments and the addition of the date of the Five Dock Chamber of Commerce meeting at which Mr Sidoti spoke, the words "never liberal councillors" were added at paragraph 13. "Megna" was struck through at paragraphs 13 and 16, as were the words "but when it came to vote on such things they recused themselves saying 'can't push too hard on this issue' and left liberals with no one to represent them". At paragraph 16, words including "I recall asking John to get 3 liberal councillors to attend a meeting" and "took place at J.S. office at Five Dock 16.4. 'I have a conflict' – left" were added in a number of different pens and handwriting.

In evidence, Ms Andersen identified her own handwriting as that replacing the word "members" with "councillors" at paragraph 23. In that paragraph, the words "Megna and Sidoti couldn't vote at the meetings that were occurring" were replaced with the words "they were not doing anything". Ms Andersen gave evidence that although that was definitely her husband's handwriting, she did not think the change would have been made by her husband, either by himself or at her suggestion, as that was not the way either he or she would express themselves, but she thought it would have been made as a result of something Mr Haron told him.

In his evidence, Mr Haron confirmed that the frustration referred to in paragraphs 16 and 23 of the typewritten notes was a reference to the fact that, although

Figure 3: Extract from document left at Mr Haron's house

13. I recall seeing ~~Magna~~ the mayor Angelo Tsirekas, Tony Fasanella and Neil Kenzler being the second in charge for labour and also a strategic thinker, as well as John Sidoti from time to time. *at some meetings.*

Never liberal councillors

X 14. I ~~cannot~~ ^{recall} any dates in particular in 2014 but I do recall meetings where the Urban Study was discussed. Prior to the meeting the committee was told that it was a topic to be discussed so that anyone who had something to say or wanted information could attend. I remember the Urban Study was on and off since 2011 and the meeting was held during a time the study was on. *Five Dock*

15. *April* The meeting where the Urban Study was discussed had about 30 attendees. I recall hearing the comments made by John contained in the minutes and I agree with those comments. During the meeting, there was a lot of division about vision. The proposals intended to keep things as they were and even though it was a 20 year plan, it was a plan made 20 years ago. Looking around it seemed Five Dock was staying as ~~is~~ ^{is} and nothing was happening. People mostly driving through it rather than driving to it. *occurred or in April 2014*

April 2014

who was there
what was said to the best of your memory

X 16. It was frustrating that Labour seemed to have their strategic thinker and liberals had no one, Magna and Sidoti attended ~~but~~ ^{when it came to voting or such things they recused themselves saying "can't push too hard on this issue" and left liberals with no one to represent them.}

asked John to get 3 liberals on cell to attend a meet

17. On a few occasions, the Chambers said ~~should~~ ^{they would} get their own people in instead of relying on the liberals that were in at that time since they continued to recuse themselves and not take an active role, rather a passive one. *to a meet*
- took place in J.S. office at Five Dock (16.9.14) I have a note - let me see 24.

18. Even the revised plan was the same as ^{the} original proposal and it had not changed, they added an extra 2 metres on top but this didn't change anything as it wasn't an extra level and FSR didn't change; as part of consultation to increase Five Dock. Like dangling a carrot.

19. I sat with quality surveyors to have a bigger development to change people's habits to go into Five Dock more rather than out of Five Dock.

X 23. I asked John a few times to organise ^a meeting with liberal members because Chambers needed to see where they were at. What their thoughts were. We were becoming frustrated because ~~they~~ ^{they} Magna and Sidoti couldn't vote at the meetings that were occurring. *they were not doing anything*

10. 24. On one occasion, *Councillors shortly after the April 2014 Chamber meets with Councillors* not sure if in 2014 or 2015, John organised a meeting and stayed outside while I spoke to the members. It was a very tense meeting and combative. I was frustrated and it seemed like they didn't get it. I was trying to explain things with diagrams and explanation of how light works and ^{the} fact that ~~won't~~ ^{you} be able to see buildings unless looking from far away because the buildings are pushed back. They didn't seem to understand.

Mr Megna and Mr Sidoti were Five Dock-based representatives, they could not represent people in Five Dock on Five Dock-based issues. Mr Megna could not vote on these matters because of his direct financial or property interests in the area and neither could Mr Sidoti; both because of his property interests and because he was not a member of the council and could not vote on such matters in any event.

Mr Haron confirmed that Labor councillor, Mr Fasanella, who was also a member of the chamber, similarly could not vote on these matters and the essence of the “frustration” and the need to speak to the three Liberal councillors was therefore to ensure that non-Five Dock councillors, who could vote, were aware of, and understood, the concerns of the Five Dock business community.

It is quite clear to the Commission that the handwritten changes to the typewritten paragraphs 13, 16 and 23 described above, made by persons other than Mr Haron, were designed to fundamentally change the meaning of those paragraphs. The typewritten paragraphs clearly suggested that the chamber was just as frustrated with Mr Megna and Mr Sidoti as with any other (unidentified) elected representatives, specifically because of the “passive” role they continued to take in relation to the plan for Five Dock, including recusing themselves when it came to voting or saying “can’t push too hard on this issue” because of their own conflicts of interest.

The handwritten amendments remove this clear inference and instead suggest that the chamber’s frustration was solely with the “passive” role taken by the three Liberal councillors who could vote on the matter, but who “were not doing anything”. The Commission notes that, for anyone to suggest to a person who is asked to make a statement or statutory declaration the specific things they should state, or a version of events they should include, is of course inconsistent with, if not contrary to, normal and proper practice.

Ms Andersen gave evidence that, mid-way through the first part of the public inquiry, Mr Sidoti’s legal team asked her husband to further the communication that had already taken place with Mr Haron. She was present during a short telephone call her husband made to Mr Haron in which arrangements were made to get a couple of typed pages from Mr Sidoti’s lawyers to him so that he could have a read and assess the material, with a view to Mr Andersen meeting with him shortly thereafter to get some further details.

Ms Andersen told the Commission that, shortly after her husband spoke to Mr Haron on the telephone, he attended Mr Haron’s office in the city and they both sat down and made some handwritten amendments to the

document, some of which were made by her husband at Mr Haron’s instruction, and some by Mr Haron himself. As well as her husband’s handwriting, and what she assumed was Mr Haron’s handwriting, she acknowledged that some of the handwriting on the document was her own.

Ms Andersen told the Commission that given Mr Haron’s evidence, that he had only met her husband once, namely on the occasion that he signed his statutory declaration at a Starbuck’s café on 12 May 2021, he must have forgotten the meeting between himself and Mr Andersen at Mr Haron’s office. Ms Andersen said she understood Mr Haron was very distracted at the time. She conceded that she could not explain why Mr Haron had also given evidence that none of the handwriting on the document was his.

Ms Andersen told the Commission that she had made handwritten changes to the typewritten notes (more aptly described as a draft statement) that had been provided to her husband by Mr Sidoti’s lawyers because:

...those notes were rather generic in nature, so I was asked to, having some sort of knowledge about the matters, as my husband had limited knowledge, to actually just read through it and where possible provide some sort of time frame structure.

Ms Andersen would not concede that it was an odd set of circumstances, that Mr Sidoti’s legal team, having arranged for a member of the firm to actually speak to Mr Haron and having prepared a document based on that meeting, did not follow up on it themselves, but asked her husband to progress it further instead.

Ms Andersen made a number of assertions that nothing was ever put in front of Mr Haron without the “filter or supervision” of her brother’s solicitors and that she and her husband were not acting independently but at the instruction of those solicitors. She gave evidence that, at each of the stages of the development of the documents leading to Mr Haron’s final, executed statutory declaration, Mr Sidoti’s solicitors were kept informed of all of the processes and actions she and her husband were undertaking and there was constant communication, mostly by telephone and email. Ms Andersen’s assertions are not supported by the evidence of those communications obtained by the Commission.

Ms Andersen told the Commission that, after the meeting between her husband and Mr Haron at Mr Haron’s office, the document with its handwritten additions sat in a manila folder on her dining table for a number of weeks and she does not know what happened to it thereafter, although she imagined that at some point it was sent back to Mr Sidoti’s lawyers.

The Commission finds that Ms Andersen was not able to provide a satisfactory explanation for why she and her husband took over the process of obtaining information and evidence from Mr Haron, from approximately mid-April 2021, while the public inquiry was underway, in circumstances where her brother's solicitors had commenced that process. The Commission is satisfied that the typewritten document prepared in mid-April 2021, following the meeting between a solicitor from the firm acting for her brother and Mr Haron, was in the form of a draft statement.

The Commission accepts Mr Haron's evidence that the only occasion on which he met Mr Andersen was on 12 May 2021, when his final statutory declaration was executed. The Commission accepts his evidence that all of the handwriting was already on the document dropped off to his house by Mr Andersen in mid-April and that none of the handwriting was his.

The Commission finds it highly unlikely that he would be mistaken or have a reason to give false evidence about such matters. Consequently, the Commission is satisfied on the evidence that the handwritten amendments to the typewritten notes prepared by solicitors acting for Mr Sidoti were made before those who made them had even spoken to Mr Haron. The Commission does not accept Ms Andersen's evidence that the handwritten insertions and corrections were not to fill in the gaps in his knowledge or recollection, but were about *asking* Mr Haron what he knew.

The Commission is satisfied that the handwritten amendments were changes that those who made them considered ought to be reflected in the further development of Mr Haron's draft statement despite what he was able to say about such matters being already plain on the face of the typewritten document.

The Commission is satisfied as a consequence of Mr Haron's own evidence about what he intended to convey to the solicitor who attended on him at his office, that the chamber's frustration, such as it was, and the need for a meeting to be arranged with the Liberal councillors, was because the Five Dock-based councillors, including Labor councillor, Mr Fasanella, were conflicted about matters related to Five Dock and could not vote on the Urban Design Study. There was therefore a need to make the chamber's views on the Urban Design Study plain to those councillors from outside Five Dock.

The Commission cannot be satisfied to the requisite standard of the identity of the authors of the handwritten amendments, other than that two of the three different sets of handwriting belonged to Ms Andersen and her husband. The Commission cannot therefore determine precisely who it was who made all of the changes to

the typewritten document the effect of which was to suggest that the three Liberal councillors who could vote on the Urban Design Study were somehow remiss or derelict in their representation of and advocacy for the business community and "were not doing anything". The Commission is satisfied on the evidence, however, that this "narrative" about the Liberal councillors' performance (or alleged lack of performance), was designed to provide support for Mr Sidoti's evidence.

Ms Andersen prepares a draft statement for Mr Haron

Mr Haron told the Commission that after the interview with the solicitor at his office, he ceased to deal with the lawyers acting for Mr Sidoti and any further communications that he had concerning the preparation of the statutory declaration he signed on 12 May 2021 were with Mr Sidoti's sister or her husband.

He said that after he gave the document dropped off to his house by Mr Andersen to his assistant to copy-type, he did nothing further about it. There was a lot going on and he did not have the time to review or think about it and it then just got lost. In late April, either Ms Andersen or her husband contacted him by telephone to follow up and see whether he would provide a statement. He said that because he had earlier reluctantly agreed to become involved and make a statement, he was intent on doing what he had agreed to do.

Mr Haron agreed that he was contacted by Ms Andersen or her husband either the evening of, or the day after, Mr Sidoti had given evidence in the public inquiry of their chance encounter, and he was aware that the veracity of that evidence had been challenged. He told the Commission that one of the Andersens asked if he would make a statutory declaration, the purpose of which he understood to be to confirm that the kerbside discussion with Mr Sidoti had occurred. He understood that he might have to expand on the events of 2014, to confirm the nature of what they had discussed, but that it would be more focused than the matters discussed with the solicitor who had previously attended his office for the purpose of obtaining a statement.

He told the Commission that:

...in essence, they wanted a statement from me and I was busy. Time was of the essence for them so I suggested they prepare something and submit it to me for comment.

Mr Haron said he had no face-to-face meetings with either Ms Andersen or her husband and had only a few fairly brief telephone conversations with Ms Andersen during the preparation of his statutory declaration.

He recalled no conversations where he was asked questions, or to relay a narrative of his recollection of the relevant events to be covered by the statutory declaration. He noted that they were all short of time and he was additionally in the process of moving office and very stressed, so asked that something be sent for him to look at.

Ms Andersen told the Commission that, at the end of the public inquiry, she and her husband were asked by Mr Sidoti's lawyers to see whether Mr Haron was still interested in assisting, "because at this point the statement hadn't gone anywhere. It'd effectively just gathered dust". She said she was unaware of the reason that the lawyers themselves did not undertake the process of gathering this evidence from Mr Haron.

Ms Andersen did not concede that there was an obvious difficulty in a situation in which she and her husband, being related to the person being investigated, were at the same time closely involved in the important exercise of getting evidence from a witness, that task conventionally being one that would be expected to be handled by the solicitor on the record who was acting for the client. She told the Commission, "quite the opposite. Because I was so closely involved, I had intimate knowledge of the material".

Ms Andersen acknowledged that she had watched the live stream of the public inquiry closely, including the entirety of her brother's evidence. She agreed that, when her brother's account of his interaction with Mr Haron was challenged as false on the last day of his evidence, the idea of getting a statutory declaration from Mr Haron originated with her.

At 12.52 pm on 27 April 2021, just before her brother was excused from giving his evidence, Ms Andersen sent a text message to his solicitor, stating "I think you need to hand in a stat Dec from Harron". In other words, it was Ms Andersen and not the solicitor who suggested that that should be done. The following morning, at 7.50 am, she emailed a document she described as "a draft for Glen Harron" to Mr Sidoti's lawyer.

Later that day, Ms Andersen sent a text message to her husband asking for Mr Haron's mobile telephone number. Her husband responded with the number and wrote, "I imagine it is safe to tell him it has narrowed so the statement would be short and he won't have to give evidence?". Ms Andersen responded by asking her husband to contact Mr Haron to ask the status of his statement and whether, if he had not prepared one, he would be open to her emailing him a draft. Her husband texted her back to say he was on his way home and asked whether she could write out for him what topic Mr Haron was to address.

The Commission is satisfied that, at the time she prepared the draft statement for Mr Haron that she emailed to

her brother's lawyer on the morning of 28 April 2021, Ms Andersen had not spoken to Mr Haron and did not know what evidence he was capable of giving other than what was contained in the typewritten paragraphs in the draft statement prepared by the female solicitor from the firm representing Mr Sidoti, discussed above, which had been amended by herself and her husband and another unidentified person and which had not been adopted by Mr Haron.

At 1.23 pm on 28 April 2021, Ms Andersen sent a text message to Mr Sidoti's lawyer, advising she had emailed him a "draft statement" for Mr Haron and, at 6.09 pm that day, she sent another text message, saying, "Glen Haron happy for you to call. Has not seen a solicitor about this but happy to assist". At 6.58 pm, she emailed Mr Sidoti's lawyer to confirm that Mr Haron wanted to assist and purportedly attached a "final draft" statement, which she told the Commission she apparently failed to attach and could not locate. She told Mr Sidoti's lawyer that Mr Haron did not need an independent solicitor because it was a "sworn statement" and that if the Commission wanted to interview Mr Haron, it could.

The first line of the draft statement sent by Ms Andersen to Mr Sidoti's lawyer on the morning of 28 April 2021, stated "I, Glen Harron, of ... Great North Road Five Dock, make this statement", and there followed 22 numbered paragraphs concerning the Five Dock Chamber of Commerce meeting on 7 April 2014, the meeting with the Liberal councillors subsequently arranged by Mr Sidoti, and Mr Haron's encounter with Mr Sidoti during the public inquiry.

Of particular significance are the following paragraphs in that document concerning the Five Dock Chamber of Commerce meeting attended by Mr Sidoti:

5. This Chamber meeting was more controversial than usual as there was heated debate about the future of Five Dock in the context of the Town Centre proposals to come before Council.

6. The issues of FSR and heights was raised and the proposals in the Five Dock Town Centre study was seen to be ineffective to achieve desired revitalization of Five Dock.

7. There was a feeling amongst many members that the Liberal councillors were not concerned to represent their traditional small business constituents.

8. They were not present at this meeting and would have been invited like all the councillors were. Their absence was not well received.

9. There were some opinions voiced by members at this meeting that to achieve effective representation for the business community there may need to be business community candidates to run at the next council election as independents [Emphasis added]

Ms Andersen told the Commission that she got the information that the chamber meeting had involved a “heated debate” from the notes made by the solicitor who met with Mr Haron and from hearing her brother use that phrase in his evidence. The draft statement prepared by the solicitor who attended on Mr Haron does not refer to a “heated debate”.

Ms Andersen agreed that there was nothing in the solicitor's notes about the chamber meeting being “more controversial than usual” and agreed that these were her choice of words.

The Commission notes that, choosing words for a person for their account of events in an evidentiary statement they have been asked to provide, is not in accordance with the practice and standards expected of a solicitor, or a permissible approach at all.

Ms Andersen insisted, however, that what she had prepared were “glorified notes” and not a draft statement and they were made with the permission of, and to assist, her brother's solicitor. She emphatically denied that from the end of the public inquiry she took particular steps to maintain control over the form of the evidence and the statement that would be given by Mr Haron.

The Commission does not accept Ms Andersen's assertion that the document she emailed Mr Sidoti's lawyers was not intended to be a draft statement to give to Mr Haron, but was rather in the nature of some “draft ideas” that could be used to check Mr Haron's recollection with him. Ms Andersen herself described the document as a draft statement in her email to Mr Sidoti's lawyers, and the document described itself as a statement.

The Commission is also satisfied on the evidence that, from a point after 15 April 2021 (being on or after the date on which the female solicitor met with Mr Haron), Ms Andersen drove the process of obtaining a statement from Mr Haron that would support key elements of her brother's evidence in the public inquiry.

The Commission finds that, as with some of the handwritten amendments made to the typewritten paragraphs compiled by the solicitor who met with Mr Haron, discussed above, paragraphs 7, 8 and 9 – in particular of the first draft statement prepared by Ms Andersen, set out above – sought to impugn the performance of the Liberal councillors in their

representation of the Five Dock business community. This draft statement went even further, however, in explicitly suggesting that, because of the failings of the Liberal councillors, members of that business community may run against them as independents at the next election. The Commission is satisfied on the evidence that this assertion was never made to Ms Andersen or anyone else by Mr Haron.

The Commission is satisfied on the evidence that, having regard to the fact that Mr Haron made no mention of this matter in his account to the female solicitor on or before 15 April 2021, this particular assertion was included to attempt to corroborate evidence given by Mr Sidoti about the intent behind the email he sent to the Liberal councillors on 17 May 2014, which is discussed in the next chapter.

Notwithstanding the fact that, again, this version of Mr Haron's draft statement was never adopted or signed by him, the Commission finds that, in drafting it, there was clearly an attempt or an objective on the part of Ms Andersen to bolster Mr Sidoti's evidence about these matters. The effect of Ms Andersen's draft statement is to call the veracity of Mr Sidoti's evidence on that aspect further into question.

Ms Andersen prepares Mr Haron's statutory declaration

On 10 May 2021, a solicitor from the firm acting for Mr Sidoti sent Mr Haron a draft statutory declaration for his consideration. Of particular concern is that (a) Mr Haron confirmed that to this point he had not spoken to anyone about the detail of his chance encounter with Mr Sidoti while the public inquiry was underway, and (b) he also agreed that in a number of respects the draft statutory declaration was incorrect, including:

- (i) his address
- (ii) the assertion that he had watched some of the public inquiry via video streaming of the hearings
- (iii) that he had seen and heard the evidence of Ms McCaffrey and Ms Cestar
- (iv) that he had encountered Mr Sidoti in Denning Street in Drummoyne
- (v) that he had said to him that he could not believe the evidence of Ms McCaffrey and Ms Cestar, that they could not recall the meeting Mr Sidoti organised between them and the chamber of commerce president and vice president
- (vi) that he agreed with the evidence Mr Sidoti gave about their encounter during the public inquiry, when he had not yet read the transcript of that evidence.

The Commission is satisfied that, on the basis of Mr Haron's evidence, the draft statutory declaration as to matters (i) to (vi) above, which was sent to Mr Haron by Mr Sidoti's lawyers, was not prepared on the basis of anything Mr Haron told its author(s) or anyone else about his independent recollection of the events canvassed in it.

The following morning, on 11 May 2021, Mr Sidoti's lawyer left a message on Mr Haron's mobile telephone voicemail, seeking confirmation that he had received the draft statutory declaration and asking whether there were any changes to be made. At 6.55 pm that evening, Ms Andersen left a message for Mr Haron looking to finalise his statement.

As Mr Haron indicated to Ms Andersen in his text message in response, his father had died only days before and he was busy organising funeral, family and aged care issues, but he would look at it that night or the following morning. Ms Andersen expressed her condolences and apologised for "hassling" him at that time, but asked that he let her or her husband know as soon as he could sign it because "time is critical unfortunately". Mr Haron asked if he could call her later that evening.

The evidence indicates that, sometime after 8 pm that evening, Mr Haron located the email sent to him by Mr Sidoti's lawyers and reviewed the draft statutory declaration attached. Ms Andersen told the Commission that she recalled speaking to Mr Haron at length that evening about the draft he had been sent. She said he told her he had not seen any of the live streamed evidence in the public inquiry and was also equivocal about the date of his chance encounter with Mr Sidoti. He started to go into other aspects of the draft and, at that point, she said to him:

Glen, you've got to be happy with this and what I recommend is rather than us toing and froing, why don't you just send me through some written material that I can send to the solicitor and they can integrate it or at least look at it and help you express it correctly.

At 9.52 pm on 11 May 2021, Mr Haron emailed Ms Andersen with the following paragraphs he wanted inserted in place of the existing first two paragraphs in the draft statutory declaration:

I read and was told of various statements made to ICAC over the hearing, which started on the 29 March 2021, in particular those made by councillors, and council staff, regarding the development and approval of local planning controls.

Over Easter I believe that I subsequently saw John Sidoti whilst I was driving my car along The Parade in Drummoyne; he was walking his dog. I stopped him to talk and subsequently suggested we move any

discussion around the corner in Moore St so I could park my car in a safer location.

When we restarted our discussion I asked how he was going with the pressure of the ICAC hearing and I reminded him of some of the processes we were both involved in over a long period as the Five Dock plan developed.

In particular I reminded him he had facilitated the organisation of a meeting between the Five Dock Chamber of Commerce (Joe Duagiacom [sic] and myself) and the Liberal councillors that could vote on the plan.

The business chamber believed that meeting with councillors was required as the two councillors Megan [sic] and Faesamella [sic], who were aware of the details and issues surrounding the plan, had pecuniary interests in five dock and could not vote on the plan.

I confirm that the five dock based councillors had attended chamber meetings and participated in discussions on the issues of business and the development of five dock, and that the other liberal councillors had minimal involvement with, or visibility within, five dock. This last point had caused much angst within the business chamber and, on behalf of the business chamber, we sought to understand their position on the plan and to explain ours.

The meeting with councillors was arranged by Sidoti and attended by myself and Joe di Giacomo. John Sidoti introduced everyone and left the meeting room closing the door behind him. He was NOT involved in the planning of the meeting discussion or any discussions.

He did reenter the room on one occasion when voices were being raised; suggesting we all calm down. He left immediately after getting our agreement to his request.

2: I'm unaware of any evidence John gave to ICAC, except that was seen via Sydney morning Herald reports or free to air TV reports.

Mr Haron told Ms Andersen that he was "not sure" about paragraph 3 of the draft statutory declaration, which stated:

3. I have also now been shown pages 1758, 1781 and 1782 of the transcripts of John Sidoti's evidence at the Public Inquiry. I agree that I said what he said I said to him at p.1758 in the transcripts, except that I did not say anything about seeing the answers John Sidoti gave. I believe I saw John and had the conversation referred to above, after I saw the evidence of the former Canada Bay councillors Helen

McCaffrey and Mirjana Cestar but before John Sidoti gave his evidence. The conversation between myself and John was not "made up", as was suggested at transcript p. 1782, with the one correction that I did not say anything about seeing the answers John Sidoti gave.

In his evidence before the Commission, Mr Haron confirmed that he was not sure about this paragraph because he had not actually seen the transcripts of Mr Sidoti's evidence at that stage and was not in a position to comment.

In his email on 11 May 2021, Mr Haron advised Ms Andersen that the remaining paragraphs from 4 to 10 of the draft statutory declaration, as follows, were "all OK":

4. I was the Vice President of the Five Dock Chamber of Commerce during the period 2013 to 2020 approximately;

5. I confirm a Chamber of Commerce meeting took place in early April 2014 concerning the Five Dock Town Centre amongst other things. It was a well-attended meeting of the business owners, the Labor Party was represented by the mayor and councilor [sic] and from the Liberal Party the state and federal member.

6. I recall the meeting was controversial and the heated debate ensured about the future of Five Dock. The issues of FSR and heights was raised and the proposals in the Five Dock Town Centre study was seen to be ineffective to achieve desired revitalization of Five Dock.

7. I personally expressed concerns to John Sidoti about the lack of, or non-attendance at the meeting by Liberal Party councillors. I also recall that they had been invited to the meeting as it was an important meeting about the town centre.

8. I recall after the chambers meeting in mid-April 2014 asking Mr Sidoti to organise a sit-down meeting with the Liberal councillors so we could voice our concerns.

9. Three Liberal Councilors of Canada Bay Council, being Helen McCaffrey, Mirjana Cestar and Tanveer Ahmed attended the meeting that was then organized and took place at John's office in Great North Road.

10. John was present to conduct introductions and then left the meeting.

As discussed above, Mr Haron conceded in evidence that a word other than "heated" should have been chosen to describe the debate about the vision for Five Dock that

occurred during the chamber meeting, and also that he did not in fact recall, because he did not know, whether the Liberal councillors had been invited to the meeting, as asserted at paragraphs six and seven above, and in his final statutory declaration.

At 10.41 pm on 11 May 2021, Ms Andersen emailed Mr Sidoti's lawyers, copying Mr Haron, and advised that she had spoken to Mr Haron, who had provided some notes to be integrated into the draft statutory declaration. She advised that she had amended the draft, and said:

I think it's best to keep it short and simple. The issue is whether a certain conversation took place or not – there is agreement as to the general gist of it – everything else is detail that is not needed at this point.

She attached a copy of the amended draft statutory declaration and asked for confirmation that "we can go ahead on this amended draft" noting that, if so, she could forward the signed/witnessed statutory declaration for submission to the Commission.

The amended draft prepared by Ms Andersen did not incorporate all of the matters that Mr Haron had wanted inserted in place of paragraph 1 of the previous iteration. Importantly, it did not incorporate Mr Haron's own version of the detail of the discussion he had had with Mr Sidoti during their kerbside encounter, but kept in the reference to Mr Haron's agreement with the transcript of Mr Sidoti's evidence about that discussion despite the fact that, at this point, Mr Haron still had not read that transcript and, as a result, had indicated to Ms Andersen that he "unsure" about his agreement with it.

The Commission finds it even more telling that Ms Andersen chose not to include those paragraphs provided by Mr Haron that set out his evidence about why he had asked Mr Sidoti to arrange a meeting with those councillors who were not based in Five Dock. Namely, that the Five Dock-based councillors, Mr Megna (Liberal) and Mr Fasanella (Labor), who were aware of the details and issues from the chamber's perspective, had pecuniary interests in the matter and could not vote on the Urban Design Study and the chamber needed to make its views known to those councillors who could vote on it.

The Commission finds that what Ms Andersen chose to leave in the amended statutory declaration at paragraph 9, namely:

I personally expressed concerns to John Sidoti about the lack of, or non-attendance at the meeting by Liberal Party councillors. I also recall that they had been invited to the meeting as it was an important meeting about the town centre

did not, alone, accurately convey Mr Haron's evidence about this matter, and conveyed a version of events that was not what he had intended, but which corroborated Mr Sidoti's evidence in the public inquiry. This was confirmed by Mr Haron in his evidence in the public inquiry, when he agreed that the reason he wanted the meeting with the Liberal councillors was because the Five Dock-based councillors, Mr Megna and Mr Fasanella, could not vote on the Urban Design Study.

Mr Sidoti's lawyer responded to Ms Andersen late on 11 May 2021, asking her to have Mr Haron read and consider carefully the amended statutory declaration and to offer him the option of seeing a lawyer or seeking independent advice before signing. He cautioned her to make sure that the facts and statements were accurate and that Mr Haron would be able to provide clear evidence if cross-examined.

It should be noted that the circumstances of getting Mr Haron to sign his statutory declaration placed considerable time pressures on him, and personal issues at the time, including the relocation of his CBD office and the very recent death of his father, placed further pressure on him, as was acknowledged by Ms Andersen with her condolences and apology for "hassling" him at that time.

At 6.29 am on 12 May 2021, Ms Andersen emailed Mr Haron a final draft of the statutory declaration for his signature and advised him:

...only a few minor changes in para 3 – instead of 'Over the Easter weekend' I have inserted 'some time in early April' as that is more consistent with your recollection. Taking a broader approach allows for errors.

She did not alert him to the fact that she had not included all of the paragraphs he had sent her to insert. She asked him to read through the statutory declaration and transcript pages sent by Mr Sidoti's lawyer and told him that her husband would be in contact so that he could sign the statutory declaration that day.

Mr Haron still had not seen or read the relevant transcript pages referred to in the statutory declaration by this stage, as evidenced by his emailed response to Ms Andersen at 7.37 am that day, in which he said "Seems OK, just need to understand and see the pages referred to in the stat dec.". At 8.03 am, Ms Andersen attached the finalised statutory declaration and transcript pages to an email to Mr Haron and advised that her husband would meet him at 12 pm that day. As previously observed, Mr Haron gave evidence that he did not in fact read the transcript pages until he met with Mr Andersen later that day to sign his statutory declaration.

Mr Haron's statutory declaration is not exculpatory of Mr Sidoti

Paragraph 3.7 of the Commission's *Public Inquiry Procedural Guidelines* provides that, during the course of a public inquiry, an affected person may seek to place exculpatory evidence before the Commission. If they wish to do so, the guidelines require the affected person to nominate in writing a person or persons who can give the evidence and provide a statement of the proposed evidence, or, if that is not possible, a written proof of the evidence that the affected person believes that a witness can give. Copies of the relevant statements or proofs of evidence must be provided to Counsel Assisting as soon as practicable after the existence of the evidence, or its potential relevance to the investigation, becomes known.

In consultation with the presiding Commissioner, it is for Counsel Assisting to determine whether such evidence requires further investigation by the Commission and whether the nominated person should be called to give evidence. Paragraph 12 of the Commission's *Standard Directions for Public Inquiries* provides for all witnesses in a public inquiry to be called to give evidence and examined by Counsel Assisting.

These procedural guidelines and directions reflect the longstanding practice of commissions of inquiry that any evidence before them is to be introduced through Counsel Assisting and that affected persons and interested parties who want certain evidence placed before these bodies should notify those assisting the inquiry as soon as practicable of the identity of any witness capable of giving that evidence, so that the necessary steps can be taken to investigate and if necessary call evidence from that witness in the inquiry.

The importance of this practice is that it allows those assisting commissions of inquiry to properly investigate the information and preserve the integrity of any evidence that a nominated witness may be able to give about matters falling within the scope of its investigation. It follows that it would not be appropriate for an affected person to hold onto information during the course of the public inquiry that there was a potential witness he or she believed could assist the Commission with exculpatory evidence and then take steps to deploy that information only after the public inquiry had concluded.

The Commission is satisfied on the evidence that, following the chance encounter between Mr Sidoti and Mr Haron in early April 2021, and certainly after one of Mr Sidoti's legal team had met with Mr Haron in his office sometime on or before 15 April 2021 and mid-way through the public inquiry, Mr Sidoti and his legal representatives would have known that Mr Haron may be able to give evidence exculpatory of Mr Sidoti about matters of specific

interest to the Commission. The relevant matters about which Mr Haron could have given evidence included the circumstances in which Mr Sidoti came to organise a meeting between the Liberal councillors and the president and vice president of the Five Dock Chamber of Commerce in April 2014, that the meeting did take place, who attended, and what occurred during it.

The Commission finds that Mr Sidoti and his legal team did not notify the Commission as soon as practicable after becoming aware that Mr Haron could give evidence of potential relevance to the investigation. The request that the Commission take into account exculpatory evidence was made almost three weeks after the conclusion of the public inquiry. By this time, steps had been taken by Mr Sidoti's legal team, but more particularly by Mr Sidoti's relatives, to obtain certain evidence from Mr Haron.

These steps culminated in the preparation by Ms Andersen of Mr Haron's statutory declaration, which he signed on 12 May 2021. A close examination of the evidence indicates that these steps resulted in the Commission being provided with a version of events about relevant matters through Mr Haron that was contaminated by the evidence of other witnesses, including, in particular that given by Mr Sidoti, in order to appear to corroborate the evidence given by Mr Sidoti in the public inquiry in a number of key respects.

The Commission is satisfied that the evidence concerning the circumstances in which Mr Haron's statutory declaration came to be made, as well as Mr Haron's own evidence about the events addressed in his statutory declaration, does not corroborate or exculpate Mr Sidoti, but rather casts further doubt on the veracity of his evidence in the public inquiry about those very events. The Commission finds that the events and processes employed in the drafting of what became Mr Haron's actual statutory declaration, discussed above, have had the unfortunate effect of rendering Mr Haron's statutory declaration neither reliable nor probative of many of the issues it purports to address.

The Commission accepts that there was a chance encounter between Mr Sidoti and Mr Haron sometime in the early part of the public inquiry, but does not accept the evidence of Mr Sidoti, purportedly supported by Mr Haron's statutory declaration, of the detail of what was discussed. The Commission does not accept that, on that occasion, Mr Haron confirmed to Mr Sidoti that the Liberal councillors had been invited to the Five Dock Chamber of Commerce meeting on 7 April 2014 and that it was their failure to attend, despite that invitation, that was the cause of the chamber's frustration and the need for Mr Sidoti to facilitate the meeting between them and the chamber president and vice president at his electorate office on 16 April 2014.

The Commission accepts that a meeting with the Liberal councillors was arranged by Mr Sidoti at Mr Haron's request, but finds that the need for this meeting was in fact the chamber's concern that those Five Dock-based elected representatives in their midst, regardless of their political stripe, could not represent the chamber's views and concerns about the Urban Design Study both because of their conflicts of interest as property owners in the area and because they took too passive a role. It was necessary to convey the chamber's concerns to councillors who *could* vote. Mr Haron's evidence about this was omitted from his final statutory declaration, but what was left in was designed to convey the impression that the Liberal councillors who could vote on the Urban Design Study were not fulfilling their obligations to represent their constituents in the Five Dock business community.

The Commission, likewise, does not accept Mr Sidoti's evidence that the Five Dock Chamber of Commerce meeting on 7 April 2014 was "heated" because of the absence of those Liberal councillors who could vote on the Urban Design Study. In his evidence before the Commission, Mr Haron did not connect the controversy or heated debate referred to in his statutory declaration with the absence of the Liberal councillors from the meeting, but rather with a divergence of opinion among those in attendance about the vision for Five Dock. A reading of the minutes of that meeting does not support a description of that meeting as heated, but rather, as Mr Haron agreed, as having been conducted in a business-like and cordial fashion.

The Commission acknowledges that Mr Haron's father died on 8 May 2021, four days before Mr Haron signed the statutory declaration prepared for him by Ms Andersen, that he had reluctantly agreed to assist with a statement, and was busy and distracted. While he took the time to correct and clarify the evidence that had been originally attributed to him, his corrections were not faithfully incorporated into the final version of his statutory declaration. The Commission is satisfied on the evidence that there was pressure being applied externally, as well as due to personal circumstances, as acknowledged by Ms Andersen's apology. In these circumstances, the Commission makes no criticism of his involvement.

The Commission does not accept Ms Andersen's assertion, repeated in her written submissions, that she and her husband were merely assisting Mr Sidoti's legal team, under their supervision and instruction, "during a period of time pressure and resource depletion" and were not driving the process of obtaining and shaping the form of Mr Haron's evidence.

As the evidence discussed in this chapter indicates, the idea of obtaining a statutory declaration from Mr Haron

to corroborate her brother's public inquiry evidence about his kerbside encounter with Mr Haron originated with Ms Anderson, she facilitated obtaining his agreement to provide such a statement, she drafted the various iterations of the document, made the fundamental decisions about what to include and what to exclude in the final version, and managed the execution of the statutory declaration with her husband's assistance.

The Commission does not accept Ms Andersen's submission that Mr Haron's statutory declaration was prepared "under the direction and guidance of Mr Sidoti's solicitors, affirmed and executed according to normal practice". The history of events described above, that culminated in Mr Haron's signature being placed on the statutory declaration, followed anything but normal practice.

As the evidence indicates, on 11 May 2021, Mr Sidoti's solicitor asked Ms Andersen to ensure that the facts and statements in the statutory declaration she drafted for Mr Haron were accurate and that Mr Haron would be able to provide clear evidence if cross-examined. Instead, Ms Andersen was solely responsible for the failure to make the corrections and clarifications to the draft that Mr Haron had asked her to make, and thereby allowed an adverse inference concerning the Liberal councillors to be conveyed, contrary to what Mr Haron had intended.

The Commission also finds it a matter of some concern that Ms Andersen, herself a former lawyer, did not recognise the conflict of interest she had, as the sister of Mr Sidoti and a witness in the proceedings herself, in being so intimately involved in drafting the statutory declaration of another witness and putting it before the Commission as exculpatory of her brother. The Commission does not accept that the intimate involvement of Mr Sidoti's relatives in the preparation and execution of the statutory declaration of a witness purporting to give exculpatory evidence for Mr Sidoti constitutes normal practice.

The Commission rejects the submission made by Ms Andersen that it failed in its duty to investigate exculpatory evidence and that it had a duty to make enquiries immediately following the accusation made by Counsel Assisting that Mr Sidoti had deliberately misled the Commission as to his chance meeting with Mr Haron, which could have been undertaken by a "single simple telephone call to Mr Haron". The Commission rejects the further submission that it in fact had a duty to enquire of Mr Haron much earlier, given how often his name had come up in the evidence of other witnesses prior to Mr Sidoti giving his.

Evidence of his interaction with Mr Haron was first given by Mr Sidoti on the last day of the public inquiry during cross-examination from his own senior counsel.

Once the Commission received Mr Haron's statutory declaration, weeks after the conclusion of the public inquiry, steps were taken to investigate not just the matters set out in the statutory declaration, but the circumstances of how it came to be made. Contrary to Ms Andersen's unfounded submission that the re-opened public inquiry amounted to "a sustained attempt to undermine all that this witness had to say by way of exculpatory evidence", the Commission is satisfied that it was necessary and appropriate to inquire in public into the extent of Mr Haron's independent recollection of his interaction with Mr Sidoti and the circumstances in which his statutory declaration came to be made. A "simple telephone enquiry" of Mr Haron would not have been sufficient to assist the Commission to understand and determine the matters that have been set out in this chapter.

The Commission does not accept Ms Andersen's submission that the inaccuracies conceded by Mr Haron in his statutory declaration were "peripheral". The Commission finds, for the reasons set out in this chapter, that they were instead germane to the explanation Mr Sidoti gave in evidence of the reason that he arranged the meeting between the Liberal councillors and the chamber president and vice president. They are also highly relevant to the email he sent to those councillors on 17 May 2014, discussed in the next chapter.



Chapter 6: The push to rezone the Waterview Street block

This chapter deals with Mr Sidoti's push to have that part of the split-zoned block on the western side of Waterview Street, between Second Avenue and Barnstaple Road ("the Waterview Street block"), included within the town centre and rezoned from medium density residential (R3) to mixed use (B4). This planning outcome became the main focus of his interactions with the Liberal councillors from mid-2014. A rezoning of this block would maximise the development potential of the additional Five Dock properties the Sidoti family began to acquire from this time.

Two questions about Mr Sidoti's conduct

The discussion in this chapter centres on two questions concerning Mr Sidoti's conduct. The first is whether his actions in connection with the processes associated with the planning proposal for the Five Dock town centre were directed at persuading or influencing the Liberal councillors in the performance of their official functions in relation to such processes. The second question is, if they were so directed, what was Mr Sidoti's purpose, motive or objective in doing so?

The first question requires a detailed examination of his conduct and the relevant surrounding circumstances in which it occurred. The second calls for a determination as to his state of mind: was he acting to advance the relevant public interest, that is to say, the community interest, or was he seeking to advance his private or family interest?

Establishing a person's motive or purpose for acting in a certain way is often a matter established by a process of inference based on what in law amounts to circumstantial evidence. This usually includes a person's statements or actions occurring in particular circumstances from which inferences may be reasonably drawn.

In the public inquiry, Mr Sidoti contended that at all times he was acting in the interests of, or for the benefit of,

the community or a part of the community which he, on a number of occasions, identified as "the shopkeepers" and later as the residents of the Waterview Street block. This contention lends itself to an analysis of what the evidence reveals was his actual interest. That interest is revealed by his words – his communications at public and private meetings, his verbal and electronic communications with others including the Liberal councillors – his actions in relation to the planning processes of CCBC, including CCBC agenda items of interest to him, and the property interests of his family in the Five Dock area including any interest shown in relation to the possible development potential of such interests.

A circumstantial evidence analysis requires an examination of the strands of evidence which, taken together, much like the strands of a rope, may provide the evidentiary strength and basis for the drawing of inferences as to the intent or state of mind for the acts of a person.

Council reconsiders the FSR and heights for large sites

As discussed in chapters 4 and 5, the Commission is satisfied on the evidence that Mr Sidoti wanted the Liberal councillors to form a united stance in relation to the Urban Design Study before it came to be voted on at the CCBC meeting originally scheduled for 6 May, and then for 20 May 2014, and to challenge the recommendations of council staff that the study should be adopted and a planning proposal submitted to the Department of Planning and Infrastructure for a Gateway determination. The Commission is satisfied on the evidence, in particular, that Mr Sidoti wanted the Liberal councillors not to accept the recommendation of the Urban Design Study that the existing FSR of 2.5:1 should be maintained.

The evidence establishes that, irrespective of Mr Sidoti's request that the Liberal councillors challenge the views of

council staff, those staff were already prepared to listen to and act on the concerns of some who thought the Urban Design Study did not go far enough to stimulate the desired revitalisation of the Five Dock town centre. Mr Dewar, who was then CCBC's project manager for the Urban Design Study, gave evidence that at a council workshop held on 8 April 2014, there was consensus amongst the councillors, the majority of whom were present, that more needed to be done to encourage development in Five Dock. He recalled Labor councillor, Mr Kenzler, being the most vocal proponent of the position that to encourage redevelopment there needed to be more amalgamation of land and to facilitate that outcome, there needed to be an increase in the available FSR and heights.

Mr Dewar said that he was concerned by the discussion as he considered it a very different approach from the desires of the community ascertained through the recent wide-ranging consultation process, and inconsistent with the recommendations of Studio GL in their Urban Design Study report. Mr Dewar said that during the extensive community consultation period, the idea of incentives for site amalgamation had only ever been raised by Mr Di Giacomo, on behalf of the Five Dock Chamber of Commerce, with his submission being that the FSR should be increased to 3.5:1, to provide the necessary incentive for site consolidation.

Mr Dewar confirmed that he drafted the summary of CCBC's response to Mr Di Giacomo's submission, which was included in the agenda report prepared by council staff prior to the meeting on 20 May 2014. Mr Dewar there noted that:

When determining an appropriate FSR it is necessary to balance various needs. These include the viability of development, design quality, amenity impacts and the relationship of new development with the surrounding context.

Following consultation with the local community (including business and property owners) as part of the preparation of the Five Dock Urban Design Study, broad concerns with the quality of development being constructed were revealed. Issues included:

- *Elongated buildings with poor distribution of floor space across sites, resulting in "squat" buildings that have poor orientation with adjoining sites*
- *Poor privacy and overshadowing outcomes due to building orientation*
- *Limited provision of open space areas within sites, and*
- *Limited opportunity to provide high quality solar penetration and cross ventilation into units.*

Mr Dewar told the Commission that ultimately, however, despite his own concerns and the recommendations of the Urban Design Study, a draft clause was prepared by staff for inclusion in the Canada Bay LEP to give effect to what the councillors had requested during the council workshop on 8 April 2014, with some additional parameters stipulated to ameliorate any adverse effects from the permitted increase to the FSR and heights. These included a minimum frontage requirement for sites and design quality criteria that would have to be addressed as part of any future development application.

The draft clause prepared by council staff permitted an FSR of 3:1 and a height of 27 metres (eight storeys) on sites with an area over 1,500 square metres and a frontage of at least 20 metres. The draft clause required that any new development taking advantage of these bonus provisions would need to ensure that consideration was given to bulk, character and amenity impacts. It was proposed that the bonus FSR and height would be available on the majority of land in the town centre, but would not apply to certain land that had been identified

as having a height limit of three-to four storeys due to the potential impact on established dwelling houses on neighbouring sites. The detail concerning this proposed draft clause was also contained in the agenda report prepared for the council meeting on 20 May 2014.

At this time, the Sidoti family property at 120 Great North Road would be too small to take advantage of the proposed bonus provision unless it could be amalgamated with adjoining properties to increase the size and frontage of the site. More significantly, however, as Mr McNamara confirmed in evidence, so long as the Waterview Street block remained zoned R3, any property in that part of the block facing Great North Road would never be able to qualify for the proposed bonus because of the impact on the established dwellings behind them.

Mr Sidoti's email of 17 May 2014

Mr Sidoti was evidently unhappy with the proposed bonus provision for larger sites. On 17 May 2014, the Saturday before the Tuesday council meeting at which the Urban Design Study was to be voted on, and following the publication of the council staff's agenda report for that meeting, Mr Sidoti sent an email to Mr Megna, Ms Cestar and Ms McCaffrey (although not Dr Ahmed), in which he wrote, relevantly:

Dear Councillors

I urge you to strongly take into consideration what we spoke about at our meeting. Making 1500sqm a requirement in order to achieve 20 metres in the town centre is a pipe dream. Again history has shown this. It may on some sites allow this where you are encouraging very large or very small buildings to occur in an ad hoc [sic] fashion.

What we spoke about was increasing the glass contents not the size of the glass. The FSR is proposed to increase from 2.5 to 3.0 to one only on large sites which will unlikely be amalgamated.

All the shop keepers I have spoken to at worst want the current proposal but with no minimum width requirement and no minimum lot size. The reason is very simple. If you haven't got the larger blocks you can't get the turning circles for parking etc. Stating the blind obvious complicates the process.

...

Please deliver the vision of the shop keepers in the interest of the community not the Mayors [sic] distorted views.

I can assure you there have already been a number of shop keepers lining up to run for Council next election if the proposal goes ahead in it's [sic] current form and quiet [sic] frankly I understand where they are coming from.

Good luck in your deliberations [Emphasis added]

Mr Sidoti told the Commission that, in this email, he was criticising as unrealistic the prerequisites of a site area of 1,500 square metres and frontage of 20 metres before the bonus provision could be accessed, in accordance with the feedback he was receiving as the local member. He said that even though he personally shared that view, he was not stating it as such, but as the view of "a lot of small property owners [who] had come to me, shop owners".

He explained that what he meant by his reference to "increasing the glass contents, not the size of the glass", was that with the existing FSR of 2.5:1, a property owner could not even reach the existing allowable height limits, let alone any additional height limits proposed, as he had demonstrated with rough sketches he had drawn for the councillors at their meeting. He agreed that he was criticising the notion that an FSR of 3:1 should only be available for large sites. He also agreed that he independently held that view, but insisted that the feedback from "all the shopkeepers" he had spoken to was that, at worst, there should be no minimum lot size or width requirements to access the proposed increased FSR and height.

The Commission is satisfied, on the basis of Mr Sidoti's explanation, that in his email he was using an analogy to refer to increasing the FSR (the glass contents) without having to meet some prerequisite about the size of the site (the size of the glass) and not, as was submitted on Mr Sidoti's behalf, referring literally to "the glass contents of shopkeepers' windows as opposed to the size of the glass".

Mr Sidoti said that he wrote this email "as a Liberal colleague to Liberal colleagues" and that it was "stating the blind obvious" that he was making these representations on behalf of the shopkeepers in his capacity as the local member for Drummoyne. He said he was not even thinking about the fact that the removal of a minimum lot size and width requirement would be favourable to his family's property interests. He said he was passing on feedback and "just regurgitating what had happened at the Chamber of Commerce and the views".

Mr Sidoti said he would not have made express reference to (that is, disclosed) the fact that the removal of the two prerequisites for the bonus provision would have benefited his family's property, because he "would have been stating the blind obvious" and he was not making reference to that property, but rather "to the whole town centre".

The Commission does not accept that Mr Sidoti's representation, that all of the shopkeepers he had spoken to wanted, as a minimum, the removal of lot size and frontage prerequisites to access the proposed increased FSR and height. As discussed in chapter 4, the chamber's interest was that there be an incentive for consolidating lots to stimulate development and, as Mr Haron agreed in evidence, there would be no such incentive if any increase in FSR was applied uniformly to all sites regardless of size.

The Commission is satisfied that what Mr Sidoti was advocating was not the shopkeepers' vision, as represented by the Five Dock Chamber of Commerce, but his own vision, directed to the benefit of his family's only Five Dock property at the time at 120 Great North Road. That vision, which diverged from the chamber's, could not be said to be directed to the town centre as a whole, nor to the interests of the business community as a whole.

Mr Sidoti denied that in this email he was urging the councillors to take a certain position and trying to advise them about matters he considered important in relation to the Urban Design Study. He said they were independent thinkers and he was just providing them with "information and feedback from the community". Despite his own words in the 17 May 2014 email, he denied that he was trying to persuade or influence them to support the "vision of the shopkeepers" and denied that his assurance that "there have already been a number of shopkeepers lining up to run for council" was, if not a threat, then a very persuasive statement to get them to fall into line with his views when the matter next came before council or there would be shopkeepers who might challenge their position on council.

In this context, Mr Sidoti repeated his assertion that the fact that the Liberal councillors were not present at the Five Dock Chamber of Commerce meeting on 7 April 2014, and their stance on small business, which "should be their bread and butter" was therefore unknown, caused a lot of discontent. He claimed it was an issue Mr Haron had said that people would run on at the next election and noted that "to have other candidates in the field would place Liberals at risk". He said that despite writing that there were shopkeepers (who he has not in evidence identified by name) lining up to run for council if the proposal were to go ahead in its current form, and that he understood where they were coming from, he did not mean that as a threat, but was rather "stating the obvious, and in concern for my Liberal colleagues".

For the reasons discussed in the previous chapter, the Commission rejects the suggestion that the Five Dock Chamber of Commerce was frustrated by the lack of attendance at its meeting by the Liberal councillors and that (unspecified) shopkeepers were consequently

indicating an intention to run against them as independent candidates at the next council election.

As previously stated, the Commission finds that the chamber's frustration, such as it was, was that those elected representatives who understood the concerns of the small business community of Five Dock were themselves Five Dock small business and property owners and therefore had conflicts of interest or were "too passive" when it came to voting on the Urban Design Study. As a result, the Commission rejects the rationale given by Mr Sidoti for the words used in his email to the Liberal councillors on 17 May 2014.

Mr Sidoti conceded that he understood the obligations on the Liberal councillors to perform their statutory functions under the LGA in accordance with the relevant code of conduct it prescribed, that is, independently, with integrity, in service of the public interest rather than private interests and in accordance with established procedures in an impartial way. He agreed that the importance of the councillors following established procedures was that this helped to ensure they discharged their public functions properly.

Mr Sidoti told the Commission that, notwithstanding this understanding, he considered he had every right to speak to those councillors about how they might exercise their public functions because that was his role as the local member of Parliament, as a member of the same political party as the councillors and because they "shared the same constituency".

He also told the Commission that he was not *telling* them how to exercise their functions, but rather passing on information or "feedback" from those constituents to take into consideration, "and then the decision is up to them, obviously". This assertion is to be evaluated by the terms appearing in his emails to the Liberal councillors, including the following:

Please be well informed on this subject and challenge the thoughts of the staff...

Can we meet over the next 7 days to form a united stance for the Five Dock town centre urban study ...

I urge you to strongly take into consideration what we spoke about at our meeting ...

Please deliver the vision of the shopkeepers in the interest of the community not the Mayors [sic] distorted views...

The Commission is satisfied that on the plain meaning of these terms, Mr Sidoti was telling the Liberal councillors how to exercise their official functions in relation to the Five Dock town centre planning matters before council.

Mr Sidoti said that the reason he did not consider his email of 17 May 2014 to have interfered with the independent exercise of the councillors' functions at the upcoming council meeting was because:

...not one councillor ever, ever, ever said, 'You've crossed the line. I don't want this, I don't want that. Don't do this, don't do that'... and there are no messages to that avail, and there was no verbal. The first time I heard anything of this was at this Commission.

The evidence indicates that Ms Cestar did not consider Mr Sidoti just to be passing on constituents' feedback in his email. In an email dated 19 May 2014, she asked Ms McCaffrey and Mr Megna:

What exactly was the purpose of this email?

Why wasn't tanveer [Ahmed] emailed?

Does it matter if shopkeepers want to run? Is john saying he would support them? Is it a threat? What is the point here?

A little later, she emailed to say she had been told by someone who was now living in Abbotsford that Mr Sidoti had approached him to run for council. She told the Commission in evidence that this person was a friend of hers and that she had also heard that there was "some canvassing being done to replace the existing councillors".

Ms Cestar stated in evidence that she perceived Mr Sidoti's email to be a "pretty clear threat" that "there's someone else that's going to take your place if this isn't delivered". She said she did not know who the shopkeepers were that Mr Sidoti referred to, noting that "the only people that ... seemed to be vaguely interested [were] the Chamber of Commerce representatives". Ms Cestar said that no names were ever given to her of people who had said they wanted to run for council.

On 19 May 2014, Ms McCaffrey responded to Ms Cestar's email, saying:

I too am a bit worried about his comments re shopkeepers ... Everyone is entitled to run for Council.

I have heard so far, there is a group at Rhodes, another at Breakfast point, now Five Dock ... and it's only 2014!

Ms McCaffrey told the Commission that she understood from his email that Mr Sidoti was certainly not happy with the report prepared by council staff prior to the meeting on 20 May 2014, and that he was asking that the Liberal councillors push for a change in what was being proposed, so that a 3:1 FSR would be applied to all sites. She understood from his statement about other

shopkeepers lining up to run for council that "if we didn't, you know, vote as he indicated, that there were other people that were going to run for council".

She agreed that she would certainly have been concerned that it was a threat to her position as a councillor and that it was of concern that the local member was expressing those sorts of views in relation to a decision she was going to have to make at a council meeting a few days later. However, she said that, while she would have read Mr Sidoti's email with concern, and perceived it as "certainly directed at influencing", it would not have influenced her decision because she had always acted independently.

Notwithstanding Ms McCaffrey's perception that Mr Sidoti's email would not have influenced the independent exercise of her functions, the evidence indicates that on the morning of 20 May 2014, Ms McCaffrey emailed council staff with questions apparently arising from her reading of the agenda report for that evening's council meeting:

The Chamber of Commerce still want 3.5:1 ... can this be achieved anywhere with a height of 27 metres etc (Is making 1500sqm a requirement in order to achieve 20 metres frontage in the town centre actually possible ... (yes there has to be amalgamations!!)

What would be the result if you had the current proposal but with no minimum width requirement and no minimum lot size. I imagine to achieve parking etc the lot sizes would have to be reasonable anyway to meet requirements.

The echoes of Mr Sidoti's email of 17 May 2014 are unmistakable in Ms McCaffrey's email and she accepted in evidence that she appeared to be asking council staff about the prospect of actually achieving the outcome Mr Sidoti had urged the councillors to deliver in his email, but said this was "so it was sorted out in my own mind".

Mr McNamara responded to Ms McCaffrey's questions later that morning, advising that he was "reluctant to support going to 3:1 across the board for a number of reasons". He listed the following:

1) *It was pretty clear from the workshops that Councillors want to see incentives to amalgamate blocks in Five Dock.*

2) *3:1 will give some very big developments if people actually build them. Super barn is only just over 2.5:1 and it has two big commercial floors.*

3) *Going to 3.5:1 may over value small blocks making them difficult to develop. The only ones who have done any real testing of the economics are Hill PDA working for Council and we are following their advice. Everyone else appears to be trying to increase*

the value of their property but have done nothing substantial to prove their case.

4) *The whole discussion appears to revolve around FSRs. This is only part of the issue. We are not being flooded with development proposals that would proceed “only if Council were more reasonable with their planning controls”.*

5) *The work to date has attracted real interest in developing Council’s land and the Five Dock Hotel. Interested parties are not asking for more fsr.*

6) *In my view, adoption of the plans, and implementation by Council of the actions identified, especially in respect of Council land and the laneways will generate a mood for change which will transform Five Dock.*

The Commission is satisfied on the evidence that Mr Sidoti’s email of 17 May 2014 constitutes a significant example in an extended course of conduct, which includes the communication discussed in chapter 4, to attempt to exert influence over the independent and impartial exercise by the Liberal councillors of their official functions.

The Commission is satisfied that it constituted a direction for them to push back against the planning proposal for the Five Dock town centre in the form recommended by council staff in favour of an outcome that was different from what the Five Dock Chamber of Commerce was seeking, but that suited his private interest in respect of his family’s property interests in the matter.

The Commission finds that Mr Sidoti plainly linked his statement that a number of shopkeepers were lining up to run against the councillors if they allowed the proposal to go ahead in its current form, with his exhortation to “deliver the vision of the shopkeepers”, namely, at a minimum, an increase in the FSR to 3:1, without the requirement of a minimum lot or width size. Of course, for reasons already set out, the Commission is satisfied that Mr Sidoti was urging the councillors to deliver what he wanted as a minimum in relation to the FSR issue rather than what the Five Dock Chamber of Commerce, or the “shopkeepers”, wanted, despite his evidence to the contrary.

