

SECTION 7: GREY STREET PLANNING PROPOSAL

(a) Introduction

(i) *The First Grey Street Planning Proposal*

302. On 28 February 2013, the new owner of land (Hilfor Pty Limited) bounded by Grey, Bligh, Carnarvon Streets and Silverwater Road, Silverwater (“the Grey Street Site”) had a meeting at the Council offices with Mayor Attie and Mark Brisby (who at the time was the Director of the Planning and Environment Department of the Council). In addition to representatives of the owner (George Ghossayan), also in attendance were Mr Frank Mosca (architect), Mr George El Khouri (architect) and Mr Fawaz Sankari from the Beirut Bank.
303. Mr Brisby made notes of the meeting which were subsequently circulated to Glenn Francis and Monica Cologna of the Council’s Planning Department in an email dated 28 February 2013: Exhibit GS 1 page 20.
304. It would appear at the meeting that Mr Mosca asked whether the Grey Street Site could be redeveloped for residential uses, as the owner’s plan was to develop a high density residential complex with retail uses. Mr Brisby indicated that it could not be as it was currently zoned B6 Enterprise Corridor under the Auburn LEP 2010. Use of land for residential accommodation or retail premises was prohibited by that zoning. Mr Ghossayan indicated that they wanted to pursue a rezoning to B4 Mixed Uses, a zone with had the objective of encouraging “*high density residential development*” 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*”: see the Auburn LEP 2010 and Ex GS 1, page 52. There was an indication that a planning proposal would be lodged in support of this.
305. A planning proposal prepared by APP Corporation (a firm of town planning consultants) was subsequently submitted to Council for the Grey Street Site (the First APP GSPP). Prior to submitting the planning proposal APP had held discussions with Mr Francis, who was by then the Council’s Director of Planning and Environment, in

order to discuss the “*broad concepts of the planning proposal*”: Exhibit GS 1, page 33.

306. As described in the First APP GSPP (page 29 of Exhibit GS 1) the Grey Street Site at the time consisted of 12 single storey detached dwelling houses (by then vacant) and a commercial building that had previously been used as a dry-cleaning establishment: Exhibit GS 1, page 39.
307. The concept plan outlined in the First APP GSPP involved four rectangular buildings of 10, 8, 6 and 6 storeys as residential towers, comprising approximately 226 apartments. The concept plan also included 4,000m² of commercial retail floor space at street level: Ex GS 1 at pages 46-49. The highest residential flat building was proposed to be up to 32 metres: Ex GS 1, page 55. It was noted that prior to the Auburn LEP 2010 being made, the area had been zoned to permit residential development.
308. A number of expert reports were also annexed to the First APP GSPP, including an economic need and impacts assessment, an economic and development feasibility study and a transport report.
309. The Council’s planners assessed the First APP GSPP in a document prepared for Council’s Planning Committee meeting to be held on 20 November 2013. The Council’s Assessment Report was dated 12 November 2013: EX GS 1, page 165.
310. The Council’s Assessment Report contained a recommendation that the First APP Grey Street Planning Proposal “not be supported” for the following reasons:
- “• *The proposal would facilitate a pocket of B4 zoned land well away from the existing town centres of Auburn and Lidcombe.*
 - *Allowing a B4 Zone in an out-of-centre location is inconsistent with the Council’s and the State Government’s approach to a clearly defined hierarchy of centres (as set out in the Metropolitan Plan for Sydney 2036, Draft West Central Subregional Strategy), and is also inconsistent with the Council’s application of the B4 Zone within Auburn City to date.*

- *The proposal is inconsistent with the Auburn Employment Land Study 2008 recommendations and principles, which seek to retain and protect industrial and other employment uses within the Silverwater Road Precinct (Precinct 14) and Silverwater Industrial Precinct (Precinct 5).*
- *The proposal could threaten strategically and regionally significant industrial land in Silverwater (Precinct 5), and could create land use conflict.*
- *The proposal is not required to meet the Council's dwelling targets. Council is currently seeking to encourage housing growth within existing town centres (for example, the FSRPP which substantially increases the dwelling capacity in both Lidcombe and Auburn town centres)": Ex GS 1, page 167 (emphasis added).*

311. In her evidence at the public hearing Ms Cologna explained that the term "land use conflict" used in the assessment report as outlined above, was a reference to the conflicts that might be created by introducing a residential land use to a location that is close to land that is being used for industrial or employment type uses, including the impact such uses might have on the amenity of people living in residential buildings: T-110.25-.42.
312. Ms Cologna also explained that the Auburn Employment Land Study 2008 referred to in the assessment report above was a reference to the strategic planning study for employment land that had been prepared for Auburn in 2008. The First APP GSPP was inconsistent with that study because it sought approval for residential land uses in an area that had been strategically set aside for employment generating uses: T-111.22-.32.
313. The Assessment Report identified that the First APP GSPP was inconsistent with a number of planning strategies. For example, it was inconsistent with Objective 13 of the draft Metropolitan Strategy for Sydney to 2031 which is an objective "*to provide a well-located supply of industrial lands*". This was because the rezoning of the site from B6 Enterprise Corridor to B4 Mixed Use Zone under the Auburn LEP would result in a loss of 0.75 hectares of significant employment lands within the Silverwater Industrial Precinct: Ex GS 1, page 183.

