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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 16 APRIL, 2018

AT 2.15PM

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

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

THE COMMISSIONER: Thank you, Mr Buchanan.

MR BUCHANAN: Commissioner. Before the luncheon adjournment, I was outlining the evidence expected to be lead in relation to the development applications that I earlier identified and shown presently on the screen, at least four of them, and I was going to turn – these are in relation to 548 to 580 Canterbury Road in globo. I'm going to turn to how these alleged to be corrupt conduct. The hearing will explore, Commissioner, why these applications were treated as so urgent. An example of the efforts
10 Mr Stavis made to try to overcome the IHAP obstacle of these applications being referred to the RMS is a series of emails between the 25th of November and the 2nd of December 2015, in which Mr Stavis pleaded with the RMS to consider the applications and get their comments back. The language he used included critical, very critical, urgent, favour and extremely urgent.

There will also be evidence that Mr Stavis told Councillor Hawatt that he will have refused, quote, “This DA long ago”, unquote, had it not been from the pressure he was under from Mr Demian and Councillor Hawatt. It’s
20 expected that Mr Stavis will say he didn't refuse Mr Demian’s DAs because he knew that to do so would have repercussions on his employment. There will be a quantity of evidence indicating that Mr Demian was active in communicating with Mr Stavis and Councillor Hawatt at the time these decisions were being made. There will also be evidence of Mr Demian’s longstanding acquaintance with Mr Montague. As mentioned earlier, there will be evidence that regular meetings were being held at Councillor Azzi’s house, sometimes involving councillor Hawatt, Mr Montague, Mr Khouri and occasionally Mr Stavis and others. It’s expected that Mr Stavis will say that he had discussed development applications at Councillor Azzi’s house.
30 It’s expected Mr Stavis will say he used to receive calls from Mr Montague asking what was happening on particular applications and advising that he was at Councillor Azzi’s house. It’s expected that Mr Montague will say that Mr Demian probably spoke to him about planning proposals at meetings held as councillor at his house.

In relation to 548 Canterbury Road, it’s expected that the evidence will be that from his attendance at meetings at Councillor Azzi’s house, Mr Stavis inferred that he had to help find solutions to Mr Demian’s issues with that development. The evidence will be that at those meetings, Councillor Azzi
40 was almost acting as a mediator between Mr Stavis and Mr Demian. There will also be evidence that in the period September 2015 to May 2016, Councillor Hawatt was speaking with Mr Demian to try to introduce purchases for the property to Mr Demian. On 3 December 2015, Councillor’s Hawatt and Azzi voted in favour of the applications without declaring, in respect of them, any interest such as their relationship with Mr Demian or in the case of Councillor Hawatt, his interest in a potential introducer’s fee on the sale of the property. If the Commission is satisfied that Councillor Hawatt had an interest in a potential introducer’s fee on the

sale of 548 to 580 Canterbury Road, this would meet the limitations on the nature of corrupt conduct imposed by section 9 of the ICAC Act, in a way additional to those indicated earlier because it would involve a pecuniary conflict of interest under the code of conduct.

10 Finally, in relation to 548 Canterbury Road, a matter being investigated is whether Mr Demian deliberately lodged a section 961A application to avoid the joint regional planning panel determining the modification prior to 1 March 2018, former clause 21 subclause 2, State Environmental Planning Policy (State and Regional Development) 2011, required modification applications lodged under subsection 962 to be determined by the JRP but not modification applications lodged under subsection 961 or 961A.

20 I turn Commissioner to a different property, 538 to 546 Canterbury Road, Campsie. The allegation of corrupt conduct under investigation in this hearing concerning that property is that between December 2014 and March 2016, Michael Hawatt and Pierre Azzi dishonestly exercised their official functions in connection with recommendations and council resolutions in connection with a development at 538 to 546 Canterbury Road, Campsie, in order to benefit the interests of Jimmy Maroun. This topic is focused on the approval of a development application for two additional floors on a six-storey development which significantly exceeded the height limits applicable under the LEP.

30 There are two matters by way of background. Firstly, Mr Maroun was the sole director of two relevant companies, Jarek, J-a-r-e-k Holdings Pty Ltd and CHP Group Pty Ltd and, secondly, the evidence to be lead gives rise to the inference that Mr Maroun had a relationship with Councillors Hawatt and Azzi which they should have disclosed. We have prepared another table which differs from the previous one in as much as this is more of a chronology than simply an identification and short description of the DA. It starts on 18 June 2014 when DA 255/2014 was lodged by Jimmy Maroun for the construction of a seven storey mixed use development comprising 50 residential dwellings at 538-546 Canterbury Road, Campsie. The height limit was 18 metres, the proposed development was for 22 metres. The DA was accompanied by a request for the limit to be varied under clause 5.6 of the LEP. Next, although we don't have a date which precisely fixes it, in respect of that DA, number 255 of 2014, the plans were amended and the size was reduced from seven storeys to six storeys with a height of 20.25 metres. On 24 November 2014, in respect of that DA, I have recommended approval and then on 4 December 2014, in respect of the same DA, the city development committee approved the DA.

40 So we pass then to 2015 and 14 May. When the City Development Committee resolved that a planning proposal be prepared to increase the maximum permissible building height at 538-546 Canterbury Road and 570-580 Canterbury Road from 18 metres to 25 metres. On 9 June 2015, in respect of DA 255 – I withdraw that. On 9 June 2015, a Maroun company

made a section 96 application which was assigned the identifier DA 255/2014A, to make changes to the approved development. The changes were to the external façade and to levels four and five to provide two additional units. Also on 9 June 2015, a Maroun company lodged a DA 243/2015 for construction of two additional residential floors above the approved development at 538 Canterbury Road.

10 On 29 February 2016, in respect of that DA 243/2015, the IHAP recommended the DA be refused. It wasn't satisfied that the proponents had satisfied the requirements at clause 4.6 of the LEP in relation to breaching the height limit and there had been no Gateway Determination of the planning proposal. The IHAP recommended approval of the section 96 application for changes to the external façade and to levels four and five to provide two additional units. On 10 March 2016, in respect of DA 243/2015 and DA 255/2014A, on Mr Stavis' recommendation, the City Development Committee approved both of them. So that is a short chronology.

20 Turning then to the details, first of DA 255/2004 and how it was handled. On 18 June 2014, Mr Maroun lodged that development application. It was the construction of a seven-storey mixed use development comprising 50 residential dwellings at 538 to 546 Canterbury Road, Campsie. The site had previously been occupied by a car wash and is occasionally referred to as the car wash site. The owner of the site was identified as Sayed Constructions Pty Ltd. It appears that a catalyst for the development application may have been the development application of planning proposals lodged in relation to the neighbouring 548 Canterbury Road. As with 548 to 580 Canterbury Road, the height limit which applied under the LEP was 18 metres. Mr Maroun's proposed development had a height of 22 metres and DA 255/2014 was accompanied by an application under clause 4.6 of the LEP to vary the applicable standard in that case. On 8 July 2014, urban planners by the name of Think Planners submitted to council that 538 Canterbury Road should be included in a planning proposal for an amendment to the LEP then on exhibition to increase the height for 445 to 449 Canterbury Road, to 25 metres.