The Commission is satisfied that both Ms Cestar and Ms McCaffrey recognised what Mr Sidoti was saying to them as an implicit threat to their positions on council if they did not vote as he had consistently requested. The fact that they claimed that their independence was not influenced by that threat is not to the point. Neither is the fact that they did not tell Mr Sidoti to “back off” or stop. Neither is any capacity or otherwise on Mr Sidoti’s part to cause other candidates to run against those councillors at the next election.

Both Ms Cestar and Ms McCaffrey knew that Mr Sidoti’s family had property in the Five Dock town centre. Both knew that he was deeply unhappy with what was being recommended by council staff and both knew that he was trying to get them to vote as he wanted them to, that is, partially, or to the benefit of his private interests. One of the key ways in which he attempted to do this was by appealing to their own desire for political self-preservation with his warning that their positions on council would be vulnerable to competition from those they would disappoint (including himself) if they voted to endorse the proposal in its then current form.

The Commission is satisfied that these matters make Mr Sidoti’s email of 17 May 2014 a significant instance of his ongoing attempt to adversely affect the honest or impartial exercise of their official functions for the purposes of s 8(1)(a) of the ICAC Act, as will be discussed further in chapter 10 of this report.

Extension of the B4 mixed use zone

As noted at the end of chapter 3, there were 31 submissions received by council following the public exhibition of the Urban Design Study, and these were summarised in the agenda report prepared for the council meeting on 20 May 2014. One of those submissions was from Mrs X, the owner of 41 Waterview Street. Mrs X submitted that, in order to improve the urban design outcomes delivered by the study, the proposed expanded town centre should include properties along the western side of Waterview Street, between Second Avenue and Barnstaple Road. Mrs X’s submission was the first occasion on which the issue of extending the B4 zone to the Waterview Street block had been raised and, as at this date, was the only submission to do so.

Mr Dewar’s response to this submission, contained in the council meeting agenda report, was as follows:

The study proposes to extend the B4 Mixed Use zone surrounding the central core of the centre. These areas would benefit most from the proposed investment and upgrade to the public domain.

The core of the Five Dock Town Centre occurs around a natural ridge within the centre and the area north and east of Second Avenue and Waterview Street is considered to lie outside this core.

Waterview Street north of Second Avenue has a predominantly low rise residential character with a few constrained sites on the western side including a heritage building and existing strata development.

Rezoning land outside this central core to additional land B4 Mixed Use would have fewer benefits and is therefore not recommended.

It may be noted here that the opinion expressed by Mr Dewar on this aspect of the matter was consistent with the conclusions reached in the Urban Design Study report concerning the identification of the town centre's central core and the public benefits of expanding the B4 zone around that central core, discussed in chapter 3 of this report.

Mrs X addressed the council meeting on 20 May 2014, as did Mr Haron on behalf of the Five Dock Chamber of Commerce. Mr Sidoti told the Commission that he had intended to speak as well, but took his sister's advice to stay away to avoid the perception of a conflict of interest. Mr Sidoti said that he took seriously his sister's advice that, if he wanted to attend "to represent everybody" and "talk about everything", that was great, but if he wanted to talk about individual property, there should be a consultant doing that independently on behalf of their parents.

Despite evidence available to the Commission that Mr Sidoti in fact wanted to address council about matters related to the family's property at 120 Great North Road, he said that he was content knowing that Mr Haron would be there instead, to "represent the views of the shopkeepers". However, it is noted that at no stage had the Five Dock Chamber of Commerce advocated for a 3:1 FSR across the board or for an extension of the B4 zone along Waterview Street, north of Second Ave.

All CCBC councillors present (Ms Cestar was absent) at the meeting on 20 May 2014 voted to defer endorsement of the recommended amendments to the LEP and the submission of the planning proposal to the Department of Planning and Infrastructure for a Gateway determination, in order to consider issues of height, setbacks, overshadowing, mix of development and the amenity of the surrounding residents.

The matter came back before council on 24 June 2014, and council staff prepared a further agenda report for that meeting. Significantly, in relation to the suggestion that council consider extending the area of land zoned B4 to include the Waterview Street block, the agenda report noted that this area was not identified for rezoning as it:

- *is located outside the central core of the centre;*
- *contains a few constrained sites, including a heritage item and existing strata development;*
and
- *would necessitate the extension of the proposed Waterview Lane to facilitate improved access.*

It was noted that rezoning land outside the central core would provide fewer benefits and was therefore not recommended. Mr Dewar confirmed in evidence that this view reflected both the conclusions of the independent experts who had authored the Urban Design Study and the independent professional views of council staff.

The Commission rejects the submission made on behalf of Mr Sidoti that Mr Dewar's assessment of Mrs X's submission was in fact "mildly positive" in that he said that rezoning land outside the identified central core would have "fewer benefits", but not *no* benefits. The effect of the submission put on behalf of Mr Sidoti was that Mr Dewar's assessment of the proposed rezoning of the Waterview Street block had not been a negative one, as submitted by Counsel Assisting.

The Commission does not accept that "fewer benefits" in fact means "some public benefits". The Commission is satisfied that the expert planning assessments, including the reasoning of council staff, informed by the expert opinion of the authors of the Urban Design Study, were that the greatest benefits from any extension of the town centre's B4 mixed use zoning would be to those areas surrounding the central core of the town centre. The Waterview Street block fell outside that central core and, in addition, faced constraints in the form of a heritage item and a strata development, which would result in even fewer benefits accruing from any such rezoning.

In any event, at the council meeting on 24 June 2014, all six councillors present (Ms McCaffrey was absent) voted to adopt the Urban Design Study and endorse the planning proposal and its referral for a Gateway determination.

The Commission is satisfied that, in doing so, council had made an informed decision in the public interest about the appropriate development controls for the Five Dock town centre. It is of significance to note that the Urban Design Study and the planning proposal based on it were supported by all councillors across party political lines.

Accordingly, councillors had unanimously agreed with the recommendation of council staff, based on the recommendation of the independent consultants it had engaged, as to the desired boundaries of an expanded Five Dock town centre and that the B4 mixed use zone should not extend to include the Waterview Street block. They had also agreed with the recommendation of council staff that there should only be an increase in FSR to 3:1 for those sites having an area of over 1,500 square metres and at least a 20-metre frontage.

The benefit to the Sidoti family's Five Dock property from the planning proposal that was being submitted for Gateway determination was therefore limited to a potential one-metre increase in the height allowable for

any new development. Mr Sidoti denied that he was unhappy with this outcome, telling the Commission it was a “long, long process” and that his “only concern has been, always, that proper process is followed and then wherever that leads I would be happy with wherever that led”.

Mr Sidoti engages town planners for his parents

Mr Sidoti conceded in evidence that, as at 24 June 2014, he and his family were looking at what the proposed changes to the LEP would mean for the prospects of developing 120 Great North Road. To that end, as evidenced by a calendar entry with the subject “Five Dock Masterplan”, a meeting was scheduled on that date between Mr Sidoti, Mark Thebridge and one of Mr Thebridge’s colleagues at Group GSA, an architecture and urban design consultancy.

Mr Sidoti agreed that the engagement of Mr Thebridge was in accordance with his sister’s advice about how he might manage any perceived conflict he had in relation to the Five Dock planning proposal; in that, any submissions made to council on behalf of the family’s interests could be prepared and made by external planning consultants, and the submissions and representations made by Mr Sidoti could be considered as separate and made on behalf of his constituents as the local member.

The fee proposal that Mr Thebridge emailed Mr Sidoti on 8 July 2014 set out the following scope of work further to their discussion:

- *The preparation of an options analysis for the site and associated adjoining lots in Second Avenue and Waterview Street*
- *Provide town planning advice concerning the effect of the draft Planning Proposal once it is certified;*
- *Review the proposed heights, FSR, setbacks, heritage controls, site amalgamation incentives and the like;*
- *Review the physical extent of the Planning Proposal and advise as to whether the boundaries should be revised to reflect a more appropriate configuration.*
- *Prepare a written submission to council detailing the above concerns and attend the relevant Council meeting to speak concerning the matter.*

Whereas the scope of works drawn up by Mr Thebridge, following discussion with Mr Sidoti, included the preparation of an options analysis for 120 Great North Road and adjoining lots in Second Avenue and

Waterview Street, as at July 2014, the Sidoti family had not yet acquired the property at 2 Second Avenue, did not own any property on Waterview Street, and had not yet acquired the neighbouring properties at 122 Great North Road and 124 Great North Road. It is clear on the evidence available to the Commission, however, that further property acquisition was in the family’s contemplation at this time, notwithstanding the fact that the planning proposal for the town centre referred for a Gateway determination was not favourable to development in the block in which 120 Great North Road was located.

The Commission is satisfied on the evidence that the scope of works set out in Mr Thebridge’s email represents the totality of Mr Sidoti’s concerns in relation to the planning proposal for the Five Dock town centre at the time; that is, the development controls for the site at 120 Great North Road and associated adjoining lots in the Waterview Street block and the rezoning of the Waterview Street block. The Commission is satisfied that these concerns were entirely private and associated with his family’s specific property interests rather than with any benefit to the town centre as a whole or with the interests of his constituents generally in the planning proposal.

The Commission is also satisfied, for the reasons set out in this and the next three chapters, that the submissions and representations made by Mr Sidoti to the Liberal councillors from this point onwards concerning the planning proposal, purportedly in his capacity as the local member of Parliament, were also entirely focused on these private concerns, towards the furtherance of his family’s property interests and to overcoming any obstacles posed to those interests by council’s decision-making.

The Gateway determination

On 25 September 2014, a delegate of the minister wrote to CCBC’s general manager, Gary Sawyer, to advise that a Gateway determination had been made under s 56 of the EP&A Act in respect of the planning proposal to amend the Canada Bay LEP 2013. The determination had been made that the planning proposal to expand the B4 mixed use zone, to amend height and FSR controls, to identify land to be acquired and to introduce additional active street frontages, should proceed subject to certain conditions.

These conditions included the requirement that council update the planning proposal to ensure the community could easily understand the proposed amendments and where they would be applied at the property level in comparison to existing controls, publicly exhibit the planning proposal along with the Urban Design Study and draft DCP for a minimum 28 days, and finalise the amending LEP within 9 months of the week following the date of the determination; that is, *by the end of June 2015*.

The relevant documentation was placed on public exhibition by CCBC from 21 October to 17 November 2014.

Anderlis purchases 2 Second Avenue

As set out in chapter 1, Mr Sidoti was appointed parliamentary secretary for planning on 17 October 2014, a position he held until 28 March 2015. Thereafter, he was appointed parliamentary secretary for roads and transport from April to January 2017 (with industry, resources and energy added to the portfolio from August 2015), and then parliamentary secretary to Cabinet from February 2017 to April 2019, when he was appointed to the ministry.

As outlined in chapter 2, on 13 October 2014, just days before Mr Sidoti's appointment as parliamentary secretary for planning, Anderlis purchased the property at 2 Second Avenue, as trustee of the Anderlis Investment Trust, whose general beneficiaries were the same as the Sidoti Family Trust's and included Mr Sidoti and his wife. Mr Sidoti told the Commission that his parents had been after the property at 2 Second Avenue for a long time. He said that Anderlis was established to purchase the property because his parents suspected the vendor would inflate the asking price if she knew who was purchasing.

Submissions prepared by MG Planning

The evidence indicates that, on or around 10 November 2014, Mr Thebridge engaged Helena Miller, principal of town planning firm, MG Planning, to prepare a submission to CCBC on behalf of the owners of 120 Great North Road before the closing date for submissions of 17 November 2014. In the record of her initial conversation with Mr Thebridge, Ms Miller noted that the block in which 120 Great North Road was situated was split in half, with the eastern side zoned residential and the western side zoned mixed use, and that the owner, noted to be Mr Sidoti, "wants to change so zoning extends to street behind. Also owns lot at rear".

Ms Miller told the Commission that, while most of the telephone calls, emails and directions during her engagement came from Mr Sidoti, her understanding was that he was operating on behalf of his parents. She said she subsequently came to learn that the land was in fact owned in the names of two companies owned by Mr Sidoti's parents, Deveme and Anderlis, as this was who she invoiced.

The final version of the submission prepared by Ms Miller, and emailed to CCBC on 21 November 2014, noted that these two companies, being the owners of 120 Great North Road and 2 Second Avenue, wished to make a submission that the land fronting Waterview Street,

between Second Avenue and Barnstaple Road, should be rezoned from R3 to B4, in line with existing B4 land immediately to the west along Great North Road and with corresponding land in the block to the south on Waterview Street, which was proposed to be rezoned in the exhibited planning proposal.

The principal arguments made by Ms Miller's submission in support of extending the B4 zoning north of Second Avenue were that, "there appears to be no logic to applying a split zoning to the block", which would hinder redevelopment of the land fronting Great North Road and would not provide an appropriate transition between the zones, and that the "proposed split zoning" (emphasis added) had the potential to result in adverse amenity impacts for land zoned R3 medium density on Waterview Street with the rear boundaries of those allotments immediately adjoining the mixed use zone.

The Commission is satisfied that the amendments to the LEP on public exhibition did not, in fact, *apply or propose* a split zoning for the Waterview Street block, as appears to have been submitted by Ms Miller. As discussed in chapter 3, the subject block's split zoning was already legislated in the Canada Bay LEP 2013 and had been maintained from the previous 2008 LEP. The draft amendments resulting from the Urban Design Study did nothing to disturb the block's existing split zoning by not considering an expansion of the town centre to include it.

The thrust of Ms Miller's submission on behalf of the Sidoti family was that:

split zoning on the subject land will hinder redevelopment of the land fronting Great North Road. As noted in the Urban Design Study the allotments fronting Great North Road are generally small and in fragmented ownership. Whilst site amalgamation is possible, the splitting of the zoning across the block means that any redevelopment will be of limited depth and with vehicular access (including cars and service vehicles) only available from Great North Road. This is a major constraint given the existing traffic which utilises the roadway and the desire to create an attractive and comfortable pedestrian environment. Extension of the zoning through the block to Waterview Street would provide an alternative vehicular access and would remove traffic off the already congested main street. It would also provide improved redevelopment options and therefore increase viability.

Mr Sidoti, himself, agreed in evidence that, were the Waterview Street block to be rezoned B4, that would remove some of the impediments to his family's property being able to access the proposed bonus provision and acknowledged that "potentially" this was part of the

family's broader strategy at this time to acquire properties with a view to future development in accordance with the bonus provision.

The Commission is satisfied on the evidence that the clear and singular reason that Mr Sidoti wanted the Waterview Street block rezoned, in respect of his family's interests, was to facilitate the development potential of their property in, and adjacent to, the town centre, which, by October 2014 had become two sites, by May 2015 had become three sites, and by December 2017 had become four sites, as 2 Second Avenue, 122 Great North Road and 124 Great North Road were successively acquired.

The Commission finds nothing improper or inappropriate about the submission made by Ms Miller on behalf of the Sidoti family on this or any subsequent occasion. The Commission does not, however, accept the submission made on behalf of Mr Sidoti, that Ms Miller's submissions always explained how the opinions put forward promoted "general amenity and the public interest" and that, accordingly, when Mr Sidoti made the same representations, "he was doing so conscious that what was being put was also in the public interest, or at least what he believed to be in the public interest".

The Commission finds that Ms Miller's submissions did not engage with the objectives and aspirations for the Five Dock town centre, as identified by Studio GL in its Urban Design Study, but rather, argued an alleged absence of "logical reason" for not further extending the town centre to include the Waterview Street block. Ms Miller's grounds for extending the B4 zoning to this area were explicitly directed to facilitating the redevelopment potential of the adjoining land fronting Great North Road and arguing for site-specific interests. The submission that Ms Miller's opinions promoted "general amenity and the public interest" is mere assertion and the Commission does not accept it.

The Commission has no difficulty accepting that Ms Miller made her submissions in good faith, professionally and informed by her extensive planning experience, and the Commission accepts as obvious that she would stand by the opinions she expressed. However, the Commission cannot accept that Ms Miller was acting on behalf of anything other than the private interests of private clients. She was privately engaged to make arguments from a town planning perspective in favour of the rezoning of the Waterview Street block for clients with interests in redeveloping adjoining property facing Great North Road, who wanted the potential of any redevelopment maximised.

The Commission finds that the arguments put forward by Ms Miller properly concerned site-specific considerations affecting the Sidoti family properties. When the same

arguments were made by Mr Sidoti in his representations to the Liberal councillors, the Commission finds that they were improperly made under the guise of being representations in the public interest about the concerns of his constituents and in particular, the concerns of unnamed shopkeepers in the planning proposal as a whole, when the purpose of those submissions was entirely directed to private interests.

Studio GL's exhibition outcomes report

Following the public exhibition in October and November 2014, CCBC received 124 individual submissions, including some site-specific submissions, such as the one made by Ms Miller on behalf of the Sidoti family properties, and petitions signed by 421 people.

A public exhibition of a significant town planning proposal, such as the one prepared to implement the Urban Design Study, is significant in revealing the views and opinions of the community, including those critical of the proposal. The public exhibition is of particular significance in this instance in determining whether in fact any such person or groups of persons held views or opinions that were consistent with the matters that Mr Sidoti had been and was continuing to pursue in his communications with the Liberal councillors.

Accordingly, if the public exhibition resulted in issues being raised by a disgruntled group of "shopkeepers" or other groups of concerned persons, constituting or representing commercial or small business interests, then one might expect that to become evident in the responses generated by the above-mentioned public exhibition. That was not the case.

At the request of CCBC, Studio GL reviewed the submissions received, and prepared an "exhibition outcomes report" dated 21 May 2015. The report noted that almost 88% of the submissions raised height as the primary concern with the exhibited planning proposal, as did all of the petitions. The vast majority of the submissions did not support the proposed increase in height from five to eight storeys for larger sites, because of the impacts of overshadowing and the loss of sunlight, views and privacy, and a number of submissions expressed concerns about the impact of excessive development on the community feel of the village. The report noted that the clear feedback received in the preparation of the Urban Design Study was that the community valued the look and feel of Five Dock as a "much loved village with a special character".

Studio GL's report also reviewed the two submissions (from Mr and Mrs X, and Ms Miller on behalf of Anderlis and Deveme) that argued for a rezoning of the Waterview Street block. The report noted that rezoning this block

was not proposed for a number of reasons. These included the heritage item at 39 Waterview Street and an existing strata development at 45–47 Waterview Street.

Studio GL noted in its report that it did not support eight-storey buildings in the Five Dock town centre, especially the large number of taller buildings that could occur under the planning proposal that was exhibited. It encouraged CCBC to listen to the community concerns that had been “so clearly expressed” and reduce building heights to six storeys, but if that was not possible, it recommended that the number of locations in the town centre where the development bonus was available be reduced. This would limit the impacts of development and be more in keeping with the existing character of the town centre.

Significantly, the report concluded that the Waterview Street block was “not considered a good location to encourage amalgamation and increased height and FSR” because of the poor interface between the potentially tall buildings in front and the residences and heritage item behind. The report also noted that removing access to the development bonus for this part of Great North Road would ensure that any future development there would more closely reflect the planning controls on the opposite side of Great North Road.

In the report prepared for the CCBC meeting on 2 June 2015, council staff adopted Studio GL’s recommendations, including, relevantly, that the number of sites permitted to develop to eight storeys with a 3:1 FSR be reduced and that the Waterview Street block retain its R3 medium residential zoning. The agenda report recommended that the planning proposal and associated planning documents be revised to reflect Studio GL’s recommendations and be re-exhibited for community feedback.

It was plainly open to CCBC staff to adopt the recommendations made by Studio GL. Indeed, although Mr Sidoti took a different view, there was no evidence adduced in the public inquiry that would establish error in council staff adopting those recommendations. To the contrary, the evidence reveals that there were cogent and rational bases for CCBC to accept Studio GL’s analysis on which the recommendations were based.

By this time, the Sidoti family had acquired 122 Great North Road, the property having been purchased by Deveve on 1 May 2015. The newly recommended amendments to the planning proposal, if adopted, would mean that, not only would the Waterview Street block not be rezoned, but the Sidoti family would no longer be able to take advantage of the bonus provision for amalgamated sites for the area of Great North Road in which they now had two adjacent properties.

The council meeting on 2 June 2015

At the council meeting on 2 June 2015, Ms Miller duly addressed council on behalf of Anderlis and Deveve and argued for the inclusion of the Waterview Street block in the town centre’s B4 zone and for the retention of the development bonus for site amalgamations on the land fronting Great North Road. One of her arguments in support of the latter issue was that, if the whole Waterview Street block was rezoned B4, the problem of transitioning from tall buildings fronting Great North Road to the residential and heritage buildings behind in Waterview Street would be removed and the area could therefore retain the development potential afforded by the bonus provision.

However, the councillors (except Dr Ahmed, who was not present) voted unanimously in favour of the course recommended by council staff and a revised planning proposal and planning documents were publicly exhibited between 30 June and 31 July 2015. The revised planning proposal included a bonus FSR of up to 3:1 for certain land over 1,000 square metres that was identified for potential eight-storey development, but the Waterview Street block remained outside the proposed expanded town centre and retained its R3 zoning.

It is a matter of significance that, as at 2 June 2015, Ms McCaffrey, Ms Cestar and Dr Ahmed had all voted on at least one occasion in favour of the LEP amendments recommended by CCBC staff and therefore to reject the arguments put forward in support of rezoning the Waterview Street block.

Mr McNamara told the Commission that, while the further public exhibition allowed for additional submissions to be made by town planners on behalf of Anderlis and Deveve advocating for the same changes as previously, in his view they needed to do more than just be critical of the work that had been undertaken by council and its consultants to date. An alternative view was required about why theirs was an acceptable proposition, “that could go into, for example, more studies, more design work, more architectural renderings, to demonstrate that the issues that had been raised by the council were not correct”.

Reflecting that view, an email from Ms Miller to Mr Thebridge, the day after the 2 June 2015 council meeting, advised that, following her presentation at that meeting, CCBC’s manager of strategic planning had indicated that council could have a further look at the zoning of the Waterview Street block and would be happy to receive a further submission during the upcoming re-exhibition. Such a submission should look in more detail at how the constraints of the heritage item at 39 Waterview Street and the strata development could

be addressed, while providing for the redevelopment of the subject land. It was suggested that block/massing diagrams, which could satisfy council that redevelopment was both suitable and feasible, should be prepared. Ms Miller wanted the client to advise how they wanted to proceed.

As Ms Miller's above-mentioned email of 3 June 2015 noted, council staff had been prepared to provide the Sidoti family with every opportunity to put forward a case for a rezoning of the Waterview Street block. The process that had been followed in the development of the Urban Design Study up to this time had been an extensive one involving the retention by CCBC of expert advice from its consultants in developing the recommended proposal for the rejuvenation of the Five Dock town centre. The nature and the contents of that process demonstrably considered all relevant matters bearing upon public interest considerations and any relevant impacts upon existing property interests including interests associated with the Waterview Street block.

On 1 July 2015, Mr Sidoti asked Mr Thebridge whether they could meet with "the planner at council together to take her up on the offer to explore opportunities for a better outcome for the Five Dock properties". There is no evidence available to the Commission that any such meeting ever took place and Mr Sidoti himself could not recall whether he ever attended such a meeting.

Re-investigating the Waterview Street block

Mr Sidoti told the Commission that he accepted the outcome of the 2 June 2015 council meeting as just part of the process. The evidence indicates, however, that at the same time as he was seeking a meeting with CCBC's town planner, he also began actively advocating for a change in the zoning of the Waterview Street block in his interactions with the Liberal councillors.

There is evidence before the Commission which establishes that, during the further public exhibition period, Mr Sidoti arranged a meeting about the town centre between himself, Ms McCaffrey, Ms Cestar and Dr Ahmed at his electorate office on 9 July 2015, although none of the councillors or Mr Sidoti could recall the meeting or what was discussed.

While Ms McCaffrey could not recall the particular meeting, her memory was that, at this time, Mr Sidoti was expressing his unhappiness about the latest recommendations in relation to the town centre "because the uplift wasn't occurring" and because the Waterview Street block had been "left out". She understood him to be representing himself rather than his constituents when

making such statements. She agreed that she recalled that the effect of his statements was to press to have further reviews undertaken to consider the Waterview Street block, even though, as she acknowledged, by this stage the question of rezoning that area and of increased FSR and heights for that area had already been considered on a number of occasions by CCBC and were not supported by council staff or the independent consultants. Ms McCaffrey agreed that it was a concern to her that Mr Sidoti appeared to be repeatedly raising the issue in these circumstances, but she could not recall what she said to him about it.

Dr Ahmed told the Commission that he recalled a meeting with Mr Sidoti, Ms McCaffrey and Ms Cestar, but not Mr Megna, at a place called the Bakehouse, in which Mr Sidoti made representations about rezoning the Waterview Street block and development. The evidence indicates that a meeting was arranged at that location by Mr Sidoti with at least Dr Ahmed, on 18 October, two days before the council meeting on 20 October 2015.

Dr Ahmed's interpretation of what Mr Sidoti was saying was, again, that Mr Sidoti did not think that there was or had been adequate advocacy for commercial or small business interests. Dr Ahmed was clear in his evidence that Mr Sidoti represented that he was speaking on behalf of the interests of his constituents, adding that "not at any stage did I feel his representations were related to his private interests".

Dr Ahmed told the Commission that Mr Sidoti's advocacy on this issue was "more enthusiastic" than in relation to other matters that he had met with the councillors about and Dr Ahmed thought that was because Mr Sidoti:

...viewed this matter as potentially electorally sensitive and he thought it was especially important and I thought he was potentially a good judge of that, given he was a state MP, he was dealing with these matters day to day, he'd been a deputy mayor, he was linked to the State Ministry for Planning, so I certainly took those representations with, with that in mind.

Mr Sidoti told the Commission he could not recall whether he particularly wanted to impress upon the councillors his view that the Waterview Street block should be included in the town centre's B4 zoning. He said that any meeting he had with the councillors would not have been for the purpose of only discussing one particular aspect of the town centre proposal. As his electorate office was on Great North Road, he was:

...always closest to the ground and a lot of people would come into my office. It was information, feedback to all, all the councillors so they ... knew what was going on.

Mr Sidoti said that any issues he raised with the councillors concerning the town centre planning proposal, following the council meeting on 2 June 2015 and up to November 2015, would have been matters raised with him by his constituents, although he could not recall any particular issue and said that nothing about the issue of rezoning the Waterview Street block stuck out in his mind.

Studio GL's second exhibition outcomes report

After the second exhibition of the amended planning proposal during July 2015, the matter was due to come back before council at its meeting on 20 October 2015. As in the ordinary course, council staff prepared an agenda report for the meeting, which was made publicly available a few days beforehand. The report noted that the primary issue raised in the 389 submissions received by council related to the impact on the public and private domain of the eight-storey height limit proposed in parts of the town centre to encourage the amalgamation of land. A total of 94% of submissions did not support increasing the building height from five to eight storeys. There was noted to be an overall concern that excessive development, and especially an eight-storey height limit, would have a detrimental impact on the village atmosphere of the centre.

Once again, had there in fact been a group of shopkeepers or those holding commercial or small business interests, who were unsatisfied with the planning proposal either in relation to the Waterview Street block or generally, then such lack of satisfaction would no doubt have been reflected in the submissions received by council following this further public exhibition. However, that is not what occurred. The vast majority of the 389 submissions, as noted above, focused on concerns about increasing heights to eight storeys.

Following its review of these submissions, Studio GL recommended in its exhibition outcomes report, dated 9 October 2015, that a maximum height of five storeys should be imposed, with the ability to construct to six storeys on certain large sites over 1,000 square metres, but with an FSR of 2.5:1 to be applied across the town centre. This was consistent with the Urban Design Study recommendations adopted by CCBC back in June 2014.

Studio GL's outcomes report of 9 October 2015 also noted that site-specific submissions had been received in relation to individual sites and areas within the Five Dock town centre, including three in relation to the zoning and development controls proposed for the Waterview Street block. Studio GL noted that responses were submitted by Mr Durkin and Mr X at 39 and 41 Waterview Street,

respectively, and by MG Planning on behalf of Devere and Anderlis, the owners of 120 Great North Road and 2 Second Avenue. Studio GL's report summarised the key issue raised by these submissions as being:

...that the proposed height of adjoining development along Great North Road will create adverse amenity for blocks along Waterview Street. These submissions argue that these sites should be rezoned to allow the entire block to be redeveloped.

In response to these submissions, Studio GL noted that, under the planning proposal, a building up to five storeys in height with an FSR of 2.5:1 would be permitted for properties on Great North Road on the western boundary of 39 and 41 Waterview Street; however, the draft DCP also proposed a 4.5-metre landscape setback to a four-storey building and an additional setback for any five-storey building. Given the new landscape setback requirements and the fact that only one additional storey was proposed to the existing planning controls, Studio GL concluded that the planning proposal would not significantly reduce the existing or future amenity of the properties along the western side of Waterview Street.

Studio GL's report also noted that Mr Durkin had submitted that there were difficulties parking in Waterview Street, that parking should be restricted to residents and that he had requested that a new laneway be provided between Second Avenue and Barnstaple Road to service properties along Waterview Street and Great North Road. Studio GL's response to this submission was that:

*...a new laneway has not been proposed as the small size of the block would mean **only a limited number of properties would be serviced by the laneway** [Emphasis added]*

As Studio GL's report noted, one of the three submissions proposing an expansion of the B4 zone to include the Waterview Street block was prepared by MG Planning on behalf of Devere and Anderlis in July 2015. As noted above, by this point, Devere had acquired the additional property at 122 Great North Road, but that property was not referred to in Ms Miller's submission.

In addition to repeating arguments previously put, Ms Miller's submission addressed the two main reasons understood from Studio GL's first exhibition outcomes report, dated 21 May 2015, to be those for which the block was not proposed for re-zoning; namely, the location of the heritage item at 39 Waterview Street and the existing strata development at 45–47 Waterview Street. It attached a heritage assessment obtained on behalf of the Sidoti family from an external consultant, the crux of which was the conclusion that:

...the existing modifications to 39 Waterview Street are substantial and lessen the heritage values/significance of the locally listed item. In general, this heritage item is not of sufficient integrity or significance to preclude future redevelopment of the proposed rezoned area.

Ms Miller also submitted that the existing local heritage item at 39 Waterview Street was not of such significance or integrity that it should preclude the “logical” expansion of the town centre, and that the existence of strata title development within the block was also not an impediment to its redevelopment. Ms Miller noted that a major overhaul of strata laws was then taking place in NSW that would allow 75% of owners, rather than the existing 100%, to agree to end the strata scheme if the majority of owners wanted to pursue redevelopment opportunities for the site.

When addressing the issue of rezoning this block, Studio GL’s second exhibition outcomes report, dated 9 October 2015, did not engage with the question of whether or not the heritage listing should be removed from 39 Waterview Street. It concluded that, while the planning proposal did not significantly reduce the existing or future amenity of the properties along the western side of Waterview Street, rezoning would have a significant impact on the amenity of properties on the eastern side of Waterview Street without providing significant public benefit and would also have an adverse impact on the context of the heritage item at 39 Waterview Street. For those reasons, it did not recommend that the area be rezoned.

The agenda report prepared by council staff for the council meeting on 20 October 2015 included Studio GL’s conclusion that, while the block to the south of the Waterview Street block was proposed to be rezoned “to facilitate a significant public benefit, including a new town square, mid-block pedestrian connections and the delivery of a new laneway” and to reinforce and widen the town centre around its central core, there were “no significant public benefits” arising from the rezoning of the Waterview Street block, which was further away from the core of the centre.

Informed by Studio GL’s analysis, and the key concerns identified by the community in the majority of submissions, council staff recommended that the maximum height of buildings be set at five storeys, or six storeys on certain sites over 1,000 square metres, with an FSR of 2.5:1 to apply across the town centre. Council staff recommended that council endorse the planning proposal for finalisation and making as an LEP and approve the associated draft planning documents. As noted above, the Gateway determination in September 2014 had imposed a condition requiring the matter’s finalisation by the end of June 2015.

Meetings to pass on constituents’ feedback

On 12 October 2015, Mr Sidoti sent an email to Dr Ahmed, Ms Cestar and Ms McCaffrey, in which he wrote that he would “love to meet before next Council meeting as a group. Any night that suits. Strictly half hour. Any dates preferred”.

Mr Sidoti agreed in evidence that he would consistently seek to meet with these three Liberal councillors before every meeting at which the town centre planning proposal was coming before council for consideration and he said he met with them about 10 times over three-and-a-half years. He denied that the purpose of these meetings was to impress upon them the outcomes for which he considered they should be voting and said that it was in order to provide them with information and feedback he had received from his constituents.

The Commission took steps to locate and obtain any documentation or electronic records to establish whether, and if so, what matters or issues concerning the town centre planning proposal had been raised by constituents of Mr Sidoti and/or noted by him in relation to the alleged “information and feedback” that he said he had received. Searches were undertaken for any material held at Mr Sidoti’s electoral office. No documentation and no records came to light, as discussed further below.

Mr Sidoti claimed that, in addition to Mr and Mrs X and, later, Mr Durkin, who put in their own written submissions and did not need his assistance, there were other constituents (unnamed and unspecified) who made representations to him in favour of extending the B4 mixed use zone to include the Waterview Street block, and he had also had feedback that some people who may have been opposed to rezoning had come in to his office, but not when he was there. Mr Sidoti gave evidence that, throughout the period from 2014 to 2017, he received representations from the community about the Five Dock town centre planning matter.

During the public inquiry, the Commission issued a notice to Mr Sidoti to produce all records of any representations or communications received by him, in his capacity as the local member, from members of the community or constituents concerning the Urban Design Study and associated planning proposals between October 2013 and February 2017. The Commission was advised there were no records to produce.

The Commission was further advised that a search of the electronic constituent feedback database described by Mr Sidoti in his evidence had been undertaken but that former electorate staff also maintained a daily journal of all verbal and telephone matters for Mr Sidoti’s attention.

Those journals were not in the custody or control of Mr Sidoti. Through his lawyers, Mr Sidoti directed the Commission to a former member of staff who he believed to be the person in possession of the daily journals recording constituent communication.

That staff member provided the Commission with a statement in which she confirmed that a loose-leaf folder system had been trialled early in Mr Sidoti's first parliamentary term after the election in March 2011, but that the system only lasted a matter of months, until the electronic feedback database was introduced to log messages from constituents and all electorate staff were trained in its use.

As a result of its enquiries, the Commission is satisfied that no alleged representations from constituents concerning the Urban Design Study and associated planning proposals were recorded either in daily journals kept by electorate staff or in the electronic feedback database used by Mr Sidoti's electorate office.

Needing to meet before the 20 October 2015 council meeting

Mr Sidoti could not recall in evidence any particular issues that he needed to raise with the councillors, or any constituent whose representation he wanted to bring to their attention, at the meeting he arranged with them in advance of the council meeting on 20 October 2015. Neither could Mr Sidoti recall a meeting with the Liberal councillors held in advance of the council meeting on 20 October 2015.

Mr Sidoti appeared to reluctantly concede that it was possible he wanted to discuss matters that were going to be before council at that meeting, one of which was the zoning of the Waterview Street block, but he asserted that he met with the councillors before council meetings because they were his Liberal colleagues and part of a team. They needed to deal with any issues that arose "and that would have been all about feedback and information and exchanging ideas". He ultimately conceded that there was a general practice of meeting before upcoming meetings concerning the Five Dock town centre because it was "a very complicated issue".

It is important to note that the Five Dock town centre planning proposal was coming back before CCBC at its meeting on 20 October 2015 to be considered for referral back to the now Department of Planning and Environment for finalisation. To this point, the evidence indicates that, on every occasion the matter had been before council, council had voted unanimously to endorse the recommendations of council staff. Were that to occur again at the upcoming meeting, in all likelihood the planning proposal would be referred to the Department

of Planning and Environment for finalisation and gazettal, and the process would be over.

On the afternoon of 15 October 2015, having heard nothing in response to his request for a meeting, Mr Sidoti sent a further email to Ms McCaffrey, Ms Cestar and Dr Ahmed acknowledging that he knew they were busy, but stating "have to meet before Tuesday as a group any time any place, Please respond". During the email exchanges that followed, Dr Ahmed advised:

John – it actually looks like I'll be out of town next Tuesday evening now. Will miss the meeting unfortunately. Might be left to Helen [McCaffrey] and Mirjana [Cestar]. Apologies.

To this, Mr Sidoti responded, "Mate without you I'm fucked. We won't have the numbers". Minutes later, Mr Sidoti emailed Dr Ahmed again to say, "Please reconsider, you know how important this is".

Emails obtained by the Commission indicate that Dr Ahmed agreed to try and reschedule his commitments to attend the CCBC meeting and agreed to a meeting with Mr Sidoti, Ms McCaffrey and Ms Cestar. The evidence indicates that he attended a meeting organised by Mr Sidoti at the Bakehouse on 18 October 2015, discussed above, and the minutes indicate that he was present at the council meeting on 20 October 2015.

Mr Sidoti denied that, when he asserted in his email on 15 October 2015 that without Dr Ahmed's attendance at the upcoming meeting he would be "fucked", he meant that he would not achieve the outcome he wanted from that meeting, which was a rezoning of the Waterview Street block. He claimed:

Tanveer [Ahmed] was well aware of the representations and concerns of the Chamber of Commerce and I'd look like an absolute pork chop if he, if he wasn't there and ... for whatever reason the numbers couldn't align.

Mr Sidoti insisted that it was important to put what was a private email between two colleagues into context, telling the Commission:

...so much work has been done for the community on this project, and failing him voting there was a possibility that I could look, as the local member, very stupid. And I am there to get re-elected at the next election through all the representations I have made for my community. That's what that means.

Mr Sidoti claimed that his reference to not having the numbers if Dr Ahmed did not attend the CCBC meeting was in relation to all matters that council had to vote on and that numbers were tight on every issue.

Mr Sidoti agreed in evidence that subject to questions of availability, given that everyone was very busy, he would expect the councillors to respond to his requests for meetings and listen to what he had to say. However, he disagreed that he expected the councillors to come to an agreement about the approach they would take on whatever matter came before council, or that the objective of some of these meetings was to get a united stance on these matters, saying he expected them to act independently and the objective of the meetings was not about directing, but about information and feedback. Mr Sidoti denied, to the best of his recollection, ever seeking to have the councillors adopt a common stance or achieve common ground on any issue that CCBC was going to deal with at its next scheduled meeting.

Dr Ahmed told the Commission that he could not remember there being any issue before council that Mr Sidoti discussed with himself and Ms McCaffrey and Ms Cestar other than the Five Dock town centre. He believed that, from October 2015 onwards, Mr Sidoti's focus was on the Waterview Street block and that the expansion of the town centre to include it was in the broader interests of small business in the area. Dr Ahmed maintained that at all times, even at this point in the process, he understood that Mr Sidoti was raising the issue on behalf of his constituents.

Dr Ahmed told the Commission that, when Mr Sidoti emailed to say that he was "fucked" and "we won't have the numbers" if Dr Ahmed did not attend the council meeting, he certainly did not read that as a reference to the impact on Mr Sidoti and his properties because "that would be highly improper". Dr Ahmed said he read Mr Sidoti's email as an indication that Mr Sidoti saw council's upcoming decision as "potentially important or sensitive to the wider constituents". Again, Dr Ahmed interpreted Mr Sidoti as saying to them, "You haven't quite advocated small business interests as well as you might have".

Dr Ahmed told the Commission that, while Mr Sidoti may have offered his representations as a direction about how they should vote, he certainly was not going to take them as such. He told the Commission that he did not have the expertise to determine whether what Mr Sidoti was saying, "is absolute bollocks or it's absolute truth", but he considered it "of significance given his standing and qualifications in the arena". He confirmed that, at this time, he had no knowledge of Mr Sidoti's property interests within the very block in question, but that, had he known, that would, without question, have changed his view about the appropriateness of Mr Sidoti even making these kinds of representation.

Dr Ahmed told the Commission that he "did not see it as improper that he, as the State MP, who had strong

experience in planning, could be an adviser as such to us", but said that it "felt intrusive" in that "we'd be going about our day-to-day lives and we'd get quite regular, unusually regular and consistent communications".

Ms Miller's one-pager

The evidence indicates that, on the morning of 15 October 2015, earlier on the same day that Mr Sidoti was trying to arrange a meeting with the councillors, he and Ms Miller were engaged in an email exchange about the upcoming council meeting. Mr Sidoti confirmed that he wanted her to attend the meeting in case there were any questions for her.

He also asked for "a one page summary for the councillors with some points why they should include Waterview st etc". Ms Miller responded:

Sure – do you have any details of the other properties the Councillors are looking to include as probably better to talk about the broader approach not just Waterview Street?

Mr Sidoti answered, "The pocket excluded from East Street to Henry St Five Dock. That area will then match the part left out on Waterview Street". A little later he emailed Ms Miller to say:

The other thing we will argue if need be is the heritage order on number 39 Waterview should be lifted as development around the item affects heritage just as much as the item itself.

Significantly, at the time of this exchange, Mr Sidoti had not yet had his meeting with the Liberal councillors. He had, however, had an earlier telephone conversation with Ms Miller which she had recorded in her notebook as occurring on 6 October 2015. In her record of that conversation, Ms Miller noted, relevantly:

Councillors keen to move amendments.

Motion to extend zoning and another street on opp side

Fairlight St

7

3 Lab

3 Lib

1 Green

All supportive except Green

Workshop last week

Ring to set up

work around

Confidentially

3 Lib councillors upset

Ms Miller gave evidence that Mr Sidoti told her that, following a workshop the week previously, he understood that all of the councillors except the Greens councillor were keen to extend the town centre's zoning to include both the subject land, being the Waterview Street block, and another two areas. She said that she thought she had recorded that she needed to ring to set up a meeting to work around people's timetables, but she could not interpret what she had meant by her reference to "confidentially" or "3 Lib councillors upset".

On the afternoon of 19 October 2015, Mr Sidoti sent Ms McCaffrey, Ms Cestar and Dr Ahmed a "one pager from JS that may help" from his parliamentary email address. The attached short document, on MG Planning letterhead, set out a number of points in favour of expanding the town centre's B4 mixed use zone to include the Waterview Street block and a block on the opposite side of Great North Road, between Henry Street and West Street. Other than the reference to the block on the other side of Great North Road, the points in this document summarised all of those made by Ms Miller in her previous submissions on behalf of Deveve and Anderlis. The document ended with the words, "It is recommended that Council amend the proposed LEP to include the subject land within the B4 zone".

Mr Sidoti claimed in evidence that the preparation by Ms Miller of the document that he sent to the Liberal councillors in fact came about at the request of Dr Ahmed, who was "happy to look at the different sites". He said that the document was a simplified version for the councillors of the submissions made on behalf of his parents by MG Planning.

Mr Sidoti agreed in evidence that there was no land on the opposite side of Great North Road, between Henry and West streets, owned by his parents or family and nor had MG Planning been engaged to make any submissions in respect of that block. Mr Sidoti said that he did not recall whether he engaged MG Planning to make a submission in respect of this area, but he denied that it was included in Ms Miller's "one-pager" to conceal the fact that the submission he wanted to press was really in relation to the Waterview Street block.

When it was put to Mr Sidoti that no submission had ever been made by MG Planning relating to the area between Henry and West streets or the issues that pertained to that site, Mr Sidoti claimed that in all of the submissions the principle had been raised that "the roads should be a natural border", that is, that the natural boundary for zoning should be a road rather than mid-block, as was the

case for the Waterview Street block and, similarly, the block on the opposite side of Great North Road.

Mr Sidoti denied that he provided the document prepared by Ms Miller to the Liberal councillors, and to the Liberal councillors only, for the purpose of having them put forward a resolution in the form of Ms Miller's ultimate recommendation. He said that the purpose of it was for Dr Ahmed to use to present the information to CCBC at the council meeting if he agreed with it.

The Commission does not accept Mr Sidoti's evidence on this issue. First, Mr Sidoti asked Ms Miller to prepare the document on 15 October 2015, prior to his communication with Dr Ahmed later that day, during which Dr Ahmed initially told him he would be out of town and would miss the council meeting and prior to any meeting with Dr Ahmed in person, which he was yet to arrange, let alone have.

Secondly, Mr Sidoti asked Ms Miller to prepare the summary document for the councillors (plural) "with some points why they should include Waterview st". Thirdly, it was Ms Miller who asked Mr Sidoti for details of other sites the councillors were apparently looking to include for potential rezoning in order to take an approach broader than just a focus on the Waterview Street block. Mr Sidoti responded with a suggested additional site before any available evidence indicates that he had spoken to Dr Ahmed or any other councillor.

Fourthly, Mr Sidoti provided the document to all three councillors and not just Dr Ahmed. Fifthly, Dr Ahmed did not even recall the document and told the Commission that he would have viewed it as part of Mr Sidoti's "broad communications regarding this issue which we kind of, we looked at and sort of went, okay, thanks", which position the Commission considers inconsistent with requesting such a document.

Finally, and significantly, Ms Miller had not been engaged by any party who was seeking to have the B4 zone expanded to include the block between East Street and Henry Street on the other side of Great North Road to the Waterview Street block. The Commission is satisfied that Mr Sidoti suggested that site for inclusion in Ms Miller's summary document for the councillors to disguise the true intent of the document, which was effectively a script for the councillors to speak to at the CCBC meeting to advocate for precisely the outcome that advanced Mr Sidoti's family's property interests.

There is no evidence available to the Commission that Ms Miller was aware that the councillors, themselves, had not requested that such a document be prepared and the Commission is satisfied from the record she made of her telephone conversation with Mr Sidoti on 6 October 2015 that she was acting in good faith on information he relayed to her.

Mr Sidoti told the Commission that he did not recall whether he ended up meeting with the councillors individually prior to the council meeting. He could recall meeting once with Dr Ahmed, but not with anyone else.

Ms Cestar told the Commission that she did not recall meeting separately with Mr Sidoti before the council meeting the following day, although she had emailed to say that she could drop into his office on her way home from work on the Monday. She said that, although she would have assumed that any such meeting would be to discuss issues affecting the particular block in which he had an interest, and that she knew he had a private interest in the planning proposal, she was prepared to accommodate Mr Sidoti and meet him about the matter. She said this was because Mr Sidoti was their state member of Parliament and, out of courtesy and respect, she would have listened to his views and position, observing candidly that, had the local member been from the Labor Party, such meetings would not have been requested.

Ms Cestar did not recall receiving or reading the document prepared by Ms Miller and sent to her by Mr Sidoti. She agreed that, by it, Mr Sidoti was clearly seeking an amendment to the recommendations received from council staff. She agreed that it was an example of the kind of pressure that Mr Sidoti applied to her in her role as a councillor and told the Commission that the reason it had not stuck in her mind was because she would have looked at it and, if it was inconsistent with those recommendations, she would just have put it to the side.

Ms McCaffrey agreed in evidence that it appeared that the document prepared by Ms Miller was provided to herself, and the two other Liberal councillors who were in a position to vote, as a way of instructing them about what should be done in respect of the matter when it came before council the next day.

Ms McCaffrey agreed that she understood Mr Sidoti was using his position to meet with her and her fellow councillors to be able to pursue a private interest. She said she could not explain why she continued to meet and communicate with him when she knew that he was seeking to influence her in his favour on that matter of private interest, but she told the Commission:

I assume it was because it was, you know, constant pressure and I wanted to make sure every avenue was explored and explored and explored and make sure that in my own mind that the decision that was going to be made, or to be made, I was happy with. And when you keep having various presentations made to you by another planner, having a different point of view, I felt, I believe I felt that I needed to be absolutely certain that what was going on was the correct decision.

Ms McCaffrey described the pressure as coming from “the constancy of the representations” from Mr Sidoti. She agreed that the email from Mr Sidoti attaching the document prepared by his planner was an example of this pressure and that she probably apprehended that her position on council may have been compromised if she did not go along with what Mr Sidoti was suggesting.

The matter is deferred

Minutes of the council meeting on 20 October 2015 indicate that a number of residents, including Mr Durkin, Mr Haron and Mr Di Giacomo, in their capacity as residents and members of the Five Dock Chamber of Commerce, as well as Ms Miller, addressed the council in relation to the Five Dock town centre planning proposal.

Despite the pressure described by Ms McCaffrey, the Liberal councillors did not put forward the recommendation in the terms included in Ms Miller’s document at that meeting. However, Ms McCaffrey and Dr Ahmed moved a motion to defer the item, pending the preparation by council staff of an addendum report setting out in tabular format the advantages and disadvantages of the alternative maximum height options presented in Studio GL’s exhibition outcomes report, and additional information in relation to the zoning of the Waterview Street block. All but the Greens councillor voted in favour of the resolution; however, this was the first time that the council was not unanimous in its decision concerning the Five Dock town centre planning proposal.

Ms McCaffrey told the Commission that the reason neither she nor her fellow Liberal councillors put forward a motion in relation to the rezoning of the Waterview Street block was that she “obviously had issues with it” and it was contrary to the recommendation in the council papers. In relation to the deferral motion, she explained:

I think I just wanted to be absolutely certain and sure that I knew every aspect of this situation. And to get the advantages and disadvantages in a tabular form would have allowed me to clarify perhaps some of the issues that were raised by the residents at the time.

Mr Sidoti knew in advance that the matter would be deferred

Mr Sidoti knew in advance of the council meeting that there would be a resolution to defer the matter. On 17 October 2015, three days before the meeting, the owner of 41 Waterview Street, Mr X, emailed Mr Sidoti to say he would be overseas for the council meeting. He could see from the papers that the Waterview Street block was not proposed for inclusion in any expansion of the town centre’s zoning and wondered whether there were any options open to them to argue against that position.

That day, Mr Sidoti replied:

Already spoken.

Item will be deferred on Tuesday with more study of the rest of Waterview st then back before Xmas for approval.

All good.

On 18 October 2015, Ms Miller recorded key points from a conversation with Mr Sidoti in her notebook. The first point referred to a deferral of the LEP amendments. Ms Miller told the Commission that her interpretation of her note was that Mr Sidoti was either asking her in her presentation to council to request a deferral of the LEP amendments for further consideration of the issues, rather than have the matter determined, or was letting her know that it was likely to happen. She said it was more likely the latter situation, but she did not know how Mr Sidoti knew that would occur.

On 21 October 2015, the day after the council meeting, Ms Miller emailed Mr Sidoti to advise him that the matter had been deferred. She explained further:

*Councillor McCaffrey originally foreshadowed a motion to defer requesting that the staff prepare an addendum report tabulating the pros and cons of the alternative height options for the Town Centre. Following presentations by speakers to the item, this motion was passed and **amended to include advice on the pros and cons of inclusion of additional land into the proposed LEP amendment including land at:***

- *Waterview Street*
- *East Street*
- *Fairlight Street* [Emphasis added]

Ms Miller's account of what occurred at the meeting is inconsistent with the council minutes, which did not record the amendment of the motion to include the provision of advice on the pros and cons of the inclusion of additional land in the expanded town centre. However, the Commission is satisfied from other evidence that Ms Miller's account of what transpired is the more accurate and that as a result of this meeting council staff were tasked with providing further information in relation to the zoning of the Waterview Street block.

Mr Sidoti agreed in evidence that he knew in advance of the council meeting that the matter would be deferred and that it was likely that he became aware of this as a result of a conversation with Dr Ahmed or Ms McCaffrey, or both. He also agreed that it was possible that there had been some discussion between himself and the

Liberal councillors prior to the council meeting about the possibility of a further "study of the rest of Waterview St" as indicated in his email to Mr X.

The Commission is satisfied that Mr Sidoti knew in advance of the council meeting that the Liberal councillors would not endorse the recommendations of council staff and refer the planning proposal for finalisation in its then current form and that they would propose the further investigation of the rezoning of the Waterview Street block, because he gave an assurance to Mr X three days before the meeting that this is what would happen and that it was "all good".

The Commission is satisfied that the resolution moved by Ms McCaffrey and Dr Ahmed went some way to being the outcome Mr Sidoti wanted when he told Dr Ahmed that without him "we won't have the numbers" and "I'm fucked". The Commission rejects Mr Sidoti's evidence that it was important that Dr Ahmed attend this particular meeting because, as the local member, Mr Sidoti would look very stupid in front of his constituents if Dr Ahmed was not there to vote on a matter about which Mr Sidoti had made so many representations for the community, and also because the numbers were tight on every issue that council had to vote on.

The Commission is satisfied that, what was so important that Dr Ahmed needed to reschedule his other commitments to get to this meeting, was preventing the finalisation of council's processes in relation to the planning proposal and keeping open the door to the possibility that the Waterview Street block could be rezoned.

The Commission finds that, his provision to the Liberal councillors (and not to the Labor and Greens councillors) of the document prepared by his family's town planner, that set out points in support of the outcome his family was pursuing and a recommendation to amend the LEP to achieve it, amounted to a direct instruction about how to vote on the matter. The Commission finds that this conduct amounted to direct interference in the independent performance of the official functions of these public officials.

Insofar as both Ms McCaffrey and Ms Cestar understood that Mr Sidoti's representations were directed to the pursuit of his family's property interests in the rezoning of the Waterview Street block, the Commission finds that Mr Sidoti's conduct amounted to an attempt to affect the impartial exercise of their official functions in favour of his family's property interests.

The Commission is also satisfied that Mr Sidoti was not making representations about the Five Dock town centre and the rezoning of the Waterview Street block in particular, on behalf of any constituents who had expressed concerns or feedback to him (noting that

Mr and Mrs X and Mr Durkin had consistently made their own submissions to council) and was certainly not, by this point, representing any purported interests of the small business community, who were actively represented by the Five Dock Chamber of Commerce in any event and had no particular interest in the zoning of the Waterview Street block.

The Commission is satisfied that Mr Sidoti's representations about the Five Dock town centre and the rezoning of the Waterview Street block to the Liberal councillors were one and the same as those made on behalf of his family's property interests by the town planners engaged by the family.

As discussed above, Ms McCaffrey and Ms Cestar were aware of Mr Sidoti's private interests in the Five Dock town centre planning matters, but Dr Ahmed was not. Unaware of a potential conflict between Mr Sidoti's private interests and his public duty to serve the public honestly, impartially and disinterestedly, the Commission is satisfied that Dr Ahmed, at least, was receptive to Mr Sidoti's advocacy in relation to matters concerning the planning proposal when he would not have been, had the nature and extent of Mr Sidoti's family's property interests in Five Dock been properly disclosed.

Disclosure to the councillors

On 24 October and 4 November 2014, Mr Sidoti made confidential discretionary disclosures in writing to the minister for planning and the premier, respectively, that his parents owned 120 Great North Road and 2 Second Avenue, Five Dock, and that there was then a planning proposal for the Five Dock town centre on exhibition. He wrote that he wished to exclude himself from any correspondence or discussion that may lead to a conflict of interest.

There is no evidence that Mr Sidoti ever made the same disclosures to the Liberal councillors. While it is clear that it was a matter of general knowledge that the Sidoti family owned the function centre at 120 Great North Road and had done for many years, the use of Anderlis and later Deveme to purchase the other properties in Five Dock meant that the Sidoti family name was not immediately connected to other properties in the block in which 120 Great North Road was located, which, by the time Ms Miller addressed the council meeting on 2 June 2015 on behalf of those companies, included 2 Second Avenue and 122 Great North Road. There was also no immediate way for those present to know that the Sidoti family were involved with the companies on whose behalf her submissions were made.

Ms Cestar told the Commission that, at the time of the 2 June 2015 council meeting, although she knew

the Sidoti family owned 120 Great North Road, she did not know who was behind or associated with Deveme and Anderlis, or the extent of the Sidoti family's property interests in Five Dock, and that she now knows these matters only as a consequence of the Commission's inquiry.

Ms McCaffrey also told the Commission that she did not know who was behind or associated with the companies Deveme and Anderlis.

Dr Ahmed was consistent and clear in his evidence that, at no stage, did he think that Mr Sidoti was making representations to him and his fellow councillors on behalf of private interests. He said he had a good relationship with Mr Sidoti and "would not have expected that sort of betrayal".

He said that it "absolutely" would have made a difference to him if he had known that when Mr Sidoti was making representations about matters concerning the Waterview Street block he and his family had property interests that would benefit from those matters. Dr Ahmed told the Commission:

If there was at any stage that I thought he was representing private interests, one, I would have weighed his advice very differently, and two, I would have had no hesitation in telling him where to go, to be honest. I would not, I would not have accepted his advocacy in the same way, unless at every stage he was kind of making it clear that I own this, my parents own this etc, that's where you, I want you to know that that this is why I'm arguing this for the other constituents or residents. And that's how I would have expected that to be presented.

Dr Ahmed confirmed that that was never how it was done.

The Commission rejects the submission made on behalf of Mr Sidoti that general knowledge of the family's ownership of one property (120 Great North Road) was sufficient to communicate to all persons when issues pertaining to the Waterview Street block were being discussed, that the Sidoti family had an interest in the block and that they could factor that interest into their considerations accordingly.

Hypothetically, if 120 Great North Road were the only property the family ever owned during the time the Five Dock town centre planning proposals were before council, it was too small to access the proposed bonus provision and would be stuck with an FSR that Mr Sidoti had argued was a disincentive to redevelopment. People could just as easily have assumed that the family had no further interest in the planning proposal once it was clear that 120 Great North Road was not going to benefit.



The Sidoti family's property interests did not remain static over the period that the Five Dock town centre planning matters were before council. They changed and grew as more properties were acquired and site amalgamation and redevelopment became the family's focus. The family's changing and expanding property interests entirely informed the specific representations made by Mr Sidoti to the Liberal councillors about the planning outcomes they should advance.