314. The Assessment Report also noted that *“introducing high density residential uses of this scale on the site could also encourage land use conflict with the adjoining industrial land uses”*.
315. The First APP GSPP was also said to be inconsistent with parts of Strategic Direction E of the Metropolitan Plan for Sydney 2036, which contains strategic directions to *“identify and retain strategically important employment lands”* and to *“strengthen existing freight and industry clusters and support the emergence of new clusters”*.
316. The First APP GSPP was also found to be inconsistent with the West Central Draft Subregional Strategy as it *“would facilitate the development of out of centre retail uses”*: Ex GS 1 page 185. It was also noted that *“no further upzonings”* were required with the Auburn LGA to meet the dwelling target of 17,000 dwellings within the Auburn LGA for 2031, as set out in the WCDSS.
317. In the Assessment Report a number of recommendations were made to Council if it decided to support the First APP GSPP. These included considering a “more appropriate zone that is consistent with the Centres hierarchy, such as B2”: Ex GS 1, page 195.
318. As a consequence of the Assessment Report, the Executive Manager Planning’s Report for the Council meeting of 20 November 2013 recommended the Council not support the planning proposal for the same four reasons identified in the Assessment Report: Ex GS 1, pages 167 and 285.
319. At the Council Meeting of 20 November 2011, consideration of the APP GSPP was deferred until the following meeting. Despite the contents and recommendations contained in the Assessment Report, at the Council’s meeting on 4 December 2013 the Council resolved to prepare a planning proposal in accordance with s.55 of the *Environmental Planning and Assessment Act* to, amongst other things, *“rezone land at 1-17 Grey Street and 32-48 Silverwater Road, Silverwater to B2 Local Centre”*. Amongst the resolutions were to put a maximum height of buildings of 25 metres and a floor space ratio of between 3.75:1 to 4:1: Ex GS 1, page 245.

320. The resolution was based on a motion moved by Councillor Attie and seconded by Councillor Mehajer. Voting for the resolution were Councillor Attie, Mehajer, Zraika, Lam, Oueik and Yang. Voting against were Councillors Batik-Dundar, Campbell, Oldfield and Simms.
321. As a consequence of this vote, in July 2014 the Council submitted a planning proposal to the Department of Planning and Environment for 1-17 Grey Street and 32-48 Silverwater Road, Silverwater (“the First GSPP”): Ex GS 1, page 251. The First GSPP sought to rezone the Grey Street Site from B6 Enterprise Corridor to B2 Local Centre, a zoning that also encouraged and permitted high density residential development. The proposed planning control changes would involve an increase in maximum height allowed from 14m to 25m and an increase in FSR from 1:1 to 4:1: Ex GS 1, page 258. Concept plans for the residential and retail developments proposed were included in the First GSPP.
322. On 18 December 2014 the Department of Planning refused the Gateway Determination: Ex GS 1, page 336. Six reasons were given for the planning proposal to not proceed in the Gateway Determination (Ex GS 1, commencing page 389) as follows:
- “1. The planning proposal is inconsistent with the Auburn Employment Land Study 2008. The Study identifies the subject site as part of a broader Strategic Employment Precinct that should be retained and protected for new and emerging industries and to avoid rezoning speculation which could undermine the viability of industrial land.*
 - 2. The proposal to rezone the subject land from B6 Enterprise Corridor to B2 Local Centre would reduce land considered to be strategically and regionally important employment land and permit non-employment generating uses. This has the potential to create significant land use conflict within the area but also undermines the role of the B6 Enterprise Corridor Zone in Auburn City and ensures that employment land is protected during a period of high residential growth across the Local Government Area.*
 - 3. Proposed rezoning of the subject site to B2 Local Centre is unlikely to contribute to strengthening or maintaining the existing*

industry cluster, and the introduction of a Centre that provides for land uses inconsistent with the objectives of this cluster may impact the long term provision of freight and industrial land in Auburn City.