40 On 14 August 2014, Hassam Morad, a senior planner for Canterbury City Council wrote to Mr Maroun setting out issues identified in a preliminary assessment of the development application. The issues included the statement that, quote, "Consideration has been given to your request under clause 4.6 of the LEP to vary the building height standard, however, the variation to the height is considered excessive and cannot be supported in its current form." The evidence will show that Mr Maroun was in frequent contact with Councillor Hawatt from 31 August 2014 and was likely in contact at an earlier time. Additionally, Councillor Hawatt and Mr Maroun exchanged a number of messages which refer to meetings, quote, "At the gym", unquote. A reference to Mr Maroun's gym behind his house. Messages sent by Mr Maroun in December 2014 refer to people called

Starsky and Hutch. These would appear to have been nicknames Mr Maroun had for Councillors Hawatt and Azzi. Likewise, amongst other names indicating a reasonable degree of acquaintance between them and Mr Maroun, Councillors Azzi and Hawatt appear to have called Mr Maroun, 'Kojak'. At some stage, Mr Maroun's plans were amended to change the development from seven storeys to six storeys for the height of 20.25 metres. On 14 November 2014, Council advised Mr Maroun that the application would be considered by the IHAP on 24 November, 2014.

- 10 Andy Sammut, S-a-m-m-u-t, council's director for corporate services, recommended to IHAP that the development application be approved on conditions. The IHAP agreed that the application should be approved. On 4 December, 2014 the City Development Committee approved the application. Councillor Hawatt moved an amendment to delete condition 5.10 recommended by the IHAP requiring a full height slot to allow natural light to the lift lobbies.

- Brad McPherson, council's group manager (governance), asked that Councillor Hawatt provide a reason for that amendment. Councillor stated,
20 "Applicants spend approximately six and sometimes 12 months putting together a DA that satisfies council. The condition of IHAP will not only cause the applicant unnecessary expense and waste of time as this requires an amend to redesign the building. This is no real justification to do this in regards to our objectives and planning requirements."

- On 3 March, 2015 Councillor Hawatt texted Mr Maroun, "Montague will call you re your DA." The evidence will show that Mr Montague did indeed ring Mr Maroun. Several meetings between council staff and Mr Maroun were then organised. On 19 March, 2015 Councillor Hawatt emailed
30 Mr Stavis asking about progress for 538 Canterbury Road. Planning staff advised Mr Stavis that the site was the subject of a planning proposal to increase the height to 25 metres and that the applicant would need to wait until the planning proposal had been resolved. As will be seen, this was not advice which Mr Stavis followed.

- Mr Maroun and Councillor Hawatt appear to have been in regular contact between 19 March, 2015 and 14 May, 2015 including to arrange meetings at the gym. Mr Maroun also contacted Mr Stavis to discuss lodging a development application. On 14 May, 2015 on the motion of Councillors
40 Hawatt and Azzi and as recommended by the director of city planning, council resolved that a planning proposal should be prepared to increase the maximum permissible building height at 538-546 Canterbury Road and 570-580 Canterbury Road from 18 metres to 25 metres.

On 9 June, 2015 Jarek Holdings Pty Limited lodged a development application for the construction of two additional residential floors above the approved development at 538 Canterbury Road. It was assigned the identifier DA 243/2015. The owner's consent in this case was signed by

Mr Maroun as director of Jarek Holdings. The statement of environment effects which accompanied the application provided that the development application was prepared “to respond to a council resolution to prepare a planning proposal to increase the building height on the site from 18 metres to 25 metres.” The proposal had to seek to vary the existing height limit of 8 metres because the 25 metre height limit had not been incorporated into the LEP. The total height of the building proposed was 25 metres for the residential slab and 26.3 metres to the top of the lift overrun.

- 10 Also on 9 June, 2015 Mr Maroun lodged an application under section 96(2) of the Environmental Planning and Assessment Act, it was assigned the identified DA 255/2014A, to make changes to the approved development namely, changes to the external façade and to levels 4 and 5 to provide two additional units.

In July, 2015 planning officer Warren Farleigh prepared a memorandum about the proposal to add two additional floors to the approved development. The memorandum made three points in particular. The planning proposal had yet to be submitted to the department for a Gateway
20 Determination and there was no certainty it would receive a Gateway Determination. Secondly, the use of clause 4.6 in the LEP was not appropriate considering the magnitude of the development proposed and, thirdly, the outcome was poor in terms of design quality.

There will be evidence that Mr Maroun remained in regular contact with Councillor Hawatt. On 3 July, 2015 Councillor Hawatt was at Mr Maroun’s house. Mr Maroun also appears to have continued to attempt to contact Mr Stavis during this time.

- 30 On 20 August, 2015 council’s team leader of planning Stephen Pratt wrote to Jarek Holdings about his preliminary assessment of the application to add two floors. The assessment noted that the application of clause 4.6 of the LEP should demonstrate that varying the development standard will result in better environmental outcomes and he identified what he saw as shortfalls in the application submitted to date.

On 25 August Mr Maroun organised a meeting that day with Councillor Hawatt. On 24 September, 2015 following a council meeting at which Mr Stavis’s contract was extended, it appears that Councillor Hawatt and
40 Azzi went to Mr Maroun’s house. It is expected that Mr Maroun will say he used to train with Councillor Hawatt at the gym at his house and that Councillor Azzi would sometimes also attend.

On 6 November, 2015 the planning proposal to increase the maximum permissible building height at 538-546 and 570-580 Canterbury Road was sent to the Department of Planning. On 14 December, 2015 the department requested additional information before it further considered the planning proposal. On 4 January, 2016 Mr Stavis sent an email to a council planner

Mine Kocak advising that he had spoken with Mr Maroun and asking her to review the development application and section 96 application to see whether they were supportable. On 6 January he wrote to Ms Kocak again saying that he had been asked to give his initial thoughts on the DA and section 96 application and he would appreciate her thoughts.

10 On 4 February, 2016 council's manager development assessment George Gouvatsos advised Mr Stavis that the planning proposal for 538-546 Canterbury Road was submitted for a Gateway determination and that council did not have delegated authority to make the plan and there was no certainty as to the outcome from the Gateway process. Despite this information, Mr Stavis then instructed Mr Gouvatsos to refer both Mr Maroun and Mr Demian's development applications to an external consultant for assessment. In an email to his team Mr Stavis set out reasons why he was comfortable to progress these applications.

20 On 5 February, 2016 possibly after speaking with Mr Maroun, Mr Stavis changed his approach and allocated DA 243/2015 to Ms Kocak to prepare the report. Mr Stavis instructed that the application must go to the March meeting. Mr Gouvatsos replied to Mr Stavis saying that he hoped "we have all the referrals for this to happen." Mr Stavis responded that if not they would "have to do what we did last time, delegate to GM to issue approval once received."

30 On 19 February, 2016 Jarek Holdings was advised that DA 243/2015 would be before the IHAP on 29 February, 2016. The IHAP recommended that the application be refused because of concerns about whether the clause 4.6 request had demonstrated that the 18 metre height limit was unreasonable and unnecessary and whether there was sufficient environmental planning grounds to justify the contravention of the height limit. The IHAP assessment noted that council's resolution to increase the height applying to the site was only a resolution and that there had been no Gateway determination and no public exhibition of a planning proposal.