While it may be accepted that the local community, the Five Dock Chamber of Commerce, council staff and many of the councillors knew that the Sidoti family owned 120 Great North Road, not knowing about the other properties (two being purchased between October 2014 and May 2015) while the planning proposal for the whole town centre was under consideration, gave credence to Mr Sidoti's representations that his interest in various aspects of that planning proposal were as the local member (and not as a local property owner). Dr Ahmed's evidence makes clear that he did not know that Mr Sidoti had any private interest affected by an extension of the B4 zoning to include the Waterview Street block and that it would have made a considerable difference to his acceptance of Mr Sidoti's advocacy if he had known.

As the family's property interests in the affected area grew, Mr Sidoti arguably became more conflicted in the pursuit of changes that would maximise the development potential of those properties, as against the interests of the community in retaining a village atmosphere for the town centre. Those growing property interests are also relevant to the motivation behind Mr Sidoti's consistent pressure on the Liberal councillors to vote in favour of extending the town centre's B4 zoning to include the Waterview Street block.

As noted in chapter 1, a primary obligation held by Mr Sidoti in appropriately managing the conflict of interest between his family's financial interests in planning decisions involving the Five Dock town centre and his

duty to act in the public interest as the local member when engaging with CCBC councillors in relation to these matters, was the appropriate disclosure of the nature and extent of his personal interest in these same matters.

While Mr Sidoti may have represented to the Liberal councillors that rezoning the Waterview Street block was in the public interest and that he was pursuing the outcome on behalf of disaffected constituents, the Commission is satisfied that his was a disingenuous attempt to pursue his private or family interests under the guise of acting for the benefit of the community. The Commission is satisfied that the only matters that interested or concerned Mr Sidoti in relation to the Urban Design Study were those aspects of the subsequent planning proposals that directly affected his family's property interests.

The Commission accepts the submission of Counsel Assisting that there was another reason that it was incumbent upon Mr Sidoti to disclose to the Liberal councillors the full nature and extent of his family's growing property interests in the area that was the focus of his representations. That was so that the Liberal councillors could properly determine whether, and to what extent, his exploitation of access to them through his position as the local member, to advocate for certain planning outcomes that would benefit his family's property interests, created a conflict of interest that they needed to manage in accordance with their obligations under clause 4.15-4.17 of the CCBC code of conduct and Part 8 of the CCBC Code of Meeting Practice.

The Liberal councillors' failure to disclose their association with Mr Sidoti as a non-pecuniary interest, and their failure to manage the conflict of interest that arose when he sought to influence the exercise of their official functions in favour of his private interests, is the subject of discussion in chapter 10 of this report.

Chapter 7: The pressure on the Liberal councillors increases

This chapter examines the increasing pressure placed by Mr Sidoti on the Liberal councillors, from October 2015 onwards, to achieve the rezoning of the Waterview Street block. This pressure escalated even further from mid-2016, when Ms McCaffrey became City of Canada Bay mayor and the balance of power on council tipped in favour of the Liberal Party.

The additional sites resolution

As set out in the last chapter, the Liberal councillors delivered an outcome Mr Sidoti wanted and expected at the council meeting on 20 October 2015. The resolution to defer finalisation of the Five Dock town centre planning proposal, in part for council to obtain further advice about the advantages and disadvantages of including three additional sites within the expanded town centre, kept alive the possibility that the Waterview Street block could be rezoned, as he had been advocating to the Liberal councillors should happen.

Mr McNamara's memo

On 29 October 2015, in response to the resolution passed at the council meeting on 20 October 2015, Mr McNamara, CCBC's director of planning and environment, sent all councillors a memo to provide additional information in relation to the matters concerning the Five Dock town centre then under consideration and, specifically, about the zoning of land in the Waterview Street block. Mr McNamara summarised the reasons that the expansion of the B4 mixed use zone to include the Waterview Street block was not recommended by Studio GL in its exhibition outcomes report dated 9 July 2015. He recommended, however, that:

...should the rezoning of the land between Barnstaple Road and Second Avenue be supported, this rezoning should be pursued as a separate Planning Proposal or it will require the entire Planning Proposal to be re-notified to the public.

Mr McNamara noted that, at the previous council meeting on 20 October 2015, the owner of the heritage-listed property at 39 Waterview Street, Mr Durkin, had raised various concerns about the impact of the draft planning controls on his and other properties on Waterview Street. Mr Durkin's concerns included the visual impacts on those properties of the proposed five-storey height limit for the buildings behind on Great North Road, which was one storey higher than the existing development controls allowed.

To address these concerns, Mr McNamara suggested that the building envelope in the draft DCP could be amended for land fronting Great North Road, between Barnstaple Road and Second Avenue (where, at that time, two of the Sidoti family's properties were located), to include a four-metre setback above the third floor on the eastern elevation. This would reduce visual impact and improve solar access for the properties behind in Waterview Street, including Mr Durkin's. Mr McNamara's memo provided the councillors with wording for a proposed resolution to that effect.

Mr McNamara said in evidence that while he had to undertake to provide the advice that had been requested by council in the resolution it had validly passed on 20 October 2015, he also undertook to issue his memo in order to advise the councillors of his views about the reasons the Waterview Street block in particular had not been included in the proposed expanded town centre and why he had no intention of recommending it for rezoning.

Mr McNamara told the Commission:

...we'd worked through the issue ad nauseum if I might say and this is, what I had to do was deal with a resolution from council, and it's always been my training and principles that where there is a legitimate resolution, you must treat it with respect and deal with it appropriately, and I couldn't see any other outcome. Given all the information that I had,

I couldn't see any other outcome other than the one that would recommend against any change.

Ms McCaffrey asks for a draft motion

The evidence reveals that, at the same time as Mr McNamara sent his memo to the councillors, he was attending to an alternative course of action, at Ms McCaffrey's request. On Friday, 30 October 2015, Mr McNamara sent Ms McCaffrey a draft resolution she had asked CCBC staff to prepare so that she could put it forward at the council meeting on 3 November 2015. The resolution was in the following terms:

THAT a separate report be prepared to investigate the zoning and development controls for the:

- a) R3 Medium Density Residential land between Second Avenue and Barnstaple Road on the western side of Waterview Street;*
- b) R2 Low Density Residential land bound by 9-19 East Street, 12-18 West Street and 1- 11 Henry Street; and*
- c) B1 Neighbourhood Centre land at 42-50 Ramsay Road.*

Mr McNamara told the Commission that he had asked Mr Dewar to prepare the draft resolution on the basis of a question Ms McCaffrey had asked him at or following a recent council workshop. He said that Ms McCaffrey asked:

'Can you put together a notice of motion so that we can investigate the Waterview site and the other two sites in the vicinity ... one on the western side and one on the southern side of the Five Dock town centre to, to review these'. My, my question to her at the time was, 'Why are we investigating these three and where did this come from?' She said to me, 'We need to investigate the three so it doesn't look like we're just looking at the Waterview Street site-specifically ... It looks as though we're being more even-handed and I'm getting, I'm getting pressure within the party to put forward this submission'.

Mr McNamara said that he understood that Ms McCaffrey was under pressure because she told him "I'm not very comfortable with this". He took her reference to "the party" to mean the Liberal Party and had the impression that she was talking about Mr Sidoti. The basis of this impression was Mr McNamara's belief that the true intent of the draft resolution was to revisit the Waterview Street block, in which he understood Mr Sidoti had an interest, but could not imagine the Liberal Party having any interest in whatsoever.

Mr McNamara said that two of the sites identified by Ms McCaffrey – the Waterview Street block and the block between East and West streets – had been considered when the original Urban Design Study area had been identified. The third site was a small triangular piece of land to the south of the centre, which already had commercial development on it but was not considered to have potential for growth due to the impact of overshadowing on residential neighbours. Its future development had been investigated and modelled by Studio GL and its rezoning was not recommended.

Mr McNamara told the Commission that he was concerned at what Ms McCaffrey was asking and he recalled raising her request and his intentions with respect to it at an executive team meeting in the days afterwards. He said he would have expressed his concerns about the motivations for the request but, at the same time, he was aware that it was a legitimate request and had to be dealt with because it came from a councillor. He said that his concern was that all the professional work that had been undertaken to produce the reports and recommendations for council was "being undermined and discredited for basically personal motives".

Mr Dewar told the Commission that, when Mr McNamara asked him to draft the motion and he asked why these specific blocks were the subject, Mr McNamara told him:

...that the East, West and Henry Street, and the corner of Ramsay and Fairlight were being added so as to distract from the fact that the Waterview Street one was the true intent of this resolution.

Mr Dewar said he did not ask the identity of the councillor who had requested the draft resolution, nor their motivation. He simply drafted the resolution as he was asked despite not considering it to be a necessary course of action. He sent the draft resolution to Mr McNamara on 30 October 2015, who sent it in turn to Ms McCaffrey.

It is significant to note here that, consistent with Mr McNamara's evidence, the issue of expanding the town centre's zoning to include the Waterview Street block and the block between East Street and West Street, below Henry Street, had already been the subject of consideration by Studio GL, and recommended against in its most recent exhibition outcomes report dated 21 May 2015.

"We need to make it supported"

The agenda report prepared by council staff for the meeting on 3 November 2015 noted that the Waterview Street block had not been identified for rezoning in the Urban Design Study or the planning proposal that was exhibited.

This report repeated the analysis set out in the agenda report for the previous council meeting on 20 October 2015, that while the block immediately to the south was proposed to be rezoned to facilitate a significant public benefit, including a new town square, mid-block pedestrian connections and the delivery of a new laneway, the Waterview Street block was further away from the “core” of the centre, there were no significant public benefits arising from its rezoning and the expansion of the town centre’s B4 zoning to include it was therefore not supported.

The agenda report for the meeting on 3 November 2015 also presented in tabular format the advantages and disadvantages of the maximum height options proposed by Studio GL in its exhibition outcomes report dated 9 July 2015. One of the reasons the matter had been deferred on 20 October 2015 was to allow council staff to prepare such a table.

In summary, the advantages of the five- to six-storey maximum heights recommended by Studio GL in the Urban Design Study were presented as far outweighing any advantages from the five- to eight-storey maximum heights of the planning proposal that was exhibited. This analysis also reminded councillors that, while only 5% of respondents to the public exhibition had supported increasing the height limit to eight storeys, 95% of submissions supported reducing the maximum height to five-to-six storeys.

On 1 November 2015, in an email about the upcoming meeting to his fellow Liberal councillors, including Mr Megna even though he was unable to vote on the matter, Dr Ahmed asked:

can we just have a clear plan for tuesday re five dock?

I am firmly in support of 8 stories [sic].

In response, Ms Cestar copied that part of the agenda report indicating the lack of support for the rezoning of the Waterview Street block into an email to all three of her fellow Liberal councillors:

The part of Waterview Street between Barnstaple Road and Second Avenue is further away from the “core” of the centre and there are no significant public benefits arising from its rezoning. The expansion of the B4 Mixed Use zone to land between Barnstaple Road and Second Avenue is not supported.

Ms McCaffrey replied to the group, “Do we have an option to meet beforehand...? I have another motion which may solve some problems...”. She separately emailed Ms Cestar to say, “We need to make it supported ... Ill talk to you about, when is the best time and number to ring you on”. On the evening of 2 November 2015, the

day before the council meeting, Ms Cestar sent an email to Ms McCaffrey, in which she wrote:

We need to argue ‘significant public benefit’

What is the ‘significant public benefit’ for any of it?

Ms Cestar said in evidence that her purpose in extracting the paragraph about the Waterview Street block from the agenda report to send to her fellow Liberal councillors was that she was “just conscious of the fact that ... the amendments or changes to that area weren’t supported” and she agreed that she was trying to reinforce that fact to them. She agreed that, from what she had read and considered in the reports prepared by Studio GL and council staff, she could not see that there was any public benefit in what Mr Sidoti was seeking to achieve by the rezoning of the Waterview Street block.

Ms Cestar said that Ms McCaffrey never told her, “in so many words”, why it was that she felt the councillors needed to make the rezoning of the Waterview Street block supported, but she said she believed Ms McCaffrey was clearly under the same pressure as she was as the recipient of emails from Mr Sidoti containing alternate wording and alternate recommendations to that provided by council staff. She recalled Ms McCaffrey saying she wanted “to get John off her back” and that was the basis of her assumption that Ms McCaffrey was feeling under pressure, although Ms McCaffrey never said that specifically, nor provided any detail about what that pressure might have been.

In her evidence at the public inquiry, Ms McCaffrey could not independently recall how the drafting of the resolution to investigate the additional three sites came about, although she conceded it was possibly at her request. She said she could not recall telling Mr McNamara that they needed to investigate three sites so that it did not appear as though they were just looking at the Waterview Street block specifically, or that she was getting pressure from the Liberal Party to put that resolution forward. She conceded that, although it did not sound like something she would say, it was possible she had.

Ms McCaffrey told the Commission she had been under “considerable pressure through this particular time”, even before October 2015, from Mr Sidoti. She said that every time the issue came up, she was concerned and worried: “I just felt that it was, I needed to make sure that every angle of this was looked at so that I knew I was making the right decision”.

She said that different issues were “constantly raised” by Mr Sidoti and she thought she would look at the issue and get feedback from council staff to ensure she was looking at it in the “right way”. She agreed that it would be correct to say she was getting pressure from within the

Liberal Party to put forward that particular resolution and that she could well have told Mr McNamara that she was not very comfortable with that, although she could not recall doing so.

Ms McCaffrey said in evidence that she did not know what she was referring to when she responded “we need to make it supported” to Ms Cestar’s email citing council staff’s lack of support for rezoning the Waterview Street. She ultimately conceded that a reading of her words would suggest that there was pressure to support the rezoning and the source of that pressure was the email communication coming from Mr Sidoti.

Ms McCaffrey agreed that, when she told her fellow councillors that she had a motion that “may solve some problems”, it was probably the pressure she was under from Mr Sidoti that was the problem. Ms McCaffrey conceded that it was possible that she felt her independence as a councillor was being interfered with by the pressure from Mr Sidoti, which she described as “certainly relentless”. She said that she and her fellow Liberal councillors were “all under pressure about it”.

Ms McCaffrey said that she did not make any formal declaration of her concerns about this pressure or its interference with her independence because she was hoping she could deal with it herself. Ms McCaffrey agreed that one of the ways she wanted to deal with it was by getting a further study done to look at the matter one more time, in the hope that, in doing so, she would be able, finally, to put it to rest.

Ms McCaffrey repudiated the suggestion, put to her in cross-examination by counsel for Mr Sidoti, that the pressure she experienced was caused by the nature of the Urban Design Study’s proposal for the town centre itself, as well as her role as a councillor in balancing competing views and making difficult decisions. She said it was not the topic itself that caused pressure, as she was perfectly able to read all of the documentation associated with it, but rather, “it was the continual representation that added the pressure”.

Mr Sidoti could not recall whether he had discussions or met with the Liberal councillors between the council meetings on 20 October and 3 November 2015, but he conceded it was possible. He denied that around this time he was putting considerable pressure on the councillors, and on Ms McCaffrey in particular, to get through a proposal that the Waterview Street block should be rezoned, telling the Commission “no pressure at any time ... the first time I ever heard the word pressure was at this Commission”. When pressed to confirm whether he meant by this response that at no point in time, either on a one-off or recurring basis, had he put pressure on Ms McCaffrey in relation to the Five Dock town

centre planning proposal, Mr Sidoti answered, “I don’t believe I ever put pressure on any of the councillors”. The Commission does not accept this evidence.

The Commission is satisfied on the evidence that Ms McCaffrey believed that a solution to the problem of the pressure she was under from Mr Sidoti was to enable the zoning of the Waterview Street block to be investigated on its merits one more time, to get Mr Sidoti “off their backs” and put a stop to his relentless representations.

The Commission is satisfied that the problem with this “solution” was, as Ms Cestar pointed out, that the issue had already been looked at by the independent planning experts and by council staff on a number of occasions and no “significant public benefit” had been identified from any rezoning. It was a “solution” put forward to appease Mr Sidoti.

The Commission is satisfied on the evidence that the draft resolution Ms McCaffrey requested council staff to prepare was designed to disguise the fact that its real focus was the Waterview Street block. The addition of the two other sites for investigation was deliberately directed to making the resolution appear more “even-handed”. The Commission is satisfied that the inclusion of the two sites besides the Waterview Street block in the draft resolution echoed the inclusion of the additional site in the one-pager prepared by Ms Miller at Mr Sidoti’s request for the Liberal councillors, discussed in the previous chapter. It was to give the appearance of taking a broader approach than the re-investigation of a specific area at the behest of private interests.

In that respect, the Commission finds that Ms McCaffrey’s request for council staff to prepare the draft resolution was partial. The Commission’s reasons for finding that this request does not amount to corrupt conduct in the particular circumstances that applied are set out in chapter 10.

The Commission is satisfied that Mr Sidoti’s relentless communication and representations about the rezoning of the Waterview Street block amounted to pressure sufficient to interfere with the independent exercise of Ms McCaffrey’s public official functions. A measure of the degree of pressure and influence Mr Sidoti applied is that it caused an experienced and, as described by Mr McNamara, “very highly regarded” councillor, to feel she needed to exercise her official functions partially to get Mr Sidoti to stop.

The council meeting on 3 November 2015

A large number of people addressed council at the meeting on 3 November 2015, including Mr Thebridge on behalf of Deveve and Anderlis, Mr and Mrs X, the owners of

41 Waterview Street, and their neighbour, Mr Durkin, the owner of the heritage-listed property at 39 Waterview Street.

Mr Kenzler, seconded by Ms McCaffrey, moved a motion in two parts. Part A of the resolution proposed that the planning proposal and draft DCP be amended to allow a maximum height of 24 metres or seven storeys on land that had previously only been permitted six storeys, and an increase in the FSR to 2.7:1 for this land.

The new proposed maximum height was one storey higher than recommended by Studio GL, and one storey less than in the planning proposal that had been exhibited, which had attracted substantial negative feedback from the community. The new proposed FSR for such development was also marginally higher than recommended by Studio GL. As discussed in the previous chapter, the Sidoti family properties on Great North Road would still not be able to attract this bonus height or FSR, primarily due to their interface with the residential buildings behind them in the Waterview Street block.

Part A of the motion also proposed that, subject to the above amendments, council approve the planning proposal for the Five Dock town centre to be made as an LEP under s 59 of the EP&A Act and approve the associated DCP.

Part B was in the form of the draft resolution provided to Ms McCaffrey at her request by Mr McNamara on 30 October 2015. It proposed that a separate report be prepared to investigate the zoning, heritage and development controls for three areas, the first of which was the Waterview Street block and the other two, the additional sites the Commission is satisfied that Ms McCaffrey had asked to be included in the draft resolution to distract from the focus on the Waterview Street block.

The entire motion was carried on the votes of councillors Dr Ahmed and Ms McCaffrey and three Labor councillors. The Greens councillor and Ms Cestar, in keeping with her observation about an absence of significant public benefit in any of it, voted against it.

As Mr Dewar explained to the Commission, because of the resolution, there was now a bifurcation of the process involving the Five Dock town centre. The main planning proposal could go back to the Department of Planning and Environment for gazettal as an LEP, but a separate piece of work needed to be undertaken by council staff in relation to the three additional sites. Potentially, a separate planning proposal and amended DCP would also need to be prepared for these sites if further investigation recommended any changes to their zoning, heritage or development controls.

Mr McNamara told the Commission that, following the resolution, Studio GL was commissioned to investigate the three additional sites so that their findings could be presented to council together with a report from council staff. He said that given that all of the work that had been done to that date had been very comprehensive and addressed the study areas and particularly the reasons for the non-inclusion of the Waterview Street block, he would “put this resolution in the unusual category, to say the least”. Nevertheless, once the matter was resolved by council, he said that staff just proceeded to deal with what was required as a result.

Dr Ahmed gave evidence that he interpreted Ms McCaffrey’s email about having a motion that “may solve some problems” as saying in effect:

...well, maybe John has a point here ... and there’s room for a compromise ... That, okay, look, we’re hardly going to, you know, cave, we’re hardly going to cave into everything he wants, but perhaps he has a point, and maybe we can reach some sort of compromise here.

Dr Ahmed said he saw Ms McCaffrey’s email as giving a degree of legitimacy to Mr Sidoti’s advocacy, in the sense that a councillor of Ms McCaffrey’s seniority was not dismissing it as completely ridiculous, but he also knew that the matter would go to council and if it was completely illegitimate, council would dismiss it.

The Commission is satisfied on the evidence, as discussed in the previous chapter, that Dr Ahmed was unaware of any private interest Mr Sidoti may have had in the rezoning of the Waterview Street block. He was a relatively inexperienced councillor influenced by Mr Sidoti’s experience and seniority in the Liberal Party, but also by his more senior Liberal colleagues on council.

The Commission accepts his evidence that Ms McCaffrey’s draft resolution appeared to lend Mr Sidoti’s advocacy some legitimacy and that, notwithstanding the fact that the matter had been considered a number of times already, he voted with others, including Labor councillors, to allow its further re-investigation in the spirit of compromise. In the absence of knowledge that he was voting to advance the private interests for which Mr Sidoti was advocating, the Commission cannot be satisfied that Dr Ahmed was exercising his official functions partially when he supported the motion seconded by Ms McCaffrey but voted against by Ms Cestar.

The Commission is satisfied that Ms McCaffrey’s conduct, in seconding and voting in favour of the resolution that included the part she had asked council staff to draft, was a continuation of the partial exercise of her official functions discussed above. Her conduct is discussed further in chapter 10.

Who was the arbiter of the public interest?

The Commission is satisfied on the evidence that by 3 November 2015, appropriate consideration on multiple occasions had already been given by independent planning consultants, council staff and CCBC, itself, of the public interest, if any, in rezoning the Waterview Street block. This consideration had taken place within the context of the wider planning proposal for the Five Dock town centre, informed by the objectives of that proposal. Despite no significant public benefit having been identified in that context, the effect of the resolution passed on 3 November 2015 was to re-agitate an issue that ought to have been settled and to put the council to further time and expense to investigate the feasibility of achieving an outcome that suited Mr Sidoti's private interests.

Submissions on behalf of Mr Sidoti argued that the Commission's investigation in this matter concerned:

...the preparation of what is really a new law, a local planning statute as it were, of significant longer-term importance to landowners, businesses, employment and residences in the Five Dock area and where the decision-maker is not the local council but the NSW Government Department of Planning & Environment, or more correctly, a director appointed thereby.

There are two key points to note here. First, there is no question that the matter occupying CCBC from the end of 2013 concerning the Five Dock town centre was the preparation of a planning proposal for the area that would, if approved by the minister, have legislative force and long-term significance for the residents, landowners and business operators in Five Dock. The Commission finds that this is, in part, what makes Mr Sidoti's use of his position as the local member of Parliament to single-mindedly pursue his private interests throughout the process, rather than the wider interests of the community he represented, so serious.

Secondly, contrary to the submission for Mr Sidoti, the Commission is satisfied that, while the minister was the ultimate decision-maker as to whether the planning proposal put forward by council would become a gazetted LEP, CCBC was the decision-making body in every meaningful respect about the content of that planning proposal.

The Commission rejects the submission on behalf of Mr Sidoti that the proposition that the matter was for the elected representatives on CCBC to determine "is a view that is many, many years out of date". As discussed in chapter 3, under Division 3.4 of the EP&A Act, the "planning proposal authority" in respect of a proposed instrument is the council for the local government area to which the proposed instrument is to apply.

Under the relevant division of the EP&A Act, before a LEP is made under that division, the planning proposal authority is required to prepare a document, namely a planning proposal, that explains the intended effect of the proposed instrument and sets out the justification for making the proposed instrument. The planning proposal is required to include, relevantly:

- a statement of the objectives or intended outcomes of the proposed instrument
- an explanation of the provisions that are to be included in the proposed instrument
- the justification for those objectives, outcomes and provisions and the process for their implementation.

Consequent upon the requirements of the EP&A Act, the Commission is satisfied that, in preparing the planning proposal for amendments to the Canada Bay LEP that were to apply to the Five Dock town centre, it was for the council to determine, explain and justify the objectives or intended outcomes of the proposed amendments.

The Commission is satisfied that determining *how* the planning proposal was to achieve its objectives or intended outcomes was also a matter for council, subject to the community participation requirements of the EP&A Act. CCBC therefore had an obligation in the preparation of the planning proposal to take into account the desires of the community ascertained through an extensive process of community consultation, including the competing interests of those who chose to make submissions over the period the matter was before council. It was assisted to ascertain, understand and balance the community's competing interests to achieve the planning proposal's objectives by the reports, advice and recommendations of the independent planning experts engaged by council and those of council's own planning staff.

Following on from these points, the Commission is satisfied that the content of a planning proposal raises questions of broad public concern; that is, issues of public interest, that are the specific object of the NSW statutory planning regime provided for by the EP&A Act. The preparation of a planning proposal therefore involves the planning proposal authority determining what is in the public interest in respect of the content of the planning proposal for the subject area.

The Commission is satisfied that it was an important part of the public official functions of the CCBC councillors, when this matter was before them, to act independently and diligently when balancing the competing interests of those affected by the planning proposal and to determine the content of the planning proposal in the public interest. It is in the exercise of these functions that they also had a duty to act impartially.

The Commission rejects the submission made on behalf of Mr Sidoti that just as Mr and Mrs X or Mr Durkin, or any other property owner was entitled to put their views before council planning staff and councillors on multiple occasions about zoning issues or development controls affecting the Waterview Street block, so also was Mr Sidoti equally entitled to express views on behalf of himself or his family.

The Commission finds that the Sidoti family were, of course, entitled, along with Mr and Mrs X and Mr Durkin, to advocate, as affected landowners, for the rezoning of the Waterview Street block. The Commission finds that Mr Sidoti was not entitled, however, to use his position as the local member of Parliament and a senior member of the Liberal Party to gain access to the Liberal councillors and urge them to advance what was in effect a site-specific submission on behalf of private interests, as though it were a submission for the benefit of the entire community and in the public interest. By doing so, he was attempting to obtain an improper advantage and partial treatment because of his relationship of power and influence over those councillors.

The Commission is satisfied on the evidence that the potential re-zoning of the Waterview Street block was an issue that affected a very small number of residents beneficially and one that had potential adverse impacts for a number of other residents on the eastern side of Waterview Street. While the evidence establishes that there were other landowners in the Waterview Street block who were in favour of the rezoning of the block, namely Mr and Mrs X and ultimately, Mr Durkin, the Commission is satisfied on the evidence that the impetus for the continued consideration of an issue that did not have wider importance to the community's vision for its town centre was Mr Sidoti's pressure on Ms McCaffrey and Ms McCaffrey's "solution" to appease him.

The Commission finds that the delay to the finalisation of planning matters related to the Five Dock town centre, and the further expense and resources it cost CCBC to investigate again a matter it had repeatedly looked into, were entirely disproportionate to the importance of the Waterview Street block to the community as a whole. The Commission finds that, at this point in the history of the matter, council processes were effectively "hijacked" to advance Mr Sidoti's private interests, which would have been more appropriately pursued via a site-specific development application for the family's properties.

The Commission accepts the submission of Counsel Assisting that the pressure exerted by Mr Sidoti on the Liberal councillors, and on Ms McCaffrey in particular, to have this issue re-investigated, is a further clear example of Mr Sidoti's improper interference in the decision-making processes of CCBC in respect of the Urban Design Study

and the associated planning proposal for the Five Dock town centre.

Studio GL's report and "option 2"

On 8 February 2016, Mr Sidoti forwarded an email he had received a few days earlier from Mr Durkin to Mr Megna. Mr Durkin's email forwarded all of the correspondence between himself and council staff since November 2015 in relation to the progress of council's investigation of the three additional sites. Relevantly, this correspondence advised Mr Durkin that it was hoped that the independent consultants would complete their investigation of the three sites that month, and that their recommendations could be discussed with councillors in a workshop so that the outcome of the investigation could be reported to council and made publicly available in late March. Mr Sidoti asked Mr Megna to "show the others" Mr Durkin's email.

Mr Megna confirmed in evidence that he understood "the others" to be a reference to the other Liberal councillors, as opposed to other councillors generally, but he did not know why Mr Sidoti could not have sent this correspondence to the others himself and why Mr Sidoti had involved him in a matter he knew Mr Megna could not vote on.

Consistent with the advice of council staff to Mr Durkin, Studio GL's report of its investigation of the planning controls for the three additional sites was finalised on 3 March 2016, and a council workshop was held on 8 March 2016, at which Studio GL presented the outcome of its investigation and recommendations to the councillors.

Studio GL's investigation examined the existing planning controls for each of the three sites and identified a number of redevelopment options. These options were subject to certain recommended changes to development controls such as building heights, setbacks, zoning and FSR, that would protect the amenity of adjoining residential areas while providing opportunities to increase density in the three areas.

Studio GL's investigation report of 3 March 2016 considered:

- 16 parcels of land bound by East Street, West Street and Henry Street (site A)
- nine parcels of land bound by Second Avenue, Waterview Street and Barnstaple Road (site B)
- five parcels of land bound by Fairlight Street and Ramsay Road (site C).

Figure 4 : Overview map of the additional sites

Five Dock Town Centre DCP | Additional Sites

Overview map



Figure 1 Location plan

Relevantly, for site B, the Waterview Street block, Studio GL identified two options. Option 1 proposed *retaining* the heritage status of 39 Waterview Street and protecting its setting, with building heights and intensity set so that any surrounding development transitioned in a sensitive manner to the one-storey heritage building.

Relevantly, for the Sidoti family properties at 120 Great North Road and 122 Great North Road, this option recommended that the rear part of those properties step down to 11.5 metres (from a maximum height of 17 metres) to protect the heritage item and decrease overshadowing. Buildings on either side of the heritage item, including Mr and Mrs X's property, would retain their current maximum height of 8.5 metres, whereas other properties in the block could build up to 10.5 metres (three storeys).

Option 2 proposed *removing* the heritage listing from 39 Waterview Street, which would open up increased development potential on the block and enable the creation of a laneway to provide access to lots, particularly those addressing Great North Road. In addition, this option proposed an increase in the maximum building height for the Waterview Street block to 14 metres, or four storeys, to create a transition from the lower heights to the north and east towards the taller heights along Great North Road. Relevantly for the Sidoti family properties, Studio GL recommended that these changes to the Waterview Street block would provide opportunity for properties addressing Great North Road to increase to seven storeys for developments achieving 1,000 square metres and a 20-metre frontage.

Significantly, *neither* option proposed for the Waterview Street block by Studio GL involved its rezoning from R3 medium density residential to B4 mixed use. Studio GL's report explained, consistently with its previous analyses, that rezoning was not recommended:

...as it is not seen as desirable to increase commercial development away from Great North Road and the Town Centre Core or locate businesses along this section of Waterview Street.

Mr McNamara told the Commission that CCBC engaged HillPDA to examine the economic viability of the development options that Studio GL had identified for each site. HillPDA's report was not finalised until sometime in May 2016.

Mr Dewar agreed that the purpose of HillPDA's feasibility analysis was to demonstrate whether, if the recommended development controls were implemented to increase the permitted density, it would in fact be economically viable for development to occur. The outcome of HillPDA's feasibility analysis was that almost all sites were *unviable* in the current market based on the recommended

development controls. Of the 11 options modelled by HillPDA, its report revealed that option 1 for the Waterview Street block, that is the retention of the heritage listing for 39 Waterview Street, was the only "marginally feasible" option.

Notwithstanding the outcome of HillPDA's feasibility analysis, Studio GL's option 2 for the Waterview Street block was clearly the preferable option of the two presented, in terms of the development potential for the properties owned by the Sidoti family. That option:

- enabled the creation of a laneway that would allow access to the lots addressing Great North Road
- did not require a step down from 17 to 11.5 metres at the back of the Great North Road, facing properties to create a sensitive transition to a heritage-listed dwelling, as option 1 required
- restored the opportunity for the Great North Road facing properties to take advantage of bonus height and FSR provisions for sites over 1,000 square metres with at least a 20-metre frontage.

The Liberal Party gains the balance of power on council

Before the matter returned to council, on 3 June 2016, Mr Tsirekas, the mayor, resigned to pursue the possibility of a federal political career. Ms McCaffrey, as deputy, became acting mayor until the council meeting on 21 June 2016, at which time she was elected unopposed to the position.

With Mr Tsirekas' departure, until the local government elections in September 2017, CCBC was evenly split between the left and right sides of the political spectrum, having four Liberal councillors, three Labor councillors and one Greens councillor. As the mayor, Ms McCaffrey had the casting vote in the event of any equal split in the numbers. This meant that for the first time in a long time, CCBC was effectively a Liberal-dominated council on the strength of Ms McCaffrey's casting vote.

The same balance of power was preserved when council had to make decisions about the Five Dock town centre and associated planning proposals because both the Liberal Party, in Mr Megna, and the Labor Party, in Mr Fasanella, had a councillor with pecuniary interests that precluded him from voting.

Ms Cestar agreed that, from the time the balance of power shifted to the Liberal Party, there was therefore some importance placed on the councillors to ensure they attended council meetings whenever the Five Dock

town centre planning matters were due to be considered, to preserve this advantage. This is reflected in an email from Mr Sidoti to Ms McCaffrey dated 4 December 2016, discussed in the next chapter, in which he exhorted her to “show some leadership” and tell Dr Ahmed his primary responsibility as a councillor was to show up to council meetings.

The agenda report for the council meeting on 2 August 2016

On 29 July 2016, Mr Dewar prepared the agenda report for the upcoming council meeting on 2 August 2016, outlining the various development options for the three sites presented by Studio GL and the outcomes of the feasibility testing undertaken by HillPDA.

Relevantly, the report noted that the advantages of proceeding with the rezoning (recommended for the two sites other than the Waterview Street block) and new development controls recommended by Studio GL, included the prospect that existing landowners with suitable sites could proceed to redevelop in the short to medium term and that amendments to the controls could deliver a lane between Barnstaple Road and Second Avenue in the Waterview Street block and improved development opportunity for the subject sites.

However, the report noted a larger number of countervailing factors, including the observation that where land values and development costs rendered development unviable, it could take many years before change occurred on many sites. In addition, the report noted that some landowners may seek to lodge applications that departed from the adopted height and FSR standards to deliver viable development outcomes, and while council was under no obligation to accept non-compliant development applications, the likelihood was that such applications would increase where development controls and feasibility were not aligned.

The report also noted that certain land that was viable for redevelopment could proceed in accordance with the new development controls while other less viable land may not change. This would result in poor visual impact and amenity outcomes where new development interfaced with old development, as would be the impact for the eastern side of Waterview Street. In addition, proceeding with rezoning and new development controls would disperse development and encourage change outside the core of the town centre.

The report strongly recommended that development controls should not be increased further than recommended by Studio GL because of the impacts this would create for surrounding properties and because this would be contrary to the broad ranging community

consultation undertaken and the principles of the Urban Design Study adopted by council at its meeting on 3 November 2015.

The report concluded that there were consequently two alternative options available to council, without providing a recommendation as to which would be preferred. The options were to:

1. leave the current zoning and controls unchanged
2. proceed with changing the zoning and controls in accordance with the report prepared by Studio GL, dated 3 March 2016.

Mr Sidoti engages Pacific Planning

The Sidoti family ceased to retain Mr Thebridge or Ms Miller to represent their interests following the council meetings in October and November 2015.

For the next stage of council’s deliberations about the Waterview Street block, Mr Sidoti, on behalf of his parents, turned to a new set of planning consultants, with Liberal Party and Department of Planning connections, engaging them in the days before the council meeting on 2 August 2016. He told the Commission that he did not think there was a particular reason for the change in planning consultants, other than “maybe a fresh set of eyes”.

Pacific Planning was an urban development and planning company established by Matthew Daniel and James Matthews in late 2015 or early 2016. Mr Daniel and Mr Matthews had worked together at the Department of Planning for a number of years; Mr Daniel as a member of the Gateway determinations panel, before leaving in 2013 to take up an executive position at Liverpool City Council, and Mr Matthews, as a senior manager of planning operations, before leaving around the time Pacific Planning was established.

Mr Daniel told the Commission that he had been a member of the Liberal Party since 1988 and has known Mr Sidoti through Liberal Party connections from before the time of Mr Sidoti’s election to Parliament in March 2011. Mr Matthews was also a member of the Liberal Party, having joined the Drummoyne branch – Mr Sidoti’s – in late 2016 at Mr Daniel’s suggestion.

Mr Daniel told the Commission that, sometime in 2016, Mr Sidoti got in contact with Pacific Planning to seek their strategic planning advice and professional views about the studies that council was then conducting in relation to the development of properties in the Waterview Street block. Mr Sidoti wanted their advice about why the block to the south of Second Avenue was receiving densities and heights and bonus provisions that the Waterview Street block was not.

Mr Daniel told the Commission that Pacific Planning was engaged by Mr Sidoti on behalf of his parents and possibly on behalf of other neighbouring landowners whose identities he could not precisely recall. He confirmed that the arrangement was not formal in the sense that there was no written contract. It was not expected to be a significant amount of work because it was a “council-led process”. There was some email communication, but the discussion was primarily verbal and all instructions came from Mr Sidoti and invoices were sent to him. Mr Matthews took the lead on the work undertaken by Pacific Planning in relation to the Five Dock planning matters.

Mr Sidoti forwards a draft resolution to the Liberal councillors

On Saturday, 30 July 2016, just days before the upcoming council meeting on 2 August 2016, at which the outcome of the investigation of the additional sites was to be considered, the following text message exchange occurred between Ms Cestar and Ms McCaffrey:

Cestar: Hey there, did you speak to John Sidoti re five dock?

McCaffrey: Only that I managed to get it on the papers ... has he spoken to you ...

Cestar: Just called me, but I can't pick as am at hairdresser [sic]. Will call him later.

McCaffrey: If you have the papers have a look at option B, he has just called me,

Cestar: Ok. Will check it tonight.

Ms McCaffrey told the Commission that she did not recall what was discussed with Mr Sidoti to prompt her to tell Ms Cestar to look at “option B”, which she agreed was a reference to Studio GL’s option 2 for the Waterview Street block. She did not know whether she was trying to convey to Ms Cestar that option 2 was Mr Sidoti’s choice for the block.

Ms Cestar said in evidence that it was “no surprise whatsoever” that Mr Sidoti was trying to contact her prior to the council meeting at which the Five Dock issue was to be considered. She agreed that she wanted to find out “the lay of the land” from Ms McCaffrey before calling Mr Sidoti back but she did not recall any telephone conversation or communication she may have had with Mr Sidoti following this exchange.

Mr Sidoti agreed that it was likely to have been only days before the council meeting on 2 August 2016 that he became aware of the two options for the Waterview

Street block proposed by Studio GL that had been the subject of a feasibility study by HillPDA and that this was possibly also when he engaged Pacific Planning.

The Commission is satisfied that Mr Sidoti’s contact with Ms Cestar and Ms McCaffrey, just prior to the 2 August 2016 council meeting, was a further example in a consistent pattern of raising the Five Dock matters that directly affected his family’s private interests with the Liberal councillors just before council was due to vote on them. The Commission is satisfied that, despite Ms McCaffrey’s and Ms Cestar’s lack of recollection, it is evident that Mr Sidoti’s specific interest was in option 2 for the Waterview Street block and that he was intent on directing their attention to that option as they considered the papers provided by council staff ahead of the meeting.

On 1 August 2016, the night before the council meeting, Mr Matthews sent an email to Mr Sidoti and Mr Daniel in which he set out a draft resolution that he described as his “suggested outcome for the future of Additional Site B”. He wrote that this was a first draft for discussion and that he was working on the speaking notes to further develop the points set out in his email by way of justification for the following draft resolution:

It is recommended that:

- *No. 39 Waterview Street, Five Dock be removed as an item of heritage significance from Councils heritage schedule; and*
- *That Site B, being the land between Second Avenue and Barnstaple Road on the western side of Waterview Street, Five Dock, be rezoned to B4 Mixed Use, with a maximum building height of 17 metres and a maximum FSR of 2.5:1 consistent with the controls adopted (but not yet gazetted) for the land immediately to the south. [Original emphasis]*

Mr Matthews’ wrote in his email:

I have reviewed the feasibility report and some of the other material, and as far as I can tell a higher FSR was not tested in terms of viability. Worst case scenario, surely this should be deferred while this is tested. There are so many benefits to higher density development here with underground parking. The laneway for a start may resolved [sic] many of the problems that residents have with parking if we can get access to the properties for employees that work on Great North Road via the laneway.

The Commission is satisfied on the evidence that in proposing the rezoning of the Waterview Street block, Mr Matthews’ draft resolution was contrary to either course of action available to council as proposed by

council staff in the agenda report and contrary to the recommendations of Studio GL in its report concerning two options proposed for the block.

The Commission is satisfied that Mr Matthews' assertion – that the viability of a higher FSR for the Waterview Street block should have been tested because of the benefits of higher density development for that area – was just an assertion. Both the proposal to rezone and the asserted need to test the viability of greater density for the block were contrary to the planning decisions council had already determined in the public interest and that had been given effect in the planning proposal for the town centre, endorsed by council at its meeting in November the previous year and referred to the Department of Planning and Environment for finalisation as an LEP.

Despite the fact that these matters had been settled after years of community consultation and council consideration, the Commission is satisfied on the evidence that, from the time Pacific Planning was engaged to represent his family's property interests, the idea that the Waterview Street block had not been properly studied became the particular focus of Mr Sidoti's advocacy.

Within the hour of receiving Mr Matthews' email, Mr Sidoti forwarded it to Dr Ahmed, writing:

This forms the basis for motion

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The following day, Mr Matthews sent Mr Sidoti a further email, copying Mr Daniel, in which he added the following recommendation to his draft resolution:

- *That Council prepare a planning proposal to implement the proposed changes to the Canada Bay LEP 2013, and that a planning proposal be forwarded to the Department of Planning and Environment seeking a Gateway determination and further community consultation.*

Mr Matthews asked Mr Sidoti to "please feel free to make any changes and forward to the necessary recipients".

Shortly afterwards, Mr Sidoti forwarded Mr Matthews' email to Dr Ahmed, writing:

Please read below.

Addition point for resolution.

Planning preposal [sic]

Cheers JS

Less than two hours before the start of the council meeting, Mr Sidoti emailed Dr Ahmed again, and prefaced the wording of Mr Matthews' draft resolution with:

Hope this helps

I move that...

Dr Ahmed responded "Thx John. All good". A few minutes later, Mr Sidoti sent Dr Ahmed a further email, in which he wrote, "I will send a couple of questions you can ask to the planner and that way gives him extra time".

Around the same time, Mr Sidoti sent an email to Ms McCaffrey with the wording of the resolution, writing "Tanveer is moving", and sent the same email separately to Ms Cestar, adding, "Hoping Mirjana you can second". He did not indicate that the wording had been drafted by his family's planning consultants.

Mr Daniel told the Commission that he considered it:

...appropriate just for us to target those councillors that we would think would be submissive to look at that in a fair way, to then bring it forward in their democratic way to the political body of the council.

He said that, because of his connection to the Liberal Party, he understood how the Liberal councillors would think about these sorts of things and because of Mr Sidoti's connection to them, he could ask "please, can you consider this".

Dr Ahmed conceded in evidence that a very important aspect of public accountability and transparency in the kinds of public decisions he and his fellow councillors were involved in making was that submissions and representations should not be made directly to individual councillors, but rather to the council itself. That practice would ensure that the identity of those making submissions and the matters taken into account by council were transparent. It would also lessen the risk that an individual councillor may unwittingly, or knowingly, come to represent the private interests of particular persons, particularly in situations such as this one, where the recommendation from council staff was not consistent with what the private interest was advocating.

Dr Ahmed told the Commission that he interpreted Mr Sidoti's email containing the wording of the resolution in relation to rezoning the Waterview Street block as part of Mr Sidoti's "broader pattern of advocacy about this issue". He denied that he saw it as an outright instruction to put the resolution forward, but rather as a suggestion from the local member, describing it as "another email that we thought, okay, we get this is something you're interested in and we'll fly it through council and the councillors et cetera".

Notwithstanding the fact that Mr Sidoti had forwarded Dr Ahmed a proposed motion obviously drafted by his own family's planning consultants, Dr Ahmed said in evidence, "and once again I'd add, I was not seeing this as

part of any, any private interest that he had”, agreeing that he understood it to be purely connected with Mr Sidoti’s representation of local constituents.

Dr Ahmed told the Commission that, if he had been aware that Mr Sidoti’s family owned a property in the very block for which rezoning was being sought, he would be “very concerned”. He confirmed that he had no idea that, by this stage, the family had acquired the properties at 2 Second Avenue and 122 Great North Road.

Dr Ahmed told the Commission that by this time:

...I think we were all thoroughly tired of the issue so to speak but at the same time again, this is the, it's a state MP with huge planning experience from outside of the party and ... given how seriously he was advocating for this issue I thought he must have estimated and I thought he was a better estimator of the electorate than I was given I was working part-time as a local government councillor. He had a lot more information so I thought I, I, I measured his advocacy with great significance so, and I saw it as part of his broader advocacy both to constituents who were also rate payers. So as a result I, I certainly wouldn't dismiss, anything he forwarded to me I would not dismiss it. I would certainly go okay, I'll, I'll have a look. It's not unreasonable but let's see what council thinks and what my fellow Liberal councillors and fellow Labor, and other councillors as well because I did not, I did not have the information or experience to make definitive decisions when I would get a suggestion like this.

Ultimately, Dr Ahmed conceded that, in his email, sent just before the council meeting with the words “I move that” followed by the resolution, Mr Sidoti was effectively giving Dr Ahmed the script for what he should say at the meeting. Dr Ahmed told the Commission that at that stage he suspected Mr Sidoti was getting “a little bit excessive” and his approach from that time to Mr Sidoti’s “barrage of communication” was sometimes to withdraw and not respond.

While Dr Ahmed agreed that it was not for Mr Sidoti to give any direction to a councillor as to the kinds of motions they might put forward or support, Dr Ahmed said that he was not overly perturbed by Mr Sidoti’s communication because he “trusted the process”. Dr Ahmed conceded that it may well be that by his “Thx John. All good” response to Mr Sidoti he had communicated a willingness to move the motion, but said that he would be looking towards council and elsewhere for further direction and debate and was certainly not party to anything that involved instructing Ms Cestar how to vote.

Ms Cestar told the Commission that she believed Mr Sidoti’s expectation was that she and her fellow

councillors would put forward, word-for-word, the resolution set out in his emails to them just before the meeting. She said it made her very uncomfortable because it was not what was recommended in the agenda report, but she also said that there would be no point communicating to Mr Sidoti her concerns about the appropriateness of his conduct, as that would just have “created bad blood and an argument”. She thought the better course was “to accept it and then just use my own judgement regardless”.

Ms Cestar told the Commission that, over this period, Mr Sidoti’s relationship with the councillors changed, becoming what she described as “more a master/servant type of relationship”. It went from being a situation in which they all worked together to:

...you're just the councillors and you, you basically have got to run things the way I want you to run things. It kind of changed along the way somewhere and I don't know why or how, but all of a sudden there was a direction as to how things were going to be.

She said that this change made her “quite defensive and ... just evasive” in her behaviour towards Mr Sidoti.

Ms Cestar told the Commission that when she received emails from Mr Sidoti shortly before a council meeting, containing:

...information or something that was expected to be amended for council or some wording, I would just look at it and, you know, without – I wouldn't retaliate or anything. I wouldn't comment generally. I just don't recall ever responding to any of these emails.

She said she did not respond to Mr Sidoti or tell him that these sorts of representations were not appropriate because she really “did not want to rock the boat” or create “unrest” between them. She agreed that this was because they were both members of the Liberal Party, and that “absolutely it was a concern” that her position as a councillor and her preselection at the next council elections might be jeopardised if she rocked the boat.

Ms McCaffrey agreed in evidence that, in his email, Mr Sidoti was effectively instructing her, and her fellow Liberal councillors, as to the form of the resolution they should pass at the council meeting in respect of a matter she understood his family had a financial interest in, and that he should not have done so.

Mr Sidoti told the Commission that, prior to forwarding Dr Ahmed the draft resolution prepared by Mr Matthews, he recalled having had a discussion in which he told Dr Ahmed that he had engaged new consultants on behalf of his parents to look at the issue a bit further. Mr Sidoti said that he “vividly” recalled Dr Ahmed saying,

“Any motion you think would cover what we’ve been discussing, I’m happy to look at”.

Mr Sidoti was asked whether he had made it clear to Dr Ahmed that this was a motion that was being put forward on behalf of his family’s property interests. He responded:

Well, I had been advocating from day one, and we’ve gone over that, Waterview Street and then for the Chamber of Commerce and shopkeepers, a bigger town centre, a wider town centre, and then Pacific Planning came on board, we have similar views, they’re not exclusive to one or the other. I, I agreed with the information that they provided and, and I then forwarded on this to Councillor Ahmed initially.

When pressed for an answer, Mr Sidoti said:

It was put on behalf really for, for the entire centre, it’s advocating what all of the advocating I’d been doing for the town centre and for Waterview Street is summed up in that motion there.

Mr Sidoti agreed that he had represented to Dr Ahmed that this was a resolution he was putting forward on behalf of the Five Dock community, and not with any particular personal family property interests in mind.

Mr Sidoti was reminded of earlier evidence about representations received from constituents on the eastern side of Waterview Street, who were against the idea of rezoning the Waterview Street block. It was put to him that the result of the resolution he was urging would be that he was preferring the interests of the owners in the Waterview Street block over those of his constituents across the road. Mr Sidoti claimed that he had taken the representations of the latter into consideration but conceded that that would be the result.

Mr Sidoti reluctantly conceded that, if the resolution he sent the Liberal councillors had been carried, it would have favoured his family’s property interests in 2 Second Avenue and removed some impediments to the redevelopment of the family’s Great North Road properties. Mr Sidoti denied, however, that purporting to represent the interests of the community by putting forward a resolution that favoured those constituents whose interests aligned with his own property interests, and against those opposed, created a perceived conflict of interest. He said:

They weren’t my property interests. They were my parents’ property interests. And I had a hat, as an MP, to advocate, which I had enthusiastically from day one. Now, if that benefitted my mother and father, yes, that was the, the by-product. But that was never a motivation. Mine was about my reputation with the

Chamber of Commerce and all the shopkeepers and with those that I’d lived next to on Waterview Street.

Mr Sidoti later appeared to concede that there was the potential for a conflict of interest in his position, when he said:

I thought I was managing a potential conflict by having consultants there that could put a clean break between my advocacy as an MP and, and the property interests of my parents.

Mr Sidoti was asked why, if the draft resolution was intended to represent the interests of the community at large, he had not provided it to all of the councillors. He responded, “I probably could have, but I ... the reason ... they were colleagues”. He said:

I was asked for the motion that, and the motion was pretty much the criteria that explains how the block should be assessed in relation to others, and the intention if they were all content with it. ‘Cause they were always free-minded. I’d given them a lot of information over the years, and they were welcoming always of the information, and at every point, at every point – well, at no point was there any idea that somehow I was doing it for myself.

He denied that he was *directing* the councillors to pass a resolution of this kind, insisting that it was “information for them to consider and then, if they’re happy to go forward – they’re very independent minded”.

When it was later put to Mr Sidoti that he had been the one to make the decision to provide the motion drafted by Mr Matthews to the Liberal councillors, he responded:

The Liberal councillors asked me. They asked me. I’ve said that numerous times. Please show me something that says, “No information. No more. I don’t want, I don’t need your help, I don’t need anything.” It was, there was never any pressure. This is all about me passing on information. This is for the community. They acknowledge that. They didn’t get what they want at the end, and here I am, you know, all the pressure. The pressure’s coming from the community, the shopkeepers, from the residents.

In response to questions from his own counsel, Mr Sidoti said that he saw nothing wrong with providing motions only to the Liberal councillors. He said that just as with other information he provided them:

It was welcomed. It was welcomed. There was never any heat, never any pressure. It was seen as being informative. I was seen as being closer to, to what was going on, having been, having lived in that area all my life. The, the two, two of the councillors basically were in Concord. They weren’t seen

regularly in the Five Dock area. So at no point was there any, you know, it was always welcomed. It was only as a result of the Commission that I've seen evidence now that suggests otherwise, that there was some sort of heat. There was never any heat.

Mr Sidoti confirmed his understanding that, if the resolution he provided the Liberal councillors had passed, the necessary changes would have been made to the planning proposal, it would have been referred to the Department of Planning and Environment for a Gateway determination and would likely have come back for further community consultation. He told the Commission that he understood from the advice given to him by Pacific Planning, that in addition, the Department's statutory processes would enable a further study of the area.

Despite his experience in local government and Parliament and his position as the parliamentary secretary for planning, he denied that he had an independent and sufficiently detailed understanding of the Department's Gateway determination processes to know what was likely to occur. He denied knowing that, after the planning proposal had gone through a Gateway determination, while there was a possibility that further studies may be required, there was also the possibility that it simply would be publicly exhibited again before returning to the Department for gazettal. He said:

No. All I had there that was on my mind was to get an outcome to look at, and that would have then washed my hands of the residents of Waterview Street and the Five Dock Chamber of Commerce.

Mr Sidoti told the Commission that, while he knew that the resolution would pass if all the Liberal councillors were on board with it, even if the other councillors were not:

...there's no expectation that they would, it's only advice. I had a good relationship with all the councillors and they were welcoming of any information, they were always, you know, supportive, all the emails would suggest that, all the conversations I've had would suggest that that they were, you know, it wasn't their area, they were from Concord, they didn't have a lot of interest there, and any information I could provide them was welcome. Then ultimately of course they're very independent people.

Mr Sidoti was asked whether he had an explanation as to why he favoured the Liberal councillors with information he thought was important concerning this public interest issue, rather than providing it to all the councillors. Mr Sidoti responded:

No. I just feel that there's a rush from when you get notified with the information you've got to the time that a council meeting comes on. It's a very short period.

In hindsight, a two-week period would allow a lot better process, where everybody could be engaged, everyone could go to a council meeting and, and have the benefit of having time.

Ultimately, having accepted that he was not precluded from sending an email to all of the councillors on CCBC, Mr Sidoti said, "Well, I have a relationship with my colleagues. So, first and foremost, that's where it went".

Mr Sidoti denied that he was taking advantage of the connection he had with the Liberal councillors that came from them all being part of "Team Blue". He said that at the end of the day, they would need to discuss the matter with their non-Liberal colleagues on council and all he was doing was asking them to consider the resolution he had sent them. It was put to Mr Sidoti that he knew it would not matter what the other councillors said because the Liberal councillors held the balance of power and if he got them to agree to put forward the motion and support it, it would pass. Mr Sidoti refused to agree with the proposition, saying "you're assuming that councillors all vote on party lines all the time. It's not the case".

Mr Sidoti denied that he instructed Dr Ahmed what to say at the council meeting when moving the motion, saying "the words would have 'I move' because that's standard words that you'd have associated with a motion". He claimed that this was what Dr Ahmed had asked him for. He acknowledged, given that Dr Ahmed had attended many council meetings, observed other councillors move motions and had moved them himself, that the words were not required, but said, "Hope this helps'. Does that sound like an instruction?".

The following extended exchange with Counsel Assisting exemplifies Mr Sidoti's tendency throughout his evidence to refuse to accede to self-evident propositions, to refuse to answer questions directly, to provide self-serving answers to questions not asked, and his often combative and uncooperative approach to the Commission's inquiry:

[Counsel Assisting]: *You were keen to see that the motion was passed in the terms that they had drafted, is that right?*

[Mr Sidoti]: *Ideally, yes. But two hours before a council meeting, it's just not going to happen.*

[Q]: *Just the principle. You were keen to see the motion go through to council.*

[A]: *Well, if they agreed, yes, that would be a good outcome.*

[Q]: *But you wanted this motion to get up, didn't you?*

[A]: *I wanted them to consider it, yes.*

[Q]: *Now, how many times do I have to keep putting my question to you? Mr Sidoti, this is a public inquiry. All witnesses must assist the Commission. You wanted this motion to succeed when it came before council, didn't you?*

[A]: *No.*

[Q]: *You didn't?*

[A]: *I, I can't agree with that.*

[Q]: *Did you not want the motion to succeed?*

[A]: *No, I was asked to provide a motion that I thought covered the major concerns of the group holders that I'd been advocating for, and this is what I proposed to them. Then ultimately it was up to them.*

[Q]: *I'll put the question once more because you are on your oath and your answer to it will be part of the evidence in this inquiry. You wanted this motion put before the council, when it convened, and passed. Is that right?*

[A]: *Ultimately, yes, if, on the basis of everything I've, I've just laid out for you.*

[Q]: *As at the date of this email and the time it was sent, 16.05, you wanted this motion to be put before the council, and you wanted it to succeed, didn't you?*

[A]: *No, I, I – no.*

[Q]: *No, wait a minute. Didn't you?*

[A]: *Well, no, I wanted – no. If you want me to just say no. No.*

[Q]: *The answer is no, is it?*

[A]: *Well, if you allow me to finish I can, I can tell you why.*

[Q]: *Well, firstly the answer though is no, and you want to add an explanation. Is that right?*

[A]: *Correct. No.*

[Q]: *So the answer is no, you did not wish this, you did not wish to see this motion passed by council.*

[A]: *No. I wished this motion to be considered and then its ultimately up to the councillors.*

[Q]: *So the answer to my question, did you want, as at the time you sent this email to Dr Ahmed, him to present this motion? That's the first point.*

[A]: *Yes.*

[Q]: *And secondly you wanted to see it passed by council. Is that right?*

[A]: *That could be the by-product, yes.*

[Q]: *As at the time of this email, that was your desired outcome, that is that it put, put before council for its consideration and that council pass it. Is that correct?*

[A]: *Yes, yes.*

Mr Sidoti's obfuscatory and argumentative approach to answering Counsel Assisting's questions continued, necessitating the Chief Commissioner's intervention in what followed:

[Counsel Assisting]: *You had an expectation at this time of sending this email that Dr Ahmed would move that motion, not just simply consider moving it, would move it.*

[Mr Sidoti]: *Well, if he considered it, yes, and that was, that was what I was told...*

[Chief Commissioner]: *No, please.*

[Mr Sidoti]: *...when it was discussed.*

[Chief Commissioner]: *No, no. Would you put the question again to the witness.*

[Mr Sidoti]: *I've already answered the question.*

[Chief Commissioner]: You have not. Put the question again to the witness.