4. *The planning proposal is inconsistent with the s.117 Direction 1.1 Business and Industrial Zones as it will reduce the potential floor space for employment generating land uses. Permitting residential development of the proposed density will undermine the ongoing operation of the Silverwater Industrial Precinct and set an undesirable precedent for rezoning industrial land for residential purposes.*
5. *The planning proposal is inconsistent with strategic objective B4 of the West Central Draft Subregional Strategy. Strategic Objective B4 – Action B4.1 supports the “concentration of Retail Activities and Centres Business Development Zones and Enterprise Corridor Zones”. The planning proposal is inconsistent with Action B4.1 as it would facilitate the development of out of centre retail uses.*
6. *The planning proposal is also inconsistent with Strategic Objective C1 – Action C1.3 which supports “increased housing capacity targets in existing areas”. The proposal is inconsistent as it is not located within an existing area that supports residential development, focused around a local centre or a corridor that permits residential uses and has good access to public transport.”*

323. Following the Gateway Determination refusal, a meeting was held at the Council offices on 5 February 2015 attended by Monica Cologna, Mitchell Noble and Harinee De Silva of the Council’s Planning Department and Elise Crameri and Rachael Snape of APP: see the meeting notes at Ex GS 1, page 361. Amongst the things noted was confirmation by the Council that there was to be a Councillor Briefing Workshop to be held on 6 February 2015 regarding the Employment Land Strategy. This was a reference in part to a section of the letter from the Department of Planning and Environment to the Auburn Council dated 18 December 2014 that was sent with the Gateway Refusal. In that letter the Department stated: *“I am aware that Council is currently reviewing its Employment Land Study with a view to updating Council’s policy framework regarding retail, commercial and industrial uses. This draft Strategy investigates renewal opportunities for the subject site and recommends that a Mixed-Use Precinct be considered more broadly and that a Master Plan approach for this area be considered. In this regard, Council is encouraged to finalise its draft*

Strategy and consider the implications for the subject site in the broader context of the Precinct and the appropriateness of non-employment generating uses. Council should subsequently consider preparing a new planning proposal to reflect the findings of the Employment Land Review. The Department is available to work with Council in this regard.”: Ex GS 1, pages 336-337.

324. In the Executive Manager Planning’s Report for the Council meeting for 18 February 2015, as a result of the Gateway Determination the recommendation to Council was:

- “1. That Council receive and note the Department of Planning and Environment’s Gateway Determination as per s.56(2) of the Environmental Planning and Assessment Act 1979.*
- 2. That the council take no further action on this proposal until the Draft Auburn Employment Lands Strategy is finalised and reported to Council for adoption.*
- 3. That Council advised the applicant of this planning proposal of Council’s decision.”*

325. It was further recommended that *“rather than requesting a review of the decision, it is recommended that Council continue to progress the Draft Auburn ELS as outlined in the Gateway Determination”*: Ex GS 1, pages 340-342.

326. At the Council meeting held on 18 February 2015 the Council resolved unanimously to adopt the recommendations in the Executive Manager Planning’s Report: Ex GS 1, page 363.

327. In a letter from the Auburn City Council to Elise Crameri of APP dated 23 February 2015, the Council advised APP of the Council’s resolution of 18 February 2015 [incorrectly described as 18 March 2015] and stated that:

“Council will now progress with the Council’s Draft Employment Land Study 2015. I will keep you informed about the progress of this Study”: Grey Street Bundle, page 364.

- (ii) *Amendment to Auburn Employment Lands Strategy*

328. At the Council meeting held on 20 May 2015 the Council unanimously resolved, amongst other resolutions, to:

“... endorse the proposed changes to the exhibited versions of the Draft Auburn Employment Land Strategy 2014 and Draft Auburn City Residential Development Strategy 2014, outlined in the report, and finalise the studies.”

And that:

“Council proceed with the recommended changes to the Auburn LEP 2010 arising from the draft Auburn Employment Land Strategy 2014 and Draft Auburn City Residential Development Strategy 2014 that are supported by Council staff (summarised at attachments A and B, respectively).”: Ex GS 1, page 365

329. As Ms Cologna clarified in her evidence in the public hearing, the relevant amendment to the Auburn Employment Lands Strategy was that the strategy now contemplated that a B1 Neighbourhood Centre could be incorporated into the Silverwater area where the Grey Street Site was located: T 118 L 25-30. Significantly, the objectives of this zoning did not include encouraging high density residential, but rather small scale retail, business and community uses. Residential flat building development would however be permissible with consent: See ALEP 2010.
330. In June 2015, APP lodged with Council a report entitled “Residential Market Appraisal” concerning Silverwater – Grey Street and Silverwater Road: Grey Street Bundle, page 367. This report noted that: “The Draft Auburn LGA Residential Development Strategy (2014) and Draft Auburn Employment Land Study (2014) both recognised the site for future mixed uses that will make some contribution to the supply of housing and to the supply of retail floor space that will meet strong growth over the next 1½ decades. As such, the proposed development, which will provide 250 residential apartments and 4,000m² of employment generating uses accords with the Regional Planning Policies and Draft Local Strategies”: Ex GS 1 page 372.