40 It should be noted that at this time the department was still raising issues in relation to the planning proposal. At the same meeting the IHAP recommended approval of the section 96 application DA 255/2014A. Mr Stavis's report to the City Development Committee recommended that DA 243/2015 be approved despite the IHAP recommendation. The report also stated that although the proposed development exceeded the allowable building height, this was in keeping with council's desired future character for the property based on "recently approved heights adjacent to the subject site and council's planning proposal for additional heights at the site." The report also stated that given previous general advice from the department, the concurrence of the department to the clause 4.6 exemption was assumed.

On 10 March, 2016, the City Development Committee voted, moved Hawatt, seconded, Kebbe, to support Mr Maroun's submission for the

clause 4.6 exemption from the height controls in the LEP and approve the additional two storeys the subject of DA 243/2014. Councillors Hawatt and Azzi voted and did not declare any interest in the application. The height of the approved development was 24.85 to 26 metres.

It will be submitted that this outcome gave Mr Maroun a much faster favourable outcome than if he had been required to await the outcome of the planning proposal, Gateway approval and exhibition process.

- 10 At the same meeting of the City Development Committee, on the recommendation of the director of city planning, DA 255/2014A was also approved. On 7 April, 2016, the department advised the council that the planning proposal to increase building height controls for 538-546 Canterbury Road and 570-580 Canterbury Road had received a Gateway Determination subject to conditions and could proceed to public exhibition.

- Returning, Commissioner, to the nature of the allegation of corrupt conduct being investigated in relation to this property, 538 Canterbury Road, this hearing will investigate in particular whether Councillors Hawatt and/or
20 Azzi dishonestly exercised their public function of voting, whether Councillors Hawatt and Azzi had a relationship with Mr Maroun that they should have disclosed, and/or whether Councillors Hawatt and/or Azzi were voting in order to obtain a benefit for Mr Maroun and not to advance the public interest.

- Whilst we have not formulated a specific allegation of dishonest exercise of official functions by Mr Stavis, I should indicate that there are features of his dealings with the applications in relation to 538 Canterbury Road, particularly his assessment of DA243/2014 which give rise to serious
30 concerns that the interests of Mr Maroun were being unduly favoured. The evidence as to Mr Stavis's relationship with Councillors Hawatt and Azzi generally will be relevant to the assessment of his involvement in the applications relating to this property.

- Commissioner, the functions of this hearing are not confined to corruption detection. As required by section 13 (2) of the ICAC Act, a function of this investigation is corruption prevention, that is the Commission is to conduct its investigation with a view to determining firstly whether any laws governing any public authority or public official need to be changed for the
40 purpose of reducing the likelihood of the occurrence of corrupt conduct, and secondly whether any methods of work, practices or procedures of any public authority or public official did or could allow, encourage or cause the occurrence of corrupt conduct. Under subsection 3 of section 13 of the Commission's act it is a principal function of the Commission to formulate recommendations for the taking of action that the Commission considers should be taken in relation to the results of its investigations.

On the evidence that we expect to present over both tranches of this hearing there are two broad areas of concern which we expect will emerge. The first broad area of concern is corruption opportunities in the employment and dismissal of council general managers and senior council staff. There are two specific concerns here, firstly there is a concern that the termination provisions in a general manager's contract of employment produced by the Office of Local Government do not sufficiently safeguard the independence of a general manager and provide councillors with an opportunity to engage in corrupt conduct to inappropriately secure benefits for themselves or others. Secondly, there is a concern that the recruitment practices and procedures for appointing senior staff at the former Canterbury City Council were loose and the Local Government Act requirements for consulting with councillors on the appointment of senior staff were ambiguous.

The second broad area of concern is corruption opportunities affecting the operation and integrity of the New South Wales planning system. In this regard there are six particular matters which are being investigated.

The first question is whether the Department of Planning and Environment exercise an adequate degree of oversight of the making and amendment of the Canterbury LEP via the planning proposals process for rezonings and amendment of development controls.

The second question is whether the New South Wales planning systems process for varying development standards under clause 4.6 of the LEP provides an opportunity for misuse, including corrupt conduct, by virtue of A, the failure by the Department of Planning and Environment to establish and maintain effective oversight on the use of clause 4.6 by councils in New South Wales and/or B, the Secretary of the department providing all councils in New South Wales with unrestricted authority to assume their concurrence or rather his concurrence or her concurrence under this clause.

Thirdly, there is question whether the New South Wales planning system provides opportunities for corrupt conduct by allowing a person submitting a development application to manipulate information in order to choose the determining authority they believe is more likely to deliver an approval.

Fourthly there is a question whether the New South Wales planning system provides opportunities for corrupt conduct by allowing applicants to submit false or misleading statements about estimated costs of work to reduce the applicable fees payable to councils and the New South Wales Government.

Fifthly there is a question whether the former Canterbury City Council lacked sound planning process which provided opportunities for corruption.

Sixthly there is a question whether council staff and councillors at former Canterbury City Council were captured by developer interests, that is public officials, instead of performing their official functions impartially, acting to

advance the interests of the industry or people that they are regulating. A submission may be made that regulatory capture at Canterbury City Council was facilitated by poor practices and a weak ethical culture.

10 It will be arising from the investigation into these matters that as Counsel Assisting we can foreshadow the likelihood of including in our closing submissions recommendations firstly for changes to minimise corruption opportunities in the employment and dismissal of general manager and senior council staff, secondly the changes to the New South Wales planning system and thirdly for attention to practices and culture particularly to avoid regulatory capture and to instil and ethical culture.

That is our opening address, Commissioner.

THE COMMISSIONER: Thank you, Mr Buchanan.

20 Now, Mr Buchanan, traditionally we have a short adjournment at this point, but I have been told that it was usually to allow the media to pack up and leave, but I see that they've already done that. What was going to propose is that we move on.

MR BUCHANAN: Certainly.

30 THE COMMISSIONER: All right. The next part of the proceedings is that I will take applications for leave to appear or announcement of appearances where leave has already been granted. Before starting that process can I emphasise that any leave to appear is subject to compliance with the Commission's new section 31B guidelines and also the new standard directions. Now, I understand everybody has received a copy of those, but if you haven't, they are available on the Commission's website.

So if I can commence with appearances.

40 MR MOSES: Yes, Commissioner. If it please the Commission, I appear or seek leave to appear for 14 parties. If I could provide you with the list of those 14 parties, if I may have leave. Just for the record Commissioner, those parties are Canterbury Bankstown City Council, Tom Foster, Warren Farleigh, George Gouvatsos, Andrew Hargreaves, Lisa Ho, Mine Kocak, Simon Manoski, Brad Macpherson, Mitchel Noble, Felicity Eberhart, Mathew Stuart, Gillian Dawson and Marcelo Occhiuzzi. Commissioner I'm instructed to inform the Commission that the council will provide whatever assistance it can to the Commission in relation to the matters that it is investigating and will monitor the progress of the inquiry in relation to the development applications that are the subject of the investigation to ascertain, what, if any, steps should be taken as a result of what's uncovered during the course of the investigation. I'm also instructed to note that the new council has a zero tolerance approach to corruption in relation to the important task of approving local environmental plans and the determination

of development applications in that there should be no misapprehension of this by persons who may seek to approach the council who are wanting to undertake developments in the council area, please the Commissioner.

THE COMMISSIONER: Mr Moses, who are you appearing with?

MR MOSES: I'm appearing, thank you Commissioner, with Ms Alderson and Ms Bulut who are both counsel assisting me in relation to the matter. They are the most important part of the team and I should have announced their appearance, thank you.