[Counsel Assisting]: At the time- sorry, Commissioner. At the time of sending this email to Ms McCaffrey, you had an expectation that Dr Ahmed would not merely consider putting forward this resolution, but would put forward this resolution.

[Mr Sidoti]: No, I don't agree with that.

[Counsel Assisting]: That's what you were hoping him to do. Correct?

[Mr Sidoti]: There would be an expectation and if he was happy with it, that would happen, but it wasn't in the words you put.

[Counsel Assisting]: And that wasn't what you were hoping for him to do, to put it forward?

[Mr Sidoti]: Oh, if, if he was happy with it, yes.

[Counsel Assisting]: Let's go to page 1147. This is another minute later.

[Mr Sidoti]: Yes.

[Counsel Assisting]: Seven minutes past, forwarding the same email on to Ms Cestar, except you've added a little bit more. "Tanveer is moving. Hoping Mirjana you can second".

[Mr Sidoti]: Yes.

[Counsel Assisting]: So this is, this is expressing what you want in this email. You want Dr Ahmed to move it, you want Cestar to second it, because that's the outcome that you wanted. Correct?

[Mr Sidoti]: It wasn't the outcome that I wanted, it was the outcome that was expressed as a result of all the consultation that we'd gone through.

[Counsel Assisting]: There are three alternatives. Either you did not want that outcome, you did want that outcome, or you were entirely indifferent. Which of the

alternatives was it, did you want this outcome, were you against this outcome or were you entirely indifferent?

[Mr Sidoti]: No, no, that's a good outcome to start the process.

[Chief Commissioner]: Please.

[Counsel Assisting]: So you wanted this outcome.

[Mr Sidoti]: Not that I wanted it. That would be the desired outcome.

[Counsel Assisting]: That was the – when you say desired outcome, that's the outcome that you desired.

[Mr Sidoti]: Well, that's the outcome that desires the Chamber of Commerce and those in the block behind that I'd been consulting with.

[Chief Commissioner]: Do you agree with the Counsel? Did you agree with Counsel Assisting's question that you, of the three options, desired this outcome, that is that motion was put, seconded and passed?

[Mr Sidoti]: I don't understand. How do I desire it?

[Chief Commissioner]: That was your wish. That's what you were aiming to achieve. Correct or incorrect?

[Mr Sidoti]: It was guidance for the councillors.

[Chief Commissioner]: Correct or incorrect?

[Mr Sidoti]: I, I just don't understand the premise of your question.

[Chief Commissioner]: You're refusing to answer the question, aren't you?

[Mr Sidoti]: No, I put my hand on the Bible. I take that very seriously.

[Chief Commissioner]: No, but by obfuscating.

[Mr Sidoti]: No, no.

[Chief Commissioner]: Let me try once more.

[Mr Sidoti]: Commissioner, I'm trying my best.

[Chief Commissioner]: *No, no. Once more.*

[Mr Sidoti]: *You don't allow me to finish and, and, and...*

[Chief Commissioner]: *No, wait a minute, Mr Sidoti*

[Mr Sidoti]: *...it's not disrespectful*

[Chief Commissioner]: *Just wait a moment. We want an answer to the question and then we'll let you have a say. There were three options put to you by Counsel. That is it was an outcome, that is the passing of this motion, that you either desired to occur – that is, to happen, that council would pass it – or you did not desire or wish to see that outcome, or you were indifferent to that outcome. Which of those three was your position at the time of sending that email to Ms McCaffrey?*

[Mr Sidoti]: *I was indifferent. Whatever the result would be would be.*

In response to questions from his own counsel, Mr Sidoti denied ever attempting to improperly influence any councillor to dishonestly or partially exercise any of their official functions, or of intending to. He denied having any reason to believe that any of the councillors could be susceptible to such attempts, saying “the process doesn't allow that” and that “they were very strong and independent people”. He denied that it ever entered his head that he was doing the wrong thing in discussing the development controls, or amendments or proposals with any of the councillors.

The Commission does not accept that evidence.

The Commission is satisfied on the evidence that, in his emails to Dr Ahmed just before the council meeting on 2 August 2016, Mr Sidoti was instructing, rather than merely suggesting or requesting, that Dr Ahmed move the resolution he sent him and gave him the script to do so, including questions to ask the family's consultant planner, to give him more floor time.

The Commission is satisfied that Mr Sidoti represented and Dr Ahmed apprehended that the draft motion he sent him was being put forward in the interests of the Five Dock community, rather than in the private property interests of Mr Sidoti's family. For this reason, the Commission is satisfied that Dr Ahmed did not act dishonestly or partially when he accepted the draft resolution from Mr Sidoti and appeared to indicate that he was prepared to move it.

However, the Commission finds that, irrespective of Dr Ahmed's understanding of Mr Sidoti's motivation, Mr Sidoti, without disclosing his interests, had no entitlement or role to send Dr Ahmed the form of a notice of motion and the words he should say to put it forward at a council meeting.

The Commission is satisfied that, despite Mr Sidoti's evidence and Dr Ahmed's understanding, the draft resolution calling for the rezoning of the Waterview Street block was clearly one that favoured the Sidoti family's property interests and was contrary to what had been determined to be in the public interest by council the year before and contrary to what continued to be recommended by council staff as in the public interest.

The Commission is satisfied that, in sending the draft resolution to Ms McCaffrey and Ms Cestar, *telling* them that Dr Ahmed would be moving it and expressing the hope that Ms Cestar would second it, Mr Sidoti was engaged in serious interference with the independence of these councillors in an attempt to influence them to exercise their official functions partially, in favour of planning outcomes that were contrary to those recommended by council staff, and directed to the benefit of his family's property interests.

The Commission rejects Mr Sidoti's assertion that the draft resolution he sent Dr Ahmed encapsulated everything he had been advocating for from day one in relation to the Five Dock town centre, and that this advocacy was on behalf of the Five Dock Chamber of Commerce, (unnamed) shopkeepers or the community generally. For the reasons already discussed in this and previous chapters, the rezoning of the Waterview Street block was relentlessly pursued by Mr Sidoti because of his family's interests in the Great North Road properties immediately behind and the benefit to their development potential from any such rezoning.

There is no evidence available to the Commission that Mr Sidoti was himself being pressured by the Five Dock Chamber of Commerce, or by individual or groups of “shopkeepers”, or even by residents of the Waterview Street block, to advocate for the inclusion of the block within an expanded town centre. There is no evidence available to the Commission that he received representations from the community seeking this outcome.

The evidence available to the Commission allows it to be satisfied that the matters in the resolution drafted by Mr Matthews were entirely directed to his family's property interests. If they just happened to coincide with the interests of Mr and Mrs X and Mr Durkin (who represented themselves before council in any event), that did not elevate his family's interests to the status of the public interest.

The Commission is satisfied that, contrary to Mr Sidoti's evidence, his provision of a draft motion for the Liberal councillors to move at the meeting on 2 August 2016 was not "welcomed". It made Ms Cestar uncomfortable, it was not appropriate in Ms McCaffrey's view, and it was considered "a little bit excessive" by Dr Ahmed. Each of these councillors dealt with Mr Sidoti's relentless pursuit of the Waterview Street block's rezoning in their own way, but the Commission is satisfied that Ms Cestar's characterisation of the relationship between themselves and Mr Sidoti by this time, as more of a "master/servant" relationship than a collaborative one, is apposite.

The Commission finds on the evidence that, because the balance of power on council had by this time tipped in the Liberal Party's favour with Ms McCaffrey's election to the mayoral position, Mr Sidoti's pressure on the Liberal councillors became even more prescriptive than previously. Because of the numbers, if they put forward the motion as he instructed, it was guaranteed to be carried on Ms McCaffrey's casting vote.

The Commission is satisfied on the evidence that the reason that Mr Sidoti provided the resolution drafted by Mr Matthews only to the Liberal councillors and only hours before the council meeting, instructed Dr Ahmed to move it, requested Ms Cestar to second it and Ms McCaffrey to support it, was to have the rezoning of the Waterview Street block made a *fait accompli* without prior notice to the other councillors that may have provided the opportunity for wider debate or dissent. The Commission is satisfied that what Mr Sidoti attempted in this instance was a direct interference with the democratic processes of local government for the advancement of private interests.

The Commission does not accept Mr Sidoti's evidence that he believed that there would necessarily be further study of the Waterview Street block if the draft motion he provided to the Liberal councillors passed and that that was all that he and those he was representing wanted; that is, that council simply consider or study different planning outcomes for the Waterview Street block than it had to date. The Commission notes Mr Sidoti's experience in local government, as a state parliamentarian and most particularly as the parliamentary secretary for planning, and considers it inconceivable that he lacked a sufficient understanding of the Gateway determination process as he claimed.

The Commission is satisfied that Mr Sidoti believed that, if council passed the resolution for the block to be rezoned B4, with a maximum height of 17 metres and a maximum FSR of 2.5:1 and for the matter to be referred to the Department of Planning and Environment for a Gateway determination, then it was likely that would be the ultimate outcome for the block.

The Commission does not accept Mr Sidoti's evidence that he was "indifferent" to whether the Liberal councillors moved, seconded and supported the draft motion he sent them. The Commission is satisfied that he sent the draft motion with what were in effect instructions for all three Liberal councillors, that Dr Ahmed would move it, Ms Cestar would second it and Ms McCaffrey's casting vote would pass it, because that is the outcome he wanted and had been trying to achieve.

The Commission finds that Mr Sidoti's refusal, when giving evidence in the public inquiry, to concede that this draft motion encapsulated his aims for the Waterview Street block, that he wanted the Liberal councillors to move, second and carry it and knew that, if they did, his desired outcome for the block would be realised, was not to his credit.

The Liberal councillors move a different motion

On 2 August 2016, the day of the council meeting, Tony Pavlovic, acting in Mr McNamara's position while he was on leave, forwarded two alternative draft motions to Ms McCaffrey, "in preparation for tonight". His email advised that the draft resolutions had been prepared on the assumption that the two areas other than the Waterview Street block would not be pursued. One draft resolution proposed proceeding with Studio GL's option 1 for the Waterview Street block and retaining the heritage listing for 39 Waterview Street, and the other proposed proceeding with option 2 and removing the heritage listing on Mr Durkin's property. Mr Dewar told the Commission that he drafted these alternative motions at Mr Pavlovic's request.

The minutes of the meeting on 2 August 2016 indicate that the part of the meeting concerning the additional sites issue took place between approximately 7 pm and 8 pm and that those who addressed council in relation to it included Mr Matthews of Pacific Planning, "representing various landowners", and Mr Durkin.

Two councillors (Labor's Mr Kenzler and the Greens' Ms Tyrrell) put forward a motion noting the outcome of Studio GL's and HillPDA's reports and proposing that, after careful consideration, the zoning and the development controls for the three additional sites remain unchanged for the following reasons:

- a) *The proposed development controls are not feasible in the current market*
- b) *Increasing densities to make development viable would create unacceptable impacts on surrounding residents*
- c) *The changes would impact an existing local heritage item and*

d) *The rezoning would encourage development outside the core of the town centre.*

The reasons for not proceeding with any change reflected those set out by Mr Dewar in the agenda report for the meeting. Dr Ahmed, Ms McCaffrey and Ms Cestar voted against this motion and it was lost on Ms McCaffrey's casting vote.

Between 7.04 pm and 7.38 pm on 2 August 2016, the following instant message exchange occurred between the three Liberal councillors, while the additional sites issue was being discussed:

McCaffrey: *[Image] (unable to be recovered)*

Ahmed: *Wtf? Is this different? I think we just support option 2.*

Cestar: *Last ask to defer to examine FSR on basis that it is not consistent with existing recommendation to the south???*

McCaffrey: *Maybe deferred as residents did t get notification*

Cestar: *Yes, and examine FSR*

Cestar: *He can eff off!!!*

McCaffrey: *Foreshadow a motion if it is defeated*

Cestar: *Then what?*

McCaffrey: *Move the motion I sent through on the photo*

McCaffrey: *Option 2*

Cestar: *Yes*

Cestar: *Tarveer will you?*

Cestar: *Me?*

Cestar: *They don't like losing do they*

Consistent with this exchange, the meeting minutes record that after the motion moved by Mr Kenzler was lost, Ms Cestar and Dr Ahmed moved a motion to:

- endorse option 2 for the Waterview Street block
- keep the zoning and controls for the other two sites unchanged
- amend the planning proposal and associated documents to implement option 2

- exhibit the planning documents for public comment before their submission to the Department of Planning for a Gateway determination.

Mr Kenzler, Labor councillor Marian Parnaby and Ms Tyrell voted against the motion but it was carried on Ms McCaffrey's casting vote. The motion moved by the Liberal councillors was in the same terms as one of the alternative resolutions that had been drafted by Mr Dewar and sent to Ms McCaffrey by Mr Pavlovic earlier that day, with the additional proposal that the amended planning proposal be publicly exhibited *before* submission for a Gateway determination.

The Liberal councillors were not the only people exchanging messages during this part of the meeting. Text messages obtained from Mr Daniel's mobile telephone indicate that Mr Daniel was in the public gallery and keeping Mr Sidoti updated about how the proceedings were unfolding. Having advised Mr Sidoti that eight councillors were present, six of whom could vote, at 7.09 pm, Mr Daniel informed Mr Sidoti that the additional sites item was being dealt with. At 7.15 pm, Mr Daniel sent Mr Sidoti a message saying:

*Lets hope they move the new motion ...
Seems to be support with the speakers.*

At 7.49 pm, Mr Sidoti sent a message, asking, "Hows it going??", but Mr Daniel did not respond until the following day, when he sent a message saying:

John I think we should now meet with Tony at Council as soon as possible. Matt

Subsequent text messages indicate Mr Daniel attempted to arrange a time and place to meet with Mr Sidoti to discuss "next steps" and "strategy".

Ms McCaffrey told the Commission that her exchange with her fellow councillors during the meeting could have been because they were receiving text messages from Mr Sidoti at the same time and discussing between themselves an approach to the issue that he was suggesting to them, although she could not recall whether that was in fact the case.

Ms Cestar confirmed in evidence that her text message "he can eff off" during the council meeting referred to Mr Sidoti:

...because, probably something that, I mean, didn't suit obviously what was, was proposed to us or put to us by John. So there would have been a response to that. So, you know, waiting for the blowback for not, not doing what was expected.

Ms Cestar confirmed that, during the meeting, Mr Sidoti was trying to have the three councillors pass a motion that was inconsistent with what had been recommended by council staff and which they were not prepared to support. She agreed that the messages between them indicated that initially Ms McCaffrey suggested the matter could be deferred for yet further examination of FSRs but that, ultimately, Ms McCaffrey asked her to move the motion proposing option 2 that she had texted a photograph of earlier. Ms Cestar confirmed that her message, “they don’t like losing do they”, could only be a reference to the Sidoti family in the context.

Ms Cestar told the Commission that, at some point after Ms McCaffrey became mayor, she told her that she wanted “to get John off her back”. Ms Cestar explained:

...there was pressure to, you know, pressure to overturn recommendation from, from staff and, and to push through a, you know, zoning, I think, from memory. Yeah, to use her casting vote to, to get an outcome that was more palatable to the Sidoti interest.

Ms Cestar told the Commission that they discussed their interactions with Mr Sidoti and the way he was dealing with them openly and they each knew the other was under pressure. They discussed this pressure regularly. Every time there was a council meeting coming up, there would be an email or a telephone call from Mr Sidoti:

...there would, there would be, you know, you would be expected to, there would be wording coming along from his planners and there seemed to be a turnaround for planners to, you know, alternate wording in or alternate approaches to the recommendations seemed to be something that’s replaying in my mind a lot from that time.

Ms Cestar said that “the pressure cooker was really in the time that Helen was the mayor”, so these conversations would mainly have occurred within the period between June 2016 and February 2017 (when the council processes in respect of the Five Dock planning matters finally concluded). Ms Cestar said that Mr Megna was definitely aware that Ms Cestar was under pressure and she believed that he was aware that Ms McCaffrey was as well, but she said she had no discussions with Dr Ahmed about the pressure she felt Mr Sidoti was bringing to bear on her in her role as councillor.

Dr Ahmed said in evidence that he could not remember what the text messages between himself and his fellow Liberal councillors during the council meeting referred to, but that, during this period, all three of them were feeling a little “harassed” by Mr Sidoti in respect of Five Dock planning decisions.

Mr Daniel agreed in evidence that once the Liberal councillors moved the motion in support of option 2, rather than the motion drafted by Mr Matthews that Mr Sidoti had sent them, it became necessary to work out another way to ensure that a proper study of the rezoning of the Waterview Street block could happen. Mr Daniel could not recall whether Mr Sidoti was unhappy with the outcome, or disappointed with the Liberal councillors’ performance, but he said that council’s decision at that meeting was just the start of a very long planning process to have the area appropriately studied.

Mr Sidoti agreed in evidence that he was aware of the numbers on council at the meeting on 2 August 2016 and knew that, if the Liberal councillors moved and supported the motion he had sent them, it would pass. However, he asserted in response to questions from his own counsel, that option 2 was a good option and he was content with it “because ultimately it doubled the height and floor space, so it was, a, a win, it was a win-win”. When asked whether he considered it a good outcome, he responded:

Oh, I, I, did. I’ve been advocating all along for the Chamber of Commerce or the shopkeepers, and for those residents that were living in that block that didn’t receive any investigation of substance to that parcel of land we’re referring to compared to the rest of the street.

In response to his counsel’s question about whether, following council’s endorsement of option 2 on 2 August 2016, he or his planners advocated further for the Waterview Street block to be rezoned B4, Mr Sidoti responded, “No, not that I’m aware of”.

The Commission finds that, in putting forward and carrying a motion proposing Studio GL’s option 2 for the Waterview Street block, the Liberal councillors adopted a position that council staff had advised was open to them, albeit not one that was specifically recommended. It was a position that both went some way to appeasing Mr Sidoti, in the sense that it provided some of the outcomes he was after, albeit not a rezoning, and stayed within the recommendations of Studio GL for the block, even if it did not follow the economic feasibility analysis undertaken by HillPDA.

Significantly, the Liberal councillors did not put forward any motion in support of zoning or control changes for the other two sites. This strengthens the Commission’s finding, discussed above, that these sites had been proposed by Mr Sidoti and, on his instruction, by Ms Miller in her presentation to council and by Ms McCaffrey in the resolution drafted at her request on 30 October 2015, to distract from the true focus on the Waterview Street block.

Notwithstanding the fact that option 2 was closer to the outcome Mr Sidoti was pursuing than option 1,



the Commission is satisfied by the text messages from Mr Daniel to Mr Sidoti that this was not the outcome he and his client had hoped for. Likewise, the Commission does not accept Mr Sidoti's evidence that he was "content" with option 2 and that he engaged in no further advocacy for a rezoning of the Waterview Street block. If he had been content, that would have been the end of the matter. As discussed in the next two chapters, his pressure on the Liberal councillors did not let up until the matter concerning the Waterview Street block was finally determined by CCBC in February 2017.



Chapter 8: “Oh my ... what a mess” – renewed efforts to get a different outcome for the Waterview Street block

This chapter examines Mr Sidoti’s ongoing dissatisfaction with the recommendations of council’s expert consultants and planning staff in relation to the planning controls for the Waterview Street block. It examines the pressure he continued to apply to the Liberal councillors in the lead up to the council meeting on 6 December 2016, in his pursuit of planning controls that would increase the development potential of his family’s properties in the area but which were inconsistent with the urban design objectives that council had endorsed for the Five Dock town centre.

Studio GL’s exhibition outcomes report

On 19 August 2016, nearly three years after the completion of the Urban Design Study in October 2013, the amendment to the Canada Bay LEP relating to the Five Dock town centre was gazetted.

In accordance with the resolution passed by the Liberal councillors on 2 August 2016, discussed in the previous chapter, draft planning controls to implement “option 2” for the Waterview Street block were publicly exhibited between 30 August and 30 September 2016. Studio GL prepared an exhibition outcomes report dated 29 November 2016 to comment on the 18 submissions received by council, identify common themes within them, and provide recommendations from a design perspective in response to the key issues raised.

Studio GL’s report noted that 12 of the 18, or 66%, of the submissions received during the exhibition period, did not support changing the planning controls for this area. Most of these submissions were from landowners on the eastern side of Waterview Street. The primary concern was height. As summarised by Studio GL, the view expressed in these submissions was that a height limit of seven storeys along Great North Road was excessive and the increase to four storeys, stepping down to three storeys along Waterview Street, was not supported,

primarily because of overshadowing impacts and the loss of the existing “village character” of the town centre.

Some of the submissions questioned what had changed to allow the loss of a heritage item in the block and some raised the proposed laneway between Barnstaple Road and Second Avenue and questioned why it was proposed, how it would be delivered if only some of the sites were developed and what impact it would have on existing residents. As well as the potential loss of a “community feel” in Waterview Street from the proposed changes, some submissions raised the potential negative impact on property values on the eastern side of Waterview Street.

Of the 18 submissions received, six, or 33%, supported changing the planning controls for the Waterview Street block and were in favour of greater development. In its overview, Studio GL’s report noted that a number of the supportive submissions were substantially the same, with only minor adjustments to the text. Two of the supportive submissions were made by respondents living outside the Waterview Street block. Of the remaining four, two came from residents of units at 41 Waterview Street, one from Mr Durkin, and the other from Pacific Planning on behalf of 120 Great North Road, 122 Great North Road, 2 Second Avenue and 37 Waterview Street.

Studio GL’s report noted that all six supportive submissions considered that the height proposed for the Waterview Street block was insufficient and suggested building heights of five-to-seven storeys, as long as these did not impact on overshadowing or the line of sight from Waterview Street. All six submissions considered that the proposed FSR of 1:1 was insufficient to “maximise benefits for the community or potential to attract developers for the site”. Five of the six submissions raised the concern that the Waterview Street site was being treated differently from the “identical” block to the south of Second Avenue.

Pacific Planning’s submission recommended that further development testing and feasibility analysis should be

undertaken in order to consider the development potential of the block. Pacific Planning’s submission also included a plan indicating an FSR of 2:1 and building heights up to 17 metres for properties on the western side of Waterview Street.

Significantly, four of the six supportive submissions, or a clear majority, were not in favour of the proposed laneway, stating that it would take up a large area of land, reduce development potential and be unattractive. These submissions were in favour of instead encouraging the amalgamation of sites so that access to car parks and loading could be provided off Barnstaple Road and Second Avenue, without the need for a laneway.

In its overview, Studio GL’s report noted that one submission considered that development of the laneway would have significant benefits to this part of the town centre where access to commercial properties was a major problem. That submission requested that the incentive of greater height and FSR should be considered to achieve this “benefit to the community”. The same submission proposed that basement parking accessed via a laneway would alleviate the parking concerns of Waterview Street residents. That submission was Pacific Planning’s.

Pacific Planning’s submission

A week after the closing date for submissions, on 6 October 2016, Mr Matthews asked Mr Dewar for an extension, stating in his email:

...we do have some comments on the Waterview Street rezoning. Is it too late to send something in or even come in and talk to you about the block. Obviously there are some land owner constraints on part of the site, but a number of landowners have been working together, particularly on the southerly section on a concept that could assist informing proposed development controls and resolve issues related to on street parking and the facilitation of the rear laneway.

Mr Dewar allowed the lodgement of a late submission and Mr Matthews sent Pacific Planning’s submission to him by email on 12 October 2016.

Before it was lodged, Mr Matthews, copying Mr Daniel, sent the submission to Mr Sidoti and asked him to have a read and let him know his thoughts. Mr Matthews summarised the submission’s two key points:

1. Council is commended for endorsing Option 2 and the removal of the heritage listing at 29 [sic] Waterview is supported;

2. That Council omitted to investigate other alternative development outcomes, where basement parking and greater FSR could be achieved. This in turn was not considered as part of the feasibility analysis by HillPDA. Therefore Council is requested to investigate alternative schemes (suggestions enclosed) that may facilitate a laneway and a more desirable built outcome.

He noted that the “recommendation does not request Council to adopt anything different, just investigate alternative densities as part of the planning process”. In addition, he wrote, “Also, you will note that I did not specifically state who I was representing ... however, we can state this when we speak at the Council meeting if required”.

As Mr Matthews noted to Mr Sidoti, the submission he prepared dated 12 October 2016 did not indicate on whose behalf it was made. On 7 November 2016, Mr Dewar sent an email to Mr Matthews seeking confirmation of who he was acting for and to which property his submission could be attributed. Mr Matthews wrote back advising, “we have been engaged by a number of land owners in the area and I need to confirm the names and addresses for you”. The following day, Mr Matthews sent an email advising:

Pacific Planning has been engaged by the owners of 120 and 122 Great North Road; 2 Second Avenue; and 37 Waterview Street, being Richard and Catherine Sidoti and Charlie Tannous.

Further, these landowners have been engaging with the owners of 39; 41; and 43 Waterview Street.

Mr Matthews agreed in evidence that, as at the date of this submission, neither he, nor the firm, had instructions to act for anyone other than Mr Sidoti’s parents, but he said that he did not consider that important because this was a submission “about the planning merit of the entire block”. He told the Commission that he may have said to Mr Sidoti, “let’s get as many landowners as we can, so I can represent more, because that overcomes some of the issues that council’s previously raised”. He told the Commission that outside of the occasions on which he presented to CCBC, he could not recall speaking with any other landowners in the Waterview Street block. He confirmed that all of his instructions in respect of the work he did in relation to the block came from Mr Sidoti directly, or through Mr Daniel.

Mr Daniel denied in evidence that a deliberate decision had been taken not to make it explicit on the face of the submission on whose behalf Pacific Planning was acting, and to delay disclosing that information until absolutely necessary. Mr Daniel said that, as he understood it at

the time, Pacific Planning was unclear about how many landowners were going to be involved in the submission, but, in any event, they were taking a “holistic approach” and studying the entire area and he did not think it was a “great secret” that they were assisting Mr Sidoti and “some of the other neighbours”.

He told the Commission that, at this point, there were meetings and discussions going on with adjoining landowners about whether they wished to be included and it was “a little unclear at that time”. He confirmed that it was Mr Sidoti’s role to conduct these discussions, to ensure the other landowners understood and could be included in the process.

Mr Sidoti told the Commission that he believed he had kept himself at arm’s length from what his parents were trying to achieve in respect of their Five Dock properties, saying that the “whole reason” Pacific Planning had been engaged was to represent his parents’ interests and give him a “buffer”. He denied exercising any independent judgment in relation to the consultants, claiming just to be a “conduit” between them and his parents who had, “pretty much”, told him to speak to Pacific Planning and get them to provide whatever advice he thought was necessary.

Mr Sidoti agreed that he instructed Pacific Planning to make a submission on behalf of his parents following the public exhibition in August/September 2016. He also agreed that, at this stage, he was not engaging Pacific Planning on behalf of any other property owners or on behalf of the community in general.

Mr Sidoti told the Commission that Pacific Planning eventually came to represent the owners of 37, 39, 41 and 43 Waterview Street. He did not recall, but considered it possible or likely that he facilitated the introduction of each of these landowners to Pacific Planning. He agreed that these were the constituents in favour of rezoning the Waterview Street block that he had been “representing” when he sent the draft resolution to Dr Ahmed prior to the council meeting on 2 August 2016, discussed in the previous chapter.

The Commission is satisfied on the evidence that, from the time Pacific Planning made its submission to council in October 2016, any putative distinction between Mr Sidoti’s family’s property interests and the interests of his “constituents” in relation to the Waterview Street block had become completely blurred. Once his family’s planning consultants began to represent, or claimed to represent, the very property owners that Mr Sidoti called his “constituents”, it could not be said that he was any longer managing, if he ever had, a perceived conflict of interest.

The Commission is satisfied, contrary to Mr Sidoti’s evidence, that this was clearly not a matter of Mr Sidoti

acting on behalf of constituents, but more a matter of him trying to get as many other residents in the block to “come on board” in support of changes to the development controls he wanted in order to advance his family’s property interests. The other residents did not approach him to represent their interests – he approached them, to support his family’s position. Both Mr Daniel and Mr Matthews gave evidence to the effect that getting as many other landowners involved or included would assist to strengthen Pacific Planning’s submission.

The Commission is also satisfied that the role Mr Sidoti played, in corralling other residents in the Waterview Street block to support the position submitted by Pacific Planning, amounted to more than being a mere “conduit” between his parents and their planning consultants, as he claimed. The Commission is satisfied on the evidence, including that discussed below, that Mr Sidoti did not keep himself at arm’s length from the position advocated on behalf of his family’s property interests, but was intimately involved in developing and executing the strategy to advance those interests with Pacific Planning.

While Pacific Planning’s submission of 12 October 2016 commended the council for the work undertaken to date, it stated that it considered that the work “did not adequately analyse the relationship of potential development of the subject block to the future development under the adopted controls of the land fronting Great North Road”. It also suggested that basement parking accessible from the rear laneway, rather than the proposed “at grade” parking, should be considered as a way of resolving existing parking congestion and any future congestion associated with any redevelopment of the site.

Its submission claimed that Pacific Planning had:

...undertaken its own preliminary development testing across the block that considers the potential development outcomes that would facilitate the development of a laneway. The inclusion of a laneway will have significant benefits to this part of the town centre where access to commercial properties for deliveries and staff is a major problem. Providing these access and additional parking arrangements will have the benefit of improving traffic movements and reducing the parking proliferation impacts on Waterview Street.

The Commission is satisfied from the evidence given by Mr Daniel and Mr Matthews during the public inquiry that the “preliminary development testing” undertaken by Pacific Planning to this point amounted to an in-house “desktop review” of what Mr Daniel and Mr Matthews thought the appropriate planning controls should be for the block.

Pacific Planning’s submission stated that “amalgamation patterns on Great North Road are likely to generate 7 storey buildings” and argued that consideration should therefore be given to increasing the FSR and height of the buildings behind in the Waterview Street block, to allow for “an appropriate transition in scale to Waterview Street” and an “improved built form”. The submission also included two diagrams that were said to:

... demonstrate how the entire block could develop as a whole and it is requested that Council consider and test the viability of such an outcome as part of the planning process as it seeks to create the most appropriate built form for landowners; neighbours; the broader local community; and the Five Dock Town Centre.

Other evidence available to the Commission indicates that the diagrams included in the submission were derived from preliminary concept designs that had been drawn up for the Sidoti family’s Five Dock sites by Zhinar Architects, the firm of Tom Kudinar-Kwee, and that had been provided to Pacific Planning on 28 September 2016. Further concept designs were provided by Mr Kudinar-Kwee to Pacific Planning and Mr Sidoti on 30 September 2016, illustrating possible built forms across the entire block.

Significantly, the sets of drawings provided by the architects were premised on development controls permitting seven storeys and an FSR of 2.7:1 for properties facing Great North Road, and five storeys and an FSR of 2:1 for developments behind facing Waterview Street. The proposed building envelopes, then under consideration for the Sidoti family properties in the block, are indicated by the one of the architects’ concept proposal drawings on page 121.

Mr Daniel conceded that, by this date, the Sidoti family had been looking at possible concepts for the development of their Five Dock properties. He agreed that Pacific Planning obtained the drawings from the Sidoti’s family’s architect to support the position they were advocating for before council.

Mr Matthews said that the drawings and plans provided by Zhinar Architects were obtained to demonstrate that a different outcome from the one council was proposing could work. Ultimately, however, he conceded that he was not convinced that the architects’ drawings demonstrated why greater FSR and height were appropriate over the entire frontage to Waterview Street and, while the concept seemed to show how the frontage to Great North Road could be developed, they already had the necessary controls for that land. Mr Matthews agreed that he did not think that the concepts demonstrated adequate justification of the greater controls they were seeking on behalf of the Sidoti family and he did not include them in his submission.

Mr Matthews told the Commission that he did not recall speaking to any other landowners in respect of this submission, but said that, as this concerned a planning proposal covering all of the land in the block, he did not need the other landowners’ consent to make a submission to council. He confirmed that he was provided his instructions by Mr Sidoti.

There is no evidence available to the Commission that, during the period under investigation, any other commercial property owner located in this part of the town centre had a particular interest in amalgamating sites and developing to seven storeys, or in the development of a laneway to address parking and access problems.

The Commission is satisfied that Pacific Planning’s submission was specifically directed to the development potential of the properties owned by the Sidoti family and was not directed to broader community interests, or to the specific interests of residents on the western side of Waterview Street, despite Pacific Planning’s claim and Mr Sidoti’s evidence that the interests of other residents were being represented.

Recommendations to council

Studio GL’s exhibition outcomes report of 29 November 2016 recommended that the exhibited draft planning controls for the Waterview Street block should proceed. It recommended that the maximum height of development on the western side of Waterview Street should remain as proposed at 14 metres (four storeys) stepping down to 10.5 metres (three storeys).

Studio GL also recommended that the FSR for the Waterview Street block remain as proposed, at 1:1, given that the area functioned as a transition between the higher development along Great North Road with an FSR of 2.5:1, and the lower development on the eastern side of Waterview Street with an FSR of 0.5:1.

In addition, and relevantly for the Sidoti family properties, Studio GL recommended that the adjoining land to the west of the investigation area, along Great North Road, should retain a maximum height of 17 metres (five storeys) and that the bonus increase in height being provided to a few selected sites within the Five Dock town centre should *not* be allowed for this area. The rationale for this recommendation was that it would reduce the risk:

... of taller development next to lower built form which can result in a significant visual difference between adjoining building heights and an increased likelihood of blank facades on boundaries over a long period of time.

Studio GL noted an increased risk of this occurring because a number of sites in the Waterview Street block,

Figure 5: Zhinar Architects: Proposed Building Envelopes Concept Proposal

zhinarchitects
E19-1462/AS-2-6-PR-0001



particularly an existing townhouse development and two adjoining narrow lots, would be unlikely to redevelop with the proposed planning controls and because the location of strata properties also limited opportunities for consolidation and amalgamation of sites along the adjoining strip of Great North Road.

In its report, Studio GL noted that the lots along Great North Road within the Waterview Street block were one of the few places within the town centre without laneway or secondary road access and that the submissions received by council had noted both the need for a laneway linking Second Avenue to Barnstaple Road and the challenges in delivering this “key piece of infrastructure”. It recommended that something similar to the “dog leg” alternative alignment for the laneway, which had been proposed by Pacific Planning, be adopted so that the delivery of a laneway would be less reliant on the redevelopment of potentially affected strata titled properties in the area.

Studio GL’s report also specifically addressed the point it noted had been raised in a number of submissions; namely, that the Waterview Street block was “identical” to that part of Waterview Street south of Second Avenue and should therefore be treated the same and have the same height and FSR controls. The report recommended against this approach, noting a number of significant differences between the blocks, as follows:

- the block to the south of the Waterview Street block, between First Avenue and Second Avenue, is on higher land and closer to the area defined as the “core” of the town centre
- a significant portion of the southern block had previously been identified as being located within the town centre
- First Avenue has significantly more traffic, public transport and commercial activity than Barnstaple Road
- the Waterview Street block is significantly smaller than the block to the south, so that east/west links and the incentives to deliver them are not required.

The agenda report for the council meeting on 6 December 2016 was prepared by Mr Dewar. It summarised the conclusions and recommendations of Studio GL’s report. It recommended that a planning proposal and DCP be prepared to implement Studio GL’s recommendations and that the planning proposal be submitted to the Department of Planning and Environment for a Gateway determination, and, if passed, placed on public exhibition with the draft planning documents.

While Pacific Planning’s submission about the need for a laneway, and the design of such a laneway, had been accepted, Studio GL and council staff had rejected its primary submission, namely, that there was a need for council to investigate alternative densities and to consider and test the feasibility of developing the entire block, including the sites fronting Great North Road.

As Studio GL had concluded when recommending no change to the proposed FSR of 1:1 for the Waterview Street block, and as Mr Dewar had cited in the agenda report he prepared for the upcoming council meeting:

Given the amount of development that can occur in and around the Five Dock Town Centre it is not recommended that urban design objectives be compromised in this location to incentivise development.

The Bay Run incident

On 2 December 2016, Mr Dewar advised Mr Matthews by email that a report on changes to the planning controls for land on Waterview Street would be considered at the next council meeting on 6 December 2016 and provided a link to the agenda report. Later that day, Mr Daniel sent a text message to Mr Sidoti, asking:

Mate have you read council report re your parents land? Oh my ... What a mess. We should meet to discuss strategy. Matty

Mr Sidoti told the Commission that he did not remember whether he met with Mr Daniel to discuss strategy but said he would have read the agenda report prepared in advance of the council meeting on 6 December 2016.

Mr Sidoti told the Commission that he was “not sure” whether, if the recommendation proposed by council staff was passed by council at the upcoming meeting, that would mean there would be no further consideration of the Waterview Street block, but he said that he thought what was proposed to proceed to a Gateway determination “looked like a good outcome” and “recognition of work being done by Studio GL to come up with something different”. He agreed that it was effectively the outcome that Studio GL had determined in its report of 3 March 2016 and that council had resolved to endorse at its meeting of 2 August 2016.

Mr Sidoti said he thought it was a good outcome that had “basically, if I’m correct, doubled the height and FSR of that whole block in Waterview Street”. He said he was not sure why Mr Daniel would suggest that such an outcome meant that they needed to discuss “strategy” or why Pacific Planning would submit that there was a need for council’s consideration of the matter to be deferred, as discussed further below.

The day after Mr Daniel had alerted Mr Sidoti to the “mess” in council’s agenda report, on Saturday, 3 December 2016, Ms Cestar had an encounter with Mr Sidoti as they were both exercising along the Bay Run in Drummoyne. At 7.25 am, Ms Cestar sent a text message to Mr Megna, which read:

Bumped into John Sidoti on bayrun just now. He is exploding making threats etc etc..can I call you later after 9?

Mr Megna responded, “After 9.30. I had two calls from him last night!!”.

As discussed in the previous chapter, Ms Cestar gave evidence that, particularly from the time that Ms McCaffrey became mayor, Mr Sidoti’s representations to her concerning the Five Dock town centre and associated planning proposals became more frequent and “forceful”. She described the nature or effect of his representations as being:

...that my position on council was being leveraged to achieve something for the Sidoti family interest [and] ... there were threats that other people wanted to run, or it was positioned that other people wanted to run for council and that if I couldn’t be loyal to I guess the Sidoti agenda, then my position would be up for grabs and there would be someone else who would be willing to take it.

Ms Cestar told the Commission about the particular interaction of this nature that stood out the most for her:

...it was a Saturday morning and I typically do the Bay Run and I’d bumped into John, and it was before a council meeting and he was quite animated about ... the proposal and what he wanted for the rezoning, and this was towards the end, it sticks out quite, it sticks out more than the other events because it was quite obvious to me from that conversation that he would line up other councillors to run for council if I wouldn’t play ball to an extent I think. I felt my position was being leveraged.

Ms Cestar said that, on this occasion, both she and Mr Sidoti were exercising early on the weekend when they crossed paths. They stopped to have a conversation. Ms Cestar initially told the Commission that:

...I think it was around the zoning and there was some, some wording that was sent to us by the town planners, John’s town planners at the time, that they wanted some additional, additional floor space. I. I can’t remember the detail of it but there was some wording that there was an expectation that we would overturn or add to the recommendation that was put to council.

Shortly afterwards in her evidence she said that she did not recall how discussion about the council meeting came up, but Mr Sidoti told her that there would be some information coming from his town planners:

...so there was wording to come and the expectation was that that wording would be, would be used to amend the recommendation [made by council staff] and, and I said, well, but my memory of it is that, ‘Well, we’ll see what the wording is but hesitant to amend any recommendation’. And then it came around that, ‘Well, if you can’t do it, we’ll find councillors’, or something to that effect, ‘I’ll find a council who can, who can actually do that’.

Under cross-examination by Mr Sidoti’s counsel, Ms Cestar was asked how Mr Sidoti could find a council to do his bidding, if she would not, given the upcoming CCBC meeting was only a matter of days away. Ms Cestar responded:

I didn’t take his comments to mean that he was going to do it within the next few days because we all know that there was no preselection coming up at that time and that there would be elections and council nominations further on in that year, and it was in 2017. My understanding of that comment was that it would be enacted for the next round of council nominations.

Ms Cestar told the Commission that, when she described Mr Sidoti as “quite animated” during this encounter, she meant that Mr Sidoti spoke “very quickly and [was] very emotional, erratic”. She remembered it being a very “emotional” interaction. She said that, while he was not shouting at her, he spoke loudly and pointed at her in what she considered an “accusatory interaction”.

Ms Cestar agreed under cross-examination that Mr Sidoti did not physically intimidate her but said that there was no other interpretation of what he said than that “he tried to leverage my position to achieve an outcome suitable to him” and she believed that, at some stage in the future, he might prejudice her preselection. She told the Commission:

It was quite concerning. I felt threatened. I felt my position was threatened. I messaged Michael Megna about it and asked to speak to him and, and also in a way to have a record of that date because in the back of my mind I thought to myself this is potentially something that should be reported and I, yeah, sat on that for a while but I, I purposely, I thought I need to have some sort of record of this interaction.

Ms Cestar said that she felt it was the most inappropriate interaction she had had with Mr Sidoti. She said that Mr Sidoti’s behaviour made her feel that her position as an independent councillor “was being compromised”.

Ms Cestar told the Commission that Mr Sidoti called her either the night of their encounter or the night of the next council meeting a few days later, and she said to him:

‘Look, I don’t think you and I should speak about this anymore. I got very uncomfortable with the last conversation’. And he said, ‘Well, can my planner call you?’ and I said, ‘Yeah, your planner’s welcome to contact me’.

Ms Cestar told the Commission that she recalled speaking to Mr Megna following her encounter with Mr Sidoti on the Bay Run. She said that Mr Megna down-played the incident, telling her “‘Oh, you know John, he gets carried away, and, you know, that’s just how he is’”. Ms Cestar said that, in the end, she decided:

...that I would try and hold my own, that I wouldn’t report it but also philosophically I thought that the type of behaviour that John was exhibiting would ultimately be his own downfall, that he had enough rope to hang himself anyway, so I didn’t really need to contribute to it.

She said that she did not report Mr Sidoti’s behaviour to anyone other than Mr Megna because she thought it was something that would pass and “blow over” and she did not want to put herself through the “taxing” process of reporting it to the Commission and “really did not want to initiate any, any additional bad blood, I think ... through the Liberal Party in the area”.

Mr Megna told the Commission that he remembered receiving the text message from Ms Cestar following her encounter with Mr Sidoti on the Bay Run and assumed he would have spoken to her afterwards but could not recall what was discussed. He also could not recall the conversation he had with Mr Sidoti the night before. Mr Megna said that, when he added exclamation marks to his message to Ms Cestar about this contact from Mr Sidoti, he was conveying his frustration that he was getting calls about something he could not vote on and did not want to be involved in. He said he could not imagine that the calls he received from Mr Sidoti were about anything other than the Five Dock town centre and associated planning proposals.

While Mr Megna could not recall the specifics of his conversation with Ms Cestar, he agreed that it would be concerning if a local member of Parliament had been making threats to a fellow councillor in respect of a matter in which the local member’s family had financial interests. He agreed that it would have caused him concern if Ms Cestar had been threatened in relation to a matter concerning the performance of her official functions.

Mr Megna said, however, that “Mirjana’s a very capable person and she can look after herself. She always has and

she always will”, and he said he would not have reported the matter or spoken to Mr Sidoti about it. He said that Ms Cestar could have reported that she felt threatened if she felt strongly about it, but he did not want to get involved. Mr Megna had earlier agreed that he considered Ms Cestar an able and conscientious councillor.

Mr Sidoti gave evidence that he had made a diary entry for 3 December 2016 recording “Exercise Bay Run 7.30” and that he recalled his interaction with Ms Cestar on that occasion. Mr Sidoti said that Ms Cestar’s evidence about the encounter was “totally false”.

Mr Sidoti said that he had been running and was hot and puffing when he came across Ms Cestar on the Bay Run and they stopped and greeted each other. He described what followed:

...and then I said, ‘The item’s coming up, the Five Dock town centre, next week. Are you across all the detail?’ And I got a strange look and I was huffing and puffing still and I said, ‘Oh, haven’t you read it yet?’ And that’s as far as we got because she became very defensive and I remember the words really clearly, ‘How dare you call me lazy’. And then there was a further exchange and I, to the best of my recollection it was something along the lines of, oh, ‘Who do you think you are?’ Something on those lines.

Mr Sidoti said that Ms Cestar was upset at his question about whether she had not yet read the council papers and was “quite loud and defensive”. He said that there were people everywhere on the Bay Run and he did not want to be seen having an argument in public. He said:

...I put my hands up in the air at the end, you know, to say look, stop, stop, that’s it, sorry, keep going, and I, I, I went on my way. And even when I just started leaving I could hear her mumbling, and that’s where it ended. It was, it was very brief.

Mr Sidoti agreed that it was strange that Ms Cestar would have sent a text message to Mr Megna immediately after this interaction to say he had exploded and made threats to her if that had not been how he had behaved, but he said that that “didn’t happen, absolutely” and agreed, “most definitely” that, if anyone exploded, it was Ms Cestar.

Mr Sidoti said that he was not surprised that Ms Cestar had not yet read the council papers when he bumped into her. He told the Commission:

She had a habit of not reading papers. As long as she had her councillor badge on and she attended functions, that was Mirjana. When it came to reading anything, she wouldn’t read anything.

It is significant that the encounter between Ms Cestar and Mr Sidoti occurred very early on a Saturday morning. The council agenda report had only been made available the day before, as Mr Daniel had brought to Mr Sidoti's attention. There were still a number of days before the council meeting on 6 December 2016 for Ms Cestar to prepare for the matter.

The Commission considers Mr Sidoti's evidence about Ms Cestar *never* reading anything to be self-serving and unsupported by other evidence available to the Commission that does indicate discussion between the Liberal councillors based on matters that were set out in the council papers – more often than not prompted by Mr Sidoti's contact – in advance of many of the meetings at which the Five Dock town centre was to be considered, as has been discussed in previous chapters. The Commission also notes that Mr Megna agreed with the proposition that Ms Cestar was an able and conscientious councillor.

The Commission does not accept Mr Sidoti's account of what was said during his exchange with Ms Cestar on the Bay Run on 3 December 2016. Her text message to Mr Megna was, of course, a contemporary reference to what had just taken place during the encounter. The Commission considers it most improbable that Ms Cestar would send a text message to Mr Megna very shortly after the interaction and state in it that Mr Sidoti had exploded and made threats to her and ask to speak to Mr Megna later that morning, if all that had in fact happened was that she had taken exception to Mr Sidoti's question about whether she had read the council papers as a slight on her diligence as a councillor.

More significantly, the Commission does not accept Mr Sidoti's evidence that he in fact considered the recommendation in the council papers for the upcoming meeting on 6 December 2016 to have been a good outcome. The Commission is satisfied that Mr Sidoti's two telephone calls to Mr Megna on the night he was alerted to the council papers and his animated encounter with Ms Cestar the following morning, both concerned the topic of the Waterview Street block and his strong dissatisfaction with the recommended outcome.

It is important to note that the planning controls for the Waterview Street block recommended in the council papers did not just entail the removal of the heritage listing on the property at 39 Waterview Street and the delivery of a laneway (outcomes favourable to the Sidoti family property interests). They also included a recommendation that the land along Great North Road adjoining the Waterview Street block, where the Sidoti family properties were located, should *not be allowed* the bonus increase to seven storeys that was being provided elsewhere in the town centre, but should retain a

maximum height of five storeys. This went to Mr Sidoti's interest in and active pursuit of greater development potential than the existing planning controls permitted.

The Commission is satisfied that Mr Sidoti's evidence that this was a "good outcome" does not reflect the actual opinion that he had held. Mr Daniel's reference to a "mess" and the need for a strategy to address it was in fact accepted by Mr Sidoti, and a strategy was developed to deal with the matter.

It was submitted on behalf of Mr Sidoti that Ms Cestar's account of the Bay Run conversation made little or no sense and that it was tied to "some wording that had been sent to the Liberal councillors", which was never identified by Ms Cestar and in fact there was no wording provided to Ms Cestar by Pacific Planning before 3 December 2016.

This submission overlooks the evidence of Ms Cestar in which she recalled that Mr Sidoti told her there was "wording *to come*" and she told him that she would see what that wording was, but would be hesitant to amend any recommendation from council staff.

It was submitted on behalf of Mr Sidoti that another problem with Ms Cestar's account of her conversation with Mr Sidoti on the Bay Run was that she had expressly suggested that the issue of rezoning and zoning was discussed, when no such issue was to be dealt with at the 6 December 2016 meeting. It was submitted:

Had Ms Cestar in fact raised rezoning on 3 December 2016, Mr Sidoti would have been entitled to be bemused and ask her whether she was lazy and knew what was going on. The Five Dock Town Centre had been a major issue for constituents in the Drummoyne State electorate and the CCBC local electorate for some years and if Ms Cestar was raising rezoning specifically in relation to council agenda items for December 2016, it would have been obvious to anyone following the issue that she was not well-versed in her understanding of the matter.

This submission is plainly wrong. As discussed above and further below, the evidence well supports the proposition that Ms Cestar was actively engaged with the Five Dock town centre planning matters. This submission reflects and continues the unwarranted attempt to level criticism against Ms Cestar's astuteness and diligence as a councillor by Mr Sidoti in his evidence. It is clearly in conflict with the evidence about her capacity and conscientiousness, and the Commission rejects it.

Ms Cestar did not assert that she had raised the issue of zoning or rezoning; she maintained that Mr Sidoti did. The Commission is satisfied on the evidence that while the zoning or rezoning of the Waterview Street block

was certainly something that council had considered and resolved by this time, it was still an issue that remained at the forefront of Mr Sidoti's actions concerning the area. As recently as 2 August 2016, he had forwarded a draft motion prepared by Pacific Planning recommending the rezoning of the Waterview Street block. As cited above, in Mr Matthews' email to Mr Dewar on 6 October 2016 requesting an extension of time to make a submission to council, the Sidoti family's planning consultant had written “we do have some comments on the Waterview Street rezoning”.

The Commission is satisfied that, whenever the argument was raised by Mr Sidoti, or on his family's behalf, that the Waterview Street block was being treated inequitably in comparison to the treatment given to other similar sites, in particular the block immediately to the south between First Avenue and Second Avenue, which had been included in the expanded town centre and re-zoned B4, then the zoning of the Waterview Street block was again being put in issue. As discussed above, the agenda report for the council meeting on 6 December 2016 specifically addressed this submission, providing yet again the rationale for treating the two blocks differently.

The Commission is satisfied, contrary to the submission on Mr Sidoti's behalf, that the rezoning of the Waterview Street block was very much still an issue that the council had to deal with as late as 6 December 2016 and that was because Mr Sidoti would not let it go.

In determining the truth or reliability of Ms Cestar and Mr Sidoti as to their competing versions of the Bay Run encounter, it is important to have regard to the relationship between them. The evidence establishes:

- Ms Cestar and Mr Sidoti were, for many years, both members of the Liberal Party
- there is a history of a comparatively constructive and harmonious personal and political relationship between them. Ms Cestar had been a loyal campaign supporter of Mr Sidoti, assisting and supporting him in the course of his election campaigns from time to time
- there is no history of animosity or ill-will between them. As to the Urban Design Study and associated planning proposals, Ms Cestar responded to Mr Sidoti's calls for meetings with him, as discussed in this report. However, Ms Cestar was not prepared to follow or comply with all of Mr Sidoti's requests concerning these matters.

Having regard to the above matters, it would be surprising to the point of absurdity to suggest that Ms Cestar had, for no particular reason established by evidence, invented

and knowingly given false evidence as to Mr Sidoti's conduct on the Bay Run as related by her in the course of the public inquiry.

Nor is there evidence to suggest that Ms Cestar was prone to exaggeration or to giving wildly wrong accounts as to particular matters or events. There is no evidence of matters that support the proposition that Ms Cestar had ever been untruthful in the past.

To the contrary, the evidence firmly establishes that she has been a competent and respected person in local government with a history of effectively engaging in, and contributing to, council business in the discharge of her official functions.

The Commission is well satisfied to the requisite standard that the account Ms Cestar gave of the encounter with Mr Sidoti on the Bay Run early on 3 December 2016 is to be preferred to Mr Sidoti's account. Evidence of what occurred in the days immediately after the Bay Run incident, discussed below, greatly strengthens the Commission's finding that Ms Cestar's account of Mr Sidoti's agitation about what was in the council papers, his advice that wording would be coming from his planning consultants and his expectation that the recommendation to CCBC would be amended or overturned is credible, and that Mr Sidoti's account of the conversation between them is not.

The Commission is satisfied that, during his encounter with Ms Cestar on the Bay Run, Mr Sidoti behaved towards her in an intimidating and threatening manner. He sought to compromise her independence as a councillor by threatening her continued position on council if she did not use her position to advance an outcome that he was seeking, being an outcome that would be to the benefit of his family's property interests in the area but that was contrary to the recommendations from council staff.

The fact that Mr Sidoti could not actually replace Ms Cestar with a more compliant councillor in the days before the upcoming council meeting is not to the point. Ms Cestar apprehended, based on what he said to her during the Bay Run incident, that her position on council would be under threat at the next preselection if she did not use it to achieve the outcome for which Mr Sidoti pressed.

The Commission finds Mr Sidoti's conduct towards Ms Cestar to be a further instance in a long course of conduct by him, which was directed to influencing the independent and impartial exercise of the three Liberal councillors' public official functions in connection with the Five Dock town centre and associated planning matters.

The Commission is additionally satisfied on the evidence, to the requisite standard, that Ms Cestar felt that

Mr Sidoti's conduct was sufficiently inappropriate to need to make a record and to inform her fellow councillor, Mr Megna. The Commission accepts that Ms Cestar believed that she could "hold her own", that she considered Mr Sidoti's behaviour would "ultimately be his own downfall" and that she did not want to initiate any "additional bad blood" by reporting the incident.

However, the Commission considers that Ms Cestar's interaction with Mr Sidoti on the Bay Run constituted a disclosable conflict between the non-pecuniary interest of her association with him and her official duty as a councillor because she, herself, considered it an attempt to compromise her independence as a councillor. As discussed in chapter 1, under the CCBC code of conduct, Ms Cestar was obliged to disclose that conflict fully, in writing and as soon as practicable, even if the conflict was insignificant, or one that she thought she could manage herself.

The Commission's reasons for finding that her failure to disclose this conflict does not amount to corrupt conduct in the particular circumstances that applied are set out in chapter 10.

Mr Sidoti tells the mayor to "show some leadership"

The day after the Bay Run incident, on 4 December 2016, Mr Sidoti forwarded Mr Megna an email that Mr Durkin, the owner of the heritage-listed property at 39 Waterview Street, had sent the day before to CCBC's general manager, Mr Sawyer.

In his email, Mr Durkin raised his concerns about the "exclusion" of the Waterview Street block from the original Urban Design Study and about the recommendations arising from the recent "reluctant decision to commission an additional study", which he said "appear flawed". Mr Durkin's email to Mr Sawyer noted a "long history of animosity between Mr Sidoti, yourself, the previous Mayor [Mr Tsirekas] and Cllr Kenzler". He expressed his concern that this "political/personal animosity is influencing the whole process".

Contrary to his evidence that he did not want to get involved in a matter on which he could not vote, Mr Megna responded to Mr Sidoti that Mr Durkin's email was an "excellent letter", and asked "Will I forward it on to the others?". Mr Sidoti replied:

He got it.

I believe the whole thing should be referred to ICAC. The allegation involves the GM and senior staff and councillors. If it is referred I will call for Sawyer and Mcnamarra [Tony McNamara] to stand down till it's investigated.

Mr Megna told the Commission that he considered that there was some political animosity or political point scoring involved in this matter, mostly from Mr Kenzler "against the Sidoti interest" and that it was "more of a party political thing" than a personal hatred. Mr Megna agreed, however, that while there was "political stouthing going on", the recommendations that were being adopted by council in relation to the Five Dock town centre and Waterview Street block had been put forward by independent experts and were not political.

Mr Megna agreed that Mr Durkin's email also made serious allegations against the integrity of the CCBC staff. Mr Megna agreed that that part of the letter was not "excellent" and that he had not heard any criticism about the integrity or capability of Mr McNamara or Mr Sawyer, or any other council staff in relation to the plan for the Five Dock town centre.

Mr Megna said he understood that Mr Sidoti had forwarded Mr Durkin's email to him for his information but said he did not know why it would be relevant for him to have any information about this matter. He agreed that, if there were any substance to the allegations made by Mr Durkin in his email, it would be a matter of significant concern and one that might be necessary to refer to this Commission, but he did not know whether Mr Sidoti did so and he did not encourage him to do so. Mr Megna did not know why he would have offered to forward Mr Durkin's email just to the Liberal councillors rather than to all councillors and he did not know whether he had.