(iii) *Second APP GSPP*

331. Following this, in July 2015, APP submitted a second planning proposal for 1-13 Grey Street and 32-46 Silverwater Road, Silverwater (“the Second APP GSPP”): Ex GS 1, page 398.
332. The Second APP GSPP sought to change the zoning from B6 Enterprise Corridor to B2 Local Centre. The maximum height for buildings was sought to be lifted from 14m to 32m and a maximum FSR of 4:1 was sought.
333. In September 2015 Council staff prepared another Assessment Report of the Second APP GSPP. The Assessment report did not recommend a B2 Local Centre zoning as sought by APP. The recommended instead that the proposed rezoning be B1 Neighbourhood centre, giving consistency with the Auburn Employment Lands Study. Instead the Council planning staff made the following recommendations:

“This report recommends the Council amend the planning proposal application for the rezoning of land at 1-17 Grey Street and 32-48 Silverwater Road, Silverwater (PP-3/2015), as follows, prior to proceeding with:

- (a) amend the proposed rezoning to B1 Neighbourhood Centre;*
- (b) reduce the proposed FSR to a maximum of 2.7:1, as recommended by the feasibility analysis undertaken by the AEC Group on behalf of Council;*
- (c) reduce the maximum height of buildings to 20m, and require the applicant to undertake urban design analysis to test the impact in terms of building envelope in relationship with surrounding development;*
- (d) require the applicant to undertake traffic modelling and analysis to assess the potential cumulative impact of the proposal on traffic across the broader traffic network, including Silverwater Road, as recommended by the RMS;*
- (e) require the applicant to provide further justification for the reasons for refusal cited in the Department of Planning’s Gateway Determination, and justify inconsistency with s.117 Direction 1.1 – Business and Industrial Zones (via a study in accordance with the Regional, Subregional or the Auburn Employment Land Strategy 2015) for the Director General of DP&I’s agreement prior to proceeding;*

- (f) *require the applicant to undertake a Phase 1 Contamination Assessment of the site (subject land) in accordance with SEPP 55 – Remediation of Land, to investigate possible site contamination, and suitability of the site for residential uses;*
- (g) *require the applicant to undertake further discussions with Council regarding the most appropriate LEP mechanism by which to achieve the 4,000m² retail component (comprising a 2,500m² supermarket and 1,500m² of local specialty retail/commercial floor space) and the need for a site-specific development control plan.”*

Notwithstanding this, this report also raised the following:

- “• *the proposal does not satisfactorily address the reasons for refusal in the Gateway Determination for the previous, almost identical, proposal;*
- *inconsistencies with relevant State and Local Plans and Strategies;*
- *the suitability of a B2 Local Centre Zone in this location;*
- *the potential to result in a cumulative loss of surrounding employment lands;*
- *the proposal does not adequately consider the traffic impacts, particularly cumulative traffic impacts on the surrounding network; nor the impacts on other retail areas;*
- *the proposal does not demonstrate that this contaminated site can be made suitable for residential development”: Grey Street Bundle, pages 469-470.*

334. By a letter to the Council dated 25 September 2015, APP sent a response to address the AEC Group feasibility study prepared for the Council dated 23 September 2015: Ex GS 1, page 517. In the Executive Manager Planning’s Report for the Council meeting of 7 October 2015 a number of recommendations were made that largely repeated the recommendations set out in the Council’s Assessment Report dated September 2015: Ex GS 1, page 524.
335. By 2 October 2015 APP had clearly become aware that Council planning staff would only be recommending a zoning change to B1 Neighbourhood Centre rather than B2

Local Centre as sought by them, and also aware of the Council recommendations for reduced FSR and maximum height from what they were seeking. Ms Elise Crameri of APP sent an email to Mr Sankari (from the Beirut Bank) and Mr Mosca (the proposed architect) of 2 October 2015 indicating that Council's planning staff recommendation was "not great news": Exhibit Gen 11. She indicated in the same email that it was "very important that we get the resolution to include amendment to Council's strategies to nominate the site as B2 with FSR and height that we want". In the body of her email she drafted her own recommendation which was in the following terms:

