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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 24 APRIL, 2018

AT 2.00PM

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

MR BUCHANAN: If Mr Manoski could be recalled.

THE COMMISSIONER: Yes.

THE COMMISSIONER: Mr Neil. Sorry, Mr Buchanan, you've finished?

MR BUCHANAN: I have finished, Commissioner.

THE COMMISSIONER: Mr Neil.

10 MR NEIL: I have no questions, thank you, Commissioner.

MR ANDRONOS: No questions, Commissioner.

THE COMMISSIONER: Mr O'Gorman-Hughes.

MR O'GORMAN-HUGHES: No questions, Commissioner.

THE COMMISSIONER: Mr Pararajasingham.

20 MR PARARAJASINGHAM: Thank you, Commissioner.

Mr Manoski, so you understand, I – can you hear me?---Yes.

I appear for Mr Stavis. I've just got a couple of questions of you. You gave some evidence last week on 20 April, 2018, I just want to ask you about two aspects of it. This is at transcript page 444 from about line 20. You were just giving a description of the process of assessing development applications and you said this at line 19. "There may have been instances or there are instances where it differs or differs from those controls that would be then subject to a justification. Now I would as an author, if I was comfortable to depart from a control and put my own justification forward but only to the extent that I'm comfortable with." Do you remember giving that evidence?---I do.

30

Can you just explain that for me?---So I guess if the, as the author of the report what recommendations go to council or to a panel would be coming from the director of planning and if there was a departure from a development standard there would be justification in that report, but only to the extent that I'd be comfortable recommending a departure from a development standard.

40

Okay. So that justification would come from you?---It would rest with me.

Rest with you.---Yes.

And it would be informed by the justification offered by the proponent?
---Or council officers.

Or council officers.---Mmm.

Okay.---So the report that I'd be recommending would be prepared by a council officer.

Yes?---The council officer's report would consider anything that's submitted from the proponent, but also their advice and my, my review and my position on, on that as well.

10 So in terms of the actual reasons for justifying a particular application or proposal, is it your position that those reasons may be sourced from, firstly, the proponent or applicant, yes?---Could be.

Another potential source of those reasons for justifying an application or proposal could be from a council officer him or herself?---Correct.

20 Is there a third or fourth category?---Not to my knowledge. Unless there's, unless there's been independent analysis done, commissioned by the council, that would consider any additional information. But effectively all the, all the information that's prepared in support or in response to, or to inform the report going to, to council or to a panel, you'd consider all that information. So regardless of whether it's from a council officer or independent or from the proponent. You have to consider all that information.

So you'd agree with this, wouldn't you, that the reasons for justifying an application or a proposal are not limited to those reasons offered by the applicant or the proponent. Correct?---No. Sorry. I do agree, yes.

30 You do agree?---Yeah, yeah. Sorry.

Just staying with the same page of transcript, line - - -?---Can I, I, I don't have the transcript.

Sorry, do you want, perhaps the witness can be provided - - -

THE COMMISSIONER: Yes. The witness can be given access. It's page 444.

40 MR PARARAJASINGHAM: Do you have that in front of you?---Yes.

If you just look at line 41, I'm just going to ask you about the three or four lines that appear there.---Yes.

This is in the context, again, of you being asked questions about the development application assessment process. Do you understand?---Yes.

You say this in answer to a question from Counsel Assisting, "Would a report go forward to council?" You say, "I would at least give the

opportunity to the proponent to respond, whether they would like to amend their application design, what have you, but if not my position would still stand and my position would formulate the response or would formulate the report itself." Can you see that?---Yes.

Is what you're saying there this, that it was your practice to certainly provide a proponent an opportunity to, if they wanted to, remedy any deficiencies in their application?---Yes.

10 And the point of that is that, so that the proponent can perhaps get their application or their proposal in such a form so that it might be approved, correct?---Correct.

So, if someone was to say to you that the process is such that a developer or a proponent hands over their application or proposal and then the council staff, in their ivory or otherwise tower, assess it.---In their professional judgement?

In their - - -

20

THE COMMISSIONER: Yes. I'd prefer that to be included in the questions.

MR PARARAJASINGHAM: Yes.

MR MOSES: To be clear, Commissioner, are we talking about a development application? Because Mr Buchanan was very precise with his questions at page 444 to deal with this in the context of assessment of development applications because they're different from proposals. So I'd
30 prefer if my learned friend stuck with what Senior Counsel was putting to the witness back at 20 April just to be consistent.

MR PARARAJASINGHAM: Commissioner, I was using what's at page 444 as a starting point. My question is more general than that. I am, but I hear what - - -

THE COMMISSIONER: I'm just a bit concerned if you can be general when, in particular, Mr Buchanan throughout his questions did make a point of distinguishing between, for example, a development application and
40 other, like the spot rezoning, et cetera.

MR PARARAJASINGHAM: No, understood, understood. Let me ask the question this way, Mr Manoski. If someone was to say that a proponent provides a proposal and then the council staff assess that proposal, in the absence of any consultation with the proponent, that is an unreality, isn't it? In terms of the way these things work. Do you agree with that?---It's ordinary practice to, for a council officer, so to speak, to undertake an assessment to identify any concerns or deficiencies, so to speak, with the

application and then give that or present those views to the proponent to give them an opportunity to remedy or to make amendments. It's an ordinary process in development assessment.

Sure. And does that process apply whether we're dealing with a proposal or a development application? Is it the same process?---A proposal or a development - - -

Sorry, a planning proposal?---Yeah.