Mr Sidoti agreed in evidence that he knew that Mr Megna had a declared pecuniary interest and could not vote or have any participation in the matter. It was put to him that, when he responded to Mr Megna, that he would call for Mr Sawyer and Mr McNamara to stand down if the matter were referred to this Commission, he knew that there was absolutely no substance to Mr Durkin's allegations in respect of council staff. Mr Sidoti responded that, "it's gossiping between two colleagues ... it's big talk".

He said that there was "no substance" to his suggestion that Mr McNamara had acted in some way that would warrant him being referred to this Commission and sought to explain:

...it was gossip, it's a private email between two colleagues, and I guess it looks different when you take it out of context between the two people, both from the same party that have known each other for a long time, and I can, I can totally understand, reading that in the context open to the public in front of a lot of people, how that could look.

Mr Sidoti denied that what he wrote to Mr Megna was an example of him "blowing his top" because he was passionate or angry about council staff in relation to the Five Dock town centre. He described himself as:

...animative, yes. Loud, yes. That's just my background, I'm gentle. I, I like to help people. That's in my nature. I, violent? No, never. Considerate, go out of my way, all the time. That's just my nature. I, you know, I'm a bit disappointed, I must say, in some of the evidence I heard. I just didn't think that was the relationship I had with my colleagues.

Ultimately, Mr Sidoti said he did not refer the matter to the Commission, himself, because he had no evidence or proof of the matters set out in Mr Durkin's email. In relation to the comment at the conclusion of Mr Durkin's email that, "none of the above makes sense other than as some kind of payback to thwart the plans of the Sidoti family", Mr Sidoti told the Commission, "Yeah, and I'd heard conspiracies like that, but the end of the day, you can't believe rumours".

On 4 December 2016, minutes after the email exchange with Mr Megna, discussed above, Mr Sidoti sent an email to Ms McCaffrey. In it, he wrote:

Dear Helen please show some leadership and ask Tanveer [Ahmed] his primary role as a councillor is to show up [sic]. This is disgraceful that the last two meeting Liberal Councillors plan outings around their elected duties.

Particularly when the numbers are so tight.

Everybody agrees the politics playing out and to date the Liberals are just watching.

That is when they show up.

This has come about because Neil Kenzler and Staff confused the Liberal councillors that don't seem to understand planning.

Please rectify by

1 calling Tanveer

2 if failing that call an extraordinary [sic] meeting

3 if Kenzler doesn't show up refer to code of conduct.

Ms McCaffrey agreed in evidence that, whenever the issue concerning the Waterview Street block was coming before council for a decision, there would be an increase in the amount of contact Mr Sidoti initiated with her. She also agreed that (apart from, to some extent, issues concerning Rhodes) the only particular issues before council that he showed any interest in were those concerning the Five Dock town centre and particularly the Waterview Street block.

Ms McCaffrey told the Commission that, from what she could recall, Dr Ahmed attended most council meetings and she agreed that he was generally an attentive councillor in the performance of his duties. She said that she was offended by the implication in Mr Sidoti's email, that she and her fellow Liberal councillors did not seem to understand planning matters and considered his comment to be directed at her and Dr Ahmed, rather than including Mr Megna.

Ms McCaffrey said that she understood Mr Sidoti's email to be a suggestion that she needed to make sure she and her fellow Liberal councillors attended the upcoming council meeting and voted as a bloc in relation to the issue concerning Waterview Street, and that Mr Sidoti was also issuing instructions to her. She agreed that the state member had no role in directing her as the mayor to take any of the steps enumerated in his email but she said her "natural tendency is not to engage in confrontation" and agreed that she was probably apprehensive about pushing back and telling him he was overstepping the bounds.

Ms McCaffrey said that she had not personally experienced the "confrontational facet" of Mr Sidoti's personality but she agreed that she understood others had, one of whom was Ms Cestar. She said that, in retrospect, she should have confronted Mr Sidoti rather than tolerate his ongoing pressure, but she appeared reluctant to definitively answer the question of what made her reticent to speak up and tell him to stop.

Mr Sidoti told the Commission that, again, this was a private email to a colleague with whom he thought he had a relationship and with whom he always spoke and exchanged ideas. He denied that he was seeking to cast the issue of the Waterview Street block that was about to be addressed at a council meeting in terms of Liberal versus non-Liberal politics. He said:

...there was some politics playing. So at that time I heard a number of things. The councillors had all been talking amongst each other and the feedback I got was that it may be deferred because councillors not attending and then quorum issues, because you need a quorum, and that's why I followed up with this, this email.

Mr Sidoti said that he and Ms McCaffrey were good colleagues and friends and he had been a mayor before. He considered it important that she, as the leader, ensured the Liberal councillors worked together. He agreed that it was not his role as the state member of Parliament to be telling the mayor what she should be doing in relation to council meeting procedural matters, but said that he was acting as a "Party friend" and colleague. He agreed that Ms McCaffrey had not sought his advice and that she herself had extensive experience, and more than him, in local government.

Mr Sidoti denied that, in his email to Ms McCaffrey, he was issuing a direction when he enumerated the three things she needed to do, or that he was castigating her when he told her to “show some leadership”. Mr Sidoti said his email was “poorly drafted” but it was from a “friendly colleague” to another.

There is no evidence available to the Commission that the recommendations made by council’s independent consultants and staff in relation to the Waterview Street block were politically motivated or deliberately directed against “the Sidoti interest”. Despite acknowledging that he had no evidence or proof to substantiate a referral of their conduct to this Commission, Mr Sidoti was prepared to impugn the integrity of Mr Sawyer and Mr McNamara in his email to Mr Megna when he said that he would call for them to stand down while the matter was investigated.

The Commission finds that this so-called “big talk” was another example of Mr Sidoti’s tendency to cast aspersions on the integrity, diligence, or capacity to understand planning of those who disagreed with, or stood up to him, during the protracted process in which the planning matters in which he had an interest were determined.

The Commission is satisfied on the evidence that Mr Sidoti sought to politicise the issue of the appropriate planning controls for the Waterview Street block, and frame it as a Liberal versus non-Liberal issue, rather than as one in which the planning controls sought by the Sidoti family were different from those recommended by council’s external consultants and planning staff.

The Commission finds that Mr Sidoti sought to politicise this planning issue in order to use his influence and seniority in the Liberal Party to exert particular pressure on the Liberal mayor, Ms McCaffrey. The Commission does not accept Mr Sidoti’s characterisation of his email to Ms McCaffrey on 4 December 2016 as one from a “Party friend”. He berated her to “show some leadership” and issued a set of instructions to her on council procedural matters to make sure the Liberal councillors had the numbers at the upcoming meeting to defeat whatever position Mr Kenzler “and staff” would “confuse” the Liberal councillors with; namely, the recommendation set out in the agenda report.

The Commission finds that Mr Sidoti’s politicisation of the issue was improper, as was his set of instructions to the mayor, which she had not asked for, did not need and which he had no role, as the state member of Parliament, in issuing.

Pacific Planning requests deferral of the matter

Later on 3 December 2016, the day of the encounter between Ms Cestar and Mr Sidoti on the Bay Run, Mr Daniel sent a text message to Mr Sidoti that said, “Hi John please call Matty re deferral process. M”.

On 5 December 2016, the day before the council meeting, Mr Matthews sent an email to Mr Dewar, copying Ms McCaffrey, Mr Megna and Mr Daniel. He stated in his email that he was representing the views of 2 Second Avenue, and 37, 39, 41 and 43 Waterview Street, and that these lots formed more than half of the Waterview Street block. He wrote:

...it is requested that the matter be deferred for further consideration at the next Council meeting to allow us to meet with the Council’s planning consultant on behalf of the landowners to understand the level of analysis undertaken to inform recommendations that will have a significant impact on the type and level of development that may occur across the block in the future. The designated development controls to this part of the town centre are inequitable in comparison to other very similar sites and the rationale and justification is in many ways flawed e.g. proximity to the centre of Five Dock (the site is closer than other sites that contain bonus provisions).

Mr Matthews told the Commission he did not know why he had included Mr Megna in this email, given Mr Megna’s declared and known conflict of interest, but noted that he was the president of the Drummoyne branch of the Liberal Party of which Mr Matthews was by then a member, although he conceded that the matter had nothing to do with the Liberal Party.

Mr Matthews confirmed in evidence that Pacific Planning had not been directly engaged by property owners in the Waterview Street block other than the Sidoti family. However, he stated that did not preclude him from representing their views.

Mr Matthews also confirmed that, despite the concerns raised in his email to Mr Dewar about the findings and feasibility analysis of council’s consultants and the justification provided for requesting the matter to be deferred, Pacific Planning did not ever meet or engage with either Studio GL or HillPDA. He denied that the basis for seeking a deferral of the matter at the council meeting the following day was a ruse. He said that the Christmas period intervened and then he was away in January before the matter was due to come back before council at its meeting in February 2017, but he had the serious intention of meeting with Studio GL at the time he drafted the email to Mr Dewar.

Later in the evening of 5 December 2016, Mr Daniel sent a text message to Mr Sidoti, which said, “Hi John did you see the email we sent? The response we received was that they would pass the request onto councillors. Lets discuss when you are free. Matt”.

Mr Daniel told the Commission that Pacific Planning’s concern at this stage was that council had come up with a position on the Waterview Street block to the effect that:

...we only think this site can take this much density and I can recall that we thought that that, that was a bit restrictive and they should be studying further densities and further outcomes in relation to the site.

Mr Daniel conceded that Pacific Planning had provided no substantive information to support the assertions that there had been a flawed process but said that the intention was that more detailed studies would be enabled following the Gateway determination process. He said that a range of densities, such as 2.5:1 or 2:1, was being “done across the road on council-owned land but not on this land, and we couldn’t understand why”.

Mr McNamara forwarded Mr Matthews’ email request for a deferral of the matter to all councillors on 5 December 2016, observing:

In addition to a request for deferral, James [Matthews] appears to be seeking planning controls which are greater than those contained in the recommendation to Item 5 on tomorrow night’s meeting. The basis for the request appears to be what James considers “flawed” and “inequitable” planning outcomes. May I respectfully suggest that the basis for all recommendations has been well and truly canvassed in the various reports despite not suiting all land owners. Rather than deferring this item may I suggest the Item be adopted as per the recommendation, and Mr Matthews be advised to submit a planning proposal setting out his client’s preferred position for future development with appropriate planning justification.

Mr McNamara explained in evidence what he intended by his email to the councillors:

Number one, as I have mentioned before, rather than put forward a development proposal ... James Matthews was putting forward a proposition that there were some fundamental flaws or something inequitable in all the work that we’d undertaken to date, and in a sense I suppose I did take exception to that because it had been very extensively investigated, and the council – on behalf of the community – had gone to a lot of effort and expense to, to get to its current level of reports and recommendations and Mr Matthews doesn’t exactly identify what is flawed

or inequitable other than he doesn’t agree with it ... I thought that was really the only basis of his submission.

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

Mr Dewar told the Commission that he wholeheartedly agreed with the views expressed by Mr McNamara in his email to the councillors recommending against deferral of the matter. He said that:

...if the applicant was dissatisfied with the outcome, they could always lodge their own application, which we would give due consideration to. But suggesting that council staff should change their recommendation as per their requests was not something that we were going to support.

On 5 December 2016, Mr Sidoti replied to Mr Daniel’s text message:

Michael [Megna] said you should of asked to defer simply. We want a motion if it’s not tomorrow next meeting exactly the same as the other side of Waterview St. 5 levels, bonuses on Great north Rd and 2.5-1 in Waterview. Will ring you shortly.

Mr Sidoti’s text message makes abundantly clear the planning outcomes he (and his family’s planning consultants) wanted. He wanted the same height and density for the Waterview Street block, as was proposed to apply in the block immediately to the south; that is, a maximum of five storeys and an FSR of 2.5:1, rather than the maximum four storeys and FSR of 1:1 recommended by Studio GL. He wanted the same bonus height and density for the adjoining Great North Road properties (his family’s) as was proposed to apply in other parts of the town centre but which Studio GL had recommended should not apply.

Mr Daniel responded by text message:

Michael has been very difficult to get on the phone to discuss. We felt we required a logical planning reason to request deferral rather than just ask. Talk soon. Matt.

Mr Sidoti agreed in evidence that it was apparent from his text message that he must have had some discussion with Mr Megna about the request for a deferral and that Mr Megna had recommended that they ask for a simple deferral of the matter rather than a deferral in order to engage in communications with Studio GL. He denied, however, that there was a strategy to defer the matter in order for it not to be finally determined at the council meeting on 6 December 2016.

Mr Sidoti told the Commission that the motion he outlined in his text message to Mr Daniel was what he had been advocating for “from day one” for the Waterview Street block, but he also asserted that these were private text messages between colleagues who had known each other for a long time and that, when they were taken into the public arena, they had a different meaning. He ultimately conceded that the “we” in “we want” in his text message included himself.

Mr Megna told the Commission he could not recall being a party to any emails about Pacific Planning’s request that council defer consideration of the matter at the council meeting on 6 December 2016 but said he may have been. He also said he could not recall having any discussion with Mr Matthews at all, nor any discussion with Mr Daniel about the Waterview Street block, nor any discussion with Mr Sidoti about the suggestion of a deferral of the matter by council.

The Commission is satisfied that the text message exchange between Mr Daniel and Mr Sidoti is evidence that the request by Pacific Planning to defer the matter’s consideration at the council meeting on 6 December 2016 was a strategy to further delay the finalisation of the matter so that it would not be referred for a Gateway determination until the outcome Mr Sidoti wanted for the Waterview Street block was achieved. That desired outcome was explicitly stated in his text message: the same maximum height and FSR as applied to the block along Waterview Street to the south, between First Avenue and Second Avenue, and access to the bonus provisions available elsewhere in the town centre to be extended to the strip of Great North Road on which the Sidoti family properties were located.

The Commission is satisfied that by this time, the rationale for Studio GL not considering a range of higher densities for the Waterview Street block was well understood given the number of times it had been reported, namely, that higher density in that area was considered incompatible with the results of the extensive community consultation undertaken during the Urban Design Study and subsequently.

The Commission accepts the view expressed by Mr McNamara in evidence, which was to the effect

that there was no basis to the assertion that Studio GL’s analysis was flawed and inequitable other than that Pacific Planning did not agree with it.

Despite his claimed reluctance to be involved in this matter because of his declared pecuniary interest, Mr Megna clearly did become involved in a manner that was actively supportive of Mr Sidoti. While Mr Megna claimed not to want to get involved when Ms Cestar reported Mr Sidoti’s conduct towards her on the Bay Run, he praised the email Mr Sidoti sent him in which Mr Durkin complained about the politicisation of council’s processes and offered to forward it to the other Liberal councillors. He was also obviously involved in providing advice to Mr Sidoti and his planning consultants about council procedural matters and the best approach to prevent the matter’s finalisation at the meeting on 6 December 2016.

Mr Megna had a pecuniary interest in matters relating to the Five Dock town centre planning proposals that precluded him from voting on those matters. It should also have precluded him from any involvement in which his seniority and experience might influence the position his fellow Liberal councillors took in relation to those matters.

Ms Cestar has some questions

On 5 December 2016, the day before the council meeting, Ms Cestar sent a message to Ms McCaffrey to ask whether they could chat later as “the emails I received regarding great north road are disturbing”. Messages between them indicate that, following their review of the agenda report for the council meeting, they both had questions about the rationale for the building height for land with a frontage to Great North Road remaining at five storeys, rather than increasing to seven, and whether there was a proper basis for retaining the split zoning of the Waterview Street block.

That night, Ms Cestar sent a message to Mr McNamara in which she wrote:

Sorry so late. I have just read the great north rd item and to be honest am still not sure why there is a line through that block preventing further uplift on the water view steer [sic] side. Do you have ½ hour tomorrow afternoon to talk me through the problems? Perhaps after 4.30pm?

Mr McNamara agreed to call Ms Cestar the following afternoon.

Ms Cestar told the Commission that the emails regarding Great North Road, which she found “disturbing” at this time, came from Mr Matthews setting out a basis for deferring the item. She agreed that she may have received another email from Mr Matthews, in addition to the

one forwarded to all councillors on 5 December 2016, in which he provided additional reasons for a deferral being appropriate.

Ms Cestar told the Commission that her doubts about whether the planning controls and zoning for the Waterview Street block were equitable probably arose from a closer reading of the council papers than the executive summary and from receiving additional information from Mr Matthews, in particular that there were a number of property owners on Waterview Street besides the Sidoti family who were “questioning the current outcome”.

Ms Cestar told the Commission that, given her interaction with Mr Sidoti on the Bay Run, the receipt of emails from Mr Matthews that caused her concern and after speaking to Mr McNamara, she was “probably a bit conflicted ... in terms of how to proceed ... probably more, more confused based on all the options that seemed to be presenting themselves and, and what I was reading”, but she said that she accepted Mr McNamara’s advice.

A submission was made on behalf of Mr Sidoti that the exchange between Ms Cestar and Ms McCaffrey on 5 December 2016 was evidence that “effectively corroborated” Mr Sidoti’s account of his encounter with Ms Cestar on the Bay Run, that had occurred two days earlier. It was submitted that:

Ms Cestar had finally been spurred to devote some time and energy to understanding the details of the planning controls for the block between Great North Road/Barnstaple Road/Waterview Street and Second Avenue and how the controls affected heights and number of storeys permitted for developments on this block.

This submission is in the same vein as the one discussed above, and the Commission rejects it as wrong and entirely baseless, as confirmed by the evidence discussed above.

Both Mr Matthews’ email request for a deferral of the matter, which raised alleged “inequitable” treatment of the Waterview Street block and an alleged “flawed” rationale for not applying the same development controls to this block, as were applied to other similar sites, and Mr McNamara’s memo in response, had been forwarded to the councillors on the same day that Ms Cestar raised her questions and doubts about these matters with her fellow councillor and with CCBC’s director of planning.

The Commission finds that in promptly seeking clarification and advice as to whether the process for arriving at the recommendation to council had been flawed or inequitable, as alleged by Mr Matthews, Ms Cestar was being responsive and conscientious in the performance of her duties as a councillor.

The Commission is satisfied that Ms Cestar’s desire to obtain answers to her questions does not corroborate Mr Sidoti’s account of the Bay Run encounter. It does, however, corroborate Ms Cestar’s own account of the incident. Just as she described the subject of her conversation with Mr Sidoti on that occasion, an email had come from Pacific Planning to the councillors, seeking a different outcome from that recommended in the council papers. Ms Cestar gave it due consideration, as she had said she would.

Mr McNamara’s memo

The advice that Ms Cestar accepted from Mr McNamara may be inferred from a memo that was prepared by Mr Dewar and sent to all councillors by Mr McNamara on 6 December 2016, prior to the council meeting that evening. The memo was specifically directed to addressing a question that had been raised; namely, “why is the western side of Waterview Street between 2nd Avenue and Barnstaple St [sic] being treated differently to the section between 1st and 2nd Avenue?”. The memo provided a detailed history and justification for the rezoning of the block to the south of the Waterview Street block and the reasons for the different planning controls proposed for the two sections of Waterview Street.

In setting out the rationale for the differing treatment, the memo noted that the most recent urban design report from Studio GL was the “last in a series of documents addressing planning and public domain improvements to reactivate economic and community activity within the Centre”. It noted that the fundamental principles of the work undertaken to that point had been focused on activating the retail core of the centre, which was located to the south of the centre. It also noted that:

... fundamental to the strategy is maintaining the essential “village feel” of Five Dock which was identified by many community members in their consultation responses as an important element worth preserving. The planning response has been to encourage increased vertical development where possible with minimal horizontal expansion into existing residential areas. In other words the new development is to be largely contained within the existing walkable footprint of the village.

The memo further explained that:

... where horizontal expansion has occurred, it has been with due consideration of adjoining neighbours. Based on this principle, no horizontal expansion of the B4 zone was recommended for the western side of Waterview St between 2nd Avenue and Barnstaple Rd. The southern end of Waterview St

between 1st and 2nd avenue [sic] has long been used for commercial purposes including a bottle shop and commercial car park as well as providing access to the rear of a number of commercial properties fronting Great North Road. Council has long held this asset (the car park) as an essential adjunct to the retail centre focused on Great North Road. The proposed redevelopment of this asset is a logical enhancement to the village centre as it is located at the strategic heart of the centre, it will provide public parking, it will activate the core of the main street and it will provide a new resident population in the heart of the centre.

The memo concluded with the observation that the latest urban design report for the Waterview Street block had recommended an uplift in FSR from 0.5:1 to 1:1 and an increase in storeys from two to four and that, “if these substantial increases do not satisfy relevant owners it is respectfully suggested that they be advised to submit their own planning proposal and supporting justification”.

The Commission is satisfied on the evidence that, irrespective of the planning merits, which are not for the Commission to determine in any event, there is evidence of a sound and transparent basis for treating the Waterview Street block differently from the block to the south. The Commission is satisfied, relevantly, that there is no evidence that the basis for the differing treatment was “flawed”, “inequitable”, political or directed specifically and unjustifiably against the Sidoti family’s property interests.

The Commission is satisfied that the recommended planning controls for the Waterview Street block could not be viewed in a vacuum but were intrinsically linked with the overall vision for the Five Dock town centre, which had been developed over a number of years, after extensive community consultation and according to clear urban design objectives.

The council meeting on 6 December 2016

Consistent with Mr Matthews’ request, the matter concerning changes to the planning controls for the Waterview Street block was deferred for consideration at the first councillor workshop in 2017.

Despite Mr Sidoti’s instruction to Ms McCaffrey to show some leadership and ensure that Dr Ahmed understood that his “primary role” as a councillor was to “show up”, Dr Ahmed did not attend the meeting. Despite Mr Sidoti’s politicisation of the matter, the motion to defer was not moved by any Liberal councillor, but was moved and seconded by Labor councillors, Mr Kenzler and Ms Parnaby, and the matter was resolved unanimously.

The Commission finds that, by the end of 2016, the planning issues concerning the Waterview Street block were still not resolved, in large part because Mr Sidoti still had not achieved the outcome he wanted. As discussed above, the Commission does not accept Mr Sidoti’s evidence that he considered the recommendation from Studio GL and council staff a “good outcome”, but rather finds that he had adopted his planning consultants’ view that it was a “mess” for his parents’ property.

The Commission is satisfied on the evidence that if he *had* been content with that outcome, council’s processes would likely have concluded in August 2016, at the latest. However, because Mr Sidoti was relentlessly pursuing a motion “exactly the same as the other side of Waterview St. 5 levels, bonuses on Great north Rd and 2.5-1 in Waterview”, to suit his family’s property interests, CCBC’s deliberations in relation to the Five Dock town centre planning matters continued into 2017.



Chapter 9: “Omg! When will it end!” – the planning matters conclude and the Liberal councillors fail to get re-elected

This chapter examines the way in which Mr Sidoti kept up his relentless pressure on the Liberal councillors until the Five Dock town centre planning matters were finally determined by council in February 2017. It also examines the preselection process for Liberal Party candidates for the CCBC election in September 2017 and whether Mr Sidoti had a role to play in Ms McCaffrey, Ms Cestar and Dr Ahmed being unsuccessful in their bids to be returned as councillors.

The council meeting on 7 February 2017

The agenda report prepared by Mr Dewar for the council meeting on 7 February 2017 effectively reflected the position that had been reached by CCBC in August 2016. It recommended:

- removal of the heritage listing at 39 Waterview Street
- delivery of a laneway between Second Avenue and Barnstaple Road
- a maximum height of three-to-four storeys and an FSR of 1:1 for the Waterview Street block
- the retention of the existing five-storey height limit for adjoining land with a frontage to Great North Road
- a planning proposal and associated documents be prepared to implement those recommendations and submitted to the Department of Planning and Environment for a Gateway determination.

A number of residents addressed council at its meeting on 7 February 2017, including Mr and Mrs X and Mr Durkin, as well as Mr Matthews from Pacific Planning, “representing residents”. Ms Cestar and Dr Ahmed moved a motion adopting the recommendations set out in the agenda report, with the following additional item in conclusion:

THAT if the owners of property in the area believe there is a better planning outcome to be achieved than the recommendation, they lodge a planning proposal in the normal way.

The motion was passed on the casting vote of the mayor, Ms McCaffrey. It was voted against by the non-Liberal councillors.

Mr Sawyer told the Commission that it was Ms McCaffrey who inserted the last item in the motion. He said that Ms McCaffrey did not give a full explanation for including it, but he had the impression that it “was going to be a line in the sand as far as council dealing with, with any more submissions regarding Waterview Street”. Mr Sawyer said that Ms McCaffrey’s additional item took a similar position to the one in Mr McNamara’s memo to the councillors recommending against deferral of the matter at the council meeting on 6 December 2016, as discussed in the previous chapter.

Mr Sawyer said that when they were going through the council papers with the mayor, on the Thursday before this meeting, Ms McCaffrey had commented in passing that she was “being lobbied by John” in relation to the item on the agenda concerning the Waterview Street block. Mr Sawyer said that, when they outlined the recommendation for the item, Ms McCaffrey said something to the effect of “He won’t be happy with that. He still can’t understand why that area has been left out of the town centre”.

Mr Sawyer conceded that “lobbied” might not have been the word used by Ms McCaffrey, but she indicated that she had spoken to Mr Sidoti about the matter and Mr Sawyer could tell that she was very uncomfortable with the recommendation. Despite this observation, he said that Ms McCaffrey was “happy to go along with” the recommendation of CCBC staff that had been made in accordance with the consultants’ recommendation.

Ms Cestar said that it was her recollection that the additional item in the motion that she moved and Dr Ahmed seconded was Ms McCaffrey's suggestion, and that it was possibly read out at the meeting by Ms McCaffrey, who had the wording in front of her. Ms Cestar said:

I think it was a sign to say that we'd, we'd exhausted all issues here and if there's anything else to, any other matters or any other planning considerations, that they need to go through the DA process.

Ms Cestar agreed that this was a message for Mr Sidoti in particular that they were done with this issue.

Ms McCaffrey said she did not recall whether the final item was added to the resolution during the meeting at her suggestion but said that it could well have been. She said that it reflected a comment Mr McNamara had made previously and that it was a message directed at objectors to say, "you know the process that you've got to go through if you're not happy with this decision". She agreed that it was a message for Mr Sidoti, in particular, to say that enough was enough, and the matter was being put to bed.

Mr Daniel told the Commission that the additional point in the resolution was "unique" or unusual and he said that the "significant cost of doing it" was something that would prevent the landowners in the Waterview Street block from putting in their own planning proposal if they wanted a different outcome. He said that he considered it a "poor process" for council to be saying "if you don't like the way we're not studying these high densities, lodge your own".

The rescission motion

The minutes of the council meeting on 7 February 2017 recorded that, during the discussion of the item concerning the Waterview Street block, Mr Kenzler foreshadowed a motion in the same terms as the one

he and Ms Tyrell had put and lost at the council meeting of 2 August 2016, as discussed in chapter 7. In effect, it sought to reverse the decision taken by council on that occasion to adopt option 2 for the Waterview Street block, and revert to the position that had been taken by council in relation to the Five Dock town centre as far back as November 2015.

Mr Kenzler's foreshadowed rescission motion was due to come before council at its next meeting on 21 February 2017.

On 16 February 2017, Ms Cestar and Mr Megna exchanged text messages about Mr Sidoti's contact with them:

Cestar: JS called in a panic over next meeting. Bloody hell!

Megna: He called Helen and me!!

Cestar: Omg! When will it end!

Ms Cestar told the Commission that Mr Sidoti's panic would have been that the rescission motion might be successful and the outcome reached at the previous council meeting would be changed. Her rhetorical question, "when will it end", referred to "all the dealings with the Sidoti properties".

Later that evening, Ms McCaffrey sent an email to Ms Cestar and Dr Ahmed to advise that "the rescission is on this Tuesday. Will you both be there? Hopefully". Ms McCaffrey told the Commission that she could not recall whether she had any contact with Mr Sidoti after the meeting on 7 February 2017 in relation to the rescission motion, but she agreed that in order for that motion *not* to be carried, it was of critical importance that Ms Cestar and Dr Ahmed attend the meeting on 21 February 2017 to defeat it.

Mr Sidoti agreed that the rescission motion would represent a step backwards and said that it was the

politics playing out as he had suggested, but he did not recall being in a panic about it when he contacted the Liberal councillors in advance of the next meeting.

Mr Matthews’ email

On 20 February 2017, the day before the council meeting, Mr Matthews sent an email to Mr Sidoti and Mr Daniel setting out a draft resolution and some bullet points in justification, for discussion amongst the three of them. He wrote, “May be we should circulate to the Councillors? The most important aspect here however is that the resolution is carried!”.

Mr Matthews’s email set out the resolution passed on the casting vote of Ms McCaffrey at the council meeting on 7 February 2017 and added the following wording:

That the motion of 7 February 2017 be carried and the following amendment be included:

- 1. “To apply the bonus height provision to land that fronts Great North Road, bound by Second Avenue and Barnstaple Road, to permit a maximum building height of 24 metres and a maximum floor space of 2.7:1 where land has a site area of 1,000 square metres and a street frontage of at least 20 metres”.*
- 2. “That the planning proposal be amended accordingly and submitted to the Department of Planning and Environment for a Gateway determination”.*

On 7 February 2017, council (that is, the Liberal councillors with Ms McCaffrey’s casting vote) had resolved to accept the recommendation of Studio GL and CCBC staff that bonus height and FSR provisions should not apply to that part of Great North Road in which the Sidoti family’s properties were located. Notwithstanding the fact that Mr Matthews’ draft resolution called for the motion of 7 February 2017 to be carried, therefore, it inconsistently sought to reinstate the bonus provisions for larger sites on that part of Great North Road, to allow development of up to 24 metres (seven storeys) in height and an FSR of 2.7:1.

Less than three hours before the council meeting on 21 February 2017, Mr Matthews sent an email to Ms Cestar and Ms McCaffrey, copying Dr Ahmed and Mr Megna. He wrote that he understood that a notice of motion of rescission had been received and stated that it was his “strong planning opinion” that the foreshadowed motion did “not provide justification or evidence on planning grounds to rescind the previous resolution”, and should not be supported.

Mr Matthews wrote: “I encourage you to consider moving the motion in the attached document. I have addressed the reasons below”. The draft motion he provided was in identical terms to the one he had sent Mr Sidoti and Mr Daniel the day before. Mr Matthews’ email concluded with the following statement:

I would be more than happy to discuss the planning merit in more detail any time, but having extensively reviewed the history, proposed controls, and controls applied throughout the centre, I have confidently concluded that this is a key site with good potential to provide a well designed development, supported by a laneway that removes traffic from surrounded streets to actually benefit the community, contrary to the rhetoric that is currently being presented.

Ms Cestar said in evidence that, when she received Mr Matthews’ email, she thought “it was just really rich to actually push the envelope to this extent”. She said that to expect that they would move the additional wording, as well as not support the rescission motion, which they were not going to do in any event, “was just really beyond the pale” and she recalled feeling infuriated by it.

Ms Cestar also said, however, that she did not see any particular irregularity in a situation in which “a planner engaged by a developer would put together some guidance or wording for a desired outcome”, although this was the first instance in her almost nine years as a councillor in which she had had a planner send such specific wording and guidance.

Ms McCaffrey agreed in evidence that it was quite an extraordinary thing for a planner on behalf of a particular private interest to be contacting only the Liberal councillors and suggesting the wording of a motion that would in effect revisit an issue that had already been considered a number of times and finalised.

Dr Ahmed told the Commission that, by this stage, they had thoroughly canvassed the topic and there was a very good chance that he would not have paid much attention to Mr Matthews’ email, given that it came directly from Mr Matthews and not via Mr Sidoti. He agreed that, even at this point, naïve as it sounded, he did not appreciate that Mr Matthews represented Mr Sidoti’s family’s interests. He agreed that, in hindsight, he should perhaps have realised that Mr Sidoti had some interest in the area beyond simply representing certain constituents, but said that it was not something that he thought was in “the realm of probability”.

Mr Matthews told the Commission that he did not know why he had sent the email to Mr Megna, given his known and declared conflict of interest. He said that he did not send his email to the non-Liberal councillors because they were the authors of the rescission motion

and that was the focus of his email. He said that, as he would have addressed all of the councillors at the meeting in relation to his proposed amended motion, he was not hiding anything by only sending it to the Liberal councillors and he denied that it was part of a strategy to take the other councillors by surprise and use the fact of the balance of power being with the Liberal councillors to gain advantage. He said it was likely that he discussed his decision, to send the email only to the Liberal councillors, with Mr Daniel and Mr Sidoti.

Mr Daniel told the Commission that Mr Matthews sent the amended motion only to the Liberal councillors to ensure, as much as possible, that the proposed uplift to the Great North Road fronting properties would be studied or considered by the Department of Planning and Environment as part of the Gateway determination process. He said, "this is politics". When it was put to him that council's processes were more than just political and that the public interest was at the heart of everything that council does, Mr Daniel said that it was the public interest that they wanted tested by the Gateway process.

Mr Sidoti agreed that he had seen the terms of Mr Matthews' draft motion, but could not recall seeing the detailed email by which it was sent to the councillors. He said that he did not remember having discussions with Mr Matthews or Mr Daniel about sending this draft resolution to the Liberal councillors and that it was possible it was sent to the councillors without his knowledge because, by this stage, Pacific Planning had been dealing directly with them and with council staff. He conceded, however, that, consultants engaged to represent the interests of a person, take their instructions from that person and do not go on frolics of their own and put forward recommendations for resolutions at council meetings without obtaining the imprimatur of those who provide them with their instructions.

In evidence reminiscent of that set out and discussed in chapter 7 in relation to the draft resolution he had sent to Dr Ahmed with the words "I move", Mr Sidoti refused to concede that the draft motion Mr Matthews sent to the Liberal councillors just before the council meeting on 21 February 2017 was one he wanted them to move and pass at that meeting.

He told the Commission, "I didn't want anything. It's up to them ... it's part of the process, they're allowed to move whatever they like ... I was hoping they would consider it". When pressed about whether he did or did not want the Liberal councillors to pass the motion, Mr Sidoti confirmed that it was correct to say that he did not care one way or the other and that he was indifferent.

The outcome of the rescission motion

At the council meeting on 21 February 2017, while the rescission motion was defeated on Ms McCaffrey's casting vote as mayor, the Liberal councillors did not put forward the amendment to the motion that Mr Matthews had encouraged them to consider moving. The planning outcome for the Waterview Street block therefore remained as council had decided on 7 February 2017, as discussed above.

The day after the meeting, Ms Cestar and Mr Megna had the following text message exchange:

Cestar: Any blow back from last night?

I spoke to John last night. He was actually happy!

Megna: Must have taken his happy pills

Cestar: Lol. He seemed impressed by our loyalty. Which I thought was interesting as it had nothing to do with loyalty. He was actually right, he was being screwed!

Megna: He sent me this today [image of a blank page]. I didn't know if he was being sarcastic, was trying to work it out. But if you said he's happy then maybe he's genuine

Cestar: Yeah he was. Apparently his sister in gallery and others were texting him while we were on the item. He was happy with all of our performances. I think it's genuine!

Ms Cestar told the Commission she could not recall the conversation she had with Mr Sidoti following the council meeting to which she referred in her exchange with Mr Megna. She said that her comment that Mr Sidoti was "being screwed" referred to her view that there "was probably some room to move with some of that development ... potential to do more with that lot, but I think there was just a really conservative approach" and she confirmed that she perceived the rescission motion as directed to Mr Sidoti and a "political move for sure".

A submission was put on behalf of Mr Sidoti that, ultimately, the result which the representations of Mr and Mrs X, Mr Durkin and the Sidoti family achieved by February 2017 was in the public interest. A further submission was made on Mr Sidoti's behalf that the evidence, including the text message exchange between Ms Cestar and Mr Megna cited above, was that Mr Sidoti was happy with that result.

The Commission accepts that the planning outcome achieved for the Waterview Street block by February 2017 was one recommended by external consultants and council staff and carefully considered by council in the context of extensive public consultation and the overarching objectives of the Urban Design Study, and that it was a decision accordingly made in the public interest.

The Commission does not accept that it was an outcome achieved by the representations of Mr and Mrs X, Mr Durkin and the Sidoti family. The Commission is satisfied on the evidence discussed in this and previous chapters, that it was an outcome that followed a protracted process that had invited and engaged with the submissions of these landowners fairly and exhaustively, but which, ultimately, being in the broader public interest rather than the furtherance of private interests, was contrary to key aspects of those submissions.

The Commission accepts that Mr Sidoti was concerned that the rescission motion, if successful, would have removed some of the gains that the motion that was carried on 7 February 2017 provided his family’s property interests and take the matter, as he put it, “back to it – square one”, and that he would therefore have been relieved when it was defeated.

The Commission accepts that Mr Sidoti and others, including Ms Cestar, perceived the rescission motion to involve some political game-playing on the part of the non-Liberal councillors against the Sidoti interests in the Waterview Street block and that Mr Sidoti was impressed by what he considered the Liberal councillors’ loyalty to him in defeating the motion.

The Commission considers the evidence that Mr Sidoti understood the Liberal councillors’ performance of their official functions in this matter to have been motivated by their loyalty to him to be particularly telling; it is evidence that Mr Sidoti wanted, if not expected, the Liberal councillors to act partially because of their relationship with him.

The Commission does not accept, however, Mr Sidoti’s own evidence that he was indifferent to whether the Liberal councillors did or did not move the amended motion sent to them by Mr Matthews just before the council meeting on 21 February 2017, nor the submission that he was happy with the planning outcome for the Waterview Street block finally determined by council on 7 February 2017, that was not overturned when the rescission motion was defeated.

The Commission is satisfied on the evidence that the outcome Mr Sidoti still wanted was the application of the bonus height and FSR to that part of Great North Road

in which his family’s properties were located and that is why his planner, Mr Matthews, acting on instruction from his client, forwarded an amended motion to the Liberal councillors in the hours before the council meeting, seeking such an outcome.

The Commission finds that Mr Matthews’ draft motion ignored the fact that council had already resolved the matter finally on 7 February 2017, in part *against* access to the bonus provision for the Sidoti family properties, and it ignored the specific message in that resolution intended particularly for Mr Sidoti, to the effect that, if landowners did not like what council had determined and wanted to see different development controls for their land, nothing prevented them from putting in their own planning proposal.

The Commission is satisfied that, in effect, Mr Matthews’ email to the Liberal councillors was a last-ditch attempt on Mr Sidoti’s instructions to lobby them to achieve an outcome that would advance the property interests of the Sidoti family. It was a final attempt to take advantage of council processes rather than have to take up the invitation to submit a site-specific planning proposal, with all of the time and private expense that would entail.

At the end of this very protracted process, the draft motion Mr Matthews sent to the Liberal councillors on 21 February 2017 provided for a different outcome from the one that Mr Sidoti had pursued at the beginning of his involvement in the matter. Mr Sidoti had advocated back in April 2014 for an increase in the FSR *regardless* of lot size, representing that this is what the smaller Five Dock shopkeepers wanted. The Commission has found instead that this is what the Sidoti family wanted. At that point, they only owned 120 Great North Road and it was too small to take advantage of the proposed bonus provisions for larger sites.

By February 2017, the Sidoti family had acquired 122 Great North Road and was contemplating site amalgamation and redevelopment, and Mr Sidoti, through his family’s planners, was advocating for the application of a bonus provision for larger sites on that part of Great North Road. The Sidoti family’s planners claimed that this would facilitate a well-designed development that would also deliver a benefit to the community in the form of a public laneway and more parking. The Commission finds that, any putative community benefit aside, this was what Mr Sidoti wanted in respect of his family’s properties in order to realise their greatest development potential.

The Commission is satisfied on the evidence that at all times during council’s lengthy deliberations on this planning matter, the issues for which Mr Sidoti advocated were solely directed to the advancement of private interests.

The Commission finds that Mr Sidoti did not recognise or respect the processes of council as democratic ones, necessarily involving a balancing exercise on the part of elected representatives of the competing interests of their constituents, in order to determine an outcome that was in the public interest. He simply would not accept an outcome that did not suit his family's interests. In continuing to pressure only the Liberal councillors outside the submissions process available to any other affected resident and landowner, he acted in a way that demonstrated a complete disregard of council's processes and he kept persisting until those Liberal councillors had had enough.

The matter concludes

Once the rescission motion was defeated on the mayor's casting vote on 21 February 2017, the Five Dock town centre planning matters were effectively brought to an end, insofar as council's deliberations were concerned. The day after the council meeting, Mr Matthews sent an email to Mr Daniel in which he wrote:

...let's work towards an outcome with the Department and Minister's Office from here. I think we need to discuss high level with Min's Office first; then the detail with the Department, but have a think about what a Strategy for this looks like.

On 10 April 2017, CCBC referred the matter to the Department of Planning and Environment for a Gateway determination. On 9 May 2017, a delegate of the minister issued a Gateway determination under s 56(2) of the EP&A Act, in support of the planning proposal for the Waterview Street block submitted by CCBC, subject to a number of conditions. These conditions included the preparation of a heritage impact statement in relation to the proposed removal of the heritage listing for 39 Waterview Street and a traffic and parking assessment to consider whether the impact on traffic and parking from the proposed increase in density would be adequately mitigated, and further community consultation. Council was issued delegation to make the LEP.

Pacific Planning continued to be engaged on behalf of the Sidoti family and made a number of representations to the Department of Planning and Environment, subsequent to CCBC's referral of the planning proposal, including a letter of intent to lodge a Gateway determination review on 24 May 2017 and a formal request for review on 10 July 2017.

In the latter request, Mr Matthews stated that he was representing a number of landowners within the subject block and the adjacent block fronting Great North Road; namely, 37, 39, and 41 Waterview Street, 2 Second Avenue, and 120 and 122 Great North Road.

He did not indicate that half of the identified properties, and all of those fronting Great North Road, were owned by the Sidoti family and that the latter was in fact Pacific Planning's client.

In summary, Mr Matthews submitted that the Gateway determination of 9 May 2017 should be reviewed and altered to require:

- the application of the bonus height and FSR provision to properties fronting Great North Road adjacent to the Waterview Street block
- an analysis/feasibility study at alternative planning controls to those included in the current planning proposal for the Waterview Street block.

He also challenged the need for any additional heritage impact assessment of the proposed removal of the heritage listing of 39 Waterview Street and attached the heritage report obtained on behalf of the Sidoti family in July 2015 in support of that submission.

It is significant that, as discussed in chapter 2 of this report, on 13 July 2017, three days after the date of Mr Matthews' review request, Mr Sidoti made a written disclosure to the premier concerning the three Five Dock properties then owned by his parents, including 120 Great North Road, in relation to which he described himself as a trustee. He stated that:

A resolution to change the LEP of which these properties are a part has now been forwarded to the Department of Planning in which a number of property owners dissatisfied with Councils decisions are seeking a review under the Act.

The Department of Planning being a State Government instrument and for the sake of total transparency and being a Parliamentary secretary I want to bring the above to your attention. I do not want to be perceived in any way of my position influencing any outcome that any other citizen may be entitled too [sic].

Mr Sidoti's disclosure did not extend to advising the premier that his parents were the primary landowners concerned and that he was acting on behalf of his parents to instruct the planning consultants, who were seeking this review by the Department of Planning and Environment.

On 27 July 2017, in the letter acknowledging this disclosure, the DPC's general counsel wrote to Mr Sidoti to advise him that it would be prudent to keep the premier updated about the progress of the application for review and that:

You should also ensure that you have no involvement in the review process other than as a member of the public, and that any involvement in the review process is no different in nature and degree to the involvement of other members of the public.

Ultimately, the representations made by Pacific Planning to the Department of Planning and Environment were unsuccessful. As a planning officer at the Department advised Mr Matthews in an email sent on 26 July 2017, a proponent or a council may request alteration of a Gateway determination in certain circumstances; however, in this case, any request for review would have to come from council because it had initiated the planning proposal as the proponent in response to a commissioned urban design study.

The planning officer also noted that the planning proposal had not yet been exhibited and suggested that, in those circumstances, Mr Matthews should discuss the matters raised in his request for a review with council, or ask that they be considered as submissions in response to the planning proposal.

The Commission is satisfied that the grounds for Pacific Planning’s request for review are further evidence confirming that the focus of Mr Sidoti’s interest in the Waterview Street block remained one related solely to the development potential of his family’s properties and not to any wider constituent, community or public interest.

Pacific Planning’s request for review and Mr Sidoti’s disclosure to the premier concerning the request for a review by property owners “dissatisfied by Councils decisions” are also further evidence in support of the finding, contrary to the submission on his behalf, that Mr Sidoti was not happy with and did not accept the resolution of the matter by council in February 2017 and that, as at July 2017, he was still in pursuit of planning outcomes that would suit his private interests. That finding is also relevant to the pre-selection process for Liberal councillors occurring around this time in preparation for the upcoming local government elections in September 2017, which is discussed further below.

The Commission is satisfied that Mr Sidoti’s disclosure to the premier of the application for review of the planning proposal affecting his parents’ property clearly indicates Mr Sidoti’s awareness of a potential conflict of interest between the influence of his parliamentary position and the advancement of private property interests, in relation to the requested review of the Gateway determination, as well as his ability to take appropriate steps to manage that conflict.

The Commission finds it improbable that Mr Sidoti would not have recognised that a similar conflict of interest arose between his obligations as the local member for

Drummoyne – to put the public interest in the Five Dock planning matters over his family’s private interests and to make clear and full disclosure of the extent of those private interests when making representations to the Liberal councillors – because, as he wrote to the premier, “I do not want to be perceived in any way of my position influencing any outcome that any other citizen may be entitled too [sic]”.

The Commission is satisfied on the evidence discussed in this and previous chapters, that Mr Sidoti *did* want his position to influence the outcome of the exercise of the Liberal councillors’ official functions in relation to the Five Dock planning matters. Had he only wanted what any other citizen was entitled to, his involvement in those matters when they were before council should have been the same in nature and degree as any other member of the public, to echo the advice given to Mr Sidoti by the DPC’s general counsel.

The Commission finds that he therefore should not have:

- had special access to the Liberal councillors
- been able to organise meetings solely with the Liberal councillors to canvas issues prior to council meetings at which the Five Dock planning matters were to be determined
- forwarded only to the Liberal councillors (either himself or his family’s planners on his instruction) draft motions which he urged them to move and support
- relentlessly advocated for different outcomes from those recommended by council staff
- threatened to withdraw political support from the Liberal councillors if they did not move resolutions and vote as he urged.

The pre-selection of Liberal Party candidates for CCBC

Six candidates nominate

On 4 July 2017, the list of candidates nominating for pre-selection on the Liberal Party ticket for the upcoming CCBC election was finalised, nominations having opened on 24 April 2017. The pre-selection itself was scheduled for 6 August 2017 with the election to occur on 9 September 2017. The evidence establishes that there had been some determination within the Liberal Party that only four of the five spots on the ticket were winnable.

The four incumbent Liberal councillors nominated, with Ms McCaffrey also nominating as the mayoral candidate. Ms McCaffrey told the Commission that she made an

error on the form and only nominated for the mayoral position. When she asked this to be rectified by Liberal Party headquarters, she was nominated against positions one to four, although the order that had been agreed between her colleagues was that Mr Megna would be at position one, she would be at position two, Ms Cestar would be at position three and Dr Ahmed would be at position four on the ticket.

Ms McCaffrey told the Commission that, prior to her nomination, she asked Mr Sidoti for a letter of support. Mr Sidoti wrote a letter addressed to the state director of the NSW Liberal Party, dated 13 April 2017, stating that he was happy to support Ms McCaffrey for pre-selection at the upcoming CCBC election. After setting out her extensive local government experience and community involvement in his letter, he provided the following endorsement:

Helen has always held strong community ties and is well known in the local community. Her contribution as a councillor and now Mayor has been outstanding and she is highly regarded by all councillors in the City of Canada Bay Council.

The City of Canada Bay Council has functioning [sic] very efficiently and effectively since Helen became Mayor in August 2016 and the community is seeing effective change by her style of governing for the people.

On 4 July 2017, Mr Daniel and Mr Megna had the following text message exchange concerning a planning matter unrelated to Five Dock, which was then before council and in which Pacific Planning was involved on behalf of another client:

Daniel: Can you add that point to allow the gateway to Consider? M

Daniel: It is actually the secretary that deals with the issues not council. The department asked that to be included. A simple Note.

Megna: Mirjana and Helen aren't prepared to amend the recommendation. I've texted them both if they will. Labor won't amend. Labor's Fasanella may have supported if Libs were all on board. The recommendation will succeed as printed, Green will vote against anything.

Daniel: That is disappointing it is one line in addition how does the council think they are going to get the laneway? M

Megna:

*I know. **Speak to Sidoti about Mirjana and Helen's astuteness in planning matters and his moves to remedy this at the coming preselection.** Tarveer has no idea at all on planning and goes with the flow [Emphasis added]*

Mr Megna told the Commission that Mr Sidoti always said that Ms McCaffrey and Ms Cestar had no idea about planning matters. Mr Megna was asked what Mr Sidoti had said to him about his moves to "remedy" this at the coming pre-selection and he responded, "I'm quite happy to say that he, he was looking at getting other candidates to run for pre-selection" and that his reasoning for doing this was that "the other three Liberals had no idea about planning matters".

Mr Megna told the Commission:

...he was probably looking for other candidates, and by the looks of it, Stephanie Di Pasqua was someone that he would have nominated or she, she declared an interest. When I spoke to her she said she's always been interested in running for, for office.

Mr Megna agreed that the effect of what Mr Sidoti told him was that he was certainly not supporting either Ms McCaffrey, Ms Cestar or Dr Ahmed in their bids to be re-elected to council because of his view that they were not particularly astute when it came to planning matters. Mr Megna confirmed that he did not share Mr Sidoti's opinion at least about Ms McCaffrey and Ms Cestar in that regard, and that he considered them both to be experienced and conscientious, with a demonstrated capacity to act as councillors.

For his part, Mr Megna told the Commission that he had an arrangement or agreement with his fellow sitting councillors that he would be at position one on the ticket, Ms McCaffrey, two, Ms Cestar, three, and Dr Ahmed, four; being the positions they had been elected on previously. Mr Megna confirmed that this was an arrangement he understood to be in place right up to the date of pre-selection on 6 August 2017.

The evidence establishes that, prior to 2017, there had not been a competitive or contested pre-selection process for Liberal Party positions on CCBC. In the years previously, the nominees had worked out among themselves who would occupy which position on the ticket and there had been no need for a vote on the matter by pre-selectors. In 2017, however, six candidates sought pre-selection for the five-position ticket.

In addition to the four incumbent councillors, Nicholas Yap, president of the Drummoyne branch of the Liberal Party and Stephanie Di Pasqua, an employee in Mr Sidoti's

electorate office, nominated for all four positions on the Liberal Party ticket, with Ms Di Pasqua also nominating as the mayoral candidate.

In 2014, the year after she left high school, Ms Di Pasqua began working one or two days a week and on holidays undertaking administrative tasks in the electorate office of Mr Sidoti, where her mother also worked. She joined the Ashfield Young Liberals in 2015 and took up the more significant position of electorate officer for Mr Sidoti in February or March 2017, while continuing her university studies part-time.

Ms Di Pasqua gave evidence that, when nominations opened for pre-selection to the Liberal Party ticket in late April 2017, she spoke to Mr Sidoti about the prospect of putting her name forward. Mr Sidoti said that he would support her if she nominated and wrote a reference at her request, which she included with her nomination. Ms Di Pasqua told the Commission she had always been interested in politics. She agreed that she had no local government or planning experience.

Mr Sidoti told the Commission that, notwithstanding the fact that he was very supportive of Ms Di Pasqua nominating, he remained supportive of Ms McCaffrey.

The challenge against Ms McCaffrey’s nomination

Ms Di Pasqua told the Commission that a number of weeks after learning that Ms McCaffrey was nominating for all four positions on the ticket, as well as the mayoralty, she made a submission to the state director of the Liberal Party, contesting Ms McCaffrey’s eligibility on the basis that, when she submitted her nomination form, she had only indicated that she was nominating for mayor.

Ms Di Pasqua said she did not think it was fair that the Liberal Party had made a ruling in Ms McCaffrey’s favour that deemed her to have in effect nominated for all ticket positions despite only ticking the box to contest the mayoralty. Ms Di Pasqua said she discussed the matter with Joseph Tannous when she saw him at the Liberal Party conference on 22 and 23 July 2017 and sought some advice from him about how to go about submitting such a challenge.

Mr Tannous was not, in 2017, and nor has he ever been, a member of the Liberal Party within the Drummoyne electorate or the City of Canada Bay local government area. He was also not a pre-selector in the Liberal Party’s pre-selection process for the CCBC election.

Ms Di Pasqua agreed that she knew that Mr Tannous had, himself, been a member of Burwood Council, that he had acted as Mr Sidoti’s campaign manager when he first ran for election to Burwood Council in 2008, and

for NSW Parliament in 2011, that Mr Tannous had been a member of the Liberal Party’s state executive and was a powerbroker within the Liberal Party. She said that she approached him because she thought he would have more of an understanding about whether there was a provision in the Liberal Party constitution to cover the scenario she wanted to challenge.

It was Ms Di Pasqua’s initial evidence that she approached Mr Tannous for advice at the Liberal Party conference on her own initiative. She could not recall whether she spoke to Mr Sidoti about the challenge she was contemplating against Ms McCaffrey’s nomination, but thought it likely that she would have told him that she felt it was unfair and probably spoke to him before she spoke with Mr Tannous. She said that Mr Sidoti agreed with her that the situation was unfair and that she should challenge the ruling and that Mr Sidoti may have suggested that she speak with Mr Tannous, but she could not recall a specific direction to that effect.

Ms Di Pasqua said that, following her conversation with Mr Tannous at the Liberal Party conference, Mr Tannous provided her with some further assistance in relation to her challenge via text message and email. Ms Di Pasqua said that it was likely that she showed Mr Sidoti her submission before she sent it to the state director, to seek his advice about whether she had made a compelling case.

On 1 August 2017, the state director issued a ruling against Ms Di Pasqua’s challenge, the effect of which was to deem Ms McCaffrey as having properly nominated for all positions on the Liberal Party ticket, including the mayoralty. Ms Di Pasqua forwarded the ruling to Mr Sidoti on 1 August 2017 and Mr Sidoti forwarded it to Mr Tannous later that day.

Mr Tannous agreed in evidence that he and Mr Sidoti were disappointed that Ms Di Pasqua’s challenge against Ms McCaffrey’s nomination had been unsuccessful. He disagreed, however, that, in supporting Ms Di Pasqua’s challenge, he and Mr Sidoti were taking a position that was directly against Ms McCaffrey’s interests, saying:

...it was more about the interests of Stephanie and the party, that there was a constitution, there was a process that should be followed, and unfortunately Ms McCaffrey didn’t complete her nomination form correctly.

An alternative ticket

Mr Megna initially gave evidence that he had conversations with both Ms Di Pasqua and Mr Yap in which he told them that his preferred ticket was one with the other three existing councillors. He suggested to Mr Yap that he consider nominating for the fifth position on that ticket. He said he could not recall exactly what he

discussed with Ms Di Pasqua about whether there would be room on the ticket for her, or whether there were other discussions he had with either Ms Di Pasqua or Mr Yap about possibly changing the order of nominees or having a different ticket, or whether he had any discussion about these matters with Mr Sidoti, although he conceded that was a possibility.

Mr Megna later told the Commission that, after the nomination list came out, he and Ms McCaffrey together spoke to Ms Di Pasqua and Mr Yap in an attempt to organise a “palatable ticket” and work out a numbering order. He recalled that they had separate discussions with Ms Di Pasqua and Mr Yap about these matters at the Liberal Party conference in late July 2017. He said that the discussion with Ms Di Pasqua would have been to the effect that Ms McCaffrey should have the higher position because she was the mayoral candidate. He thought that he asked Mr Yap to nominate for the fourth and fifth positions, in case Dr Ahmed was not nominating (even though, by that time, he knew that Dr Ahmed had nominated for all four positions). He denied that the proposed ticket was designed to exclude Ms Cestar or Dr Ahmed and said that it was trying to accommodate as many of the nominees as they could.

Mr Megna also denied that it was Mr Sidoti’s suggestion that he should think about forming an alternative ticket with Ms Di Pasqua and Mr Yap and he denied having any discussion with Mr Sidoti of that nature. He said they were “trying to formulate a ticket that would accommodate as many people as possible and if that could not happen, it was in the hands of the pre-selection panel”.

Mr Megna said that he in fact asked Ms Di Pasqua to withdraw as a mayoral candidate “because Helen’s the mayor and she’d be the ideal person to be running as mayor ... as opposed to a 20-year-old”. Despite having earlier suggested that Mr Yap nominate for the fourth and fifth positions on the ticket, Mr Megna told the Commission that he actually said to him, “Why don’t you just give it a miss this time and run next time?”.

Ms McCaffrey’s evidence differed somewhat from Mr Megna’s. She agreed that, after the finalisation of the nominations, when she saw that Ms Di Pasqua and Mr Yap had also nominated and there would need to be a competitive pre-selection, she came to suspect that an alternative ticket had been organised. She did not recall whether she made enquiries about the situation as she was booked to go on a two-week family holiday in the Kimberley in Western Australia over the period during which the pre-selection was to take place, and that was also occupying her attention.

Ms McCaffrey said that she knew Mr Yap but did not recall asking him why he was nominating and she

agreed that she probably made some enquiries to find out who Ms Di Pasqua was, and learnt that she worked in Mr Sidoti’s office, but she could not recall doing so. She told the Commission that she did not recall meeting Ms Di Pasqua prior to the pre-selection.