- "(1) that Council approve the planning proposal to proceed to Gateway for the rezoning of land at 1-17 Grey Street and 32-48 Silverwater Road, Silverwater (pp-3/2015), as follows:*
 - (a) zone the site B2 Local Centre;*
 - (b) allow a maximum floor space ratio of between 3.75:1 and 4:1;*
 - (c) allow a maximum height of 26 metres; and*
 - (d) amend the Auburn Employment Land Strategy 2015 to recommend the site be zoned B2 Local Centre and permit residential uses on the site, including land, zoned B2 Local Centre with frontage to Silverwater Road.*
- (2) Once all required amendments have been made, forward the planning proposal to the Department of Planning and Environment for Gateway determination.*
- (3) Note that the Gateway determination will likely require the applicant to undertake a further study prior to the consultation being undertaken in accordance with s.56 and s.57 of the Environmental Planning and Assessment Act (1979), including:*
 - (a) additional traffic modelling and analysis to assess the potential cumulative impact of the proposal on traffic across the broader traffic network, including Silverwater Road, as recommended by the RMS;*
 - (b) applicant to undertake a phase 1 contamination assessment of the site (subject land) in accordance with SEPP 55 – Remediation of land to investigate possible site contamination, and suitability of the site for residential uses; and*
 - (c) the applicant provide a site-specific development control plan for the controls identified above": Exhibit Gen 11.*

336. Ms Crameri sent a further email to Mr Sankari on 6 October 2015 in which she reproduced her resolution with only a minor word change, stating that “[w]e need the following alternate resolution put forward”: Exhibit Gen 11.
337. At the Council meeting of 7 October 2015, Ms Crameri of APP was listed in the Agenda as someone who was to speak on the GSPP, but did not do so when called upon. Councillor Simms moved a motion that the Council not support the proposal, largely because in her view the second APP GSPP did not sufficiently address the reasons for the Gateway refusal to the First GSPP and because traffic impacts on Silverwater Road had not been sufficiently addressed.
338. Mr Attie then moved a motion (seconded by Mr Mehajer) that was in near identical terms to the recommendation drafted by Ms Crameri in her emails to Mr Sankari of 2 and 6 October, referred to above. This is a matter discussed further below.
339. At the Council meeting of 7 October 2015 Councillor Attie’s motion was carried on the votes of Councillors Attie, Mehajer, Lam, Oueik, Yang and Zraika. Councillors Batik-Dundar, Campbell, Oldfield and Sims voted against.
340. By letter dated 15 December 2015 the Council sent to the Department of Planning a Second GSPP based on the Second APP GSPP: Ex GS 1, page 520. That planning proposal had not received a Gateway Determination by the time of the suspension of the Council in February 2016.
341. On 2 March 2016 the Interim Administrator Mr May moved and carried a motion directing the General Manager to notify the Department of Planning and Environment that the GSPP is withdrawn so as to not require any further action from the Department: Ex S2 page 34.

(b) Evidence at Private and Public Hearings

Ms Cologna and Mr Brisby

342. In the evidence that she gave at the public hearing, Ms Cologna confirmed that one of the principle reasons that the Council Planning Department (she had responsibility for the GSPP) recommended to the Council to not adopt the First and Second APP GSPPs

was non-compliance with the Auburn Employment Land Strategy. She also made it clear in her evidence that it is poor planning practice to amend important strategies such as an employment land strategy, in order to make it consistent with a planning proposal. The situation should be the reverse – planning proposals should be consistent with an important Council strategy like an employment land strategy: T-121.20-.29.

343. In a similar vein, when examined by Counsel Assisting, Mr Brisby agreed that it was a fairly unusual situation for a Council to amend an important policy document such as an employment land strategy in order to make a proposed development permissible: T-462.45-463.2.

Evidence of Mr Attie and Mr Sankari

344. One of the themes explored by Counsel Assisting in his examinations of Mr Attie at the private and public hearing, and in his examination of Mr Sankari, who was summoned to appear at the Inquiry, was that Mr Attie had simply done the bidding of the proposed developer of the Grey Street site and had, in particular, been provided with recommendations drafted by Ms Crameri (or someone else of the developer) which he then moved for adoption at the Council meeting of 7 October 2015.
345. In his evidence, Mr Sankari confirmed that he was engaged as an “owner representative” in a private business capacity for the owner of the Grey Street site: T-1572.10-.29.
346. Mr Sankari was asked about the initial meeting with Mr Attie and Mr Brisby concerning the Grey Street site on 28 February 2013: Exhibit GS1 page 20. It would appear that Mr Attie was involved in this meeting simply because he was Mayor at the time. Mr Sankari agreed that Mr Attie appeared to be a strong supporter of the planning proposal for the Grey Street site (T-573.34-.36), something that Mr Brisby also agreed with in his evidence: T-460.35-.41.
347. Mr Sankari’s evidence was that while throughout the process he understood that Mr Attie was supportive of the planning proposals, he had minimal contact with him. His evidence was that he did not pass on to the councillors the recommendation

drafted by Ms Crameri in her email to him of 2 October 2015 because he was too busy at the time: T-1580.4-.10.