THE COMMISSIONER: Yes, I concur with that.

MR MOSES: Thank you.

MR NEIL: Commissioner, my name is Morris Neil, leave has been granted so but I announced my appearance with my learned friend Mr Matthew Tyson instructed by Abrahams and Associates for Mr George Vasiliades. I've had a discussion with my learned friend Mr Buchanan. The documents and the witness list refer to Mr Vasiliades as George Vasil but he will not take umbrage if he's referred to in the proceedings as George Vasil but he is actually known, his actual name is George Vasiliades.

THE COMMISSIONER: All right. Thank you Mr Neil.

MR ANDRONOS: If it please the Commission, Andronos is my name. I think I'm still seeking leave to appear at this stage, we notified the Commission that I would be seeking leave to appear for Mr Montague on 9 April, we haven't heard back so I make the application before your Honour at this stage.

THE COMMISSIONER: And you're instructed by?

MR ANDRONOS: I am instructed by Ms Rosana Parmegiani and from time to time by Ms Jennifer Williams both at Spark Helmore Lawyers.

THE COMMISSIONER: Thank you. Leave is granted.

MR O'GORMAN: O'Gorman, I appear for the Office of Local Government and I'm instructed by Jenny Taine of Crown Solicitors.

THE COMMISSIONER: Leave had been granted to you.

MR O'GORMAN: I understand it was here today.

THE COMMISSIONER: Thank you.

MR PARARAJASINGHAM: Commissioner, I seek leave to appear to for Mr Stavis. My name is Pararajasingham for the record P-a-r-a-r-a-j-a-s-i-n-g-h-a-m. I'm instructed by Eakin McCaffery Cox.

THE COMMISSIONER: Leave is granted.

MR DOYON: If it please the Commissioner, Doyon is my name D-o-y-o-n instructed by CDM Lawyers, I seek leave to appear for Constantine Vasiliades.

10

THE COMMISSIONER: Yes, leave is granted.

MR TAYLOR: Commissioner, if it please, Taylor solicitor, I seek your leave to appear on behalf of the witness Brian Robson.

THE COMMISSIONER: yes, leave is granted.

MR TAYLOR: Thank you.

20 THE COMMISSIONER: Right. Nobody else? All right. Now, the next matter Mr Buchanan.

MR BUCHANAN: A small matter of evidence. Commissioner, it will be no surprise in this day and age and indeed and a great relief to many of us that the evidence has been produced in digital form in all cases and what I'm going to do is tender the brief in digital form comprising 14 Volumes and contained on the two thumb drives that are in the plastic bag that I am going to hand up which has also in it a paper index of the contents in outline form of each volume. Commissioner, I tender the documents, the 14

30 Volumes, essentially as one exhibit, if that is convenient. Also in the plastic bag, I indicate there are two thumb drives, there is a second thumb drives with the copies of statements of witnesses on it and that will be our application, be a separate exhibit.

30

40

THE COMMISSIONER: Now, the first thumb drive which contains volumes one to 14, that will be marked as Exhibit 52. Now, the numbering sequence which requires that exhibit to be given the number 52 is caught up with internal Commission identification process so everybody don't be concerned about it, it will be known as Exhibit 52. Can I just confirm, Mr Buchanan, during the proceedings if anybody wish to refer to a particular page in a particular volume it would be sufficient for a reference to be made to Exhibit 52, Volume 3 page 4 for example.

MR BUCHANAN: That is right. The pages are all paginated at the bottom of each page, they should be all paginated with the volume number and the page number.

THE COMMISSIONER: So Exhibit 52 will be the thumb drive containing Volumes 1 to 14. Then Exhibit 53 will be the second thumb drive which contains a number of statements, excuse me for a minute. Exhibit 53 is the second thumb drive containing 42 witness statements and again, Mr Buchanan, sufficient if people refer to the Exhibit and then the particular witness statement and then I take it a paragraph number or - - -

10 **#EXH-052 – PUBLIC INQUIRY BRIEF (VOLUMES 1 - 14)**

#EXH-053 – 42 WITNESS STATEMENTS & RECORDS OF INTERVIEWS

MR BUCHANAN: Yes, I should have said that it's not just witness statements there have also been conducted interviews of witnesses which have been recorded electronically and so it's a combination of witness statements and electronic records of interview.

20

THE COMMISSIONER: Yes, that will be Exhibit 53.

MR BUCHANAN: If the Commission please. Now Commissioner, there is a necessity in this case for me to apply for an order under section 112 or perhaps more accurately directions in respect of a particular matter that appears in the evidence to protect them against publication and my application would be that a direction be given in these terms. Pursuant to section 112 of the ICAC Act, a suppression order is made protecting against publication to any person outside the Commission of the following

30 information contained in each of the Exhibits admitted into evidence in this inquiry and/or other documents shown during this inquiry with the exception of Commissioner Officers for statutory purposes and between witnesses in the inquiry and their legal representatives subject to any further order of the Commission and the material concerned I identify as, private email address, private residential addresses, private phone numbers and bank account numbers. Secondly, the contents of references supplied for Spiro Stavis, by Heather Warton W-a-r-t-o-n and Silvio Falato F-a-l-a-t-o both on the 16 December, 2014. Thirdly, information in the statement of Brian Robson of 6 June, 2017 which relates to allegations not under

40 investigation by the Commission in this hearing.

THE COMMISSIONER: Yes. I think that's a sensible approach Mr Buchanan. So I will issue a direction under section 112 that pursuant to that section. A suppression order is made protecting against publication to any person outside the Commission of the following information contained in each of the exhibits to be admitted in to evidence in this inquiry and/or other documents shown during this inquiry with the exception of the commission officers for statutory purposes and between witnesses in the inquiry and

their legal representatives subject to any further order of the Commission: private email addresses, private residential addresses, private phone numbers and bank account numbers; second, the contents of references supplied for Spiro Stavis by Heather Walton and Silvio Falato, both on 16 December, 2014; and information in the statement of Brian Robson of 6 June, 2017 which relates to allegations not under investigation by the Commission in this hearing.

10 **I WILL ISSUE A DIRECTION UNDER SECTION 112 THAT**
PURSUANT TO THAT SECTION. A SUPPRESSION ORDER IS
MADE PROTECTING AGAINST PUBLICATION TO ANY PERSON
OUTSIDE THE COMMISSION OF THE FOLLOWING
INFORMATION CONTAINED IN EACH OF THE EXHIBITS TO BE
ADMITTED IN TO EVIDENCE IN THIS INQUIRY AND/OR
OTHER DOCUMENTS SHOWN DURING THIS INQUIRY WITH
THE EXCEPTION OF THE COMMISSION OFFICERS FOR
STATUTORY PURPOSES AND BETWEEN WITNESSES IN THE
INQUIRY AND THEIR LEGAL REPRESENTATIVES SUBJECT TO
20 **ANY FURTHER ORDER OF THE COMMISSION: PRIVATE**
EMAIL ADDRESSES, PRIVATE RESIDENTIAL ADDRESSES,
PRIVATE PHONE NUMBERS AND BANK ACCOUNT NUMBERS;
SECOND, THE CONTENTS OF REFERENCES SUPPLIED FOR
SPIRO STAVIS BY HEATHER WALTON AND SILVIO FALATO,
BOTH ON 16 DECEMBER, 2014; AND INFORMATION IN THE
STATEMENT OF BRIAN ROBSON OF 6 JUNE, 2017 WHICH
RELATES TO ALLEGATIONS NOT UNDER INVESTIGATION BY
THE COMMISSION IN THIS HEARING.