Ms Di Pasqua told the Commission that she was aiming for position two on the Liberal Party ticket and would have discussed this with Mr Sidoti and asked him whether this was a good place to position herself. He indicated that he would support her in that position and said to her something to the effect of, “Don’t let them put you down in say, position four or further down the ticket if you want position two”. Ms Di Pasqua said she also had a conversation with Mr Sidoti about position one, but Mr Sidoti was supportive of Mr Megna securing that position and that was the view of other pre-selectors with whom she spoke.

Ms Di Pasqua said she also had a conversation with Mr Tannous about how to shore up position two on the ticket and it was suggested to her that, as she was not interested in position one for herself, she remove her nomination for it and that would show she was serious about position two. She told the Commission that she understood that Mr Tannous assisted her candidacy in that position with the four votes that came from the state executive, that is, the votes of the external pre-selectors, as distinct from the pre-selectors from Liberal Party branches within the City of Canada Bay local government area.

Ms Di Pasqua told the Commission that she had conversations with Mr Yap, and then with Mr Yap and Mr Megna together, at the Liberal Party conference on the weekend of 22 and 23 July, during which they discussed their nominations, the positions they were aiming for, and a possible alternative united ticket arrangement between the three of them. Ms Di Pasqua maintained throughout her evidence that, to the best of her recollection, this arrangement was never suggested to her by Mr Sidoti, Mr Tannous or anyone else.

Unlike Mr Megna, Ms Di Pasqua did not give evidence that Ms McCaffrey was involved in these discussions about an alternative ticket. Given Ms Di Pasqua’s challenge to the validity of Ms McCaffrey’s nomination, about which she sought Mr Tannous’ advice at the same Liberal Party event, and her evidence that she was intent on shoring up the second position on the ticket for herself, the Commission considers it highly unlikely that she would have been involved in discussions with Ms McCaffrey at the Liberal Party conference about forming an alternative ticket with her during which it was suggested she should aim for a position lower than Ms McCaffrey. As discussed above, Ms McCaffrey did not recall meeting Ms Di Pasqua prior to the pre-selection.

The Commission does not accept Mr Megna's evidence that Ms McCaffrey was involved in any discussions concerning the proposed alternative ticket that came to be supported by Mr Sidoti.

Ms Di Pasqua agreed that, following the ruling by the state director on 1 August 2017, to the effect that Ms McCaffrey was deemed to have nominated for all positions on the ticket, she had a conversation with Mr Tannous about how to facilitate the arrangement discussed with Mr Megna and Mr Yap. As a result, on the day of the pre-selection, she rescinded her nomination for any but positions two and three on the ticket.

Mr Yap, a member of the Drummoyne branch of the Liberal Party since 2011 and its president in 2017, had previously run for council in 2012 but had been unsuccessful, having occupied the last position on the Liberal Party ticket. He had no experience in local government or planning.

Mr Yap told the Commission that he made the decision about 12 months prior to the election to have another run for council after his unsuccessful tilt in 2012. No one approached him to run again but, in around February 2017, he reached out to Mr Sidoti and to Mr Megna and possibly to other Liberal Party members to gauge what they felt about him doing so.

Mr Yap said that, in the lead up to pre-selection, there was an understanding or arrangement between himself and Mr Megna and Ms Di Pasqua, that Mr Megna would be number one, Ms Di Pasqua would be number two and he would be number three on the ticket. He said that there was also a discussion at some point between himself and Mr Megna that Ms McCaffrey might be on the third spot on the ticket and Mr Yap on the fourth, but that was not the arrangement that was in place by the time of the pre-selection itself on 6 August 2017.

Mr Yap told the Commission that he had originally put his name forward for positions one to four on the ticket, but he received a call a couple of days before the pre-selection from Mr Tannous, who asked Mr Yap to withdraw from the first and second spots because it was too crowded on the ticket. Mr Yap could not recall whether Mr Tannous explained his objective in calling, or who he had in mind for these positions on the ticket. Mr Yap told Mr Tannous that he would withdraw promptly and Mr Tannous asked him to let him know when that had happened. Mr Yap said that he understood that Mr Sidoti was supportive of Mr Megna in first, Ms Di Pasqua in second and himself being in the third position on the ticket.

Mr Tannous told the Commission that he provided some advice to Mr Sidoti about the type of candidate the Liberal Party should be looking to run in the upcoming CCBC election in 2017. He agreed that he and Mr Sidoti

spoke about how to support and advance the proposed Megna/Di Pasqua/Yap ticket and he agreed that the understanding between them was that Mr Tannous would focus on contacting the state executive pre-selectors and Mr Sidoti would focus on the branch pre-selectors.

Derek Henderson gave evidence in the public inquiry. He joined the Drummoyne branch of the Liberal Party in 2013, and in 2017 was its vice president of policy. By virtue of that position, he was one of the pre-selectors for the Liberal Party ticket for CCBC. He told the Commission that, in July 2017, he received a telephone call from Mr Tannous, who he knew through the Liberal Party, and they discussed the upcoming pre-selection.

Mr Henderson said that Mr Tannous had asked him:

"What are you, what are you looking for in candidates?" I said, "Well, I'm, you know, I'm, I'm interested in seeing fresh, some fresh faces, some new, young blood." And, and he said, "Well, look," words to the effect of, "Nick Yap and Stephanie [Di Pasqua] are, are interested in, in being put forward, and I think they would be good, good persons." It'd, it'd be, just words to the effect of, oh, you know, "Mirjana [Cestar] and Tanveer [Ahmed] haven't, haven't been productive, you know, if, if you're looking for some new blood and, and, and fresh faces then, you know, I, I could suggest that Nick Yap and Stephanie be put forward and, and you vote, vote for them. Michael Megna has good corporate knowledge and experience on council, so he's, he's a good person to, to stay where he is." And that, that is, I guess, the, the gist or the, the extent of discussions around, oh, you know, the, the way the ticket would look in regards to Michael – I, I do recall it was, you know, "It would be good if Michael Megna was number 1, Stephanie was 2, Nick Yap 3," and look, I, I can't recall a mention of Helen [McCaffrey] but, in the conversation.

Mr Tannous told the Commission he could not recall using the words attributed to him by Mr Henderson in relation to Ms Cestar and Dr Ahmed, and said "I would have used words that both councillors were not seen, weren't active in the party in terms of helping on campaigns... I would have made the point that they were persons to be, other people should be considered for their positions".

Mr Tannous agreed that he was effectively working towards an outcome in which Ms Cestar and Dr Ahmed would miss out on pre-selection. He agreed that he and Mr Sidoti continued to work together in promoting the Megna/Di Pasqua/Yap ticket right up to and including the day of pre-selection on 6 August 2017 and that he did so knowing and intending for that to be directly contrary to the interests of Ms McCaffrey, Ms Cestar and Dr Ahmed.

Mr Sidoti agreed in evidence that the ticket he ended up promoting with Mr Tannous was the Megna/Di Pasqua/Yap ticket and that they both spoke in support of it with pre-selectors. Mr Sidoti said that the “thought never entered my mind” that, in doing so, he was acting contrary to the interests of Ms McCaffrey and Ms Cestar in the pre-selection process. He said he was thinking about “... the best possible team to win an election...The strongest candidates”. Under questioning from his own counsel, Mr Sidoti said that he had supported the alternative ticket “because they were the best candidates by a country mile”.

Mr Sidoti denied that the fact that Ms McCaffrey, Ms Cestar and Dr Ahmed had ultimately not moved the resolutions he had asked them to at the various council meetings at which the Five Dock town centre planning proposals were before council, had played any part in his motivation to support an alternative ticket. He denied that, in not supporting those councillors for pre-selection, he was expressing his displeasure at their lack of support for the resolutions he had wanted to have passed, saying “there is no relationship at all”.

Mr Sidoti told the Commission he did not know where Mr Megna would have got the idea from that he had a particular view about Ms Cestar’s and Ms McCaffrey’s astuteness in planning matters and that he intended to remedy that at the 2017 pre-selection. He agreed that he had expressed views to Mr Megna about both councillors over the years he had known them but denied that he had said anything about having plans to get rid of them at the coming pre-selection. While he considered Mr Megna to be a very competent councillor, Mr Sidoti said that Mr Megna was “gossiping all the time” and he had no idea why he would have mentioned Mr Sidoti in his text message to Mr Daniel about Ms Cestar and Ms McCaffrey.

When asked by his own counsel to describe his relationship with the Liberal councillors in the period between 2014 and 2017, Mr Sidoti asserted “Oh, I’ve always had a good relationship with the councillors, a very professional, cordial, very good relationship”.

The pre-selection

Ms Cestar, who was overseas from mid-July 2017 until the day before the pre-selection, was unable to be physically present to put her case forward to pre-selectors and the best she could do was to email the delegates on the list that was given to her. Similarly, Ms McCaffrey was interstate with her family at the time of the pre-selection. She was only able to make telephone calls to a couple of pre-selectors while she was away and she also recalled submitting a video recording as a means of presenting her case.

Ultimately, while Ms McCaffrey was automatically pre-selected as the Liberal Party’s mayoral candidate, with Ms Di Pasqua withdrawing her nomination on the day, she did not secure positions one, two or three on the Liberal Party ticket, which went to Mr Megna, Ms Di Pasqua and Mr Yap respectively. Ms McCaffrey secured the fourth position on the ticket. Dr Ahmed gave evidence that he believed he was used to fill the unwinnable fifth position and Ms Cestar was not pre-selected at all.

Ms McCaffrey agreed in evidence that, following the pre-selection result, she was concerned or had suspicions that an alternative ticket had been organised as a response to the resolution of council on 7 February 2017 that had been moved and passed by the Liberal councillors. She said she found it surprising that she would be “dropped” after serving on council for a long period and could not think of any reason other than that she had not voted in favour of the changes to the Five Dock town centre planning proposals for which Mr Sidoti had been pushing.

Under cross-examination from Mr Sidoti’s counsel, it was put to Ms Cestar that it was the case that there was new blood coming into the party, she was overseas and unable to campaign as well as she otherwise might and she simply did not get sufficient support from the pre-selectors to be pre-selected. Ms Cestar disagreed and said:

No, the situation is that previously we hadn’t had pre-selections and we’d always worked it out amongst ourselves who was going to run in the ticket, and it was quite a surprise to have candidates who had not approached me or any of the sitting councillors to say that they wanted to run in winnable positions. If they had done so, we could have avoided pre-selection. The pre-selection itself was an unusual situation. The number of people who turned up for that pre-selection was unusual. The fact that the state member was at that pre-selection was unusual. It was a very unusual event. And, and I just might add that the fact that someone who was unknown in the local electorate to win a number 2 position on a ticket in a preselection was highly unusual.

She said that she and Ms McCaffrey discussed the outcome after the pre-selection and they both agreed that they felt it was retribution for not delivering the outcome Mr Sidoti wanted for his family’s properties in Five Dock.

Mr Megna agreed that he was surprised to see that Ms Di Pasqua had secured the second position on the Liberal Party ticket in the pre-selection. When Ms McCaffrey and Ms Cestar were not pre-selected for the second and third positions, he said he was downhearted that the election campaign that he had worked out in his head would have to be completely changed.

Mr Megna told the Commission that later, when he thought about the unexpected outcome, his conclusion was that:

Stephanie was interested in running. She either discussed it with John ... or John discussed it with her, but she wanted to run and she ran and she got up ... It was the connection between the two of them in my view.

He said that he felt responsible for Mr Yap’s pre-selection because he had asked him to run and he “wasn’t just some blow-in that came from nowhere”. He disagreed with the proposition that Mr Sidoti’s support for Ms Di Pasqua’s candidacy was retribution against Ms Cestar and Ms McCaffrey for their failure to deliver in respect of planning matters that were in Mr Sidoti’s interests.

It was put to Mr Sidoti that the outcome he and Mr Tannous were working towards when speaking to the pre-selectors about the ticket they were promoting was, first, that one or other of Ms McCaffrey, Ms Cestar and Dr Ahmed would not even make it onto the ticket and, secondly, that whomever of the three *did*, they would be on the lowest position on the ticket. Mr Sidoti responded, “No, but that’s a decision for the pre-selectors ... there’s a lot of ifs here ... That’s the pre-selection process, yes”. When pressed on whether that was the outcome he wanted, he initially said “that may have been the outcome that occurred”, then said “I think the pre-selectors wanted that outcome” and finally conceded that that is what he and Mr Tannous wanted.

In response to later questioning from his own counsel, however, Mr Sidoti claimed that he was actively supporting Ms McCaffrey for mayor in that he gave her a reference early on in the piece and “I worked my backside off on the day on one of the biggest booths” handing out how-to-vote-cards. He said that, if Ms McCaffrey had won the mayoralty, even if she were third or fourth on the ticket, then she would also have been elected an ordinary councillor “because her quota transfers to the candidate ticket and it automatically gets you another councillor”. Mr Sidoti said that he very much expected Ms McCaffrey to be elected mayor because “incumbency in politics means a lot”, and he asserted that therefore such a situation “was the best opportunity to get the most number of councillors up”.

It is important to note that, as Mr Sidoti contended, had Ms McCaffrey won the mayoralty from fourth position on the ticket, an automatic additional position on council would have been gained for the Liberal Party. However, had she been pre-selected to a position higher up the ticket than fourth position, and won the mayoralty, an automatic additional position on the council would also have been gained. The significant difference for

Ms McCaffrey, in being pre-selected to the fourth rather than to the second position on the ticket, was that in the event that she did not win the mayoralty (as in fact occurred), she, rather than the candidate in the second position, would miss out on being elected to council if (as in fact occurred) only three Liberal councillors were elected.

Mr Sidoti said that it would have been a “fantastic result” for the Liberal Party and the people of Canada Bay had Ms McCaffrey been elected mayor and therefore also as a councillor, and if Mr Megna, Ms Di Pasqua and Mr Yap were also elected; even if Ms Cestar missed out. In relation to the prospect that Ms Cestar would not get elected, Mr Sidoti said:

Look, as I said earlier on, Mirjana [Cestar] was about Mirjana, you know, it was about establishing sister cities with Croatia that wasn’t in the interests of everyday residents. This, this was just about her wearing a badge to further her own name wherever she went. Mirjana wasn’t, I, I would say, a worker. You know, she did the bare minimum. You know, she’s, she’s conceded to this Commission that she never read, never read documents even when they were only eight pages long, yet they’re making decisions that affect the livelihoods of thousands upon thousands of people. So, again, I can only go back and say that the pre-selectors weren’t asleep. They would have been privy to all of this. So I, I, you know, they wanted fresh, young, enthusiastic candidates that cared and engaged with the community and I think that was the obvious result in the pre-selection.

At the CCBC election in September 2017, only three Liberal councillors were elected and Ms McCaffrey was unsuccessful as the Liberal Party’s mayoral candidate, losing to the Labor Party’s Mr Tsirekas. As a consequence, following the election, none of the three Liberal councillors who had been able to vote in respect of matters concerning the Five Dock town centre remained on council.

The Commission is satisfied on the evidence that, while it cannot be said that Mr Sidoti on his own brought about the result that saw Ms McCaffrey, Ms Cestar and Dr Ahmed replaced on council, he certainly took active steps towards securing this outcome.

While Mr Megna continued to enjoy the support of Mr Sidoti in his nomination for the first position on the Liberal Party ticket, the evidence is clear that Mr Sidoti withdrew his support for the other three Liberal councillors and actively supported and promoted Ms Di Pasqua’s and Mr Yap’s nominations and an alternative ticket.

The Commission does not accept Mr Sidoti's assertion that he actively supported Ms McCaffrey for the mayoral position, nor his suggestion that positioning her lower on the ticket was actually beneficial to the Liberal Party's chances of winning more councillor positions. Handing out Liberal Party how-to-vote cards as the Liberal state member when there was only one Liberal Party candidate for mayor does not constitute specific assistance for Ms McCaffrey. The Commission is satisfied that, despite Mr Sidoti's ostensible support for Ms McCaffrey's nomination, when he provided her with a reference in April 2017, his support for Ms Di Pasqua worked directly against Ms McCaffrey's interests in the pre-selection.

The Commission is satisfied that had Mr Sidoti in fact supported Ms McCaffrey as he claimed, as part of some overarching or considered strategy to win more council positions for the Liberal Party, she would have been included on the ticket he promoted to pre-selectors and he would not have encouraged Ms Di Pasqua to challenge the validity of her nomination for pre-selection.

The Commission is also satisfied that Mr Sidoti took active steps towards an outcome that would ensure that neither Ms Cestar nor Dr Ahmed would be pre-selected. The pejorative assessment of Ms Cestar's performance as a councillor given by Mr Sidoti in evidence is not reflected by other evidence before the Commission and reflects a level of animosity towards her that belies his asserted good and cordial relationship with each of the councillors.

The evidence establishes that he:

- strongly encouraged, if not approached, Ms Di Pasqua to nominate for the Liberal Party ticket despite the fact that she was a candidate who, because of her age, was entirely inexperienced in local government and planning matters and had no profile in the local community. She had, however, been in his employ for the previous three years and sought his advice about the furtherance of a political career within the Liberal Party
- encouraged Ms Di Pasqua to aim for the second position on the Liberal Party ticket, thus putting her in direct competition with Ms McCaffrey, who was the mayoral candidate and a highly regarded and very experienced councillor with strong community ties
- actively encouraged and supported Ms Di Pasqua's challenge against the Liberal Party state director's ruling that Ms McCaffrey had properly nominated against all positions despite incorrectly completing her nomination form, agreeing with Ms Di Pasqua that it was unfair and suggesting that she seek the advice

of Liberal Party powerbroker, Mr Tannous, with whom he was closely associated

- actively supported, if not suggested to both Mr Megna and Ms Di Pasqua, the formation of an alternative ticket to the incumbent councillors, consisting of Mr Megna in first position, Ms Di Pasqua in second and Mr Yap in third, thereby effectively removing the possibility of the other three sitting Liberal councillors being pre-selected or, if making the ticket, being in a winnable position
- together with Mr Tannous, engaged in the active promotion of the alternative ticket, which did not include Ms McCaffrey, by directly contacting pre-selectors and delegates from the local branches, and state executive
- conveyed his criticism of the diligence and capacity as councillors of Ms Cestar and Dr Ahmed, in particular to Mr Tannous, who, in turn, conveyed this lack of support for the incumbents to pre-selectors including Mr Henderson.

The Commission is satisfied that Mr Sidoti's active endorsement and promotion of the alternative ticket was particularly significant given his position as the state member of Parliament and his influence as a senior member of the Liberal Party.

The Commission accepts the submission on Mr Sidoti's behalf that any notion that the pre-selectors were "cyphers" for Mr Sidoti is not supported by any evidence and that there is also no evidence that Mr Sidoti committed any impropriety in relation to any pre-selector. The Commission also accepts the submission that Mr Megna, Ms Di Pasqua and Mr Yap were legitimate members of the Liberal Party who had every right to nominate and who campaigned hard for the votes of the delegates.

The Commission is satisfied on the evidence, however, that when Mr Megna intimated in his text message to Mr Daniel that Mr Sidoti would be making certain moves in the upcoming pre-selection process to "remedy" his dissatisfaction with Ms McCaffrey and Ms Cestar, Mr Sidoti had spoken to Mr Megna about a strategy he intended to pursue to use his influence to weaken the re-election prospects for the incumbents. The Commission is satisfied that, notwithstanding he was not one of the pre-selectors, Mr Sidoti knew that he could – as he did – have a significant impact on the pre-selection outcome.

The Commission is satisfied that Mr Sidoti's moves were political and tactical. Mr Sidoti at one point conceded

that the outcome he and Mr Tannous wanted, when promoting the alternative ticket to the pre-selectors they spoke to, was one in which Ms McCaffrey, Ms Cestar and Dr Ahmed would either not be pre-selected, or would be in a position too low on the ticket to be elected. Despite his later denial in respect of Ms McCaffrey at least, his support for the alternative ticket was an effective withdrawal of support for the political futures of Ms McCaffrey, Ms Cestar and Dr Ahmed.

The question of Mr Sidoti’s motivation for wanting this outcome is a significant one. The Commission rejects the submission made on Mr Sidoti’s behalf that:

...there was no logical reason at all for Mr Sidoti, even if, which is denied he had some magical power to decide who the Liberal candidates would be at the next CCBC council election, to conduct some sort of vendetta against Ms McCaffery [sic], Ms Cestar and Dr Ahmed.

Mr Sidoti’s conduct in withdrawing support from the incumbent councillors needs to be viewed in the context of a long history of interaction in the years prior to the pre-selection process discussed in previous chapters, in which the Commission has found that he suggested or intimated (for example, in his email of 17 May 2014), and in the case of Ms Cestar on the Bay Run on 3 December 2016, threatened, that their political futures may be jeopardised if they did not do what he urged or requested.

Having regard to the totality of the evidence, the Commission does not accept Mr Sidoti’s denial that he was in any way motivated by the fact that Ms McCaffrey, Ms Cestar and Dr Ahmed had ultimately not gone along with the resolutions that he had asked them to move at the various meetings of the council at which the Five Dock town centre planning proposals were before them.

Mr Megna’s text message to Mr Daniel and his evidence in the public inquiry clearly linked Mr Sidoti’s active involvement in the pre-selection process for the Liberal Party candidates for election to CCBC in 2017 with his disaffection with the incumbent councillors in relation to planning matters. The Commission is satisfied on the evidence discussed in this and previous chapters that the planning matters about which Mr Sidoti and the incumbent councillors had by far the most frequent and significant interactions were those relating to his family’s properties in Five Dock. The Commission does not accept Mr Sidoti’s evidence that Mr Megna’s comment to Mr Daniel was just “gossiping”.

The words attributed to Mr Tannous by the pre-selector, Mr Henderson, also indicated some belief on Mr Tannous’ part that Ms Cestar and Dr Ahmed had not been “productive” and should be replaced by “fresh faces”.

Given that Mr Tannous had never been a member of the Liberal Party within the Drummoyne electorate or the City of Canada Bay local government area, and given his close association with Mr Sidoti, the Commission is satisfied that the negative view of these incumbent councillors was a view expressed by Mr Sidoti to Mr Tannous. This finding is strengthened by the particularly critical description of Ms Cestar’s qualities and capacity as a councillor and the alleged need for “fresh, young, enthusiastic candidates” to replace her given by Mr Sidoti in evidence.

The Commission is satisfied on the evidence that Mr Sidoti was actively involved in machinations during the pre-selection process to ensure that Ms Di Pasqua and Mr Yap replaced at least two out of three of Ms McCaffrey, Ms Cestar and Dr Ahmed. If, as intimated by Mr Megna in his text message to Mr Daniel, this was because their lack of “astuteness” in planning matters needed remedying, then the candidate he chose to actively support and promote, being a relatively young university student who worked part-time in his office and who had no local government or planning experience, would have been even more unsuitable.

The Commission therefore finds it more likely than not that Mr Sidoti wanted to replace councillors who had not done what he wanted them to do in relation to the Five Dock town centre planning matters with councillors who might be more amenable. In Ms Di Pasqua, he had a councillor with whom he had a longstanding relationship, including as her employer and as her mother’s employer, and someone who looked to him for advice and mentorship as a senior and influential member of the Liberal Party at the commencement of her political career.

Ultimately, though, and very much to her credit, Ms Di Pasqua recognised a conflict of interest in relation to the Waterview Street block planning proposal and declared herself unable to vote when it next came before council following the election, as discussed further below.

The evidence in relation to Mr Sidoti’s involvement in the pre-selection processes is evidence that is confirmatory or corroborative of the purpose and objectives he had tried, but ultimately failed to achieve through exerting pressure on the three Liberal councillors. It is confirmatory that he did target the political futures of the three councillors as he had previously said or intimated he would do if they did not adopt and advance the positions on the Five Dock planning matters he was urging.

The Commission does not find that Mr Sidoti’s conduct in relation to the Liberal Party pre-selection processes, discussed above, itself constitutes corrupt conduct, or any form of misconduct. The Commission finds that this episode adds to the context of earlier matters to show

that those councillors he had tried to influence were those he was involved in manoeuvres to remove, or whose resistance to his influence he was involved in “moves to remedy”.

The Commission finds that the evidence of Mr Sidoti’s involvement in the pre-selection is significant because:

- (i) it is evidence of a continuing course of conduct in relation to the three Liberal councillors
- (ii) it is evidence that goes to his state of mind in relation to “threats” earlier made and corroborates the subject of those earlier threats that the councillors could be replaced if they did not do what he urged them to do.

After the CCBC election

Mr Sidoti conceded in evidence that, between 2013 and 2017, his family had embarked on a strategy of adding to the family’s property portfolio in Five Dock by purchasing properties adjoining the family’s original property at 120 Great North Road, with a view to amalgamating and developing those sites.

On 8 August 2017, just days after the pre-selection, the Sidoti family acquired a further property in the Five Dock town centre when the contract for the sale of 124 Great North Road to Deverme, acting as trustee for the Sidoti Family Trust, was executed.

On the same day, the planning proposal for the Waterview Street block went on public exhibition until 5 September 2017.

By the time of the CCBC election on 9 September 2017, the Sidoti family owned the three adjoining properties at 120, 122 and 124 Great North Road and a property immediately behind in the Waterview Street block, at 2 Second Avenue. The exhibited planning proposal provided that the Great North Road properties would not have access to the bonus height and FSR provisions available elsewhere in the town centre and the height of any development at 2 Second Avenue would be limited to three-to-four storeys and an FSR of 1:1.

Ms Di Pasqua told the Commission that, prior to being elected to council, she had not been aware of the Five Dock town centre study and associated planning proposals, but that after her election, Mr Sidoti brought to her attention the fact that the matter was coming up at a council meeting. The evidence establishes that, following the council elections, the matter was next due to come before council at its meeting on 5 December 2017.

Ms Di Pasqua said that Mr Sidoti shared his view with her that he did not feel the two sides of Waterview Street, that is the block to the north of Second Avenue and the

block to the south, were being treated equitably. She said that Mr Sidoti gave her a bit of context to the matter and did a rough drawing to explain what he was talking about. Ms Di Pasqua said that she was aware, at this stage, that the Sidoti family owned properties in the block to the north, at 120 Great North Road and 2 Second Avenue.

Ms Di Pasqua said that this was the first time Mr Sidoti had spoken to her about the subject. In response, she told Mr Sidoti that she would not be able to vote on it. She said that she could see that there was a conflict of interest and she had made the independent decision that she would not vote or participate in the matter when it came before council. She took the advice of council’s director of corporate services the day of, or the day before, the council meeting about how she should word the disclosure of her conflict of interest.

Under cross-examination from Mr Sidoti’s counsel, Ms Di Pasqua agreed that, “hypothetically speaking”, it was possible that Mr Sidoti mentioned the matter to her so that she would have some background if a constituent came into the office and asked about it. However, Ms Di Pasqua also agreed with Counsel Assisting that, if a constituent had come into the electorate office to raise the matter of the Five Dock town centre with her, she would have advised them of her conflict of interest and, if necessary, referred them to someone else in the office, or to the council.

Mr Sidoti denied in evidence that he provided information to Ms Di Pasqua about the Waterview Street block so that she could make a decision about it when it came back before council. He said that his conversation with her was “in very basic terms just in case someone comes into the office and asks”.

The Commission accepts Ms Di Pasqua as a credible witness. Insofar as there is any dispute in the evidence about Mr Sidoti’s conversation with her, the Commission accepts her version of what was discussed.

The Commission finds Mr Sidoti’s justification for discussing the Waterview Street block planning proposal with Ms Di Pasqua following her election to council improbable. Ms Di Pasqua had worked in his electorate office continuously since 2014 and the Urban Design Study and associated planning proposals had been before council repeatedly from the time she commenced that employment. Matters specifically concerning the Waterview Street block had been considered by council since at least November 2015. As noted above, as at Ms Di Pasqua’s election to council, the Sidoti family had just purchased another property adjoining the Waterview Street block and the matter was due to come back before council following the public exhibition of the planning proposal between 8 August and 5 September 2017.

In these circumstances, the Commission is satisfied that the timing of Mr Sidoti’s discussion of the Waterview Street block related to Ms Di Pasqua’s position as a newly elected councillor who would have to vote on the matter, rather than as an ongoing employee in his electorate office who may have to answer a constituent’s question. That finding is strengthened by the evidence in relation to the newly elected councillor, Mr Yap, discussed below.

Evidence before the Commission establishes that Pacific Planning, under instruction from Mr Sidoti, made a submission to council on 9 October 2017, more than a month after the public exhibition period had concluded. The submission attached an economic evaluation of the development potential of the Waterview Street block commissioned by Pacific Planning. It repeated earlier arguments made by Pacific Planning that the proposed controls would make redevelopment unviable, and this would, in turn, prevent delivery of the laneway and the public benefit the laneway would provide, and would harm the entire town centre strategy.

On 11 October 2017, Mr Matthews sent an email to Mr Sidoti, attaching Pacific Planning’s submission and stating:

I think it may be a good idea if I can sit down with Nick [Yap] and go through all this with him for an hour. He may benefit from all the background and merit arguments etc. Let me know what you think.

Mr Sidoti responded, “I think it would be great to go through this with Nick. He’s [sic] the only one without a conflict and the only one that would understand it”.

At the council meeting on 6 February 2018, the Waterview Street block planning proposal came back before council following the public exhibition, having been deferred from the meeting on 5 December 2017. The recommendation of council staff was that the planning proposal should proceed to finalisation. At the meeting, Mr Megna declared a pecuniary interest in the matter, Ms Di Pasqua declared a non-pecuniary interest and both left the meeting. Mr Yap, and the majority of those eligible to vote, passed the resolution recommended by council staff.

The Sidoti family submits a development application

By 6 February 2018, the planning proposals associated with the Five Dock town centre and the Waterview Street block had effectively been finalised. At the end of this process, despite a change in the make up of council and new Liberal councillors, not all the planning controls that Mr Sidoti had wanted and advocated for over the previous nearly four years had been realised.

As discussed previously, the Sidoti family had, between the time the Urban Design Study was first adopted by council in late 2013 and the finalisation of the associated planning matters in February 2018, acquired three additional properties in and adjoining the Waterview Street block. Even as the Waterview Street block planning proposal was before council pending finalisation in the form recommended by council staff, preliminary design concepts were being drawn up by architects for the Sidoti family for a proposed large, mixed commercial and residential development at 120-124 Great North Road and 2 Second Avenue.

An initial iteration of the design concept, on 1 February 2018, contemplated a development of seven storeys, or 24 metres, along the Great North Road frontage with five storeys along the frontage to the rear lane. With an FSR of 3:1, it yielded two large shops, 33 apartments and basement parking for 46 cars. It would not have been compliant with the exhibited planning proposal.

By 16 February 2018, revised concept designs still contemplated a development of seven storeys along the Great North Road frontage, stepping down to five storeys at the back. The outcome of the revised designs was an FSR of 2.7:1, yielding two smaller shops and 30 apartments. Even though council had, by this time, determined to finalise a planning proposal which did *not* allow bonus height and FSR provisions to that part of Great North Road on which the Sidoti family properties were located, the revised design concept again exceeded the allowable height and density for the site. The designs were provided to Mr Sidoti for his review and comments.

The Canada Bay LEP, incorporating the amendments from the Waterview Street block planning proposal, was gazetted on 27 April 2018.

Ultimately, in July 2018, a preliminary development application was prepared for a proposed mixed-use development at the Sidoti family’s Five Dock sites. The proposed development, at seven storeys, clearly still exceeded the allowable height of 17 metres and possibly also the allowable FSR of 2.5:1.

Mr Sidoti agreed in evidence with his counsel’s proposition that the proposed development could be built regardless of what happened to land in the Waterview Street block, because it only involved the three properties on Great North Road. He also agreed with his counsel’s proposition that, if the proposal were approved, it could be developed regardless of anything to do with the Urban Design Study and regardless of anything that had happened by way of change to any controls or zoning in the Waterview Street block.

The Commission accepts that nothing prevented the Sidoti family from submitting a development application

in relation to their Five Dock properties, even one that was possibly non-compliant with the applicable planning controls and that was accompanied by a request to vary any relevant development standards to allow it. They had been invited to do as much by council's resolution of 7 February 2017.

However, a favourable decision on such a development application could not be assumed. Following amendments to the EP&A Act, all councils in the Great Sydney Region, including CCBC, were required to establish local planning panels by 1 March 2018. Councillors were no longer able to act as a consent authority for Part 4 development (that is, most development in NSW that usually requires council consent), those functions instead exercisable by the new panel of independent planning experts.

A formal development application was eventually lodged by the Sidoti family sometime in 2019, but was later withdrawn. Mr Sidoti gave evidence that this was primarily because of his mother's deteriorating health at the time.

The Commission is satisfied that, had the planning controls that Mr Sidoti relentlessly pursued been incorporated into the Canada Bay LEP, particularly the bonus height and FSR provisions for the Great North Road fronting properties and greater density for the Waterview Street block behind, the impediments to, and uncertainty regarding, the outcome of his family's development application would have been greatly lessened.

The Commission finds on the totality of the evidence set out in this and previous chapters, that the Sidoti family's property development interests entirely informed Mr Sidoti's advocacy in relation to the Five Dock town centre planning matters. The development potential of the family's four Five Dock properties was not as fully realised as he had hoped by the time the matters were finalised. That fact does not alter the seriousness of Mr Sidoti's conduct in trying to influence the honest and impartial exercise of the Liberal councillors in pursuit of private interests, as discussed in the next chapter.

Chapter 10: Corrupt conduct and s 74A(2) statements

In the relevant period, between 2013 and 2017, Mr Sidoti was, in his capacity as a member of the NSW Parliament, obliged to act in the interests of his constituents. His obligation formed part of his duty as an elected public official to at all times act honestly and diligently in the public interest. The entirety of Mr Sidoti's constituency fell within the City of Canada Bay local government area. Accordingly, the councillors of CCBC were the elected representatives for local government purposes of the same constituents as Mr Sidoti represented as the state member.

The CCBC councillors were obliged to act at all times in the interests of that constituency and, in doing so, were obliged to exercise their official functions, including their decision-making, impartially, objectively and not for extraneous or improper purposes.

In this investigation, the Commission has examined aspects of the relationship between the Liberal councillors and Mr Sidoti. As the local member for Drummoyne and as a senior member of the Liberal Party, Mr Sidoti's position gave him significant standing and authority in the eyes of the Liberal councillors. There is evidence that he enjoyed longstanding cordial and collegial relationships with Mr Megna, Ms McCaffrey and Ms Cestar. For the more recently elected Dr Ahmed, Mr Sidoti was an important source of advice and support and his views carried significant weight because of his political seniority and experience. The Liberal councillors assisted Mr Sidoti's campaigning and fundraising activities when required and he, in turn, provided political mentorship and support to them.

Given their shared constituency, Mr Sidoti also had contact with the Liberal councillors from time to time in relation to local government matters raised with him by residents. Mr Sidoti's position as the state representative of the same constituents served by CCBC allowed him direct and regular access to the Liberal councillors and gave considerable authority to his representations about the interests and concerns of those constituents.

The conduct of Mr Sidoti

The previous chapters of this report have examined in detail an extended course of conduct engaged in by Mr Sidoti between the end of 2013 and early 2017. That course of conduct involved using his public office as a member of Parliament and the local member for Drummoyne in deliberately trying to influence the exercise of the official functions of the three Liberal councillors of CCBC, who could vote on CCBC's plans for the revitalisation of the Five Dock town centre, to persuade them to adopt and advance the positions he advocated for in relation to those plans. Those councillors were Ms McCaffrey, Ms Cestar and Dr Ahmed. Determining Mr Sidoti's motivation or objective for doing so is fundamental to the Commission's task.

The evaluation of Mr Sidoti's conduct for the purposes of s 8 and s 9 of the ICAC Act requires consideration of all the relevant acts (including his statements and communications) and omissions that constitute his conduct, as well as his state of mind, in respect of them. The latter concept embraces matters of "intention", "motive", "purpose" and/or the "objectives" behind particular conduct.

Often, intention or motive is only evident from a person's conduct. In the public inquiry, there was a considerable volume of evidence which reveals that, over the extended period in which the Urban Design Study and associated planning proposals were before CCBC, Mr Sidoti's consistent focus was on seeing the introduction or amendment of relevant planning controls that would permit greater height and density and improve the redevelopment potential of the area in which his family's properties were located. If his attempts to bring about changes to what the Urban Design Study and proposed planning controls provided for were successful, then the prospect of financial benefits from a redevelopment of the Sidoti family's original property at 120 Great North Road and the adjacent three more recently acquired properties would be realised.



The factual findings set out in this report establish a serious and developing conflict between Mr Sidoti's private interest in advancing the development potential of his family's growing number of properties and his public duty as the local member of Parliament, to serve the interests of the public, including the interests of his constituency, honestly, impartially and disinterestedly.

The planning outcomes Mr Sidoti wanted the Liberal councillors to deliver were specific to a small part of Five Dock in which his family's properties were located and were directed to maximising their development potential. In the main, the outcomes he sought were inconsistent with what had been determined by CCBC – informed by the recommendations of council staff and those independent expert planning consultants engaged by council – to be in the public interest.

The extensive community consultation process informing the advice given to CCBC had revealed widespread opposition from the Five Dock local community to high density development. The majority of the affected residents who continued to engage with the consultative process while the matters remained before CCBC made submissions opposing higher heights, densities, commercial zoning and redevelopment and sought to retain the village feel of the town centre.

Mr Sidoti insisted that he was, in particular, representing the interests of the "shopkeepers" of Five Dock when he advocated for a greater density than the independent planning experts had recommended for the town centre. However, at the outset, the position he advocated for was one that benefited his family's only property at the time. That position was inconsistent with what the local chamber of commerce was advocating to CCBC. Mr Sidoti could not identify the "shopkeepers" he professed to be representing. He also could not produce any evidence of other feedback or concerns about the Five Dock town centre planning proposals he said he regularly received from other constituents and that

he claimed informed his representations on those matters to the Liberal councillors.

Mr Sidoti did not manage the conflict of interest between his private interests and his public duty in relation to the Five Dock town centre planning matters. Mr Sidoti insisted that he did not have to disclose or highlight the fact that his family owned property in the area because it was a well-known fact.

While Ms McCaffrey and Ms Cestar were aware that Mr Sidoti had an interest in the Five Dock town centre planning proposals in respect of their impact on his family's property development plans, they did not know its extent. Dr Ahmed had no knowledge that the Sidoti family owned any property in Five Dock other than 120 Great North Road. He gave evidence that, had he known that Mr Sidoti's family had property interests that would benefit from the planning outcomes for which Mr Sidoti was advocating, he would have weighed Mr Sidoti's advocacy very differently and would have had no hesitation in "telling him where to go".

Notwithstanding Mr Sidoti's assertion that his parents engaged planning consultants to represent their interests before CCBC in order to keep Mr Sidoti at arm's length from what they were trying to achieve, the evidence is clear that he was intimately involved in the engagement and instruction of those planning consultants on behalf of his parents. Far from staying at arm's length from the Liberal councillors' deliberations about matters affecting his family's property interests, Mr Sidoti made representations to the councillors entirely consistent with the submissions of his family's planning consultants, purporting that these were made on behalf of disgruntled constituents in his capacity as their local member.

By virtue of his own official position, Mr Sidoti had a level of access to, and influence over, the Liberal councillors that no other constituent enjoyed and their willingness to hear, consider and act on his representations was greater

than for any other constituent. Mr Sidoti exerted pressure on the Liberal councillors by:

- maligning aspects of the Urban Design Study and falsely accusing CCBC staff of making misleading statements about it
- misrepresenting the concerns of the local business community, or “shopkeepers”, about the Urban Design Study and urging them to better represent their shared constituents and deliver their “vision”
- engaging in persistent email and telephone communication and initiating meetings with them before every meeting at which the relevant planning matters were due to come before council
- advocating for planning outcomes that he represented reflected the concerns and feedback of unspecified constituents, but which in fact benefited his family’s property interests
- directing their attendance at meetings and berating them for non-attendance
- suggesting their positions on CCBC could be threatened if they did not advance the positions he urged them to adopt and advance.

When Ms McCaffrey became mayor in June 2016, the Liberal Party assumed the balance of power on CCBC by virtue of her casting vote and any motion moved and supported by the Liberal councillors would be carried because they had the numbers. From that point, Mr Sidoti’s attempts to influence the Liberal councillors’ positions in relation to the Five Dock town centre planning proposals became more targeted and insistent. Shortly before key council meetings, he provided the Liberal councillors with the wording of draft motions and amendments prepared by his family’s planning consultants, with instructions about how they should be moved and supported.

Ms Cestar described Mr Sidoti’s interactions with them after Ms McCaffrey became mayor as a “pressure cooker” and said that Ms McCaffrey told her she wanted to “get John off her back”. Ms McCaffrey described experiencing “constant pressure” from Mr Sidoti and Dr Ahmed said that, by this time, they were all feeling “harassed” by Mr Sidoti in relation to the Five Dock matters and described his communication as a “barrage”.

A significant aspect of Mr Sidoti’s attempt to improperly interfere with the exercise of the Liberal councillors’ official functions was his use of threats to their political futures if they did not deliver the outcomes he urged them to adopt and advance. In May 2014, he suggested that a number of (unnamed) shopkeepers were lining up to run against them at the next election if they endorsed the plan for the town centre in the form that was then

recommended by CCBC staff. In December 2016, he made a specific threat to Ms Cestar that her position on CCBC would be in jeopardy if she voted in favour of the recommendation of CCBC staff, rather than in accordance with an alternative form of words that would be sent to her by his family’s planning consultants.

The purpose of Mr Sidoti’s conduct was to influence and persuade the three Liberal councillors to advance the outcomes that he wanted in relation to the Five Dock town centre planning matters. Had they done as he wanted them to, they would have exercised their official functions contrary to their own obligations, set out in the CCBC code of conduct, to deal with matters in accordance with established procedures in a non-discriminatory manner, to take no irrelevant matters or circumstances into consideration, and to act transparently. They would have failed to manage a significant conflict arising as a consequence of the pressure that was being exerted on them by Mr Sidoti that was affecting the honest, diligent and impartial exercise of their public duty.

Ms McCaffrey and Ms Cestar knew that Mr Sidoti had private interests in the Five Dock planning matters and were conscious that he was trying to influence them to exercise their official functions to favour those interests. Had they done as he urged them to, they would have exercised their official functions partially. Had they capitulated to Mr Sidoti’s pressure, they would have exercised their official functions knowing that they were advancing private interests.

Mr Sidoti’s attempts to adversely affect the honest and impartial exercise of the Liberal councillors’ official functions did not succeed, or did not succeed nearly to the extent that he had intended. Ms McCaffrey’s request for council staff to draft a motion to cause the further investigation of the zoning of the Waterview Street block (and two other sites included to distract from the focus on the Waterview Street block), in circumstances where the matter had already been investigated and no public benefit had been identified, involved partiality on her part, albeit she felt coerced to act in that way because of pressure from Mr Sidoti.

As a former councillor and mayor himself, and as a member of Parliament with his own public duty, Mr Sidoti was well aware of the obligations on councillors to act impartially, independently and with integrity in the public interest. Despite not achieving all of the outcomes he wanted, his conduct constituted a serious attempt both to interfere with the democratic processes of another level of government, and to cause other public officials to act contrary to their own obligations by giving him preferential treatment.

The Commission is satisfied on the evidence to the requisite standard that Mr Sidoti attempted to influence the honest and impartial exercise of the Liberal councillors' official functions in the expectation that his authority and their loyalty would cause them to do what he told them. That he did *not* want them to act independently and impartially was made clear by his use of an implied threat to their political positions as early as May 2014, in his animosity towards Ms Cestar in particular, manifest in his confrontation with her on the Bay Run in December 2016, and in his ultimate withdrawal of political support for Ms McCaffrey, Ms Cestar and Dr Ahmed during the pre-selection process for the Liberal Party candidates for the CCBC election in September 2017.

While Mr Sidoti's involvement in the pre-selection process could not be said to be sufficiently connected with or under the colour of his public office, it involved withdrawing political support from those three Liberal councillors who did not deliver the Five Dock town centre planning outcomes he wanted in respect of his family's interests. The Commission is satisfied that his effective dis-endorsement of those councillors is corroborative of Mr Sidoti's state of mind in engaging in a course of conduct directed to influencing the honest and impartial exercise of their official functions.

Corrupt conduct

As outlined in chapter 2 and in Appendix 2 to this report, in making findings of fact and corrupt conduct, the Commission applies the civil standard of proof on the balance of probabilities, which requires facts to be proved to a reasonable satisfaction taking into account the decisions in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362 and *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171.

The Commission is satisfied that, between approximately late 2013 and February 2017, Mr Sidoti engaged in a protracted course of conduct, involving the use of his official position as a member of Parliament and the local member for Drummoyne, to try to improperly influence the CCBC Liberal councillors, Ms McCaffrey, Ms Cestar and Dr Ahmed, to adopt and advance certain positions in relation to the Five Dock town centre that would benefit his family's property interests in the area.

Despite his representations that he was acting at all times in the interests of his constituents, in particular, the business community and landowners in the Waterview Street block, the outcomes that he wanted those councillors to deliver were entirely directed to his private interest in increasing the development potential of his family's growing number of properties in and around the Five Dock town centre. Those outcomes were also

inconsistent with what had been determined by CCBC (informed by the recommendations of CCBC staff and the independent expert planning consultants engaged by CCBC following extensive community consultation) to be in the public interest.

Relevant findings in respect of Mr Sidoti's conduct set out and discussed from chapters 3 to 9 of this report may be summarised in the list that follows.

- The work done by CCBC to plan for the revitalisation of the Five Dock town centre was a substantial project in the public interest. Following extensive community engagement and consultation, the key feedback from the community was that there should not be a significant increase in height and density in the town centre, in order to maintain its highly valued village feel and to minimise the negative impact of taller buildings on the public domain and adjacent residential areas (chapter 3).
- Following the public exhibition of the Urban Design Study in late 2013, Mr Sidoti was unhappy with the recommendations directed to the revitalisation of the Five Dock town centre because the development potential of his family's property at 120 Great North Road did not stand to materially benefit (chapter 4).
- CCBC staff engaged extensively with the Five Dock Chamber of Commerce in relation to CCBC's plans to revitalise the town centre and the chamber supported many aspects of the Urban Design Study. The chamber was concerned to see the promotion of greater development and it advocated for an increase in FSR from the existing 2.5:1 to 3.5:1 for larger sites over 1,500 square metres, to operate as an incentive for site amalgamation and make development viable. It was also concerned about what it perceived to be a lack of vision for the northern end of Great North Road (chapter 4).
- When Mr Sidoti, in his capacity as the local member for Drummoyne, attended the chamber meeting on 7 April 2014 and advocated for an increase in the FSR to 3:1 for all sites in the town centre, regardless of lot size:
 - his position was inconsistent with the chamber's formalised position and would not have encouraged site amalgamation or stimulated development for the benefit of Five Dock as a whole
 - his position was directed to the benefit of his family's property, which, at 620 square metres, was too small to take advantage

- of any proposed bonus increase in FSR for larger sites
 - he was using his official position to advocate for a position that favoured his private interest without proper disclosure that that was what he was doing
 - it was not sufficient for the purposes of disclosure that those present *would have* known that his family owned 120 Great North Road
 - there is no evidence that he was representing the views of “a lot of the smaller shopkeepers” who had conveyed their concerns to him (chapter 4).
- The assertions in Mr Sidoti’s email to the Liberal councillors of 7 April 2014, that CCBC staff were “making very misleading statements” about the Urban Design Study and attempting to “sell the business community a pup”, and that the councillors needed to “challenge the thoughts of staff” as the “survival of the centre is at play”:
 - had no proper basis and were themselves misleading representations
 - were designed to persuade the councillors to challenge rather than support CCBC staff’s recommendation to endorse the Urban Design Study
 - were designed to represent that it was the interests of the business community that he, as the local member, was promoting, when he had a private interest in the councillors “challenging” the Urban Design Study (chapter 4).
- In his email of 8 April 2014, when Mr Sidoti requested the Liberal councillors meet “to form a united stance” in relation to the Urban Design Study in the week before it was due to be voted on by CCBC:
 - he was attempting to get the councillors to form a united voting position that challenged the council staff’s recommendation to endorse it
 - he was attempting to use his position and influence as a member of Parliament and the local member, to interfere with the councillors’ independence
 - he had an undisclosed private interest in achieving an increase to the recommended FSR for the town centre that he wanted to persuade the councillors to adopt and advance
- Ms McCaffrey and Ms Cestar understood that the position Mr Sidoti wanted them to unite on related to his family’s property interests in the area and his unhappiness with the Urban Design Study recommendations as these would affect the development potential of his family’s properties
- Dr Ahmed believed the position Mr Sidoti wanted them to unite on was on behalf of their shared constituents in the business community, which Mr Sidoti gave the impression they had not been doing enough to represent (chapter 4).
- Mr Sidoti facilitated a private meeting between Five Dock Chamber of Commerce representatives and the Liberal councillors in his electorate office on 16 April 2014. The arrangement of such a meeting, notwithstanding that he did not stay for the actual discussion, was an improper attempt to interfere with the independence of the Liberal councillors, in that he:
 - had a private interest contrary to the recommendations of the Urban Design Study
 - had already told the councillors that CCBC staff were attempting to sell the business community a “pup” with their “very misleading statements”
 - exhorted the councillors to be well informed to “challenge” the thoughts of CCBC staff
 - had asked them to meet and form a “united stance” in relation to the Urban Design Study (chapter 4).
- In his email to the Liberal councillors on 17 May 2014, Mr Sidoti:
 - falsely represented that all the (unnamed) “shopkeepers” he had spoken to wanted the bonus height and FSR provision to apply to all sites regardless of lot size, when this was not factually correct and was the outcome he wanted in respect of his family’s property
 - falsely politicised the matter when he exhorted the Liberal councillors to “deliver the vision of the shopkeepers” instead of the Labor mayor’s “distorted views”
 - coupled his instruction to the councillors about the “vision” they should deliver with

a suggestion that a number of (unnamed) shopkeepers were lining up to run against them at the next election if the proposal for the town centre went ahead in its current form and that he understood where they were coming from.

In this email, Mr Sidoti was attempting to exert pressure on the councillors with what Ms Cestar and Ms McCaffrey recognised as a threat to their political futures if they did not deliver an outcome that he purported was in the interests of their shared constituents, but which they understood was directed to the benefit of his family's property interests (chapter 6).

- In or around July 2014, Mr Sidoti was intimately involved in the engagement of planning consultants to represent his family's property interests before CCBC in relation to the Five Dock town centre planning proposal. Following the family's purchase of 2 Second Avenue in the Waterview Street block in October 2014 and 122 Great North Road in May 2015, submissions made to CCBC by the family's consultants were directed to achieving the rezoning of the Waterview Street block and the amendment of development controls that would benefit the redevelopment potential of the family's three properties. Rather than stay at arm's length from the Liberal councillors' deliberations about these matters, in circumstances where his private interests were already being represented before CCBC, he used his access to the councillors to continue to make self-interested representations in his capacity as the local member of Parliament (chapter 6).
- Mr Sidoti sought to influence the position that the Liberal councillors took in relation to these planning matters by:
 - adopting the site-specific submissions made by his family's planning consultants
 - representing that these were submissions he was making in the public interest on behalf of constituents, and in particular in response to the concerns of (unnamed) "shopkeepers", when such concerns were not reflected in the submissions received by CCBC following the public exhibition of the planning proposal and no evidence was produced of any such "feedback" from constituents (chapter 6).
- In the lead up to the CCBC meeting on 20 October 2015, Mr Sidoti continued to use the influence of his position to exert pressure on the Liberal councillors to try to get them to deliver the planning outcomes he wanted, by:
 - seeking to meet with the councillors in advance of a CCBC meeting at which the town centre planning proposal was due to be considered
 - when Dr Ahmed indicated on 15 October 2015 that he would be away for the important upcoming CCBC meeting, telling him "Mate without you I'm fucked. We won't have the numbers", and asking him to reconsider, Dr Ahmed attended the meeting
 - on 19 October 2015, providing them (and not the non-Liberal councillors) with a document prepared, at his request by his family's planning consultant, that was effectively a script for the councillors to speak to at the CCBC meeting, setting out points in favour of expanding the town centre to include the Waterview Street block and one other site (included to distract from the focus on the Waterview Street block) as well as the wording of a motion for this to occur; it was clear given the author of the document, and Ms McCaffrey and Ms Cestar understood it to be the case, that a rezoning would benefit Mr Sidoti's family's property interests
 - discussing the need to defer endorsement of the planning proposal and further investigate the zoning of the Waterview Street block with Ms McCaffrey and Dr Ahmed prior to the CCBC meeting on 20 October 2015 at which those councillors moved a motion to achieve this outcome, contrary to the recommendations of CCBC staff (chapter 6).
- Prior to the CCBC meeting on 3 November 2015, as a consequence of the persistent pressure brought to bear on her by Mr Sidoti, Ms McCaffrey asked CCBC staff to prepare a draft motion calling for further investigation of the zoning and development controls for three additional sites, one of which was the Waterview Street block. She did so in circumstances where:
 - she knew that the Waterview Street block was the focus of Mr Sidoti's private interests

- she requested the inclusion of two other sites to distract from that focus
- the issue of rezoning the Waterview Street block had already been considered by Studio GL and CCBC staff on a number of previous occasions, no public benefit had been identified and it was not supported
- when she provided the draft motion to her fellow councillors in advance of the meeting, she described it as one “which may solve some problems”, by which she meant the pressure from Mr Sidoti
- when Ms Cestar indicated that the rezoning of the Waterview Street block was not supported, she responded “we need to make it supported”, by which she meant because of pressure from Mr Sidoti to do so.

When Ms McCaffrey seconded and supported the draft motion she had asked CCBC staff to prepare, she continued to exercise her official functions partially to favour Mr Sidoti, motivated by a desire to get him to stop his relentless representations about the issue (chapter 7).

- While the Sidoti family was entitled, like any other constituent, to advocate to CCBC for the rezoning of the Waterview Street block, what Mr Sidoti was doing when he made the same representations to the Liberal councillors alone, was not done in his capacity as a private citizen, but rather in his capacity as the local member of Parliament. He used his position’s access to and influence over the Liberal councillors to advocate for the benefit of private interests, as though they were one and the same as the interests of their shared constituents and in the broader public interest. A key aspect of his attempt to adversely affect the impartial exercise of the councillors’ official functions was the misrepresentation that the planning outcomes that favoured his private interests were one and the same as those sought by their shared constituency and were in the public interest (chapter 7).
- After Ms McCaffrey became mayor in June 2016 and the Liberal Party gained the balance of power, Mr Sidoti:
 - was intimately involved in the engagement of new planning consultants, Pacific Planning, to represent his family’s property interests before CCBC

- continued his consistent pattern of raising the Five Dock matters that directly affected his family’s private interests with the Liberal councillors just before CCBC was due to vote on them
- on 1 August 2016, forwarded Dr Ahmed a draft motion prepared by the Sidoti family’s planning consultant that was contrary to either course of action proposed by CCBC staff and that called for the rezoning of the Waterview Street block contrary to the recommendations of CCBC’s independent consultants but to the benefit of his family’s property interests
- on 2 August 2016, hours before the CCBC meeting, forwarded additional wording including the script “I move that”, and indicated he would send some questions that Dr Ahmed could ask the planner to give him more floor time
- on 2 August 2016, sent the draft motion to Ms McCaffrey and Ms Cestar and advised them that Dr Ahmed would be moving it and expressed the hope that Ms Cestar would second it
- was interfering with the independence of the Liberal councillors in an attempt to have them move, second and carry a motion despite it being contrary to the recommendations of CCBC staff and in favour of planning outcomes that would benefit his family’s property interests
- was interfering with the exercise of the official functions of the non-Liberal councillors, in that had the Liberal councillors acted in accordance with his instructions and had the non-Liberal councillors voted in favour of the motion, they would have done so without knowing Mr Sidoti’s role in securing an outcome favourable to his family’s property interests (chapter 7).

- Mr Sidoti forwarded the notice of motion drafted by the Sidoti family’s planning consultant only to the Liberal councillors, and only hours before the CCBC meeting, so that had the Liberal councillors acted as he instructed and the motion carried on Ms McCaffrey’s (the mayor’s) casting vote, the rezoning of the Waterview Street block would have been achieved without the prior notice to the other councillors that may have provided the opportunity for wider debate or dissent. This constituted a significant departure

from established procedures and a direct interference with the democratic processes of local government for the advancement of private interests (chapter 7).

- At the same time as Mr Sidoti was representing to the Liberal councillors, and Dr Ahmed in particular, that he was acting on behalf of the landowners who were his constituents in the Waterview Street block, he was involved in a strategy with Pacific Planning to get as many of those landowners “on board” to support and strengthen their submissions to CCBC on behalf of his family’s interests in October 2016. This constituted a serious conflict between his private interests and his position of public trust as the local member of Parliament to serve the public honestly, impartially and disinterestedly, that is, not to be motivated by personal gain (chapter 8).
- During the encounter between Mr Sidoti and Ms Cestar on the Bay Run early on 3 December 2016, a few days before an important CCBC meeting at which the planning proposal for the Waterview Street block was due to be considered, Mr Sidoti behaved towards Ms Cestar in an intimidating manner and threatened her position on CCBC when he:

- engaged in animated discussion about his unhappiness with the proposal and what he wanted instead in relation to the zoning of the block
- told her that there would be wording coming from his town planners seeking additional floor space to what had been proposed, and conveyed his expectation that she and her fellow councillors would use that wording to amend the recommendation of CCBC staff
- said, in response to Ms Cestar’s hesitation to agree to doing what he asked, words to the effect that, if she could not do that, he would find councillors or a council who could (chapter 8).