348. Mr Sankari also said that he did not contact Mr Attie following the receipt of Mr Crameri's email of 2 October but did contact Mr Attie after he had received the 6 October email from Mr Crameri: T-1581.21-.26.
349. Mr Sankari's evidence in summary was that he did have a meeting with Mr Attie at the Council on 6 October. He believed he would have printed the email from Ms Crameri containing her proposed Council resolution and he would have brought that email with him to the meeting with Mr Attie: T-1584.15-.19. Mr Sankari said that he discussed the planner's advice with Mr Attie and it is possible that he gave Mr Attie a copy of Ms Crameri's 6 October email, but he had no specific recollection: T-1584.36-.47. He denied receiving any assurance from Mr Attie that the resolution drafted by Ms Crameri in her 2 and 6 October 2015 emails would be put by Mr Attie at the Council meeting on 7 October: T-1585.45-T-1586; T-1587.40-.46.
350. In his private hearing evidence Mr Attie confirmed that he was still a strong supporter of the GSPP. He considered it an important proposal for the Silverwater area, which had "*no shopping centre ... and required some retail exposure*": Exhibit PH5; T-3.14-.23. Mr Attie's evidence was that he drafted the motion carried at the 4 December 2013 Council meeting, but did not discuss it with any other councillors beforehand: Exhibit PH5; T-9.1-.47.
351. In relation to the motion carried by the Council at the 7 October 2015 Council meeting, when examined at his private hearing, Mr Attie said that he had prepared the motion: Exhibit PH5; T-16.38-.42.
352. At the public hearing, Mr Attie again confirmed that he had drafted the motion carried by the Council on 7 October 2015. He insisted that he drafted the motion and that neither Mr Sankari nor Ms Crameri had approached him about moving or drafting a motion in the terms set out in Ms Crameri's emails to Mr Sankari of 2 and 6 October 2015. He denied ever seeing an email from Ms Crameri. He denied receiving an email from Mr Sankari containing Ms Crameri's email, and denied knowing who Ms

Crameri was. Even when faced with the near identical nature of Ms Crameri's drafting and the motion that he moved at the 7 October 2015 Council meeting, Mr Attie remained adamant that he had drafted it independently of anyone else: see generally Mr Attie's evidence at T-131-135.

353. I granted leave to Mr Watson SC to examine his client, Mr Attie. One of the matters Mr Watson addressed with Mr Attie was whether he lobbied any other members of the Council in relation to issues before it. Mr Attie denied that, and also denied that any other member of Council lobbied him about anything: T-1233.41-.47.
354. In relation to the near identical wording of Ms Crameri's proposed resolution and the motion that Mr Attie put to the Council at the meeting of 7 October 2015, Mr Attie's evidence, when questioned by Mr Watson SC was as follows:

Q: Look, it is quite obvious that the wording of your motion and the wording of a recommendation made by Ms Crameri, for all intents and purposes, you could call them identical; you see that, don't you?

A: Yes, I do."

Q: ... You say your best recollection is that you wrote it?

A: Yes, and I'm not perfect, I can't remember everything, but yes, I remember that, yes.

Q: You wrote the motion. The point is this, it can't be a coincidence that there is identical wording or near identical wording --

A: No, I accept the fact that it can't be a coincidence, yes.

Q: It can't be a coincidence. Either they got your work or you got their work; is that right?

A: I assume so.

Q: Do you remember sending your work to Ms Crameri or Mr Sankari or anybody associated with the Silverwater Project?

A: No.

Q: Could your memory be defective? May you have got something from them?

A: Look, it's possible that I may have got something from them, or I gave them something, but I can't recall.

Q: I noticed in the email itself it was suggested by Ms Crameri that letters be sent to all councillors. Could you have got something from them and forgotten it?

A: *That's a possibility (T-1238.20-T-1239.16)."*

355. Because he was recalled to give evidence in respect to another issue, and because Mr Sankari had given his evidence after him, Mr Attie was recalled to be examined by Counsel Assisting concerning the GSPP on 24 August 2016. He said, when examined on that occasion that he could not recall meeting Mr Sankari on 6 October 2015 but that it was "possible". He also didn't recall receiving a document from Mr Sankari during a meeting: T-1818.32 - 1819.1. During the course of that examination, the following exchange occurred between Counsel Assisting and Mr Attie:

"Mr Bolster: Q: Before you were re-examined by Mr Watson the day after you were examined by me, you repeated your denial, on a number of occasions, that the source of the resolution moved on October 7 was someone other than yourself; correct?"

A: I believe that was the case, yes.

Q: The reason you did that, Mr Attie, is that you don't want to suggest to this Inquiry that there was any relationship or direction from the developer of this site; correct?"

A: Yes, and there wasn't.