30 MR BUCHANAN: May it please the Commission. I can indicate that subject to that direction, the document submitted in to evidence will, like the transcripts, be available on the Commission's public website.

THE COMMISSIONER: Thank you.

MR BUCHANAN: If it's convenient now to do so, Commissioner, I would call the first witness.

40 THE COMMISSIONER: Yes.

MR BUCHANAN: We call Mr Occhiuzzi, please.

THE COMMISSIONER: Mr Occhiuzzi, will you take an oath or an affirmation?---An affirmation.

THE COMMISSIONER: Mr Moses, is there any application in respect of this witness?

MR MOSES: No. I think the witness has been informed of the terms of section 26, so, Commissioner, as well, just in the event that the Commission wishes to raise that with him but other than that, there's no application.

10

THE COMMISSIONER: All right.

MR BUCHANAN: Sir, your name is Marcelo Occhiuzzi?---Correct. Yes.

O-c-c-h-i-u-z-z-i.---That's right.

You are a town planner by occupation?---Correct. Yes.

20 And have you made two statements for the Commission in this investigation?---I have.

If the witness could please be shown folder four in the hard copy of exhibit 53? And would you turn to tab 35, please? Could I just enquire whether we've given you the right folder?---Yeah. there's only two tabs on this one.

Well, it's not the right one. What we've done, even though it has only two tabs is, put in to one folder copies of both your statements. So if I can, for the third time, and you folders. That's it.

30 THE COMMISSIONER: Ah hmm.

MR BUCHANAN: Thank you very much. That's great. And I'm not asking you to read them through but do you see there copies of two statements? One dated 29 November, 2017 and the other a short statement dated 28 March, 2018.---I see the first one but not the second one.

There should be a second tab on the right-hand side.---Oh, my apologies. Okay, yep. I've got it, yep.

40 And the second one is 28 March, 2018.---Yes. I have that. Yep.

That's right. Now, just to clarify, you didn't make a statement that's three hundred pages long on 29 November, 2017, but rather a statement that's 15 pages long with two annexures. The first annexure comprising the Canterbury Local Environmental Plan, 2012.---Yep. That's right.

And then if you can just flip through from the back. The second being a performance appraisal, including a performance plan for you for the period of 2013/14.---Yes. I have that.

Thank you. Now, I'd like to ask you some questions. I'll withdraw that. First of all, there is a change that you want to make to one paragraph of your first statement. Is that right?---That's correct.

10 The one dates 29 November, is that paragraph eight?---That's right.

What's the change you'd like to make there?---So there's an error there. Starting from 2010 to September, 2014, that should be November, 2014.

Thank you. So it should read, "From 2010 to November 2014, I was employed at Canterbury City Council as the director of planning"?---That's right.

20 Now, I'm not going to be asking you to read out your statement but I will be asking you to give us the gist of your evidence, and if it assists you to do that by reference to your statement, please feel free to do so. Do you understand?---I understand. Yep.

You told us that you were a town planner by occupation. You were at Canterbury City Council as director of planning from 2010 to September, 2014. That's paragraph eight.---Yes. November, 2014. Yes.

Thank you. And you've been employed in planning roles since about 1993. Is that right?---That's right.

30 If I can just ask you to, by reference to paragraph nine of your statement, explain to us what your duties were as director of planning at Canterbury City Council?---So the board role included three distinct areas of responsibility. The first being development assessment. So George Gouvatsos reported to me on, on those matters. The second was regulatory services, pardon me, but I, I don't remember the exact name of that team but essentially regulatory services that looked after compliance activities, security inspections, unauthorised building works, that sort of thing. And the third was the urban planning area, which was the, what I would refer to as
40 Development Control Plans, contributions plans and that sort of thing.

And from time to time, were reports prepared by staff in say, the planning area that were submitted to council under your name?---In fact, all reports that went up to council, went to council under the, the, the authorship of the director of city planning. The only exceptions to that were in instances where there were conflicts of interest. I remember one case where I had a conflict of interest and the report went out under the manager's name.

And you didn't write the reports themselves or occasionally you did? What was the situation?---Generally speaking, I didn't. I certainly reviewed all reports as they went out. Sometimes more comprehensively than other times. But I would not often write the report but there were several instances where I, I authored those reports.

10 What would be the, what were the criteria which you used for changing what a staff member had written in a report that was go to out to council in your name?---Look, the only areas that I would involve myself in were just to ensure that the language is clear, that it was as plain English as possible, accuracy, that sort of thing. But in terms of the recommendation, I wouldn't get involved in that. I would leave that to the team. Having said that, however, there were instances where I questioned the recommendation and there would be a discussion followed.

Now, there was a planning framework within which you had to operate comprising the Environmental Planning and Assessment Act 1979?
---Correct.

20 And the Canterbury Local Environmental Plan 2012. Is that right?
---Correct.

And was there also a document under then the development control plan?
---That's right.

30 Where did it sit in relation to the other two documents?---So, the development control plan or the DCP as its known in planning circles is subservient to the Local Environmental Plan, so the intention of that document is to add detail to the higher order provisions of the Local Environmental Plan design type parameters.

40 Can I ask the – you were obviously there when the LEP was made. My understanding is the LEP is made by the minister, strictly speaking. What was the process by which the Canterbury LEP of 2012 was made? If you could explain with views to us being able to understand what happened after it was made?---So, this is in the context of the Department of Planning rolling out a standard environmental planning structure right across New South Wales. Canterbury, as I understand it, was one of the last tranche of councils to roll that out, so essentially, the majority of that exercise involved putting in existing provisions into a new format. There were changes of course, but by and large the exercise involved a rollover of old provisions under the old planning scheme orders which went back to the 70s, I think, and rolling those into a new format, reported to council, exhibited, reported once again to council after its submission and then with the endorsement of the council, sending it off to the Department of Planning for approval by the Minister, ultimately.

And so the development controls, the substantive development controls that ended up in the Canterbury Local Environmental Plan 2012 might have been around, as they applied to a particular parcel of land, for some time. And just because it was made in 2012, doesn't mean to say that someone had thought about those particular controls terribly carefully in their application to that particular parcel of land. Is that right?---That's right. So, as I say, the majority of controls that were rolled over to the 2012 plan had been in existence in one form or another for some time.

10 And during the exhibition process, were submissions received about particular parcels of land or particular controls?---Yes.

Can you tell us a little bit about that?---So, I think as I've said in my statement it's not unusual when a comprehensive Local Environment Plan is placed on exhibition that submissions are made seeking to amend the planning controls as they have been exhibited. That was certainly the case in Canterbury's case. I can't remember off the top of my head how many submissions were received but there were a significant number of submissions that were made seeking to increase density, increase height and
20 change the planning controls in that sense.

Are you able to characterise the sources of those submissions? Was there a particular area or segment of the population that they came from?---I'm not sure that I understand the question.

Was it land owners?---That's right, it was land owners. Yeah.

Proponents of development?---Generally speaking, and sometimes through consultants but representing land owner interests.
30

Now, what happened to all of those submissions at the time the LEP was made in 2012 to commence on 1 January 2013?---So, there was a report that went up in 2012, I think.