In doing so, Mr Sidoti sought to compromise Ms Cestar’s independence as a councillor and used a threat to her continued position to try to coerce her to act partially in favour of the outcome he wanted in respect of his family’s property interests.

- In his email to Ms McCaffrey on 4 December 2016, Mr Sidoti improperly used the seniority and influence of his position to put pressure on

the mayor and interfere with the independent exercise of her official functions by:

- berating her to “show some leadership” and ensure that the Liberal councillors showed up to CCBC meetings
- implicitly criticising the Liberal councillors’ performance and competence
- politicising the Waterview Street block planning matter as a Liberal versus non-Liberal matter
- directing her to “rectify” a situation he described as “disgraceful”
- issuing instructions on CCBC procedural matters.

In doing so, he was trying to ensure that the Liberal councillors had the numbers at the next CCBC meeting and would vote together against recommendations from CCBC staff that did not suit his private interests (chapter 8).

- The request by Pacific Planning on 5 December 2016 to defer CCBC’s consideration of the Waterview Street block planning proposal at its meeting the next day was a strategy to further delay its finalisation and referral for a Gateway determination. Mr Sidoti was still seeking a different outcome to benefit his family’s property interests, namely, the same development controls for the Waterview Street block as applied to the block immediately to the south and access to the bonus height and FSR provisions for the Sidoti family properties on Great North Road. What Mr Sidoti was still seeking was inconsistent with the recommendations of CCBC’s independent consultants and CCBC staff and with what had been determined by CCBC as in the public interest on 2 August 2016 (chapter 8).
- Less than three hours before the CCBC meeting on 21 February 2017, Mr Matthews, on instruction from Mr Sidoti, sent the Liberal councillors an email in which he:
 - advised them that the rescission motion that had been foreshadowed for that meeting should not be supported “on strong planning grounds”
 - encouraged them to consider moving the motion he attached, which sought to carry the motion that had passed on Ms McCaffrey’s casting vote on 7 February 2017, with an amendment

permitting the application of bonus height and FSR provisions for sites larger than 1,000 square metres for that part of Great North Road on which two of the Sidoti family properties were located.

This was a final attempt to influence the impartial exercise of the official functions of the Liberal councillors and to take advantage of CCBC processes, to deliver an outcome that was inconsistent with the motion carried at the previous CCBC meeting (and with the recommendations of CCBC's independent consultants and planning staff) but which, if carried, would directly benefit the property interests of the Sidoti family (chapter 9).

- When Mr Sidoti made a disclosure to the premier on 13 July 2017, that his parents were among a number of property owners who were dissatisfied with CCBC's decisions and were seeking a review by the Department of Planning and Environment, he recognised that he had a potential conflict of interest in the matter and a duty not to allow his position to influence any outcome in his favour. At all relevant times, a similar potential conflict of interest existed between his duty as the local member of Drummoyne and his pursuit of his family's property interests. The Commission is satisfied to the requisite standard that he recognised this conflict but did not disclose or manage it appropriately because he intended to use his position to influence the exercise of the Liberal councillors' official functions to further his private interest (chapter 9).
- Mr Sidoti's involvement in the pre-selection process for the Liberal Party ticket for the CCBC election in 2017, does not in itself constitute corrupt conduct, or any form of misconduct. The evidence of his involvement is significant because it is further evidence:
 - of a continuing course of conduct in relation to the three Liberal councillors
 - that goes to his state of mind in relation to "threats" earlier made and corroborates the subject of those earlier threats that the councillors could be replaced if they did not do what he urged them to do (chapter 9).

Mr Sidoti

Mr Sidoti's conduct, between approximately late 2013 and February 2017, of engaging in a protracted course of conduct, involving the use of his official position as a member of Parliament and the local member for Drummoyne, to try to improperly influence the CCBC Liberal councillors, Ms McCaffrey and Ms Cestar, to dishonestly and/or partially exercise their official functions to adopt and advance certain positions in relation to the Five Dock town centre that would benefit his family's property interests in the area, constitutes corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act, because it is conduct that adversely affects, or that could adversely affect, the honest or impartial exercise of the official functions of the Liberal councillors on CCBC at the relevant time.

Because the Commission accepts that Dr Ahmed had no awareness that Mr Sidoti's family had property interests that would benefit from the planning outcomes for which he was advocating, he would have lacked a necessary appreciation that any preference shown to Mr Sidoti's advocacy was for an unacceptable reason. Dr Ahmed's position is, however, relevant to Mr Sidoti's breach of public trust, discussed further below.

Mr Sidoti's conduct also constitutes or involves a breach of public trust and therefore comes within s 8(1)(c) of the ICAC Act.

Submissions made to the Commission on behalf of Mr Sidoti seek to characterise the conduct investigated by the Commission as "advocating a view to local councillors, even if it is different to views held by others" and argue that such conduct does not engage the jurisdiction of the Commission, especially when the particular councillors involved never communicated to the advocate that they were going to, or were ever likely to, exercise their official functions dishonestly or partially.

The submissions argue that, for a politician, engaged in internal party communication with other politicians, to have used "strong language" in less than a handful of email transmissions in the whole of a seven-year period investigated by the Commission, "may possibly offend the subjective sensibilities of some, but it cannot amount to a breach of standards imposed and recognised by law in the circumstances of this case".

The submissions further contend that the conduct of Mr Sidoti was well within the boundaries of the line between influence, in the sense of legitimate representations, and influence that seeks to procure a person to act contrary to probity, and that he was exercising his democratic rights and his functions as a member of Parliament in a manner which was in no way

corrupt or designed to obtain corrupt conduct on the part of councillors. Equally, there was no breach of trust.

For the reasons discussed in this report, the Commission does not accept the characterisation of Mr Sidoti's conduct nor the submissions that the Commission's jurisdiction is not engaged by it.

Conduct affecting the impartial exercise of official functions

In considering whether Mr Sidoti's conduct adversely affected, or *could have* adversely affected, the honest or impartial exercise of the Liberal councillors' official functions, it is important to note that it is not necessary for Mr Sidoti's conduct to have *actually* affected the honest or impartial exercise of their official functions.

It is enough, for the conduct to come within s 8(1)(a) of the ICAC Act, that Mr Sidoti attempted to adversely affect, and/or that his conduct could have adversely affected, the honest or impartial exercise of the councillors' official functions, whether his attempts were successful or not. It follows that the Commission does not have to be satisfied that the three Liberal councillors, who were subjected to Mr Sidoti's attempts, were susceptible to acting corruptly when carrying out their functions, or that he had a basis for believing that to be the case.

Section 8(1)(a) of the ICAC Act concerns the conduct of *any person*, whether or not a public official, that is directed towards interfering with the honest or impartial exercise of another public official. In this case, the person engaging in the "interfering conduct" is himself a public official. Mr Sidoti's use of his official position as a member of Parliament, to interfere with the exercise of the official functions of other public officers, compounds the seriousness of his conduct. It involved breaching two sets of standards at one and the same time.

On the one hand, it involved a breach of Mr Sidoti's duty to use his official position in service of the public before his own private interests; on the other, it involved his attempt to interfere with the duty of the Liberal councillors to exercise their own public duty to act honestly and impartially.

Neither of the terms "partial" or "impartial" are defined in the ICAC Act. In *Greiner v ICAC*,²⁷ Mahoney JA considered the term "partial" in some detail as it is used in s 8 of the ICAC Act and identified it as involving at least five elements:

First, it is used in a context in which two or more persons or interests are in contest, in the sense of having competing claims

...

*Secondly, it indicates that a preference or advantage has been given to those persons or interests which has not been given to another. Thirdly, for the term to be applicable, the advantage must be given in circumstances where there was a duty or at least an expectation that no one would be advantaged in the particular way over the others, but, in the relevant sense, all would be treated equally. Fourthly, what was done in preferring one over the other was done for that purpose, that is the purpose of giving a preference or an advantage to that one. And, finally, the preference was given not for a purpose for which, in the exercise of the power in question, it was required, allowed or expected that the preference could be given, but for a purpose which was, in the sense to which I have referred, extraneous to that power.*²⁸

His Honour opined that "ordinarily, there will be no partiality if there be no duty to be impartial" and emphasised that partiality requires consciousness of wrongdoing, or "an appreciation of the fact that the selected person has been preferred for an unacceptable reason".²⁹

It is clear that the Liberal councillors had a duty to act impartially in the exercise of their official functions in relation to the Five Dock planning matters that came before CCBC. Their obligations under the CCBC code of conduct included the requirements to:

- consider issues consistently, promptly and fairly and to deal with matters in accordance with established procedures in a non-discriminatory manner (clause 3.4)
- take all relevant known facts (or those of which they should be reasonably aware), and no irrelevant matters or circumstances, into consideration when making decisions and have regard to the particular merits of each case (clause 3.5).

As public officials, like Mr Sidoti himself, they were also expected to serve the public honestly, impartially and disinterestedly in accordance with their fiduciary duty of loyalty. Mr Sidoti readily agreed, having been a councillor himself, that he understood that the councillors were obliged to act with integrity, selflessness and impartiality, and that any conduct directed to undermining their ability to act in accordance with these key principles would be a very serious matter.

²⁸ *Greiner v ICAC* at 161-162.

²⁹ *Greiner v ICAC* at 162C-E.

²⁷ (1992) 28 NSWLR 125.

If the five elements of partiality identified by Mahoney JA are applied to the facts found in this matter, it is clear that Mr Sidoti's conduct could adversely affect, and in one particular case, at least, did adversely affect, the honest or impartial exercise of the official functions of Ms McCaffrey and Ms Cestar.

First, when the planning matters concerning the Five Dock town centre were before the Liberal councillors for their consideration and vote, the councillors were more often than not faced with a contest between the recommendations of CCBC staff and the divergent planning outcomes for which Mr Sidoti advocated.

Ms Cestar and Ms McCaffrey were both aware that, despite Mr Sidoti's representations that he was acting on behalf of the concerns of disgruntled constituents including Five Dock's "shopkeepers" and residents of Waterview Street, he was personally unhappy with the Urban Design Study and associated town centre planning proposals and that the outcomes he wanted were specific to a small block in Five Dock in which his family had property interests.

Secondly, even though Mr Sidoti's family's interests were represented before CCBC by two sets of planning consultants, by virtue of his own official position, he had a level of direct access to the Liberal councillors that no other constituent enjoyed, including their greater willingness to hear, consider and act on his representations than those of other constituents. He used that access to try to seek a further advantage, namely, the site-specific planning outcomes that would benefit his family's properties' redevelopment potential over the recommendations of CCBC staff about what was in the public interest for the revitalisation of the Five Dock town centre as a whole.

Thirdly, as discussed above, the Liberal councillors had a duty under the CCBC code of conduct and a public trust duty to act impartially. They also had a duty to disclose and manage or avoid altogether any conflict of interest, defined under the CCBC code of conduct as existing where a reasonable and informed person would perceive that a council official could be influenced by a private interest when carrying out their public duty.

As discussed further below, Ms Cestar and Ms McCaffrey recognised on multiple occasions that Mr Sidoti was attempting to use his relationship of influence and authority over them to interfere with the independent exercise of their official functions to further his private interests. This constituted a conflict of interest for each of them, which neither disclosed or reported as they were obliged to do, believing they could appropriately manage it by maintaining their independence as councillors, but which in fact made them increasingly susceptible to the pressure

that Mr Sidoti exerted on them over a period of years to influence them to act in favour of the outcomes he wanted, which they knew were directed to private interests.

Fourthly, Mr Sidoti exerted persistent pressure in an attempt to influence the Liberal councillors to prefer the positions for which he was advocating (which were one and the same as those of the planning consultants acting for the Sidoti family interests) over the recommendations of CCBC staff, which he had at an early stage maligned and thereafter continued to urge them to challenge.

Mr Sidoti knew that the councillors would be acting improperly and partially if the reason they advanced the planning outcomes he urged on them was to advantage his family's property interests. He represented, therefore, that the planning outcomes he urged on them in fact represented the concerns of their shared constituency and that they would need to heed those concerns and do a better job of representing their constituency or risk their own political futures. That was the crux of the pressure he brought to bear on them over a period of years, increasing in intensity after Ms McCaffrey became mayor and the Liberal councillors consequentially held the balance of power. All three councillors experienced this pressure in different ways, and were able to withstand it to greater and lesser degrees.

Fifthly, Ms McCaffrey succumbed to Mr Sidoti's pressure and exercised her official functions for the extraneous reason of wanting to appease him and get him off their backs when she asked CCBC staff to prepare a draft motion she described to her fellow Liberal councillors before the CCBC meeting on 3 November 2015 as one "that may solve some problems". She caused a motion to be put before CCBC, requiring yet again the investigation of the zoning of the Waterview Street block, when that issue had already been considered by Studio GL and CCBC staff on a number of previous occasions, no public benefit had been identified and it was not supported. Her request for the inclusion of two additional sites, to distract from the focus on the Waterview Street block, was evidence of her consciousness that appeasing Mr Sidoti was an unacceptable reason for the exercise of her official functions. Ms Cestar did not support Ms McCaffrey's motion because she saw no public benefit in what was being proposed.

Had Ms McCaffrey and Ms Cestar not been able to withstand the pressure Mr Sidoti exerted on them at other times over the extended course of conduct summarised above, and done what his pressure was directed to achieving, they would likewise have preferred his interests for the extraneous reason that they wanted the pressure to stop, which would have been contrary to their obligations to act independently and impartially in the interests of the community.

Breach of public trust

Submissions were made on behalf of Mr Sidoti that Counsel Assisting never put to him that he was acting in bad faith and that any specific arguments about the Five Dock town centre which he put, were known by him to be contrary to the public interest, and that in fact such arguments were not contrary to the public interest. It was submitted that the Commission would be acting in excess of jurisdiction and contrary to its statutory obligations when carrying out its functions, to make findings on a breach of public trust case that was not put to Mr Sidoti during the public inquiry.

It was further submitted that, just as Mr and Mrs X, Mr Durkin, or any other property owner was entitled to put their views before CCBC planning staff and councillors, on multiple occasions, about zoning issues or development controls affecting the Waterview Street block, without that advocacy being suggested by Counsel Assisting to have been made in bad faith, so too was Mr Sidoti equally entitled.

The Commission does not accept these submissions, nor the contention that Mr Sidoti's representations to the Liberal councillors were legitimate representations made in the exercise of his democratic right and his functions as a member of Parliament in a manner that was in no way corrupt.

These submissions, made on behalf of Mr Sidoti, do not reflect the evidence before the Commission and are plainly wrong. They fail to make the necessary distinction between the representations that were made to CCBC on behalf of the Sidoti family interests by planning consultants, to which they were entitled just like any other affected property owner, and those representations Mr Sidoti made only to the Liberal councillors, in his capacity as the local member for Drummoyne, purportedly on behalf of his constituents.

It is fundamentally important to recall Mr Sidoti's own evidence that:

I had a hat, as an MP, to advocate, which I had enthusiastically from day one. Now, if that benefitted my mother and father, yes, that was the, the by-product. But that was never a motivation. Mine was about my reputation with the Chamber of Commerce and all the shopkeepers and with those that I'd lived next to on Waterview Street

...

I thought I was managing a potential conflict by having consultants there that could put a clean break between my advocacy as an MP and, and the property interests of my parents.

As has been made clear in the findings in this report, Mr Sidoti's parents had the same right as any other constituent to have their interests represented before CCBC. There is no suggestion that the representations and submissions to CCBC that were made by the planning consultants they engaged were inappropriate or made in bad faith.

It is an entirely different matter for Mr Sidoti, in his capacity as the local member for Drummoyne, to represent to the Liberal councillors that he was advocating on behalf of the concerns and feedback from his constituents when he urged them to adopt and advance positions on the Five Dock town planning matters that were wholly directed to his family's property interests and contrary to what had been recommended to CCBC as in the public interest.

A central focus of the Commission's investigation was whether Mr Sidoti, in his capacity as the local member for Drummoyne, pursued his family's private interests over the public interest. It was made clear during Counsel Assisting's opening address in the public inquiry, and it was a proposition with which Mr Sidoti agreed, when it was put to him during his evidence, that any attempt to seek to influence local councillors to make decisions that may benefit a private interest, but which are not in the public interest, is a serious matter that undermines the integrity, selflessness and impartiality of local government and jeopardises public confidence in local government decision-making processes and outcomes.

It was consistently put to Mr Sidoti that he was not honest about whose interests he was actually pursuing when he failed to make it plain that the positions he pursued were to benefit his family's interests rather than the wider interests of the people he was duty bound to represent in his electorate.

The Commission's findings in the previous chapters of this report, set out in summary form above, allow it to be satisfied, on the evidence to the requisite standard, of the following:

- (i) Mr Sidoti had a clear conflict of interest in relation to the Five Dock town centre planning matters and knew that he did
- (ii) the course of conduct in which he engaged, which was directed to interfering with the independence of the Liberal councillors and motivated by the pursuit of outcomes that would benefit his family's property interests, was so serious as to amount to bad faith.

It is necessary to consider what is meant by the concept of "public trust" in s 8(1)(c) of the ICAC Act in order to determine how and to what degree Mr Sidoti's conduct constitutes a breach.

As discussed in chapter 1, as a member of Parliament and parliamentary secretary, Mr Sidoti was obliged to comply not only with the duties and obligations contained in the Members' Code and the Ministerial Code, but with the fundamental duty attaching to his public office, the fiduciary duty of loyalty to the public. He was required to serve the public honestly, impartially and disinterestedly, for the public's benefit and not for his own.

In *Obeid v The Queen*,³⁰ Bathurst CJ reviewed the authorities concerning the high public duty imposed upon members of Parliament, citing the remarks of Isaacs and Rich JJ in *R v Boston*,³¹ that:

*The fundamental obligation of a member in relation to the Parliament of which he is a constituent unit still subsists as essentially as at any period of our history. That fundamental obligation, which is the key to this case, is the duty to serve and, in serving, to act with fidelity and with a single-mindedness for the welfare of the community.*³²

Bathurst CJ cited the formulation of the duty by Rich J in *Horne v Barber*:³³

*Members of Parliament are donees of certain powers and discretions entrusted to them on behalf of the community, and they must be free to exercise these powers and discretions in the interests of the public unfettered by considerations of personal gain or profit. So much is required by the policy of the law. Any transaction which has a tendency to injure this trust, a tendency to interfere with this duty, is invalid.*³⁴

He cited as a useful formulation of the duty the following statements by O' Bryan J in *The Queen v Clarke*:³⁵

When a man accepts a position of trust and confidence under the Crown he undertakes duties the pure administration of which is of the utmost importance to the community in which he lives, and the law requires from such a person a very great care in the exercise of his office and he should never put himself into a position in which his own interests may point one way, and the duties which he has

*undertaken for the Crown point in the opposite direction.*³⁶

In *R v Obeid (No 2)*, Beech-Jones J also considered the nature of the duty described by the authorities and stated it in a formulation that was accepted by the Court of Criminal Appeal in its subsequent decision:

*Just as with the duties of a fiduciary, the various statements in Wilkinson, Horne and Boston as to the nature and scope of a parliamentarian's duty reduce to a negative obligation not to use their position to promote their own pecuniary interests (or those of their families or entities close to them) in circumstances in which there is a conflict, or a real or substantial possibility of a conflict, between those interests and their duty to the public.*³⁷

In pursuing his family's property interests, Mr Sidoti did not act with the required fidelity and single-mindedness for the good of the community. His pursuit of those interests was in disregard of the community's interests in the revitalisation of the Five Dock town centre as identified following an extensive community consultation process managed for CCBC by independent expert planning consultants.

(i) Mr Sidoti's conflict of interest

As discussed in chapter 1, a conflict of interest and duty arises where a public official possesses, obtains or seeks to obtain a personal interest (invariably economic) in a matter falling within the scope or ambit of the official function they are entrusted to perform as an official and the interest must be one that is capable of influencing the exercise or performance of an official function. Accordingly, the identification of the scope of official duties or functions in office is fundamental in determining whether a conflict between public duty and private interest has arisen or could arise.

As the local member for Drummoyne and the representative in NSW Parliament of the same constituency as the Liberal councillors represented in local government, Mr Sidoti had the duty, discussed above, when making representations in his official capacity to the Liberal councillors concerning the Five Dock town planning matters, to have a single-mindedness for the welfare of the community.

He had a duty to make his representations in the interests of the public unfettered by considerations of personal gain or profit. He had a duty not to put himself in a position

³⁰ [2017] NSWCCA 221.

³¹ (1923) 33 CLR 386 at 400.

³² at [68].

³³ (1920) 27 CLR 494 at 501.

³⁴ at [66].

³⁵ *The Queen v Clarke* (1954) 61 ALR 312.

³⁶ at [72].

³⁷ [2015] NSWSC 1380 at [75].

in which his own interests pointed one way, and his duty to represent the interests of his constituents pointed in the opposite direction. In circumstances where there was a conflict or a real or substantial possibility of a conflict between his interests and his duty to the public, he had an obligation not to use his position to promote his own pecuniary interests.

As discussed in chapter 1, the current iteration of the Members' Code, which was not in force at the time of the conduct investigated by the Commission, nevertheless assists in understanding the scope of the relevant duties of members of Parliament. It provides at clause 2(c), that:

A Member must not knowingly and improperly use his or her influence as a Member to seek to affect a decision by a public official including a Minister, public sector employee, statutory officer or officer of a public body, to further, directly or indirectly, the private interests of the Member, member of the Member's family, or a business associate of the Member.

Also apposite to the matters investigated by the Commission, the current Members' Code stipulates, in relation to conflicts of interest, that:

Members must take reasonable steps to avoid, resolve or disclose any conflict between their private interests and the public interest. The public interest is always to be favoured over any private interest of the Member.

Members shall take reasonable steps to draw attention to any conflicts between their private interests and the public interest in any proceeding of the House or its committees, and in any communications with Ministers, members, public officials or public office holders.

Mr Sidoti gave evidence, discussed above, that he was aware of a potential conflict of interest between his private interest and his public duty, and that is why planning consultants were engaged to represent his family's interests before council, to "put a clean break between my advocacy as an MP and the property interests of my parents".

Had Mr Sidoti left the representation of his family's property interests to the planning consultants he engaged on behalf of his parents and had nothing further to do with the matter, Mr Sidoti would have managed a potential conflict of interest. Far from doing so, the Commission has found that, not only was there no "clean break" between the property interests of his parents and his "advocacy as an MP" as a result of the family's engagement of planning consultants, Mr Sidoti used his family's planning consultants in a variety of ways to try to persuade the Liberal councillors to deliver outcomes that benefited his family's property interests.

Had Mr Sidoti made a proper disclosure of the extent of his conflict of interest to the Liberal councillors, that is, as to the properties his family owned and whether and how they stood to benefit from the representations he was making concerning the Five Dock planning matters, they would have been able to take his self-interest into consideration when assessing whether his advocacy should carry any weight for their independent deliberations.

While, as discussed above, Ms McCaffrey and Ms Cestar understood that Mr Sidoti's representations were directed to the benefit of his family's property interests (although not because he specifically disclosed that to them out of a concern for the proper management of his conflict of interest) the position with respect to Dr Ahmed was different.

The Commission accepts that Dr Ahmed was unaware of the extent of the Sidoti family's property interests and had no knowledge that those interests stood to benefit from the matters about which Mr Sidoti was making representations. At all times, Dr Ahmed believed that Mr Sidoti was acting on behalf of his constituents and, had he known that representations were being made on behalf of private interests, he would have weighed Mr Sidoti's advocacy very differently and been very concerned. He said he would not have expected that sort of "betrayal".

(ii) Bad faith

The betrayal that Dr Ahmed would not have expected from Mr Sidoti, namely, that he would make representations that promoted private interests under the guise of acting on behalf of his constituents and that he would pursue his private interests over his duty to the public if the two were in conflict, is what underlies a breach of public trust.

If a public official exercises power, carries out a function or fulfils an office honestly and in good faith, or attempts to do so honestly and in good faith, there can be no breach of public trust. Breach of public trust cannot arise from mere inadvertence or neglect on the part of the public official. It requires wilfulness and bad faith.

No matter how much the positions Mr Sidoti urged the Liberal councillors to adopt in relation to the Five Dock town centre planning matters are characterised as having been made on behalf of constituents and in the public interest (either in Mr Sidoti's representations to the Liberal councillors, in his evidence in the public inquiry or in submissions on his behalf), a careful analysis of those positions, as set out in this report, establishes that each one of them was specifically directed to the increased redevelopment potential of his family's growing number of Five Dock properties in and adjacent to the Waterview Street block.

If any “public interest” was also served by the particular planning outcomes Mr Sidoti wanted in respect of his family’s properties, such as, for example, by the delivery of a laneway behind the family’s Great North Road facing properties that may assist with traffic congestion and parking issues in the area, that was coincidental, or, to use his own phrase, a “by-product”, but the Commission is satisfied, that was not his purpose or motivation.

As the Commission has found, when Mr Sidoti purported to advocate on behalf of the “shopkeepers” for a uniform increase in the town centre’s FSR, he was putting forward a position that was inconsistent with the position of the Five Dock Chamber of Commerce – the “shopkeepers” – but which suited his family’s single, small property at the time. Once the family had acquired two further properties, in, and adjacent to, the Waterview Street block, the outcomes he advocated for, in the purported representation of the concerns and feedback of his constituents, were specific to that small area of Five Dock in which his family’s properties were located.

If the planning outcomes Mr Sidoti urged on the Liberal councillors were also to the benefit of other residents in the Waterview Street block, such as, for example, Mr and Mrs X and Mr Durkin, the Commission is satisfied to the requisite standard that was not the purpose or motivation of his representations to the Liberal councillors. The Commission has found that he was involved in a strategy with Pacific Planning to get as many of those landowners “on board” as he could, to support and strengthen their submissions to CCBC on behalf of his family’s interests, rather than acting on their behalf.

There is no evidence before the Commission of any other feedback or concerns from Mr Sidoti’s constituents that formed the basis of the representations about the Five Dock town centre planning matters he made to the Liberal councillors.

The Commission is satisfied to the requisite standard that the course of conduct in which Mr Sidoti engaged was deliberate, dishonest, directed to interfering with the independence of the Liberal councillors and was motivated by the pursuit of his private interest in benefiting his family’s property interests. The pressure he brought to bear on those other public officials included threats to their positions. It was so serious as to amount to bad faith.

Misconduct in public office

In his submissions to the Commission, Counsel Assisting suggested only s 9(1)(a) of the ICAC Act as a basis for making a corrupt conduct finding and the Commission has therefore restricted its consideration to that sub-paragraph. For the purposes of s 9(1)(a), the relevant criminal offence is the common law offence of misconduct in public office.

It is recognised that the law’s concern, in particular the criminal law, has been to ensure that official functions are exercised for the benefit of the public by protecting the public generally from abuses of office. The criminal offence of misconduct in public office is one such protection.

It is well established that official misconduct offences involve the intentional or deliberate abuse of official power or authority, or abuse through wilful neglect. Professor Paul D Finn, who has written extensively about the notion of public trust, identified a category of official misconduct he described as wilful abuse of position, or malfeasance, that is particularly relevant to the Commission’s findings in relation to Mr Sidoti’s conduct.

This category or class of the offence includes cases where the official, although having no actual authority in a matter, nonetheless uses their position, or the influence or apparent authority it gives, for personal or third party advantage, or so as to subvert the interests of the public or to harm a member of the public. Professor Finn provides the example of a senior public servant or minister who wilfully uses their official influence either to stifle an investigation into a matter in which he has a personal interest, or to mislead or suborn other officials in the discharge of their duties.³⁸

The elements of the offence of misconduct in public office were recently considered by the NSW Court of Criminal Appeal in *Maitland v R*; *Macdonald v R*.³⁹ The Court reiterated the formulation of the elements of the offence originally addressed in *R v Quach*⁴⁰ and approved in *Obeid v R*.⁴¹ The Court confirmed that the elements of the offence are:

- (1) a public official;
- (2) in the course of or connected to his public office;
- (3) wilfully misconducts himself, by act or omission, for example, by wilfully neglecting or failing to perform his duty;
- (4) without reasonable excuse or justification, and;

³⁸ PD Finn, *Abuse of Official Trust, Conflict of Interest and Related Matters, Integrity in Government Project*, Second Report (The Australian National University, 1993) Section I at p. 7, cited by P Hall, p. 22.

³⁹ [2019] NSWCCA 32.

⁴⁰ (2010) 201 A Crim R 522 at [46].

⁴¹ [2015] NSWCCA 309 at [133].

(5) where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.

Addressing these elements, the Commission has found, as set out in this report, that Mr Sidoti used the influence and authority of his official position as the state member of Parliament in attempting to influence the exercise of the official functions of the CCBC Liberal councillors in a manner that was directed to the advantage of his family's property interests. His ability to access and make representations to the Liberal councillors in connection with the Five Dock town centre planning matters arose from his own official position as the representative in state Parliament of the people of the Drummoyne electorate, which was effectively the same constituency as that represented at a local government level by the Liberal councillors.

Mr Sidoti's course of conduct was wilful. As set out above in the discussion of breach of public trust, it was deliberate, dishonest and motivated by personal gain associated with his family's property interests. It was undertaken in bad faith and constituted a serious breach of public trust.

In *Obeid v The Queen*, the applicant for leave to appeal was tried on indictment which alleged that when holding public office as a member of the Legislative Council of NSW, he, in the course of or connected to his office, wilfully misconducted himself by making certain representations to another public officer with the intention of securing a specified favourable outcome to certain tenancies at Circular Quay, knowing that at the relevant time he made the representations, he had a commercial and/or beneficial and/or family and/or personal interest in those tenancies which he failed to disclose.

In that case, in relation to the question of whether conduct of the nature alleged in the indictment could constitute the offence of misconduct in public office, Bathurst CJ stated:

... Members of Parliament are appointed to serve the people of the State, including their constituents and it would seem that a serious breach of the trust imposed on them by using their power and authority to advance their own position or family interests rather than the interests of the constituents who they are elected to serve, could constitute an offence of the nature of that alleged.⁴²

Mr Sidoti's conduct could be so described.

There was no reasonable excuse or justification for his conduct.

The question of the seriousness of Mr Sidoti's conduct and whether it could merit criminal punishment is to be considered by having regard to the responsibilities of his position as a member of Parliament and the local member for Drummoyne, the importance of the public objects which his office served, and the nature and extent of the departure from those objects.

In *R v Boston*, Isaacs and Rich JJ made the following apposite remarks about the duty of members of Parliament:

*It is an everyday experience that members of Parliament can and do in many legitimate ways materially and honourably aid the Administration by assistance and advice outside the walls of Parliament. This unofficial aid to the conduct of public business is in effect a recognized adjunct to his parliamentary position, and ceases with it. But if intervention by a public representative be impelled by motives of personal gain, if it be the outcome of an agreement based on some pecuniary, or what is equivalent to a pecuniary, consideration and constituting the member a special agent of some individual whose interests he has agreed to secure—interests that are necessarily opposed pro tanto to those of the community—the whole situation is changed. To apply some words in *Wilkinson v Osborne* in the judgment of Isaacs J., he who had been appointed to be a sentinel of the public welfare becomes a "sapper and miner" of the Constitution. The power, the influence, the opportunity, the distinction with which his position invests him for the advantage of the public, are turned against those for whose protection and welfare they come into existence.⁴³*

Having regard to the fundamental duty of a member of Parliament to act for the advantage of the public, and the nature and extent of Mr Sidoti's departure from that duty, Mr Sidoti's conduct is serious and could merit criminal punishment. It is conduct that:

- was wholly motivated by the desire to advance his family's property interests, despite those interests being in conflict in several key respects with what CCBC had determined, based on the analyses of its expert planning consultants, to be in the public interest

⁴² [2017] NSWCCA 221 at [62].

⁴³ (1923) 33 CLR 386 at 402-403

- was contrary to Mr Sidoti's public duty always to put the public interest before his private interest and amounted to a breach of public trust
- involved a serious attempt through an ongoing course of conduct to interfere with the independence and integrity of the exercise by other officials of their official functions, for personal gain
- involved Mr Sidoti's attempt to use the Liberal councillors as his undisclosed agents, particularly after Ms McCaffrey became mayor and the Liberal councillors consequentially held the balance of power on CCBC, to usurp the decision-making functions of CCBC to promote his own interests
- involved Mr Sidoti providing information only to the Liberal councillors concerning agenda items before CCBC, thereby removing the opportunity for the non-Liberal councillors to understand what was motivating certain positions
- involved Mr Sidoti's ongoing misrepresentation that, at all times he was acting in the interests of his constituents and the community and his ongoing non-disclosure of a serious and growing conflict of interest
- involved the use of pressure and threats to attempt to cause other public officials to misconduct themselves
- involved Mr Sidoti making public comments that undermined trust and confidence in CCBC staff
- involved CCBC needing to obtain additional assessments and supplementary reports with the associated costs in engaging external consultants to provide these
- involved a delay to CCBC's processes from the pursuit of private interests.

As to the mental element of the offence, the Commission is satisfied to the requisite standard that Mr Sidoti knew that his conduct was wrong. He knew, from his own experience as a councillor and from his own public duties, that any conduct directed to undermining the Liberal councillors' independence and ability to act with integrity, selflessness and impartiality would be a very serious matter. His whole course of conduct, notwithstanding, was *intended* to interfere with the councillors' independence and the impartial exercise of their official functions in relation to the Five Dock town centre planning matters. His state of mind is further evidenced by the threats he made to their positions if they did not do what he wanted and by his later conduct during the pre-selection process in which he worked actively to replace the councillors who had not done what he wanted.

For the purposes of s 9(1)(a) of the ICAC Act, Mr Sidoti's conduct could constitute or involve the criminal law offence of misconduct in public office.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts it has found were to be proved on admissible evidence and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find to the criminal standard that Mr Sidoti had committed the common law offence of misconduct in public office.

The Commission is satisfied, for the purposes of s 74BA of the ICAC Act, that Mr Sidoti's conduct is serious corrupt conduct because:

- it is conduct that undermined the democratic decision-making processes of CCBC and thereby had the potential to impair public confidence in public administration
- Mr Sidoti held a position of high public office as the local member of Parliament and, from 2014, as a parliamentary secretary, including a period of time as the parliamentary secretary for planning. He was obliged to act in the public interest at all times and to elevate the public interest, particularly as it concerned his own constituents, above his private interest. His conduct represents a significant departure from those responsibilities
- Mr Sidoti's conduct was sustained over a period of more than three years
- it involved a substantial breach of public trust
- Mr Sidoti was motivated by greed, namely the advancement of his family's property interests
- if established by evidence to the criminal standard, it could constitute the serious common law offence of misconduct in public office, the maximum penalty for which is at large.

Section 74A(2) statement

In making a public report, the Commission is required by the provisions of s 74A(2) of the ICAC Act to include, in respect of each "affected person", a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

- a) obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the person for a specified criminal offence
- b) the taking of action against the person for a specified disciplinary offence

- c) the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An “affected person” is defined in s 74A(3) of the ICAC Act as a person against whom, in the Commission’s opinion, substantial allegations have been made in the course of, or in connection with, the investigation.

The Commission is satisfied that Mr Sidoti is an “affected person” for the purposes of s 74A(2) of the ICAC Act.

John Sidoti

Mr Sidoti’s evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for offences under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including documentary material such as emails, text messages, CCBC records, including the minutes of CCBC meetings, and the business records of the planning consultants engaged by Mr Sidoti to represent his family’s property interests.

The evidence of witnesses such as Mr Megna, Ms Cestar, Ms McCaffrey, Dr Ahmed, CCBC staff and others, including the Sidoti family’s planning consultants, could also potentially be available, notwithstanding the possibility that some witnesses may be reluctant or even uncooperative.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Sidoti for the offence of misconduct in public office in relation to the course of conduct in which he engaged between approximately late 2013 and February 2017, involving the use of his official position as a member of Parliament and the local member for Drummoyne:

- to try to influence the Liberal councillors on CCBC to exercise their official functions partially in favour of planning outcomes that would favour his family’s property interests in and around the Five Dock town centre
- to engage in a breach of public trust by representing that he was acting at all times in the interests of his constituents and the local community, when the outcomes he pursued in respect of his family’s property interests were inconsistent with what had been determined by CCBC (informed by the recommendations of CCBC staff and the independent expert planning consultants engaged by CCBC following extensive community consultation) to be in the public interest.

The conduct of the Liberal councillors

Conflicts of interest

As discussed in chapter 1, the CCBC code of conduct in place from late 2013 contains provisions directed to the management of councillors’ conflicts of interest, defined as existing “where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty”.

Any such conflicts are required to be avoided or appropriately managed and the onus is on the councillor to identify the conflict and take the appropriate action to manage the conflict in favour of the councillor’s public duty. Any conflict of interest must be managed to uphold the probity of council decision-making.

Relevantly for the Liberal councillors, a non-pecuniary interest is defined as a private or personal interest that does not amount to a pecuniary interest as defined in the LGA. The code of conduct notes that such interests commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations. The political views of a councillor do not constitute a particularly close relationship or a particularly strong affiliation.

The management of a non-pecuniary conflict of interest will depend on whether or not it is significant, but regardless of whether or not it is significant, the code of conduct requires the councillor to disclose the interest fully, in writing and as soon as possible when he or she has a non-pecuniary interest that conflicts with their public duty.

If a significant non-pecuniary conflict of interest exists, it must be managed in one of two ways:

- removing the source of the conflict by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another council official
- having no involvement in the matter, by absenting oneself and not taking part in any debate or voting on the issue.

As discussed in chapter 9 of this report, following her election to council in September 2017, Ms Di Pasqua recognised that she had a non-pecuniary conflict of interest in relation to the Waterview Street block planning proposal because of her awareness that Mr Sidoti’s family owned properties in that block. She made the decision that she would manage that conflict by not voting on the matter, and she took the advice of CCBC’s director of corporate services about how she should word her disclosure.

By contrast, although both Ms McCaffrey and Ms Cestar were also aware that Mr Sidoti's family had property interests that would be affected by the Five Dock town centre planning matters before CCBC and, more particularly, knew that he was engaging in conduct directed to influencing them to act in favour of those interests, neither councillor made the disclosure of a conflict between the pressure being exerted on them by Mr Sidoti and the probity of the exercise of their public duty.

Given the findings made by the Commission set out in this report, the Commission is satisfied that both Ms McCaffrey and Ms Cestar had a conflict of interest within the definition of the code of conduct, from the time they perceived that Mr Sidoti's interactions with them were directed to influencing the exercise of their public duty (or from the time that their relationship became what Ms Cestar described as a "master/servant" relationship).

One of the consequences of not identifying, disclosing and managing their conflicts of interest is evident from the findings in this report; they remained exposed and vulnerable to Mr Sidoti's pressure and attempts to influence the honest and impartial exercise of their public duty. Findings in relation to their respective failures to disclose and manage their conflicts of interest are set out below.

Dr Ahmed

The Commission is satisfied that the situation in respect of Dr Ahmed is somewhat different. The Commission has accepted that Dr Ahmed was not aware of Mr Sidoti's private interest in respect of his family's property interests in any of the planning matters that came before CCBC concerning the Five Dock town centre. He accepted Mr Sidoti's advocacy as the local member for Drummoyne and a representative of the same constituents as Dr Ahmed represented. He accepted Mr Sidoti's advocacy as legitimate and carrying some weight by virtue of Mr Sidoti's experience and seniority in government and the Liberal Party.

The Commission is satisfied in all the circumstances that in the absence of knowledge that Mr Sidoti was advocating for the advancement of private interests, Dr Ahmed had no reason to apprehend that his relationship with Mr Sidoti and Mr Sidoti's representations were such as to lead a reasonable and informed person to perceive that he could be influenced by a private interest when carrying out his public duty.

Because Mr Sidoti did not make an appropriate disclosure of the nature and extent of his family's growing property interests in the area that was the focus of his representations, Dr Ahmed was prevented from properly

identifying, in accordance with his obligations under the CCBC code of conduct, whether Mr Sidoti's access to him and his advocacy created a conflict of interest that needed to be disclosed and managed.

Ms McCaffrey

As discussed in chapter 7 of this report, the Commission has found, that when Ms McCaffrey requested CCBC staff, prior to the CCBC meeting on 3 November 2015, to prepare a draft motion to investigate the zoning of three additional sites, one of which was the Waterview Street block, and when she seconded and voted in favour of that motion at the CCBC meeting, she was exercising her official functions partially.

Ms McCaffrey also had a conflict of interest that she failed to disclose and manage.

The Commission is satisfied that Ms McCaffrey's conduct, as set out in the preceding two paragraphs, comes within s 8(1)(b) of the ICAC Act in that it is conduct of a public official that constitutes or involves the dishonest or partial exercise of her official functions.

For the purposes of s 9(1)(b) of the ICAC Act, the question is whether Ms McCaffrey's conduct could constitute or involve a disciplinary offence, which is defined in s 9(3) to include any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.

Importantly, s 9(6) provides that a reference to a disciplinary offence in this section (and sections 74A and 74B of the ICAC Act) includes a reference to a *substantial* breach of an applicable requirement of a code of conduct required to be complied with under s 440(5) of the LGA, but does not include a reference to any other breach of such a requirement.

The CCBC code of conduct is a code of conduct that is required to be complied with under the LGA. The question is therefore whether Ms McCaffrey's conduct could constitute or involve a substantial breach of the CCBC code of conduct, as anything less than a substantial breach does not come within s 9(1)(b) and cannot amount to corrupt conduct under the ICAC Act.

While the Commission is satisfied that Ms McCaffrey's conduct was improper and unethical because it was partial, and was therefore capable of constituting a breach of clause 3.1(c) of the CCBC code of conduct, the Commission accepts the submissions of Counsel Assisting that it would not find that Ms McCaffrey's conduct constitutes a substantial breach of that code of conduct.

While Ms McCaffrey's draft motion required CCBC to re-investigate the zoning of the Waterview Street block, when this was a matter that had already been considered a number of times and recommended against, the motion did not favour the Sidoti family interests beyond affording this further opportunity. It did not deliver the rezoning of the Waterview Street block, which is the outcome for which Mr Sidoti relentlessly advocated.

The Commission is satisfied that, although Ms McCaffrey's conduct in requesting and moving this draft motion was partial, it was motivated by her need to make absolutely certain she was making the correct decision about it, in the face of Mr Sidoti's constant pressure. The Commission is satisfied that, although Ms McCaffrey was aware that Mr Sidoti's pressure constituted interference with her independence as a councillor, she thought that she could deal with it by having the matter investigated one more time on its merits as a means of appeasing Mr Sidoti and putting a stop to his relentless representations.

Ms McCaffrey gave consistent evidence that she did not report Mr Sidoti's relentless pressure, despite being aware that it was directed to interfering with her independence as a councillor, because she believed she could manage it herself and that it would not in fact interfere with her public duty.

The Commission is satisfied that Ms McCaffrey should have recognised that Mr Sidoti's pressure had interfered with the independent and impartial exercise of her official functions. The draft motion to further investigate the zoning of the Waterview Street block was designed to address the problems caused by his pressure and not, as Ms Cestar pointed out to her, to further the public interest.

The Commission finds that Ms McCaffrey was plainly in error in thinking that she did not have to disclose the conflict because she could manage it herself, but finds that her conduct was not wilful or motivated by personal gain and would not amount to a substantial breach of the CCBC code of conduct in all the circumstances.

Ms Cestar

As discussed in chapter 8, the Commission has found that, when Ms Cestar thought that her interaction with Mr Sidoti on the Bay Run was something that should be reported, she was right. The effect of Ms Cestar's recognition that Mr Sidoti's behaviour was directed to compromising her independence as a councillor, was that her obligation under the CCBC code of conduct to disclose a non-pecuniary conflict of interest was enlivened, even if she believed it would blow over and she could manage it herself.

Ms Cestar's non-disclosure of a situation in which a reasonable and informed person would perceive that she could be influenced by a private interest when carrying out her public duty is conduct that could adversely affect, at least indirectly, the honest and impartial exercise by Ms Cestar of her official functions, within the meaning of s 8(1)(a) of the ICAC Act.

Such non-disclosure would be in breach of clause 4.21 of the CCBC code of conduct, however, the Commission accepts the submission of Counsel Assisting that it would not find that Ms Cestar's conduct constitutes a substantial breach of that code of conduct for the purposes of s 9(1)(b) of the ICAC Act.

As the Commission has found, Ms Cestar did not allow Mr Sidoti's pressure, including his attempt to compromise her independence with the threat he issued during the Bay Run interaction, to affect the honest and impartial exercise of her official functions in relation to the Five Dock town centre planning matters. Despite the considerable pressure the Commission has found was exerted on her and her fellow councillors by Mr Sidoti over an extended period, Ms Cestar otherwise discharged her official functions in relation to the Five Dock town centre planning matters with probity and according to what she genuinely considered to be in the public interest. This is well illustrated by her decision not to support Ms McCaffrey's draft motion on 3 November 2015 calling for the re-investigation of the Waterview Street block, because she could see no public benefit in that course of action.

While the Commission considers it unfortunate that Ms Cestar did not disclose her conflict of interest as obliged under the CCBC code of conduct, nor report Mr Sidoti's conduct to this Commission, it finds that Ms Cestar's conduct does not amount to corrupt conduct for the purposes of the ICAC Act.

Chapter 11: Corruption prevention

This chapter is divided into two parts.

The first part concerns NSW Parliament. It has several subsections and considers whether the current systems regarding the disclosure of pecuniary and private interests, and the management and declaration of conflicts of interest for members of Parliament are sufficiently robust. Specific areas of concern include the interests of family members, and those relating to discretionary trusts and superannuation funds. It also considers the Code of Conduct for Members (“the Members’ Code”) provision about improper influence, and the current reforms regarding the establishment of a “parliamentary independent complaints officer” for NSW Parliament.

The second part concerns the local government sector and the integrity of council decision-making. It covers councillors’ governance obligations, particularly in relation to lobbying, conflicts of interest and environmental planning issues.

Part 1: The private interests of members of Parliament and ministers/parliamentary secretaries

The register of members’ pecuniary and personal interests

Registers of members’ interests act as an accountability measure that requires a person holding a position of public trust to reveal their interests rather than conceal them. The intention of a disclosure regime, which requires members of Parliament to proactively register or disclose relevant interests, is to assist them in recognising and avoiding any potential conflicts of interest that could arise between their public role and their private interests. In addition, this measure of transparency assists others in determining whether a member is potentially conflicted.

Once disclosed, interests can be managed, including, if considered necessary, by removing the conflicted person from the process, to protect its integrity. Such a register ideally helps a member to demonstrate openly and transparently that they, or other associates, including family members, do not benefit from the power bestowed on them by virtue of their public office. In addition, such registers encourage divestment of interests that could be seen to conflict with their public duties.

As outlined in the previous chapters, Mr Sidoti failed to make several pecuniary interest disclosures contrary to his obligations to do so under the Constitution (Disclosures by Members) Regulation 1983 (“the Disclosure Regulation”) and the Ministerial Code of Conduct (“the Ministerial Code”).

History of NSW’s pecuniary interest register for members of Parliament

Over the years, the disclosure requirements for members’ interests, including those relating to trusts and family members, have shifted. Following recommendations made by the *Report from the Joint Committee upon Pecuniary Interests*, the NSW Parliament established an interest disclosure regime and register in 1979, which required the disclosure of members’ interests, as well as the interests of their spouses and children. It also required the disclosure of positions, whether remunerated or not, in entities such as trusts (including as a beneficiary) and businesses or occupations.

In November 1980, these registers of interests were rescinded. The subsequent Constitution (Disclosures by Members) Amendment Bill proposed the insertion of a new section, s 14A, in the *Constitution Act 1902*, which was passed by both Houses of Parliament on 12 May 1981. It was approved at a state-wide referendum held on 19 September 1981.

Statutory obligations

Currently, members are required to disclose their pecuniary and other interests pursuant to s 14A of the Constitution Act and the Disclosure Regulation. These obligations and the limits thereof have been outlined in chapters 1 and 2. The current regime categorises the various types of interests that members must disclose in returns into distinct parts. This regime does not specifically or directly require the disclosure of memberships of trusts and superannuation funds. Nor does it require the disclosure of the interests of family members.

Section 14A(1)(a)(vii) of the Constitution Act states that regulations can be made, which require the disclosure of interests in regard to trusts. In addition, there is a general power in s 14A to regulate:

...positions (whether remunerated or not) held in, or membership of, corporations, trade unions, professional associations or other organisations or associations, as well as any other direct or indirect benefits, advantages or liabilities, whether pecuniary or not, of a kind specified in the regulations.

There is scope to expand the current requirements under s 14A of the Constitution Act, subject to the procedural requirements imposed by subsections 14A(4) and 14A(5) of the Constitution Act.

Members' Code of Conduct and the Ministerial Code of Conduct

The 2011, 2015 and 2019 versions of the Members' Code made some reference to disclosure obligations. The Members' Code, adopted in March 2020, introduced a specific clause 6, which states that "Members shall fulfil conscientiously the requirements of the House in respect of the Register of Disclosures by Members". In addition, it includes a "commentary" section, which outlines the requirements to lodge regular returns that disclose

certain interests, and stating that the purpose of the register is "to promote greater transparency, openness and accountability in the parliamentary process."

Several parts of the Ministerial Code apply to parliamentary secretaries. In summary and when compared to the Members' Code, the Ministerial Code has the following additional disclosure requirements for parliamentary secretaries:

- Part 2 of the Schedule to the Ministerial Code requires ministers and parliamentary secretaries to continuously provide the premier with updates of any relevant changes to their parliamentary returns
- Part 2 of the Schedule to the Ministerial Code requires ministers and parliamentary secretaries to notify the premier in writing of any pecuniary and other interests of their immediate family members
- Part 3 of the Schedule to the Ministerial Code requires ministers and parliamentary secretaries to promptly notify the premier of any conflict of interest that arises in relation to any matter. A minister must abstain from making any decision or participating in any action in relation to that matter, except with the Premier's approval (the topic of conflicts of interest will be considered in more detail below.)

"Family members" and "immediate family members" in relation to a minister and parliamentary secretary are defined by the Ministerial Code.

Guidance and training – members of Parliament

Additional guidance regarding the pecuniary interest register for members of Parliament and the Members' Code is contained in the Legislative Assembly Members' Guide ("the Members' Guide"). In regard to interests in real property the guidance mentions that interests in family trusts should also be disclosed. It states:

3.19 ... *Interests held in family trusts also, on the face of it, fall within the disclosure requirements.*

3.22 *A Member is not required to disclose property where the Member's interest is limited to acting as executor or administrator of the estate of a deceased person (unless they are a beneficiary), or where the Member is a trustee of a property and the Member became a trustee in the ordinary course of the Member's occupation which is not related to the Member's duties as a Member (thus interests held in family trusts should, on the face of it, be disclosed).*

Guidance and training – parliamentary secretaries

The Department of Premier and Cabinet (“the DPC”) provides specific training and ongoing guidance to parliamentary secretaries regarding their disclosure requirements. As outlined in chapter I, the evidence obtained during this investigation demonstrates that the DPC provided Mr Sidoti with guidance and advice about his obligations under the Ministerial Code.

Parliamentary inquiries

Following the Commission’s 2013 report, *Reducing the opportunities and incentives for corruption in the state’s management of coal resources*, which recommended expansion of the register of disclosures for members to specifically include family members and family trusts, the Legislative Council’s Privileges Committee conducted an inquiry and published a report in June 2014. Its recommendations included that the interest disclosure regime be amended to incorporate full and open disclosure by members of Parliament of the interests of their spouses/partners and dependent children, as well as recommending that the Disclosure Regulation be amended to deal specifically with interests in family trusts or companies and private superannuation funds.

The Legislative Assembly’s Standing Committee on Parliamentary Privilege and Ethics conducted a separate inquiry into the same recommendations made by the Commission and released its report in July 2014. While it made a recommendation to require the disclosure of the interests of members’ spouses/partners and dependent children privately to an “Ethics Commissioner”, it did not specifically recommend the disclosure of trusts.

In a 2018 review, the Legislative Council’s Privileges Committee considered the issue again. It noted the different view taken by the Legislative Assembly’s Standing Committee on Parliamentary Privilege and Ethics but determined to continue to support the introduction of reforms to provide for the disclosure of certain third-party interests and reiterated its previous recommendations.

On 22 November 2018, the Legislative Assembly’s Standing Committee on Parliamentary Privilege and Ethics released its Review of the Pecuniary Interest Register, which considered the Commission’s earlier recommendation. Notwithstanding its previous report of July 2014, it no longer broadly supported the concept of requiring the disclosure of the interests of members’ spouses/partners and dependent children.

Other jurisdictions

Other Australian parliaments require the disclosure and registration of various private interests, third-party interests and interests in trusts, as follows.

The federal House of Representatives requires members to disclose interests of a spouse or partner and any dependent children. Members are also required to disclose any relevant interest in any shares including equitable as well as legal interests, whether held directly or indirectly. This includes:

- shares held by a family or business trust, a nominee company or a partnership or a self-managed superannuation fund (SMSF)
- specifics regarding beneficial interests of family and business trust and nominee companies, as well as partnerships⁴⁴
- a registrable interest, defined as “any other interests where a conflict of interest with a member’s public duties could foreseeably arise or be seen to arise”.⁴⁵

Queensland requires disclosure of family or business trusts or nominee companies in which the member is trustee, officeholder or holds beneficial interests as well as the nature of activities and the nature of interests. It also requires the disclosure of the position of trustee or director of a private superannuation fund and requires the disclosure of interests of related persons.⁴⁶ Queensland maintains a separate register for the interest of related persons.⁴⁷

⁴⁴ Clause (2)(b) Resolutions of the House, Registration of Members’ interests, resolution adopted 19 September 2019.

⁴⁵ Clause (2)(n) Resolutions of the House, Registration of Members’ interests, resolution adopted 19 September 2019.

⁴⁶ Subclause 7 of Schedule 2 to the Parliament of Queensland, Standing Rules and Orders of the Legislative Assembly, 2004, amendments effective 12 October 2021.

⁴⁷ Section 69A and s 69B *Parliament of Queensland Act 2001* and the Parliament of Queensland Standing Rules and Orders of the Legislative Assembly, 2004, amendments effective 12 October 2021.

Conflicts of interests must also be registered.⁴⁸

Victoria requires disclosure of trusts and beneficial interests in trusts (including for family members), of any offices, including in a partnership or body as well as any other membership or association, and disclosure of any other interests that could cause a conflict of interest.⁴⁹

South Australia requires the disclosure of the interests of family members or related persons and of beneficial interests, including those held by the member, or their spouse, partner or child. Disclosure requirements extend to any fund as well as to:

*any other substantial interest whether of a pecuniary nature or not of the Member or of a person related to the Member of which the Member is aware and which he considers might appear to raise a material conflict between his private interest and the public duty that he has or may subsequently have*⁵⁰

Tasmania requires disclosures of the pecuniary and other interests of the member's spouse, defined to include the person who is in a significant relationship. It is discretionary for the member to disclose direct or indirect benefits, advantages or liabilities, whether pecuniary or not, which may raise a conflict between the member's private interests and his or her duties as a member.⁵¹ The clerk has the discretion to delete certain information, including if it may unreasonably compromise the privacy or safety of any person.⁵²

Western Australia requires disclosure of certain details of trusts where the member holds a beneficial or discretionary interest.⁵³ The disclosure of conflicts of interest is discretionary.⁵⁴

Members of NSW Parliament can, and should, make discretionary returns at any time, which could include

⁴⁸ Subclause 7(5)n, Parliament of Queensland Standing Rules and Orders of the Legislative Assembly, 2004, amendments effective 12 October 2021, p. 84.

⁴⁹ Section 9(1) *Members of Parliament (Standards) Act 1978* (Victoria).

⁵⁰ Part 4, *Members of Parliament (Register of Interests) Act 1983* (South Australia).

⁵¹ *Parliamentary (Disclosure of Interests) Act 1996* (Tasmania).

⁵² *Ibid*, s 21.

⁵³ Section 8 *Members of Parliament (Financial Interests) Act 1992* (Western Australia).

⁵⁴ *Ibid*, s 15.

disclosure of the interests of other family members, and/or involvements in trusts or other associations, including other potential conflicts of interest, but, as the name suggests, these are not mandatory. Ordinary and supplementary ordinary returns are biannual.

The comparative table on page 176 (Table 1) is a national overview of the regulatory schemes and requirements for members of Parliament (not including parliamentary secretaries and ministers) concerning the registration of various interests, including conflicts of interest, and whether there are obligations for continuous disclosure (within one month or less). The table also summarises if there is online access to the register which, at times, is via the tabling of the register in Parliament rather than via a separate online and dedicated access.

As outlined in chapter 1, the disclosure regime for parliamentary secretaries and ministers in NSW is different from the regime for members of Parliament, as they are also subject to the Ministerial Code. The DPC maintains a Ministerial Register of Interests, which includes disclosures of conflicts of interests.⁵⁵ It requires the disclosure of any pecuniary and other interests of their immediate family members.⁵⁶ The Ministerial Code has requirements regarding certain trusts, but these are limited to ministers.⁵⁷ The Ministerial Register of Interests is not publicly accessible.

Weaknesses and shortcomings of the NSW disclosure system

The matters that the Commission investigated have revealed several shortcomings in the current disclosure system with respect to the disclosure of trusts and other entities in NSW. These include that:

- Mr Sidoti's interest in the properties at 122 Great North Road, 124 Great North Road and 2 Second Avenue did not reach the threshold of amounting to a legal interest that required disclosure, notwithstanding the Members' Guide, suggesting that property interests held in family trusts may need to be disclosed. As a result, in situations where family members use family trusts to hold investments, there are limited disclosure requirements on members of NSW Parliament
- there is no specific section dealing with trusts in the returns required to be completed by members of NSW Parliament

⁵⁵ Cl 11 Ministerial Code of Conduct; Part 3, cl 11, Schedule to the NSW Ministerial Code of Conduct.