Q: Mr Attie, you were directed by Mr Sankari to move that motion, weren't you?"

A: No.

Q: You were requested by Mr Sankari to move that motion, weren't you?"

A: No. I was requested to support the proposal ...

Q: He asked you to move that motion on behalf of the developers?"

A: No, he did not. ...

Q: What did he say to you, Mr Attie?"

A: I can't say exactly in terms, but he showed me the proposal initially, when we had the meetings in Council, I liked the proposal and I was for the proposal from day 1. I wanted another shopping centre in that precinct, which has no shopping centre, so I was for any proposal to bring about a shopping district for Silverwater. And yes, I supported it from day 1 and I will support any development that brings income to this LGA and also provides jobs for the people and if it means that you have to have residential units on top, that's fine, it's fine by me, I'm a pro-development person. ...

Q: You hid the true source of that motion, Mr Attie, despite numerous questions from me on the first day that you gave your

evidence, and you only revealed it in re-examination the next day; correct?

A: I don't believe I revealed anything. I agreed that it's possible.

....

Q: No, please tell us what your position is now, Mr Attie?

A: My position is that it's quite possible that I may have received something from somewhere else that I could use to create a motion.

Q: Only "possible"?

A: Yes.

Q: You don't accept that Mr Sankari gave you that document on either 6 or 7 October?

A: No.

Q: You don't accept that?

A: I don't accept that he gave it to me. ...

Q: Mr Attie, come on now. Are you now retreating from what you told Mr Watson?

A: No. I said to you it could be possible --

Q: It could be possible?

A: -- that I obtained other information to write the motion ...

Q: What is the other source? What other source could it be, Mr Attie?

A: If you look at the documentation, it's also very similar to previous motions that Council put together as well." (T-1823.17-T-1826.6).

Evidence of other councillors in favour of the GSPP

356. Mr Oueik's evidence was that he was in favour of the GSPP because he considered it would benefit the community because it would create employment. He indicated that he had been asked by the residents of Silverwater and they wanted a supermarket: Exhibit PH6; T-39.2-18 and T-1019.9-.21. Mr Oueik said he didn't discuss the proposal with any other councillor: T-1023.11-.36.
357. Mr Mehajer's evidence seemed to be directed to the proposition that if any proposed development was within a town centre, he would always support an upgrade: Exhibit PH9; T-26.31-.35. He considered all of Silverwater Road needed large scale residential apartments: Exhibit PH9; T-26.43-.47.

358. Mr Zraika's evidence was that during his time as Mayor he had done Saturday street corner meetings around the LGA and residents had told him that the Grey Street site was "quite dead", and he thought there was a strong argument to have mixed businesses there and diversity: Exhibit PH8; T-16.18-.27.

Findings in relation to GSPP

359. Counsel Assisting submits that Mr Attie should be found to have "*abrogated his responsibility under s.439(1) of the Local Government Act to act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions*" under the Act: GS19. He bases this on the submission that Mr Attie did the "*bidding of the developer*" of the Grey Street site and abrogated his own duties and responsibilities: GS17 and 18. Central to this is the submission that I should find that prior to the Council meeting of 7 October 2015 Mr Attie was provided with a copy of the recommendations or resolutions drafted by Ms Crameri on 2 and 6 October that were set out in the emails she sent to Mr Sankari of those dates: GS14.
360. Counsel Assisting also submits that I should not accept the evidence of Mr Attie to the effect that he drafted the resolution of 7 October 2015 without reference to the Applicant or its planning consultants: GS13.
361. There is, in my opinion, irresistible force in Counsel Assisting's submission that Mr Attie was provided with a copy of Ms Crameri's email to Mr Sankari of 6 October 2015. I find that he was. It does not follow necessarily, however, that Mr Attie has acted either dishonestly, or in breach of his obligation of reasonable care and diligence under the Act and Model Code.
362. There was an element of controversy about the GSPP, not because it appeared likely to benefit any individual councillor, but because it was squarely inconsistent with one of the Council's key planning strategies – the Auburn Employment Land Strategy.
363. In my view it would be fair to summarise the evidence of Ms Cologna this way – the Council's Planning Department twice failed to recommend that the (APP) GSPP be resolved favourably by the Council to the developers because, amongst other matters, it was inconsistent with the reservation of employment generating land in the AELS.

She saw the amendment of the AELS as a means of accommodating the GSPP as effectively putting the “*cart before the horse*”.