I'm looking at paragraph 22 of your statement?---Thank you. Yeah, so there was a report that went up recommending that the LEP be adopted and that included a discussion of the number of submissions received. Now what that report recommended was that the council proceed with the making and the approval of the LEP and put the submissions as they sought to increase
40 height and density to one side and have those dealt with by way of what we call a residential development strategy.

Residential development strategy?---Correct.

And was that to be something that would occur or be considered after the LEP had been made?---That's right. Essentially, the council signing off on the LEP as exhibited with some tweaking, that, that process then had a life

of its own, the submissions made in response to that would have a different part.

If the witness can be shown volume 11 please of the documents in Exhibit 52, pages 54 to 87?---Thank you. Yes.

What's that document?---So that was the – I haven't seen this document for some years but it's the Canterbury residential development strategy dated October 2013.

10

And essentially how did it work? It's got on it the logo of external planners, GLN Planning?---That's right. So, what we did, we acknowledged that there was a lot of interest in residential development and increased densities, heights, that sort of thing. So, we thought it quite appropriate to hand over the work of assessing the submissions that sought increases in density to a consultant team to come up with a residential development strategy to guide the future growth of Canterbury in a residential sense, and included in that, a basis for assessing those submissions. So, providing a broad framework to consider the growth, as I say, and as a jump to that, providing a framework to assess whether or not those submissions, or those intentions, should be supported.

20

Once you received that document, what happened next?---Well, the document was received and put to the council.

You're talking paragraph 25 of your first statement of an extraordinary meeting of council held on 31 October 2013?---That's right. So, the report was actually put to a previous meeting, I think it was several occasions that it went up to council and was deferred. Ultimately, it was considered in a resolution made at the council meeting on 31 October and the council made a decision on the future of all of those submissions included in that residential development strategy.

30

If I could just ask you to have a look at some more pages in volume 11. You prepared a report yourself on the RDS Report, the Residential Development Strategy Report, and the submissions made to it and provided your views. Is that pages 100 to 130 of volume 11?---Yeah. That's, that's correct. Whether I wrote it myself, I can't recall but it certainly went out under my, my, my role.

40

And it was to the extraordinary meeting of council held on 31 October, 2013.---Correct.

Is that right?---That's right.

And then if you go to page 131 in that volume. This is still volume 11 in Exhibit 52.---Yes.

That's the first page of a set of minutes of that particular meeting of council and they run to page 138. Is that right?---Yes.

And does that record how your report and the RDS report were dealt with at that meeting?---That's right.

In summary how was it dealt with?---Well, it was an extraordinary meeting. The council met and fairly quickly moved into recess.

10 Recess?---That's right. So there was a suspension of standing orders.

Yes.---The gallery was quite full. There were a lot of, a lot of people in the gallery. The, the mayor called a suspension of standing orders and at recess. The councillors moved into the councillors' lounge away from public view and had a broad discussion over - - -

Without officers present?---I was present.

20 You were present.---I was present, and a motion that Councillor Hawatt had prepared was discussed. Now, that motion added significant amounts of amendment to the officer's recommendation. There was broad discussion at that forum. I wasn't asked any questions. I wasn't asked for my opinion. We moved back into the council meeting following - - -

All that is recorded on page 131 at about point 6, is that right, under the heading Adjournment?---That's right.

30 And then there is the original motion but it became subject to amendments that start at the bottom of page 132 going over 133 and following.---That's right.

In respect of a number of individual properties.---That's right.

And so can I just take you to particular properties. If you look at page 132 at about halfway down the page, item 3.8. The original motion Councillors Kebbe and Azzi was to increase the maximum building height applying to 548 Canterbury Road, Belmore from 18 metres to 21 metres.---Yes.

40 If you go to page 133.---Yes.

And over to, first of all a request was made that each property be considered separately or each item number be considered separately.---That's right.

And then if you go to page 137 you can see the ultimate resolution in respect of 548 Canterbury Road, item 3.8, this is at about point 3 on page 137 of the volume, is increase the maximum building height applying to 548 Canterbury Road, Belmore from 18 metres to 25 metres.---That's right.

Now, did you have any input into that?---No, I didn't have any input into that. Now, I must say that there were several meetings that Councillor Hawatt and Councillor Azzi organised leading up to this council meeting including both those councillors, the previous mayor, Robson, Jim Montague and myself and at those meetings Councillor Hawatt went through the various amendments as, as has been pointed out. Now, I attended those meetings but I made very clear that the position of staff and my position was on the public record including that site and other sites and that's the position that I would be prosecuting if asked publicly, so I wanted
10 to make very clear that my position was not going to change. So that was one that changed. The height limit went from 21 to 25 metres.

And the amendment if I could just ask if you identify it, is at the bottom of page 133, moved Councillors Hawatt and seconded Nam, amend item 3.8 to read 25 metres instead of 21 metres as proposed by the applicant?---Sorry, what page was that?

Bottom of page 133.---Yeah, that's right.

20 Now, another property was also the subject of motions. First of all, can I just ask you to just have a quick run down page 132 and there is no reference in the original motion Councillors Kebbe and Azzi to a property known as 998 Punchbowl Road.---That's right.

But at page 134 there was an amendment at about point 7, point 8. Amendment moved Councillors Hawatt and Nam add dot point 3.14. ---That's right.

30 Rezone land at 1499 Canterbury Road, Punchbowl also known as 998 Punchbowl Road to R4 FSR to 1.8:1 and height to 15 metres.---That's right.

And then if you go to the ultimate resolution which commences at about point 4 on page 136 and then go over the page to the middle of 137 item 3.13 rezone land at 1499 Canterbury Road, Punchbowl also known as 998 Punchbowl Road to R4 FSR 1.8:1 and height to 15 metres.---That's right.

I should just go back if I can. I apologise for jumping around, but if you look at page 88 there was a bit of an exchange between you and Councillor Hawatt over some draft motions before the meeting.---That's right.
40

And at page 88 your email, sorry, yes, your email of 23 October, 2013 to Mr Montague about what you described as Councillor Hawatt's motion, and then if I can just take you over the next three pages, it's 89 to 91.---Yes.

Are they your comments? It says comments in response to Councillor Hawatt's motion, Councillor Hawatt's proposed motion in bold.---Yeah. So I, on pages 89 through to page 91 I provided various, various comments in response to those resolutions, those, that proposed motion.

There's a reference there on page 89 at about point 7 to 548-568 Canterbury Road, Harrison's. This is all, it's in a list of properties underneath a draft motion consolidate the B5 business development and B6 enterprise corridor zones into one zone with a maximum building height of 25 metres applying, et cetera. Do you see that?---Yes, I do.

And then after your comment there's a list of properties.---Yes.

10 And your comment was I do not support this change and your reasons appear underneath.---That's right.

And then on page 90 you express disagreement at point 5 at about point 8 on the page about including a new dot point item to rezone 1499 Canterbury Road also known as 998 Punchbowl Road to R4 with a height limit of 14 metres. Disagree with this for the reasons outlined in the RDS document. ---Yes, I see that.

20 The RDS document being?---The Residential Development Strategy, which was that framework document which analysed all of those submissions in some detail.