⁵⁶ Cl 6 Ministerial Code of Conduct.

⁵⁷ Part 1, Schedule to the NSW Ministerial Code of Conduct.

Table 1: Selection of Australian regulatory schemes and requirements for members to disclose various interests on a register

	Family members' interests	Trusts	Entities, eg, super fund	Register of conflicts of interest	Continuous disclosure	Online access
Commonwealth	Yes	Yes	Yes	Yes	Yes	Yes
Queensland	Yes	Yes	Yes	Yes	Yes	Yes
Victoria	Partly	Yes	Yes	Yes	Yes	Partly
South Australia	Yes	Yes	Yes	Yes	No	Partly
Tasmania	Yes	Partly	Partly	Partly	Partly	Partly
Western Australia	No	Partly	No	Partly	Partly	Partly
New South Wales	No	Partly	No	Partly	Partly	Partly

- the guidance material contained in the Members' Guide regarding disclosure obligations for trusts is limited, which might be because there is lack of Disclosure Regulation and clarity concerning trusts.

It is concerning that the current system of disclosures places limited obligations on members of Parliament who are discretionary beneficiaries of family trusts just because their interest (or the interest of a family member) in the assets of a trust or other entity have not crystallised in a legal sense. Details of interests in trusts, including discretionary trusts and SMSF, should be disclosed as a standalone item.

Furthermore, members of Parliament should not be able to circumvent disclosure obligations by ensuring their family members hold assets or by transferring assets to family members. NSW's disclosure regime regarding various third-party interests needs to expand to specifically require the disclosure of the interests of family members.

There is also further scope to clarify the guidance material covering the existing disclosure obligations of members of Parliament in relation to trusts, including in situations where a trust holds assets, such as properties.

The Commission notes that several of its previous recommendations, concerned with strengthening the pecuniary interest regime for members of Parliament, remain unimplemented. In comparison to other Australian jurisdictions, NSW's regulatory scheme for members of Parliament does not reflect best practice and community expectations, and provides opportunities for hidden interests. The Commission only has limited resources and would prefer not to have to expose similar conduct resulting in substantially similar recommendations before

action is taken by the NSW Government to address the relevant issues.

RECOMMENDATION 1

That the NSW Government, in consultation with NSW Parliament's Legislative Assembly Privilege and Ethics Committee and Legislative Council Privileges Committee ("NSW Parliament's designated committees"), amends the Constitution (Disclosures by Members) Regulation 1983 to require:

- the details of interests in trusts, including discretionary trusts and self-managed superannuation funds, to be disclosed as a standalone item
- the details of real property held by discretionary trusts, where a member of Parliament is a potential beneficiary, to be disclosed
- the details of the interests of immediate family members to be disclosed (noting the option to limit access to certain information for privacy reasons)
- the dispositions of interests to family members or other associates to be disclosed
- ongoing (within 28 days) requirements to update disclosures of interests including for members leaving Parliament
- electronic databases to improve transparency of the registers.

RECOMMENDATION 2

That the Speaker of the Legislative Assembly, the President of the Legislative Council and the relevant parliamentary departments jointly ensure that the guidance material for members of Parliament is updated to provide details about their disclosure obligations pursuant to the Constitution (Disclosures by Members) Regulation 1983 (pending implementation of recommendation 1).

Conflict of interest obligations for members of Parliament

The proper management of conflicts of interest is an essential part of public administration. While hard to quantify, it is highly likely that a failure by public officials to recognise, disclose and manage conflicts of interest contributes significantly to a loss of public confidence in the public sector.

The Commission's position is that a conflict of interest exists when a reasonable person might perceive that a public official's personal interest(s) could be favoured over their public duties.⁵⁸ It means that a conflict of interest arises if the relevant personal interest(s) could be improperly favoured over public duties. The test is an objective, or "reasonable person" test, as conflicts of interest arise where a reasonable person might perceive that a public official's personal interest could be favoured over their public duties.

Conflict of interest obligations

As noted in chapter 1, a member of Parliament, in addition to the disclosure requirements contained in part 3 of the Disclosure Regulation, may also, at their discretion, disclose any direct or indirect benefit, advantage, or liability, whether pecuniary or not, which the member considers might appear to raise a conflict between their private interests and their public duty.

The 2011, 2015 and 2019 versions of the Members' Code contained clause 1 regarding the disclosure requirements for a conflict of interest, including that:

Members of Parliament must take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office.

As outlined in chapter 1, the Members' Code was revised in 2020. It now has a new subsection titled "openness and accountability", which includes a clause 7, titled "conflicts of interest" with the requirements that:

Members shall take reasonable steps to draw attention to any conflicts between their private interests and the public interest in any proceeding of the House or its committees, and in any communications with Ministers, members, public officials or public office holders.

The Commission notes that the revised Members' Code does not include a definition of a conflict of interest, nor does it provide guidance on what are "reasonable steps" regarding conflicts of interest and nor does it outline what steps to take to manage conflicts of interest.

The preamble of the Ministerial Code states, "Ministers have a responsibility to avoid or otherwise manage appropriately conflicts of interest to ensure the maintenance of both the actuality and appearance of Ministerial integrity". The Ministerial Code includes a conflict of interest definition. As mentioned in chapter 1, the enforcement of the Ministerial Code, including any sanctions for a breach, is a matter for the premier.

Guidance and training

Guidance for members of Parliament regarding the disclosure of conflicts of interest is contained in the Members' Guide, which points out that there is a general conflict of interest disclosure obligation in clause 1 of the Members' Code "to declare any conflict of interest whenever it arises in the execution of their office, including in Parliament". Apart from some commentary regarding the distinction between disclosing an interest and having a conflict of interest, and advice about where to seek advice, the Members' Code, revised in 2020, provides no further guidance.

NSW Parliament has a parliamentary ethics adviser, whose role encompasses giving advice to members of Parliament in respect to potential conflicts of interest. The Commission notes that NSW Parliament's training initiatives, which are currently being implemented, include a separate module on conflicts of interest.

The DPC has prepared a fact sheet on conflicts of interest and outlined its guidance and training in detail.

Mr Sidoti's evidence regarding conflicts of interest

Mr Sidoti agreed that there was a need to ensure that any personal or private interest associated with the property interests of his family would not come into conflict with the interests of other constituents. This evidence was also discussed in chapter 4.

In Mr Sidoti's view, he managed any potential conflict of interest regarding the Five Dock town centre "by having consultants there that could put a clean break between my advocacy as an MP and, and the property interests

⁵⁸ Independent Commission Against Corruption, [Managing conflicts of interest in the NSW public sector](#), April 2019, p. 4.

of my parents.” Mr Sidoti agreed that this distinction became blurred when the consultants hired by his family also began representing, or claiming to represent, interests of constituents residing on a certain block, bordered by Second Avenue, Waterview Street and Barnstaple Road, Five Dock. This is the Waterview Street block referred to previously in this report.

Mr Sidoti agreed that it would be necessary for him to be clear when making representations on behalf of constituents to local government, to identify if it was the case that the interests he was supporting by his representations coincided with his family’s property interests and to be clear that the position he was advocating was one that was likely to benefit his family’s property interests.

Mr Sidoti gave evidence that, “in order to have a conflict you have to be part of the decision-making process”. Regarding his representations made about the Five Dock town centre, Mr Sidoti’s evidence was that he did not have to disclose his family’s property interests because everyone already knew about them. This view is wrong and is rejected by the Commission. For example, as discussed in chapter 4, the Commission does not accept that Mr Sidoti’s representations made at a Five Dock Chamber of Commerce meeting did not require the disclosure of his family’s property interests, because those present at the meeting would have known of it already. He also ignored the fact that his family’s growing property portfolio actually heightened his conflict of interest.

Furthermore, as outlined in chapter 6, the Commission finds that it was disingenuous for Mr Sidoti to attempt to pursue his private or family interests under the guise of acting in the public interest and for the benefit of the community. Moreover, Mr Sidoti’s disclosure made to the premier dated 13 July 2017, about the application for review of the planning proposal affecting his parents’ property, clearly indicates his awareness of a potential conflict of interest as well as demonstrating his ability to take appropriate steps to manage that conflict.

Strengthening the conflicts of interest obligations for members of Parliament

As outlined in chapters 1 and 10, a conflict necessarily arose between Mr Sidoti’s pursuit of his family’s private interests and his public duty as an elected representative because Mr Sidoti was pursuing planning outcomes in relation to the Five Dock town centre that would have benefited his family’s property interests.

Mr Sidoti had several options to manage the conflict between his private interests and his public duties, and to ensure that his power and influence was not used, or seen to be used, inappropriately, including:

- avoiding being involved in matters that could result in a private benefit for himself, his family, or close associates, by referring constituents to a disinterested public official, such as a CCBC officer
- being open and transparent about his family’s interests when making representations, and disclosing that the proposal could result in a private benefit for himself and his family; this course of action would have at least alerted other public officials to probity requirements regarding conflicts of interest
- avoiding taking any actions that could be seen as directing, threatening or pressuring another public official
- obtaining advice from the parliamentary ethics adviser about his options to manage his private interests while representing his constituents.

The Members’ Code, as revised in 2020, has clarified that members of Parliament must disclose their conflicts of interest “in any communication” including with public officials. This means that the current code of conduct emphasises that conflicts of interest should be disclosed at the relevant time. The code of conduct also stipulates that members of Parliament must not only disclose, but also take reasonable steps to avoid and resolve, their conflicts of interest.

The clear implication is that members of Parliament have to disclose their conflicting interests at the relevant time so the conflict can be considered and possibly managed. The changes introduced by the revisions introduced into the 2020 version of the Members’ Code have not been accompanied by a change to the Disclosure Regulation.

The Commission’s investigation has laid bare a range of systemic weaknesses relating to the conflicts of interest requirements of the Members’ Code, namely:

- the current mechanisms regarding the recognition, disclosure and management of conflicts of interest rely heavily on self-regulation
- the conflict of interest regime envisaged currently lacks effective mechanisms to monitor and enforce its requirements (apart from the oversight provided by the Commission, but noting the approvals to establish a parliamentary independent complaints officer, which will be discussed, below)
- there is no current register regarding conflicts of interest for members of Parliament
- the current Disclosure Regulation provides that it is at the members’ discretion to disclose any

direct or indirect benefits, advantages or liabilities, whether pecuniary or not (apart from those already required to be disclosed)

- the current Members' Code requires members of Parliament to "take reasonable steps to avoid, resolve or disclose any conflict between their private interests and the public interest" but it does not define what is a conflict of interest nor provide any details or guidance on what process or "reasonable steps" ought to be followed in order to avoid, resolve or disclose conflicts of interest on an ad hoc basis; also there are no mechanisms in place to collate any such ad hoc disclosures
- there are separate and distinct conflict of interest disclosure requirements via separate codes of conduct for members of Parliament and for parliamentary secretaries/ministers. The separate requirements are quite different and lack consistency. The lack of uniformity and differing standards can potentially create confusion for those subject to both codes (that is, ministers and parliamentary secretaries)
- ideally, the separate regimes should still have an internal consistency about core aspects, namely a:
 - consistent definition of a conflict of interest
 - generally consistent approach to the principles and steps taken regarding avoiding, recognising, disclosing and managing conflicts of interest
 - consistent approach to maintaining centralised conflicts of interest registers.

A centralised conflicts of interest register for members of Parliament is an appropriate mechanism to promote accountability and transparency. A centralised register would assist others in determining whether a member of Parliament has disclosed a conflict of interest. Similar to the register established by the Ministerial Code, it ought to capture conflicts of interest that occur on an ad hoc basis; for example, at a meeting with public officials, as these could be registered in writing afterwards. As noted earlier, many other Australian jurisdictions already mandate the registration of members' conflicts of interest.

The President of the Legislative Council has advised the Commission that the Members' Code is due to be reviewed in 2022, and that the Legislative Council's Privileges Committee has noted the desirability of consistency. The Commission notes that a review of the Members' Code by the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics commenced on 10 March 2022 and is currently under way.

RECOMMENDATION 3

That NSW Parliament's designated committees include a clear, consistent and comprehensive conflict of interest definition in the Code of Conduct for Members. This review should include a consideration of the relevant definitions in the Ministerial Code of Conduct and any opportunities for achieving a consistent approach in regard to avoiding, recognising, disclosing and managing conflicts of interest.

RECOMMENDATION 4

That the NSW Government, in consultation with NSW Parliament's designated committees, amends the Constitution (Disclosures by Members) Regulation 1983 to provide for the mandatory registration of conflicts of interest by members of Parliament via the creation of a register for this purpose (noting the option to limit access to certain information for privacy reasons).

RECOMMENDATION 5

That the Speaker of the Legislative Assembly, the President of the Legislative Council and the relevant parliamentary departments jointly ensure that the guidance material for members of Parliament be updated to provide details about their obligations pursuant to clause 7 of the Code of Conduct for Members, on how to take reasonable steps to avoid, resolve and disclose a conflict of interest, and the registration of conflicts of interest (pending implementation of recommendations 3 and 4).

Improper influence

Public office is held for the public good and not to benefit the office holder. Members of Parliament are entrusted with significant authority and occupy positions of public trust. It is absolutely imperative members of Parliament do not knowingly and improperly use their influence to achieve private gain.

Mr Sidoti occupied a number of roles and, as outlined in chapters 2 and 10, he had interests in several family properties.

The conduct outlined in the previous chapters demonstrates that Mr Sidoti used his position to try and influence the exercise of the official functions of another sphere of government in pursuit of his private interests.

This investigation demonstrates that a member of Parliament can seek to exert influence over others in different and sometimes quite subtle forms. Examples of

this conduct were discussed in the previous chapters and summarised in chapter 10.

Importantly, this investigation also demonstrates that Mr Sidoti used his official position as a member of Parliament and the local member for Drummoyne in his attempts to improperly influence the Liberal councillors on CCBC to adopt and advance certain positions in relation to the Five Dock town centre that would benefit his family's property interests in the area. Examples of this conduct were discussed in the previous chapters and summarised in chapter 10.

Furthermore, Mr Sidoti's communications with the Liberal councillors concerning the Five Dock town centre planning matters have been found by the Commission to be self-serving rather than in the interests of his constituents. In these circumstances, his use of his electorate office as well as his parliamentary email, were aspects of his attempts to improperly influence the honest or impartial exercise of the Liberal councillors' official functions.

There are concerns about Mr Sidoti's use of public resources, such as the use of his parliamentary email address, which was for Mr Sidoti's use in, and for, his public office and not for family business purposes. In addition, Mr Sidoti failed to appreciate that, in holding meetings with councillors in his electoral office on 16 April 2014, he was deploying a facility that is provided for performing his duties as local member for Drummoyne, and not to convene meetings in relation to family property matters. Mr Sidoti's electorate office is associated with his high status and ranking as a member of Parliament. This influence on Dr Ahmed in particular was discussed in chapter 4.

Clarifying improper influence and the proper use of public resources

The role of a member of the Legislative Assembly includes making representations on behalf of constituents and local organisations or businesses. Members of Parliament regularly meet with organisations, businesses and constituents to hear about their various needs and concerns, which can include issues within the domain of local government, including development applications and planning proposals. The role of a member of Parliament involves making representations for their constituents or for official purposes but not for the member's private benefit or the private benefit of the member's family or close associates. Because elected public officials often reside in their electorate, and have property interests in the area, self-serving conduct can be masked as a representation made on behalf of a constituent. There is a heightened risk of this occurring in situations where a member of Parliament has public and private interests,

including in relation to private property interests and having a prominent role in a political party, and where such public and private roles and interests can become intermingled.

In situations where a member of Parliament promotes a policy or proposal that could also result in a private benefit, including for themselves, their family, or a close business associate, it is incumbent on the elected public official to ensure that they are not using their power and influence and the status of their office improperly. In situations where members of Parliament also have a private interest in a matter pertaining to their own electorate, they can still exercise their rights as private citizens. Examples of how this can be done have been outlined above, which explored the intersection of public duty and private interests.

As outlined in chapter 1, both Houses of Parliament in 2020 adopted a revised Members' Code, which contains a specific prohibition against the use of the term "improper influence" under the subheading "Proper exercise of power". However, the revised code did not apply to Mr Sidoti for the period of time being investigated by the Commission. Clause 2(c) of the code now prohibits members from using their influence to seek to affect a decision of any public official that could further their private interests, or that of their family or business associates. This provision fits squarely with Mr Sidoti's conduct as exposed in this investigation.

The term "improper influence" is not found in the ICAC Act, although such influence may in some circumstances constitute corrupt conduct under s 8 and s 9 of the ICAC Act. The 2020 revision of the Members' Code is relevant to the factual findings made in previous chapters. Had the current code applied at the time that is the subject of this investigation, Mr Sidoti's conduct, as found, would have constituted a substantial breach of the Members' Code.

The Commission has been advised of training initiatives under way at NSW Parliament, including a mobile telephone-based application being implemented in support of the education of members on matters relating to the current Members' Code, with a separate module on improper influence. In addition, members of Parliament can seek advice from the clerks of the House as well as the parliamentary ethics adviser on ethical issues and those relating to the issue of intermingling of public resources with personal interests; a topic that is also covered as part of the induction for new members.

In the Commission's view, the investigation in this regard illustrates that Mr Sidoti's conduct amounted to attempts to improperly influence other public officials. Additional induction, as well as ongoing training and guidance about this topic, would assist members of Parliament in

differentiating between improper influence and the proper exercise of power and privileges as well as the use of publicly funded resources bestowed on them by virtue of their public office.

RECOMMENDATION 6

That the Speaker of the Legislative Assembly, the President of the Legislative Council and the relevant parliamentary departments jointly develop and/or update specific training and guidance material about the proper and improper exercise of power by members and undue influence, in line with findings made by this investigation.

RECOMMENDATION 7

That the Speaker of the Legislative Assembly, the President of the Legislative Council and the relevant parliamentary departments jointly develop and/or update specific training and guidance material about the improper intermingling of public resources with personal interests, in line with findings made by this investigation.

Monitoring and enforcement

Potential breaches of a code of conduct and the Disclosure Regulation need to be addressed so that members of Parliament and the public at large understand that misconduct has consequences. Compliance and deterrence depend on effective enforcement mechanisms being in place that are timely and impartial.

Compliance framework

Under the Ministerial Code, the premier has the power to determine what sanctions or enforcement actions to take. This means that ministers and parliamentary secretaries are directly accountable to the premier.

Section 14A (2) of the Constitution Act provides that if a member of Parliament wilfully contravenes any regulation made under s 14A(1) of the Constitution Act, including the Disclosure Regulation, the House may declare the seat of a member of Parliament vacant. To date, there has been no case in which a member's seat has been declared vacant under these provisions.

Substantial breaches of relevant codes can amount to corrupt conduct (see s 9(1)(d) of the ICAC Act).

Current reforms to establish a parliamentary independent complaints officer for NSW Parliament

In November 2020, the Legislative Assembly and the Legislative Council both resolved to refer a proposal to establish a "parliamentary compliance officer" to their

respective committees for an inquiry. Essentially, the proposals considered ways to fill a gap in current accountability mechanisms and to allow allegations of minor misconduct against members of Parliament to be addressed in a timely manner. These concerns were raised by the Commission in its 2013 report, *Reducing the opportunities and incentives for corruption in the state's management of coal resources*.

Both Houses have now approved somewhat different proposals to establish a parliamentary independent complaints officer, who may receive and investigate complaints confidentially in relation to alleged breaches of the Members' Code, including:

- misuse of allowances and entitlements
- other less serious misconduct matters falling short of corrupt conduct
- minor breaches of the pecuniary interests disclosure scheme.⁵⁹

In late May 2022, the position was being advertised.

The latest resolutions to establish a parliamentary independent complaints officer mention potential sanctions in response to breaches such as repayment, rectification, and the option to recommend further sanctions to the committee(s).

The resolutions also propose that it would be at the discretion of that officer to make a referral to the Commission.

Addressing weaknesses and gaps in the current compliance framework

A number of observations arise from the Commission's findings that Mr Sidoti failed to disclose his interests in 120 Great North Road, the income received by his wife by way of distributions from the Sidoti Family Trust, and his directorship of Betternow. These include:

- the current compliance regime has control gaps
- disclosure requirements rely heavily on self-regulation
- the oversight and enforcement mechanisms regarding potential misconduct by a member of Parliament are weak
- the likelihood of detection is low, which decreases deterrence
- there were limited available sanctions.

⁵⁹ See Hansard, Legislative Assembly, 29 March 2022, pp. 25–28. See also Hansard, Legislative Council, 30 March 2022, p. 5.

Especially in combination, these factors allow, encourage or cause the occurrence of aberrant behaviour, and can potentially lead to corrupt conduct.

In relation to members, it is the role of NSW Parliament to provide effective monitoring and enforcement mechanisms for misconduct that are timely and impartial. Unlike appointed public officials, members of Parliament are not in a contract of employment and do not have a manager who can dismiss or discipline them for breaches.

The Commission's position regarding a parliamentary independent complaints officer for NSW Parliament remains unchanged from its previous submission.⁶⁰ In particular:

- there ought to be a robust and sound process to ensure the Commission's jurisdiction is preserved
- the proposed monitoring function could be impaired due to the limitations of the existing disclosure regime
- other than making orders for the repayment of misused funds or entitlements, the proposed functions do not include detailed enforcement measures.

Notwithstanding the establishment of a parliamentary independent complaints officer currently being under way, in the Commission's view the monitoring and enforcement systems of the Members' Code as well as the disclosure regime are likely to require further strengthening. Such recommendations will be made in due course. The Commission notes that both approved models require that the designated committees review the parliamentary independent complaints officer system within 12 months of the establishment of that position, in consultation with key stakeholders. It is anticipated that this will provide the Commission with another opportunity to provide further feedback and recommendations.

The Ministerial Code

The Commission has identified a potential jurisdictional gap regarding whether the Ministerial Code is an "applicable code of conduct" in relation to parliamentary secretaries for the purposes of s 9(3) of the ICAC Act, given s 9(3) refers only to ministers of the Crown and not parliamentary secretaries. Although the Ministerial Code expressly applies to parliamentary secretaries (other than Part 1 and Part 5 of its Schedule), s 9(1)(d) of the ICAC Act only refers to "a Minister of the Crown".

⁶⁰ NSW Legislative Council Privileges Committee, *Inquiry into proposal for a compliance officer for the NSW Parliament*, Submission No 6, NSW Independent Commission Against Corruption, 8 February 2021.

Consequently, substantial breaches of the Ministerial Code by a parliamentary secretary do not constitute corrupt conduct. This issue is discussed in chapter 1. An "applicable code" in s 9(3) of the ICAC Act for parliamentary secretaries is currently only the Members' Code. This potential gap ought to be clarified and/or rectified.

RECOMMENDATION 8

That the NSW Government considers the introduction of amending legislation to clarify that an applicable code of conduct in relation to a parliamentary secretary is a ministerial code of conduct prescribed or adopted for the purposes of s 9(3) of the ICAC Act.

Part 2: The integrity of Council decision-making

The lobbying of councillors

Generally, the lobbying of councillors is a normal and acceptable feature of the relationship between citizens and their elected representatives. Nonetheless, it is in the public interest that lobbying is fair and transparent, and does not undermine public confidence in impartial decision-making. The conduct exposed in the investigation demonstrated that there is a need to enhance transparency and promote honesty with respect to the lobbying of councillors, particularly when it involves proponents with planning matters before a council.

Existing councillor guidance and requirements regarding lobbying

The Department of Planning and Environment's ("the Department") *Councillor Handbook* (October 2017) provides general advice to councillors about appropriate and inappropriate lobbying. Compliance with this guidance is not mandatory.

As noted in chapter 1, the CCBC code of conduct reflected the versions of the Model Code of Conduct for Local Councils in NSW "the model code" that were in place during the relevant time. In addition to the general obligations to act impartially, independently and with integrity in the public interest, the CCBC code of conduct also contained provisions concerning the consideration and determination of development matters. During the relevant time, these provisions only extended to development applications. However, since the period of the investigation, the provisions have been amended to cover land use planning and regulatory decisions in general.

While the above requirements and advice establish boundaries for appropriate conduct, the model code contains limited specific guidance about local government lobbying practices. This was unfortunate, as the Liberal councillors were ill-equipped to deal with Mr Sidoti's attempts to lobby them, which raised several probity issues for them; these are outlined below.

The frequency of Mr Sidoti's meetings with the Liberal councillors

The frequency of Mr Sidoti's contact with the Liberal councillors concerning his family's private interests was excessive and beyond what was afforded to other stakeholders.

Mr Sidoti's attempts to persuade the Liberal councillors during these interactions were, at times, forceful. Dr Ahmed, Ms Cestar and Ms McCaffrey all described Mr Sidoti's representations, both in person and electronically, as "intrusive," "frequent", "a consistent barrage", "unusually regular and consistent", "continual" and "relentless."

The failure to report Mr Sidoti's conduct

As discussed in chapter 10, the Liberal councillors did not report their concerns over Mr Sidoti's conduct.

Ms Cestar did not report her interactions with Mr Sidoti despite believing that his representations interfered with her independence as a councillor after Ms McCaffrey became mayor in June 2016. She specifically recalled that she felt intimidated and threatened after an interaction with Mr Sidoti on 3 December 2016 concerning an upcoming council meeting. She believed her position on CCBC was "up for grabs" if she "didn't do what was expected". Ms Cestar also described her relationship with Mr Sidoti as changing to a "master/servant type of relationship" around this period in time.

Despite Ms Cestar thinking that her 3 December 2016 interaction with Mr Sidoti was "potentially something that should be reported", she told the Commission that she decided not to report the matter, as she thought "it would pass" and she would do what was right, regardless. Ms Cestar, however, acknowledged that she was not sure to whom the matter should be reported. She also agreed that not all persons would have the fortitude to withstand Mr Sidoti's behaviour.

Ms McCaffrey agreed that she was under relentless pressure from Mr Sidoti and that it was possible that her independence as a councillor was being interfered with. As noted previously, she consistently told the Commission she did not report the situation as she was hoping to handle it herself.

Mr Megna told the Commission that he would have been concerned if Ms Cestar was threatened in the performance of her official functions but that he would not have reported his concerns.

It is regrettable that the councillors did not report Mr Sidoti's conduct. The Commission believes that, had Ms Cestar and Ms McCaffrey been provided with guidance about how and where to report concerns about lobbying practices, they would have been more inclined to report Mr Sidoti's conduct. It is also possible that reporting their concerns would have exposed Mr Sidoti's forceful conduct at an earlier point in time.

The transmitting of lobbying material to the Liberal councillors in a way that excluded others

Mr Sidoti and the planning consultants representing the Sidoti family provided information to Dr Ahmed, Ms Cestar and Ms McCaffrey that was not seen by planning staff and the other CCBC councillors. Mr Sidoti and his family's planning consultants also provided Dr Ahmed, Ms Cestar and Ms McCaffrey with draft resolutions, speaking notes and questions to ask at CCBC meetings. In addition, Dr Ahmed, Ms Cestar and Ms McCaffrey were directly emailed copies of architectural renderings depicting the overshadowing impact of a specific rezoning scenario from the owner of a property in Waterview Street.

Ms Cestar told the Commission that it "should be a concern" that material was only addressed to the Liberal councillors although, at the time, she did not register this concern. Mr Haron also gave evidence that he recently formed the view that "there should have been some more openness" regarding his private meeting with the councillors held on 16 April 2014 to discuss the Urban Design Study.

Transmitting material directly to the Liberal councillors at times undermined the integrity and processes of CCBC decision-making and provided favourable treatment to Mr Sidoti as:

- the information was not placed on the public record and its origins lacked transparency
- the meetings where information was provided where not on CCBC premises, which further diminished the transparency surrounding Mr Sidoti's actions
- it was unlikely that similar opportunities to submit material of a technical nature directly to councillors would have been afforded to other interested parties
- providing alternative resolutions to Dr Ahmed, Ms Cestar and Ms McCaffrey was an attempt to

marshal and instruct them as to how they should exercise their official functions

- conveying information just before a council meeting contained a tactical element as Dr Ahmed, Ms Cestar and Ms McCaffrey were provided limited opportunity to review the information prior to making a decision, while those officials who had not received the information were taken by surprise
- Mr Sidoti was afforded special access to Dr Ahmed, Ms Cestar and Ms McCaffrey by virtue of his position and influence.

While councils should not adopt practices that preclude receipt of relevant planning matters for consideration, procedures should be put in place to discourage or prohibit manipulative lobbying practices. Procedures should also be put in place to ensure information received from interested parties is dealt with in a fair, impartial and transparent manner.

Councillors' attendance at staff meetings with parties interested in a planning outcome

In November 2016, Ms McCaffrey was included in a meeting between CCBC staff and Mr Matthews from Pacific Planning to discuss the potential Waterview Street rezoning. A year earlier than that meeting, Ms McCaffrey had informed Mr McNamara that she was receiving pressure from the Liberal Party over the issue. Mr McNamara described the meeting as just another attempt to see if there was any way that CCBC could change its view on the rezoning, observing that, "it's just the thing you live with in a council."

There is no evidence to suggest that Ms McCaffrey behaved inappropriately at the meeting and the Commission does not suggest that councillors, and in particular mayors, should be excluded from proponent meetings. However, councillors' attendance at staff meetings with proponents to discuss planning matters raises probity concerns, including the potential for councillors to express a bias in a proponent's favour. It is also possible that such forums can be used by councillors to pressure staff. Moreover, attendance at proponent meetings by select councillors can create an unlevel playing field if councillors, who are not in attendance, do not gain access to the information considered.

To address these concerns, proponent meetings should be subject to probity controls. The controls should include prohibiting councillors from expressing a concluded view when they are expected to vote on a matter in the future to avoid creating the impression of bias in an interested party's favour. It should also be made clear that councillors cannot pressure staff over the content of

advice or recommendations at meetings with proponents. Furthermore, any information made available to councillors in such forums should be provided to all elected representatives. In the interests of transparency, significant interactions with proponents should also be documented.

Councillor and staff interactions arising from proponent representations

The investigation revealed that CCBC planning staff were required to write additional reports and recommendations that accorded with representations made by Mr Sidoti and his planners concerning his family's interests.

In one example, Mr McNamara raised concerns at a CCBC executive meeting about the motivation behind Ms McCaffrey's request in October 2015 that he draft a resolution to re-investigate three sites outside of the town centre boundaries recommended in the Urban Design Study. Ms McCaffrey acknowledged to Mr McNamara that she was "getting some pressure within the party". Mr McNamara stated that his concern with the request was the fact council officers' professional work was being undermined and discredited for basically personal motives.

While the investigation identified only one instance of a council staff member feeling directly pressured by councillors over the content of a recommendation, interactions between councillors and staff remain an area of vulnerability with respect to inappropriate lobbying practices. This is particularly the case when there is a risk that councillors may be drawn into a relationship that undermines their objectivity and that they become aligned with a proponent's point of view.

The LGA and the model code clearly establish that staff are not subject to direction by a councillor as to the content of any advice or recommendation. Many councils choose to supplement these provisions by policies that provide further guidance about inappropriate interactions. Evidence was provided at the public inquiry that CCBC did not have a formal policy regulating contact between councillors and staff, although there was an informal rule that councillors could only deal with directors and the general manager.

The Department has recently released the *Model Councillor and Staff Interaction Policy*, which it encourages councils to adopt. In doing so councils can also adapt the policy to suit their local circumstances and operating environments. CCBC informed the Commission that it is intending to adopt a councillor and staff interaction policy.

Addressing the improper lobbying of councillors

The Commission's March 2021 report, *Investigation into the conduct of councillors of the former Canterbury city council and others*, known as Operation Dasha, exposed

numerous examples of councillors and proponents with an interest in a planning decision engaging in inappropriate lobbying practices. To address this issue, recommendation 8 in the Commission's report provided that the Department:

...following a period of consultation, issue guidelines under s 23A of the LGA to introduce measures to enhance transparency around the lobbying of councillors. The guidelines should require that:

- *councils provide meeting facilities to councillors (where practical) so that they may meet in a formal setting with parties who have an interest in a development matter*
- *councils make available a member of council staff to be present at such a meeting and to prepare an official file note of that meeting to be kept on the council's files (any additional notes made by the member of council staff and/or the councillor should also be kept as part of the council's records)*
- *all councillors be invited when a council conducts formal onsite meetings for controversial re-zonings and developments [where an elected body is the consent authority]*
- *council officers disclose in writing to the general manager any attempts by councillors to influence them over the contents or recommendations contained in any report to council and/or relating to planning and development in the local government area.*

The Department has advised the Commission that, in response to Operation Dasha, it will issue guidelines under s 23A of the LG Act and a model policy to enhance transparency around the lobbying of councillors.

The Commission believes that any guidelines regarding the lobbying of councillors that are drafted in accordance with the Operation Dasha recommendation outlined above ought to also address the inappropriate lobbying exposed by this investigation. In addition, the guidelines should also address the issue of councillors being lobbied by interested parties with whom they have a pre-existing relationship, which is discussed below. The model code should also be amended to reflect the guidelines.

The Commission also notes that the Department is currently undertaking an independent review of the framework governing the behaviour of councillors. The review will examine the effectiveness of the available penalties for councillor misconduct, the processes for making code of conduct complaints, the way investigations are conducted, and the timeliness of

disciplinary action. An outcome of the review ought to be an increase in deterrence for councillor misconduct, including breaches of the model code.

RECOMMENDATION 9

That the Department ensures any guidelines issued pursuant to s 23A of the LGA regarding the lobbying of councillors include advice about:

- **the nature and frequency of meetings between councillors and interested parties, including the need to ensure transparency around these interactions**
- **how and where to report concerns about lobbying practices**
- **the receipt of submissions outside of formal processes, including the transmission of material to specific councillors in a way that excludes other councillors and staff**
- **councillors' attendance at staff meetings with parties interested in an outcome**
- **councillor representations to staff arising from lobbying interactions**
- **the lobbying of councillors by interested parties with whom they have a pre-existing relationship.**

RECOMMENDATION 10

That the Department updates the model code to refer to any councillor lobbying guidelines and to reflect the substantive advice contained in the guidelines.

RECOMMENDATION 11

That CCBC adopts a policy regulating interactions between councillors and staff. The policy should cover councillor representations to staff arising from lobbying activities and the attendance of councillors at proponent meetings with staff.

Councillors and conflicts of interest

Citizens rightly expect that public officials, and their associates, should never be able to obtain an undue personal benefit as a result of the performance of public duties. More broadly, a failure to properly manage conflicts of interest is likely to contribute to a loss of confidence in public administration.

The management of councillors' conflicts of interest

As set out in chapters 1 and 10, in alignment with the model code, the CCBC code of conduct defined a conflict of interest. Conflicts of interest were further categorised as either pecuniary or non-pecuniary.

At all relevant times, councillors' obligations with respect to the management of non-pecuniary conflicts of interest were contained in the CCBC code of conduct. These obligations are set out in chapter 10.

During the time of the conduct under investigation, pecuniary conflicts of interest were regulated by the LGA. Some of these provisions were also contained in the model code. In 2018, the pecuniary interest obligations previously contained in the LGA were transferred to a new Part 4 of the model code with some changes that are not relevant to this matter.

At the relevant time, s 451 of the LGA (which was reflected in the model code and the CCBC code of conduct) required that councillors who had a pecuniary conflict of interest in a matter must not be present at, or in sight of, the meeting of the council or committee, or present in the council chambers:

- at any time during which the matter is being considered or discussed by the council or committee
- at any time during which the council or committee is voting on any question in relation to the matter.

As a result, councillors' pecuniary conflict of interest management obligations were limited to council and committee meetings. In November 2017, the Commission raised the limited requirements for managing conflicts of interest outside of official council meetings with the former Office of Local Government in a submission to the review of the model code. The limitation continues to exist in the current version of the model code.

Ms McCaffrey and Ms Cestar did not consider whether their relationship to Mr Sidoti gave rise to a conflict of interest

While the nature of Mr Sidoti's relationship with the Liberal councillors was based on their political connection, it extended beyond a common membership of the Liberal Party.

Ms Cestar had been a member of the Liberal Party for 20 years. Ms Cestar and Mr Sidoti had been active members of the same branch of the Liberal Party; working together since 2011. This entailed Ms Cestar campaigning for Mr Sidoti by participating in street stalls, attending fundraisers and working on election day. When

providing evidence about Mr Sidoti's lobbying interactions, Ms Cestar told the Commission, "I suspect if it was a Labor member of parliament it wouldn't have got to that. We wouldn't have been requested to have these meetings".

While not recalling her thoughts at the time, Ms McCaffrey acknowledged in retrospect the fact Mr Sidoti was a colleague, in addition to his role, may have prevented her from resisting his lobbying pressure.

Mr Daniel gave evidence that Pacific Planning targeted the Liberal councillors partly because "our client had a connection to them". Mr Sidoti agreed that he had a relationship with the Liberal councillors because they were colleagues in the Liberal Party. Additionally, Mr Sidoti described his relationship with Ms McCaffrey as being "friends". He also stated in relation to the Liberal councillors: "I had a very, very good relationship with them all".

As discussed in chapter 10, Ms McCaffrey's and Ms Cestar's relationship with Mr Sidoti, combined with their knowledge of his family's property interests, warranted a significant conflict of interest declaration. The councillors' compliance with their obligations in this respect would have helped focus their attention on the appropriateness of Mr Sidoti's lobbying practices and alerted Mr Sidoti to their awareness of probity requirements.

On 25 September 2012, the new and re-elected CCBC councillors received a 10-minute code of conduct briefing session. The presentation included one slide dealing with the topic of conflicts of interest, which covered in limited detail:

- the definition of a conflict of interest
- a recognition that perceptions of a conflict are as important as an actual conflict
- the general requirement to report, document and resolve conflicts in favour of a councillor's public duty.

The councillors were also provided with a handbook at the beginning of the term, which included a brief section on conflicts of interest, covering the definition of pecuniary and non-pecuniary conflicts of interest.

Since the September 2017 local government elections, councillors have been provided with more substantial information about their obligations, including:

- code of conduct training provided by probity consultant Allan Yates (19 September 2017)
- a briefing on changes to the model code (5 June 2018) provided by the Office of Local Government

- CCBC code of conduct training provided by Lindsay Taylor Lawyers (5 March 2019)
- a briefing on amendments to the CCBC code of conduct provided by Lindsay Taylor Lawyers (6 October 2020)
- a report on amendments to the CCBC code of conduct (20 October 2020).

It is now a statutory requirement for councils to provide induction and ongoing professional development programs to councillors. Mayors and councillors have a reciprocal obligation to participate in these programs. The Department also provides a checklist of recommended content for induction programs, which includes conflict of interest obligations.

Conflicts of interest are a particular area of vulnerability for councillors, given their strong community ties and the potential for pre-existing relationships to exist between councillors and those who support a planning matter and those who oppose it. As such, any induction or ongoing professional development program for councillors should cover situations where councillors are lobbied over council matters by a constituent they have a connection or association with, and whether the nature of the relationship, and the impact of the matter on the person's interests, gives rise to a non-pecuniary interest or pecuniary conflict of interest.

CCBC has prepared a councillor induction plan for the new term of council, which includes specific conflict of interest training. CCBC also plans to deliver this training on an annual basis over the next three years.

It is also noted that recommendation 10 deals in part with the issue of councillors being lobbied by interested parties with whom they have a pre-existing relationship.

RECOMMENDATION 12

That CCBC continues to provide conflict of interest training to councillors, at least on a biennial basis. The training should cover situations where councillors are lobbied by those with whom they have a relationship or association and the circumstances where this would give rise to a conflict of interest.

Councillors' conflicts of interest and activities outside of formal council meetings

As noted earlier, the sector-wide governance framework concerning councillors' pecuniary conflict of interest obligations concerns formal council proceedings. The Department informed the Commission in its submissions that the current provisions of the model code concerning the disclosure and management of pecuniary

interests by councillors are confined to official meetings because these are the only forums in which councillors exercise any formal decision-making functions.

The Commission believes that the current pecuniary conflicts of interest management provisions are too narrow as public duty is a broad concept that extends beyond simply considering, debating and voting on issues at formal council meetings. It extends to all the duties, functions and influences that a holder of public office has and exercises both in an official and informal capacity.

The public inquiry revealed that, despite declaring a pecuniary conflict of interest and recusing himself when these matters were before CCBC, Mr Megna had some involvement in the planning matters that were the subject of this investigation. For instance, Mr Megna:

- offered to forward a letter from a local resident sent to him via Mr Sidoti to the other Liberal councillors
- was copied in on emails, some of which were of a technical nature, by Mr Sidoti's planners, the other Liberal councillors, and Mr Sidoti
- acceded to Mr Sidoti's request (received via Sandra Sidoti's email) to provide information to the other Liberal councillors
- on or near 5 December 2016, expressed the view to Mr Sidoti that a simple deferral request should have been made, rather than providing reasons for the request, in relation to CCBC's upcoming consideration of changes to planning controls for Waterview Street and Second Avenue
- discussed planning matters privately with Mr Sidoti and texted Mr Sidoti from the "side corridor" as the planning controls for Waterview Street and Second Avenue were being considered during the council meeting of 21 February 2017
- was invited by Mr Sidoti to attend meetings to discuss the matter but did not recall attending any such meetings.

Mr Megna agreed with the proposition that it would be improper for him, as a councillor with a pecuniary interest in the Five Dock town centre matter, to play any role or have any involvement in discussions regarding the Urban Design Study. Mr Megna also told the Commission, "the more I tried to not get involved in this entire issue, I seemed to be getting involved in it." Mr Sidoti agreed that he should not have forwarded concerns raised by a local resident who lived in Waterview Street to Mr Megna.

While it was imprudent of Mr Megna to continue to interact with Mr Sidoti regarding the Five Dock town centre, there was no specific requirement for him to manage pecuniary conflicts of interest outside of formal council meetings.

A sector-wide approach, prohibiting councillor involvement in matters where they have a pecuniary conflict of interest, is warranted to provide clarity around the permissible boundaries of behaviour. In particular, the model code should make it clear that a councillor should not generally be involved in a matter when they have a pecuniary conflict of interest, beyond exercising the general rights afforded to a member of the public. A prohibition on involvement in matters should include both participation in official council activities, such as workshops, and participation in activities that are not organised by a council, including proponent representations. For the sake of clarity, any amendment of the model code to deal with this issue should also extend to the management of significant non-pecuniary conflicts of interest.

The Department submitted that it would have no objection to broadening the scope of the current pecuniary interest obligations.

RECOMMENDATION 13

That the Department amends the model code to generally prohibit councillors' involvement in matters where they have a pecuniary or significant non-pecuniary conflict of interest, beyond exercising the general rights afforded to a member of the public. An exception should be made in circumstances where a councillor reallocates or delegates their duties, refers interested parties to the appropriate way of making a representation or makes a complaint due to becoming aware of improper conduct.

The potential for councillor workshops to be used to direct staff

Good governance is promoted by providing a role segregation between elected representatives and the administration of a council. As part of this role segregation, council staff ought to provide councillors with advice that is free of political influence. The capacity for councillors to use workshops to direct staff about the content of advice and recommendations away from public view contravenes this good governance principle.

Council workshop requirements

During the 2013 – November 2018 period, neither the LGA nor the Local Government (General) Regulation 2005 covered the issue of councillor workshops.

The former Division of Local Government, however, issued a Meetings Practice Note in 2009, which was in place during the period of the investigation. The Meeting Practice Note was not binding on councils, and advised them that:

When conducting workshops, a council needs to think about its obligations and responsibilities under the Model Code, and of community perceptions in terms of unfair advantage and transparency of process. There may be a belief that workshops are a means of transacting council business and coming to council decisions in secret.

Negative public views of workshops could be changed by community education on the purpose of workshops, and by ensuring that council decisions are not made at workshops.

This advice is reflected in the most recent *Councillor Handbook* (October 2017).

CCBC workshops

At the relevant time, CBCC workshops were run on an informal basis, with no minutes or attendance records kept. They were generally closed to the public.

Mr McNamara told the Commission that councillors could raise any issue relevant to a matter at a workshop and, if it looked like an issue that needed to be addressed, staff would address it through a council report. He also gave evidence that it was possible that a report would not identify that a matter was raised via a workshop.

In 2021, CCBC formalised the conduct of workshops to ensure the declaration and management of conflicts of interest by councillors.

The councillor workshop of 8 April 2014 and the drafting of the bonus provision

The Urban Design Study proposed a 16-metre height limit (five storeys) in the Five Dock town centre and no change to the current FSR of 2.5:1. While the option of a bonus provision was raised, it was limited to 19 metres (six storeys) on sites greater than 2,000 square metres. The Urban Design Study considered the size of such sites should enable an architect to provide the additional storey without adversely impacting on bulk and scale, privacy and overshadowing.

On 8 April 2014, CCBC held a workshop to discuss the Five Dock town centre rezoning. Following the workshop, a report was prepared for the council meeting of 20 May 2014, outlining a bonus provision that allowed for an FSR of 3.0:1 and a height of 27 metres (eight storeys) for amalgamated sites with an area over 1,500 square metres and a frontage of 20 metres. Mr Dewar described the

bonus provision as “very generous”. The investigation established that the bonus provision arose out of the workshop, although, the Commission does not suggest that it arose out of any representations made by Mr Sidoti.

Mr Dewar told the Commission that CCBC councillors were directing council staff during this workshop as to what recommendations they should make regarding the further progress of the Urban Design Study and associated planning controls. He recalled the discussion was not a suggestion but rather a direction that, “This is what’s going to happen”.

On 9 April 2014 (the day after the workshop), Mr Dewar sent an email to himself (but addressed to the then Department of Local Government), concerning councillor workshops. Mr Dewar told the Commission that, while he ultimately took no action, he wrote the email as he was contemplating lodging a complaint. The email included the following statements:

These workshops have now evolved to provide a platform for Councillors to direct staff on the recommendations they should make. If the majority of councillors are not happy with the recommendations of the staff about a particular matter, they make it clear and suggest what would be an acceptable outcome. In the vast majority of cases, recommendations that are made in reports to official Council meetings are changed to align with Councillors wishes following the workshops.

In addition [sic] area of concern is that the standards that apply to Councillors with regard to declaring a pecuniary or non-pecuniary interest, do not apply to the workshops. It is not uncommon to see councillors who have a direct pecuniary interest in a matter debating issues with staff at a workshop, influencing the outcome and then declaring a pecuniary interest at the Council meeting.

This outcome of this process is inappropriate influence and pressure from Councillors in respect to the way in which employees perform their functions. Council staff lose their independence and no longer make recommendations that are in the public interest but rather in the interest of the political aspirations of the councillors.

Mr Dewar’s email of 9 April 2014 suggested CCBC councillors used the 8 April 2014 workshop as a forum for directing staff about the Five Dock town centre bonus provision. However, the agenda item report for the CCBC meeting of 20 May 2014 created an impression that the bonus provision originated as a staff recommendation, as it made no mention of the 8 April 2014 workshop.

Clarifying the proper role of workshops

As members of the governing body, it is appropriate for councillors to set the broad strategic direction for a council. Consequently, there may be situations where workshops are used as a forum for councillors to communicate their views to staff about high-level strategic priorities and the direction of a council. There is also nothing inherently improper with councillors expressing opinions at workshops.

These situations can be distinguished from circumstances where councillors direct staff members about the specific contents of a report or a recommendation. This behaviour is problematic as it undermines the role of staff in providing “frank and fearless advice” to elected officials. The lack of community transparency around workshops also makes these forums a problematic environment for making and influencing decisions. This lack of transparency, combined with the absence of a clear sector-wide requirement to declare conflicts of interest outside of council meetings in the model code, provides a potential shield for councillors seeking to influence matters where they have a conflict of interest.

The Commission believes there is merit in formally addressing the appropriate role of council workshops. While the Department had no objection in principle to addressing the role of workshops, it submitted that the evidence before the public inquiry was specific to the interactions being investigated and did not represent a wider systemic issue across all local government areas. The Commission contends that the adoption of measures to address probity weaknesses in the conduct of workshops should not be dependent on whether evidence has been obtained of a wide systemic issue across all local government areas. As the Department noted in its submissions, “An effective and robust governance framework is essential to the successful performance of a council”. Good practice suggests that measures should be taken to identify and manage probity risks to ensure they do not become wider systemic issues.

RECOMMENDATION 14

That the Department amends the model code to include provisions about the appropriate role of council workshops. In particular, it should be made clear that workshops cannot be used to transact council business.

Councillors’ understanding of environmental planning considerations

Councillors may be informed about relevant planning issues from council officers’ reports, however, they are under an obligation to themselves consider the issues relevant to planning matters before them.

There was conflicting evidence about the Liberal councillors' level of knowledge and understanding regarding planning issues. Some evidence suggested that the councillors were confused about the planning merits of Mr Sidoti's arguments. For example, Ms Cestar described herself as being confused about the available planning options prior to the 6 December 2016 CCBC meeting and wanted advice from staff about how to proceed. In relation to the bonus provision for amalgamated sites, Ms McCaffrey stated in a text to Ms Cestar, "The question is, is everyone on the strip getting seven storeys? If not, why not? I am so confused. I don't know what's happening".

Mr Dewar told the Commission that the councillors' support for a bonus provision for amalgamated sites in the Five Dock town centre did not address the considerations in the Urban Design Study. He also agreed that the parameters of the increase were not expressed by reference to any planning principles and that it appeared as though the numbers were just plucked out of the air.

While land use planning guidance is contained in the relevant provisions of the EP&A Act and departmental guidelines, this information is not easy for non-planners to navigate and understand.

CCBC councillors would benefit from attending training and other presentations about planning matters. Although the mayor attended numerous planning events during the 2012–2017 council term, only two other councillors attended planning forums. More recently, Planning Institute Australia's "Planning for non-planners" course was offered to at least several councillors. The Commission encourages this initiative.

RECOMMENDATION 15

That CCBC continues to offer planning training to councillors during each term on their obligations under the EP&A Act, particularly regarding the consideration of planning proposals.

The satisfaction of departmental Gateway conditions

The Department can require councils to provide additional information as part of a Gateway condition after it has reviewed planning proposal documents. The information provided as part of this process should not unfairly advantage a proponent.

In April 2017, CCBC provided the planning proposal for the land between Barnstaple Road, Waterview Street and Second Avenue to the Department. The removal of 39 Waterview Street from a heritage listing, which was part of the proposal, was inconsistent with

the planning minister's Local Planning Direction 2.3 concerning the conservation of items, areas, objects and places of heritage significance. CCBC's heritage advisor also did not agree with the report prepared by Futurepast Heritage Consulting ("Futurepast") on behalf of the Sidoti family regarding the dwelling. Nevertheless, the planning proposal sought to remove the heritage listing of 39 Waterview Street in accordance with the CCBC resolution.

On 9 May 2017, a departmental representative issued a Gateway determination, stating that the planning proposal should proceed subject to certain conditions. The conditions included the preparation of a heritage impact assessment. The Department was aware of the Futurepast assessment concerning the heritage significance of 39 Waterview Street, which suggests that the intent of the Department's Gateway condition was for a new and independent heritage assessment to be obtained.

CCBC relied on the Futurepast report in satisfaction of the Gateway condition concerning the heritage impact assessment for 39 Waterview Street. Mr Dewar told the Commission that CCBC relied on the Futurepast report because it had the report at its disposal and it addressed the heritage significance of the site. He also noted that it was the same report that CCBC had consistently referred to throughout the process and it was the report CCBC had referred to the Heritage Office.

The Futurepast report was not an "independent" report given the proponent's obvious interest in obtaining an LEP amendment in respect of 2 Second Avenue. CCBC's decision to publicly exhibit the proponent's report could have created a perception of bias in favour of the proponent and arguably skewed the process with regards to the intent of the Gateway condition. However, it should be noted that the Department's Gateway condition was not sufficiently clear to preclude reliance on a proponent's report.

The Commission is aware that the public exhibition of proponent reports to satisfy Gateway conditions is not a practice that is unique to CCBC and has sought to address this issue via a recommendation to the Department in its Operation Dasha report. Consequently, the Commission does not propose to make any further recommendation regarding this issue.

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to the NSW Government and the responsible minister, the NSW Department of Premier and Cabinet, NSW Parliament's Legislative Assembly Privilege and Ethics Committee and Legislative Council Privileges Committee, the Speaker of the Legislative

Assembly, the President of the Legislative Council and the relevant parliamentary departments, the NSW Department of Planning and Environment and CCBC.

As required by s 111E(2) of the ICAC Act, the relevant public authority and/or responsible minister must inform the Commission in writing within three months (or such longer period as the Commission may agree to in writing) after receiving the recommendations, whether it proposes to implement any plan of action in response to the recommendations and, if so, of the plan of action.

In the event a plan of action is prepared, the relevant public authority and/or responsible minister is required to provide a written report to the Commission of its progress in implementing the plan 12 months after informing the Commission of the plan. If the plan has not been fully implemented by then, a further written report must be provided 12 months after the first report.

The Commission will publish the response to its recommendations, any plan of action and progress reports on its implementation on the Commission's website, www.icac.nsw.gov.au.

Appendix 1: The role of the Commission

The Commission was created in response to community and Parliamentary concerns about corruption that had been revealed in, inter alia, various parts of the public sector, causing a consequent downturn in community confidence in the integrity of the public sector. It is recognised that corruption in the public sector not only undermines confidence in the bureaucracy but also has a detrimental effect on the confidence of the community in the processes of democratic government, at least at the level of government in which that corruption occurs. It is also recognised that corruption commonly indicates and promotes inefficiency, produces waste and could lead to loss of revenue.

The Commission's functions are set out in s 13, s 13A and s 14 of the ICAC Act. One of the Commission's principal functions is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

- i. corrupt conduct (as defined by the ICAC Act), or
- ii. conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or
- iii. conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur.

The Commission may also investigate conduct that may possibly involve certain criminal offences under the *Electoral Act 2017*, the *Electoral Funding Act 2018* or the *Lobbying of Government Officials Act 2011*, where such conduct has been referred by the NSW Electoral Commission to the Commission for investigation.

The Commission may report on its investigations and, where appropriate, make recommendations as to any action it believes should be taken or considered.

The Commission may make findings of fact and form opinions based on those facts as to whether any particular person has engaged in serious corrupt conduct.

The role of the Commission is to act as an agent for changing the situation that has been revealed. Through its work, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

The Commission may form and express an opinion as to whether consideration should or should not be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of a person for a specified criminal offence. It may also state whether it is of the opinion that consideration should be given to the taking of action against a person for a specified disciplinary offence or the taking of action against a public official on specified grounds with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the public official.

Appendix 2: Making corrupt conduct findings

Corrupt conduct is defined in s 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in s 8 of the ICAC Act and which is not excluded by s 9 of the ICAC Act.

Section 8 defines the general nature of corrupt conduct. Subsection 8(1) provides that corrupt conduct is:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
- (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
- (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
- (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Subsection 8(2) specifies conduct, including the conduct of any person (whether or not a public official), that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which, in addition, could involve a number of specific offences which are set out in that subsection.

Subsection 8(2A) provides that corrupt conduct is also any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:

- (a) collusive tendering,
- (b) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,
- (c) dishonestly obtaining or assisting in obtaining, or dishonestly benefitting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,
- (d) defrauding the public revenue,
- (e) fraudulently obtaining or retaining employment or appointment as a public official.

Subsection 9(1) provides that, despite s 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- (a) a criminal offence, or
- (b) a disciplinary offence, or
- (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or
- (d) in the case of conduct of a Minister of the Crown or a Member of a House of Parliament – a substantial breach of an applicable code of conduct.

Section 13(3A) of the ICAC Act provides that the Commission may make a finding that a person has engaged or is engaged in corrupt conduct of a kind described in paragraphs (a), (b), (c), or (d) of s 9(1) only if satisfied that a person has engaged or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

Subsection 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within

the description of corrupt conduct in s 8 is not excluded by s 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

Subsection 9(5) of the ICAC Act provides that the Commission is not authorised to include in a report a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection 9(4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from the ICAC Act) and the Commission identifies that law in the report.

Section 74BA of the ICAC Act provides that the Commission is not authorised to include in a report under s 74 a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct.

The Commission adopts the following approach in determining findings of corrupt conduct.

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of subsections 8(1), 8(2) or 8(2A) of the ICAC Act. If they do, the Commission then considers s 9 and the jurisdictional requirement of s 13(3A) and, in the case of a Minister of the Crown or a member of a House of Parliament, the jurisdictional requirements of subsection 9(5). In the case of subsection 9(1)(a) and subsection 9(5) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence. In the case of subsections 9(1)(b), 9(1)(c) and 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there are limited instances where judicial review will be available. These are generally limited to grounds for prerogative relief based upon

jurisdictional error, denial of procedural fairness, failing to take into account a relevant consideration or taking into account an irrelevant consideration and acting in breach of the ordinary principles governing the exercise of discretion. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission when making factual findings. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362:

...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

This formulation is, as the High Court pointed out in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171, to be understood:

...as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.

See also *Rejtek v McElroy* (1965) 112 CLR 517, the *Report of the Royal Commission of inquiry into matters in relation to electoral redistribution, Queensland, 1977* (McGregor J) and the *Report of the Royal Commission into An Attempt to Bribe a Member of the House of Assembly, and Other Matters* (Hon W Carter QC, Tasmania, 1991).

Findings of fact and corrupt conduct set out in this report have been made applying the principles detailed in this Appendix.



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