364. Good planning practice is for planning proposals to receive assent if they comply with an important planning strategy like an Employment Land Strategy. To amend a policy document like the AELS so as to accommodate the GSPP was not Ms Cologna’s idea of good planning. No doubt many planners would agree with her. This is in part why the First GSPP failed to receive Gateway determination.
365. The approach taken by the Council majority who voted in favour of the First and Second GSPP was therefore “*unusual*”, an endorsement of poor planning, contrary to the Council’s own Employment Land Strategy, and inconsistent with a number of State Government Planning Policies. On the basis of these matters I find that the Council’s adoption of the GSPP represented poor planning.
366. Further, a majority of council at the 7 October 2015 meeting, on the motion of Mr Attie, moved an amendment to the Council’s employments lands study without community consultation or assessment by Council staff. That simply should not have happened.
367. While criticism can be made of the Councillors (including Mr Attie) who supported the GSPP, that criticism does not translate into a finding that they have breached the Act or Model Code.
368. Mr Attie was entitled to form a favourable view of the GSPP. Had he pushed for it and voted in favour of it in an entirely unthinking way, ignoring all details concerning it, and merely acting as he did because a developer told him to, I would have found that he had failed to exercise reasonable care and diligence in both moving the motions that he did and in voting in favour of the GSPP. I am not inclined to make that finding of fact for the reasons that follow.
369. First, it cannot be said that Mr Attie had no regard to what the developer was seeking. He may have even been better informed than the other councillors, in that he had attended the first meeting with the representatives of the owner and the architect in

March 2013 with Mr Brisby. He also had other meetings with the developer's planners about the proposal: Exhibit PH5; T-5.13-.16. He said he took a great deal of interest in the proposal and that he carried out an analysis of it: Exhibit PH5; T-9.15-.19. He spoke with Council planning staff about the proposal after it failed to receive Gateway determination: Exhibit PH5; T-13.8-.15. Mr Attie considered relevant expert reports and documents concerning the GSPP: T-1137.32-.36.

370. Further, like the other councillors in favour of the GSPP, Mr Attie was able to identify the reasons why he supported the proposal, despite the opposition and concerns from the Council's planning staff, and its inconsistency with planning strategies and policies: see T-1143.1-.5, re the perceived need for a Silverwater supermarket. His evidence was that at least the residents of Silverwater who had spoken to him wanted a supermarket shopping facility in Silverwater, which (along with high density residential development) the GSPP would deliver: T-1143.1-.43. Without referencing each time he asserted it, Mr Attie was at pains in his evidence to underline his general "pro-development" credentials. That much is clear in any event from his voting pattern on all planning proposals examined as part of this Inquiry.
371. Finally, it should be noted that there is no evidence that Mr Attie stood to personally gain anything from his support of the First and Second GSPPs.
372. Given the above facts, even though I have found that someone (probably Mr Sankari) gave to Mr Attie Ms Crameri's 6 October email containing the proposed resolution from the developer, I am not persuaded that I should find that he abrogated his obligations of honesty and due care so as to merely do the developer's bidding. I accept that he was given a copy of Ms Crameri's proposed resolution, but I do not accept Mr Attie thereby acted purely at the behest of the developer or under direction from it, or its advisers. Mr Attie, for his own considered reasons, was in favour of the GSPP, and he gave genuine consideration to the relevant aspects of it.
373. Counsel Assisting is of course right to criticise aspects of Mr Attie's evidence concerning the motion he moved on 7 October 2015. Mr Attie was initially adamant it was the result of his independent drafting. When faced with the virtual word for word Crameri recommendation in the 6 October email, he conceded (in what was in

effect re-examination) that he possibly had received something from someone that he had based his motion on.

374. In my view, this evidence was coy at best, and I do not accept it. I am comfortably satisfied that Mr Sankari printed off a copy of Ms Crameri's email of 6 October 2015 and took it to the meeting he had that day with Mr Attie, and gave Mr Attie a copy of it. It is surprising to me that Mr Attie does not recall that. Despite this, the fact that Mr Attie based his motion (extremely closely) on a recommended drafting by Ms Crameri for the developer does not lead to the conclusion that Mr Attie abrogated his duty of care or acted under direction. He was in favour of a proposal he had properly considered for the reasons exposed in his evidence. No lack of honesty in his conduct as a councillor is apparent from this. Had there been evidence that Mr Attie stood to make some personal gain by supporting the GSPP, or had there been no evidence that he engaged with the proposal independently and formed his own views about it, but rather only acted because asked to by APP or Mr Sankari, the position would be different.

The Future

375. The GSPP has been withdrawn. This occurred after the then Interim Administrator, Mr May, had discussions with Ms Cologna. The reasons for the Council planning staff not supporting the First or Second GSPP are hopefully clear from this report, and are in any event clear from the relevant Council documents tendered as part of Exhibit GS1, particularly the Council Assessment Reports and the Executive Manager Planning Reports for the Council meetings.
376. In my view this Inquiry cannot usefully add anything to those expert reports. It is always open to the owner of the Grey Street site to approach Council again with a further proposal or development application.