This might be an appropriate time to just take you to what it was that you were referring to. If I could ask that we go to page 63, please, in the same volume. This is a page from a copy of the RDS report and the format that the authors followed was to describe the site, to describe the proposed changes and justification from the applicant and then to have recommended action and justification underneath the words, "Recommended action." ---Yeah, yeah, I see that.

30 And in this case, on page 63, it is the assessment of the submission made in respect of 998 Punchbowl Road.---That's right.

40 And as far as you're concerned, the submission had not been justified or the submission, the outcome of the submission was not warranted for the reasons given on the right-hand corner of that page? Just read it in landscape format. Is that right?---Yeah, that's right. It seemed, as is perhaps obvious now, that it was somewhat ad hoc and out of character with the remainder of the zones and I think there is a comment there about needing to do a much wider piece of work as the second dot point there suggests, review properties along Canterbury Road frontage that are zoned R3 residential in the event of significantly increased housing targets for the LGA. So in other words, let's put this aside for the moment.

Now, whilst you've still got this volume in front of you, after the meeting, the extraordinary meeting of council on 31 October there was another meeting sometime later on 2 October, 2014 in the succeeding year. And in this volume if you just flick through it, first of all after the minutes of the

extraordinary meeting of 31 October, 2013 there appears commencing at page 140 a submission made in the name of Statewide Planning in respect of 998 Punchbowl Road, and after that, I'll just make sure that I'm not missing anything, there's a notice of an extraordinary meeting of council to be held on 2 October, 2014. I'm looking at page 148. And then an agenda for such meeting commencing on page 149.---Yes.

Do you recall the meeting of 2 October, 2014?---I do, I do. Ironically not as clearly as I remember the 2013 meeting, but I do recall that meeting.

10

And if you just look on the next page, 150, there's a summary of reports and commencing on page 152, officers' reports, one under your name.---Yes, I see that.

And the recommendation was that a planning proposal be submitted to the department for gazettal. Is that right? That's, I'm looking at the last dot point under the heading Summary on page 152.---That's right, yes.

Now, if I could just ask you to go then to page 173. This is part of your report but it's in respect of 998 Punchbowl Road. Is that right?---Yes, that's right.

20

And in the table towards the bottom of the page you have a summary of the proposed changes. The height was currently 8.5 metres and the proposal was for it to be 15 metres, floor space ratio 0.5:1, and the proposal was for it to be 1.8:1.---That's right, as previously resolved by the council at the 31 October meeting.

Thank you. Page 174 commencing, "However," at about point 7 on the page, you discuss the increase in height and the increase in FSR?---Yes.

30

And you say, "As the proposed maximum height of the building is proposed to be 15 metres, it is recommended that a lower FSR of 1.5:1 be applied to his site, and then you give reasons.---Yep, that's right.

Then under the heading, Request for an Increase in Building Height and FSR, you identify the issue and say on top of page 175, "This request is not supported."---Yeah, that's right.

And the issue was you identified an increase in floor space ration from 1.8:1 to 2.2:1 is requested to maximise the building form on the site. And you then referred the reader back to what you had said on page 174, that the recommendation was that a lower FSR of 1.5:1 be applied to the site. ---That's right.

40

And accordingly that request was not supported. If I could just take you then to page 189, this is in respect of 548-568 Canterbury Road, Campsie, it's still your report?---Yes.

The summary of the proposed changes, 18 metres go up to 25 metres?
---Yep.

And that was not supported or sorry, I withdraw that. Your recommendation as that it be supported?---That's right.

Thank you. So the recommendations are then set out on pages 208 to 209. Is that right, in conclusion?---Yeah, that's right. So the recommendations start at 208 and go through to 209, correct.

And looking at the top of, looking at the fourth dot point on 209 there is your recommendation in respect of 998 Punchbowl Road, height of 15 metres, FSR reduced from the exhibited 1.8:1 to 1.5:1.---Yes.

Subject to no issue being raised by the department.---Yes.

And then in the middle of the page, 548-568 Canterbury Road, Campsie, to increase the height limit to 25 metres.---That's right.

Now, commencing at page 219 is the minutes of that meeting. Does that appear to you to be the case?---Yes.

And then going over to page 220 towards the bottom of the page there's the original motion by Councillors Azzi and Kebbe, going over to page 221 which includes your recommendations. Seventh dot point is 998 Punchbowl Road.---Yes.

Tenth dot point is 548-568 Canterbury Road.---Yes.

However, an amendment was moved, page 222.---Yeah.

Moved, Councillors Hawatt and Azzi, and those pages then set out the amendments.---Yes.

Seventh dot point, 998 Punchbowl Road, to rezone to R4 with a height of 15 metres and FSR increased to 2.2:1.---That's right.

Considerably more dense than what you recommended?---Well, that's right. We had obviously recommended a lowering of the FSR because it wasn't consistent with the height. The council resolved to actually go in the other direction.

And for completeness, three dot points down from that, 548-568 Canterbury Road, to increase the height limit to 25 metres, which is no change from what you recommended.---that's right.

The resolution then commences at page 223. I think again each property is addressed with separate votes. And then 998 appears at the top of page 225. 998 Punchbowl Road, rezoned to R4 with a height of 15 metres and FSR increased to 2.2:1.---Yes.

With the voting set out underneath. And at the bottom of that page, 548-568 Canterbury Road, Campsie, to increase the height limit to 25 metres.---Yes.

10 And then the final resolution reflecting the amendments made is at pages 227-228.---Yes.

Just excuse me a moment. Can I take you to another property now? If the witness could be shown volume 9 of Exhibit 52, commencing at page 1. This is in respect of a property known as 15-23 Homer Street, Earlwood. Commencing at page 1 there's a rezoning application received 13 May, 2014, by Assad Faker.---Yes.

20 And the planning proposal, as its described, commences at page 4 of volume 9.---Yes, I see that, yeah.

Are you familiar with that property or are you familiar with that planning proposal?---Yes, in very broad terms, yes, I am.

It was submitted in May. You left in November. In your statement at paragraph 30, you tell the reader that you're aware of it, and paragraph 31 that you recalled a meeting with the applicant on an occasion in 2014. ---Yes.

30 Was that Mr Faker?---I'm not sure. There were several gentlemen there. I can't remember their names. But presumably - - -

How did you know you were meeting the applicant?---The vibe. Look, we met, I think, with three gentleman – an architect, somebody that purported to be the owner or the representative of the, of the owner. I just can't recall their names.

40 That's okay. But you there set out your recollection, at the time you made this statement, about what the proposal was, what the submission was, for council to adopt a planning proposal and put it forward to the department. The proponent's report, as I indicated, commences at page 4. Then page 38, is that – and it's a genuine question here – is this the officer's report in respect of that - - -?---Yes, that's right.

- - - about that submission?---That's right. As I think I've included in my statement, this was actually submitted. It was being prepared whilst I was still at the council but it was presented to the City Development Committee after I'd left.

It's submitted under your name – sorry, under the name of your office.
---Yes.

10 Do you recall whether you reviewed and approved this report to go forward to council?---I do recall having a discussion around it. I do recall reviewing a report. I can't remember whether it was the final report, because I think my departure was around about the time that the reports were being finalised. But I do remember sitting down with the team, with the Urban Planning Team – including Gill Dawson and, and Warren Farleigh – and, and talking it through with them.

And you tell us in paragraph 32 of your first statement that the team assessed the 18-metre proposed height and that it was not supported.
---That's right.

And you think you were not at the City Development Committee meeting at which the submission was considered?---I'm quite sure I wasn't there.

20 Tell us a bit, the next page of your statement about independent reports being prepared at the request of the council, this was not an unusual practice?---Not overly unusual, there were a few independent reports prepared whilst I was there, I could name them but they occur from time to time, particularly with bigger proposals and also where there was some interest expressed by councillors then it was safer to have an independent assessment prepared.

This was is of submissions for planning proposals?---That's right.

30 What would you have thought of the idea that the director (city planning) should sit down with the author of such a report once it had been commissioned with a view to changing its contents from those originally drafted by the author of the report?---Look, I don't think there's an issue with the director of city planning or a manager sitting down with the author of the report and going through the contents to ensure accuracy and ensuring that there's accountability, I suppose, as to what was going on in a planning sense but to change the report you'd need obviously take a little care with but I don't see an issue with the director of city planning sitting down with the author of an independent report.

40 Why would you need to take a bit of care with changing these content of the report?---An independent report is being commissioned for a reason, that is to provide an independent point of view, so imposing a point of view that is a council officers is not the point of the exercise.

Can I ask you about this situation, on the one hand you have a submission by a development proponent for a rezoning or some other change to development controls with a view to council adopting the submission and directing that a planning proposal be prepared and provided to the

department for gateway approval. What if a planning proposal has been prepared at the request of council by your staff and at the request of the department an independent consultant is retained to provide additional justification for the change or changes proposed in the planning proposal. What would you say in those circumstances to the director of city planning city down with the author of the consultant's report with a view to modifying the substantive content?---If the report is commissioned on the basis of a specific condition of a gateway determination, it would be prudent to allow that report to be prepared absolutely independently and receive the outcome of that.

If the report was so far as the substantive content was concerned, inconsistent in some respect with the planning proposal that had been prepared at the direction of council is there any role for the director of city planning to play in trying to bring the consultant's report back into line with the planning proposal, council's planning proposal?---I would think not.

Why not?---Well, the purpose of the report from the scenario you've just described is to receive an independent assessment on a particular position that council presumably already had a council officers view and they had their own opinion, the council resolution so if a condition was imposed as a result of a gateway determination the clear objective of that is to provide for an independent review of that position.

So what are the options for planning staff who receive a consultant's report in a situation like that, which is does not justify an important component of the council's planning proposal?---Well that would need to be fed back up to the council or at very least exhibited with the, with the planning proposal so, so as to be absolutely transparent.

Sorry, this might seem to be an obviously question, but what is the purpose of exhibition of a planning proposal to change the LEP?---Well, the purpose of the public exhibition is to ensure and enable local residents and other stakeholders to be aware of what's been proposed. The, the challenge often with Local Environment Plan amendments and planning proposals is that they don't speak a plain English language so the, the role of the, of the exhibition is to ensure that, that, that people are aware that there's a proposal to change the planning controls.

And so that the community is aware of the material being put forward to support the change?---That's right.

Can I now ask you some questions about your interaction with various people at council before you left? I'm looking at your statement, first statement in exhibit 52. You spoke there at paragraph 13- - -?---Yes.

- - -about dealings with Mr Hawatt.---Yes.

Indeed commencing at paragraph 11, going over to paragraph 13. Can you tell us how you got on with Councillor Hawatt, what sort of dealings you had with him?---Councillor Hawatt, look, I got on fine with all councillors but some councillors were a little more difficult to get on in certain instances and circumstances than others. Councillor Hawatt was certainly one that was, A) very interested and involved in compliance type matters, unauthorised building work type matters, small-scale DA type matters, planning controls and he made representations on a very regular basis. As I've said in my statement, I try to assist as much as possible. I committed almost all my advice to, to email and filed all those bits of advice. I sought advice from my staff, informing an opinion when asked questions. The relationship with Hawatt was robust from time to time. He could turn to being somewhat aggressive from time to time. It didn't happen particularly often but it happened from time to time.

And then commencing on paragraph, on page four of that statement, paragraphs 14 to 16, you speak of your relationship with Councillor Azzi. ---Yes.

20 He was elected in 2012.---That's right.

Came on council then. How did you get on with him?---I got on fine with Councillor Azzi. Like, Councillor Hawatt, he made plenty of representations on behalf of his constituents most often in relationship to compliance type matters. Again, unauthorised building works, fines, small-scale development applications, that sort of thing. He, he could be pushy from time to time when the responses weren't sort of, to his satisfaction or they were overly bureaucratic. He liked to find quick solutions to, to his problems, or the problems of his constituents I should say.

30 In your second statement, if I can ask you to go to that in the same volume, you recall an application for modification of a previous approval for development at 23 Oatley Street, Kingsgrove.---Yes.

Is that an event, did that involve an event that you have reason to remember?---Yeah. Look, I, I was asked a question several weeks ago about what happened at a site meeting. It was - - -

40 Can you tell us?---Sure. Just as a little bit of background, there was an application to modify a previous approval for a development. The councillor, both Councillor Hawatt and Azzi showed interest in it and hence my involvement in it. I asked my staff what the issues were. The, the significant issue and, and the, the, the issue holding back the potential approval of the application was that this, the development had already been built so it was seeking some modifications of fairly minor things with exception of the front yard being covered in covered in concrete whereas, the approval required that that area be landscaped. So this was communicated to the applicant.

Was the modification application in part to retrospectively approve the concreting instead of the landscaping?---That's correct.

10 And was there a site inspection?---Yeah. So I attended a sit inspection in, prior to May, 2014, I don't recall the exact date. But at that site inspection, Councillors Azzi and Hawatt were in attendance, as was the owner, he told me he was the owner at least and another party. I'm not sure of their role. at that meeting it was made very clear to me that my role was to find some sort of a solution, some sort of a compromise to ensure that the development could go ahead and be approved.

20 By whom was that made clear?---By Hawatt and Azzi. They both became quite agitated when I said that it wasn't my role to be finding solutions on-site like this. There was, there was a photo in the, in the report that went to council that showed it was 100 per cent coverage of concrete and I said there is no way we can approve anything remotely like this. I urged the applicant to go back to the approved landscape plan. Hawatt made comments like, you know, there are services and things under the, the concrete. It would be very expensive and cumbersome and inconvenient to rip up the concrete. I held my ground. Both councillors were quite dissatisfied with the outcome of that. The meeting was over in about half an hour and we moved on.

30 When you say you moved on, was this to your knowledge taken up by anyone, this event?---I did report that just as a matter of course as I had very frequent communication with the general manager Jim Montague. I let him know about that site inspection. His response was that perhaps it wasn't a good idea to meet with councillors out on-site on my own and he gave his blessing for me not to attend such meetings in future.

I note the time, Commissioner. I was going to just move on now to the question of the witness's relationship with Mr Montague and what happened in 2014 for him to ultimately be leaving in November of that year.

THE COMMISSIONER: Is it appropriate to leave that till tomorrow morning?

40 MR BUCHANAN: Certainly.

THE COMMISSIONER: If you can come back tomorrow morning.---Sure.

All right. We'll adjourn the hearing until tomorrow morning at 10.00 o'clock.

THE WITNESS STOOD DOWN

[3.59pm]

AT 3.59PM THE MATTER WAS ADJOURNED ACCORDINGLY
[3.59pm]