10

As distinct from a development application?---There are opportunities offered to proponents, yes, during the planning proposal process and development application, the difference being that the proposal, the planning proposal, if supported, council would take the ownership of that as opposed to the proponent, with or without any amendments from the proponent.

20

In terms of, I'll ask you this, is it usual for council planning staff to meet a proponent prior to the proponent submitting his or her proposal?---Planning proposal?

Yes?---Yes.

Do you have volume 9 with you?---No.

Perhaps the witness could be provided that, please. And can you just turn to page 2 of that? Is that headed Rezoning Checklist?---Yes.

30

And do you see the second question is, "Have you discussed your proposal with council strategic planning staff?"---Yes.

And there's a box there to tick that. Correct?---Yes.

So is it the case that to even get past this first hurdle, a proponent is required to discuss the proposal with someone from council in the strategic planning group?---I'd say it's not mandated but it's preferred.

40

And what type of things are discussed at such a meeting?---It would give the opportunity for the land owner or proponent to demonstrate to council what their initial plans or proposal may look like. It may also give, it will also give the council the opportunity to indicate its early views on a proposal as well.

And that is presumably so that the proponent can then consider his or her position and whether any amendments ought to be made, and so forth? ---Prior to formally submitting, yes.

Can I ask you now about, so, following a proponent and submitting a, a planning proposal, and prior to council submitting the planning proposal to the department, you understand?---Yes. Yes.

Is it usual for council planning staff to meet a proponent in between those two, within that time frame?---From, can I just get this clear?

Sure.---From the time that the planning proposal, the proposal is submitted -
--

10

Yes.--- - - - to the time that it's submitted for Gateway?

Yes.---Is it?

Yes.---Yes, it's, it, it's ordinary and it does happen in terms of council officers meeting with development proponents in relation to a planning proposal prior to Gateway.

20

And what types of things would be discussed at that point in time?---So if the, the proposal comes into, is formally submitted the council officers would indicate their views, their, their position on the proposal and again if, if the, the process is a little bit different to the development application because the council during the planning proposal process, yes, would meet with the planning proponent but more so along the lines to indicate what it is comfortable with progressing forward as opposed to a more (not transcribable) process of the applicant in a DA matter.

30

Just moving on. You were asked some questions about the Gateway Determination with respect to the Homer Street property.---Yes.

I'm just going to put some propositions to you and I just want to know whether you agree with this, agree or disagree with this. The Gateway Determination itself, so relying on that, there is nothing preventing council from sourcing more than one additional study. Correct?---In relation to the same matter?

Yes, yes.---I'm not aware of anything legally stopping that, no.

40

You accept that there is no obligation on council to exhibit all additional studies sourced?---Can you just repeat the question?

You accept that there is no obligation on council to exhibit all additional studies sourced?

MR BUCHANAN: Can I take an objection just to require if I might through you, Commissioner, clarification. When my friend says sourced, does he mean obtained by council seeking these reports or does he mean

that council simply has them in their possession, irrespective of where they came from? It might make a difference, I don't know.

THE COMMISSIONER: I take Mr Buchanan's point. Can you reformulate the question to make it clear as to whether it's as Mr Buchanan has suggested, a council-obtained report or in a sense initiated or whether it's any study or report sourced from wherever.

10 MR PARARAJASINGHAM: It's the latter. So there is, there is no obligation, is there, for council to exhibit any additional reports sourced from wherever they may have been sourced from. Do you accept that?

MR MOSES: Sourced from whom, so sourced by whom, Commissioner. It's a relevant point concerning this property.

THE COMMISSIONER: My understanding is that your question now is if the council get a study or a report from wherever, so for example from, including the proponent?

20 MR PARARAJASINGHAM: Yes, yes.

THE COMMISSIONER: And then your question follows on.

MR PARARAJASINGHAM: Yes.

THE COMMISSIONER: So is that the basis of your question?

MR PARARAJASINGHAM: That is, that is.

30 THE COMMISSIONER: Does that - - -

MR MOSES: It does, Commissioner, that deals with clarifying that, thank you.

THE COMMISSIONER: I'm sorry, do you understand?---Can we get, can we get the question then in that respect again?

40 Yes. So you understand the basis of the question, that it's any study or report obtained, including for example a report commissioned by the proponent.---Okay. So there is, excuse me, there is no obligation. The obligation rests with responding to the requirements under the Gateway Determination.

MR PARARAJASINGHAM: And just to shortcut this, you accept that all that is required under the Gateway Determination is an additional study which justifies the proposal?---That's correct.

THE COMMISSIONER: Regardless of its source?---Regardless of its source.

MR PARARAJASINGHAM: Are you familiar - - -

MR BUCHANAN: So sorry, can I just, is that the answer to that matter?

THE COMMISSIONER: I'm sorry?

10 MR BUCHANAN: Can I just check whether the witness responded to the additional part of the question, regardless of its source?

THE COMMISSIONER: You did, didn't you?---Regardless of its source, it's an additional study.

MR BUCHANAN: Thank you.

MR PARARAJASINGHAM: Are you familiar with JBA Urban Planning?
---Yes, I am.

20

You understand that recently they've merged with two other companies and they're now known as Ethos Urban?---I am.

But as at 2014/15 they were JBA Urban?---Yes.

And you understand them to be an expert planning consultancy? You're nodding?---Yes, yes.

30 You understand that they were involved in preparing the original rezoning and concept plan at Barangaroo?---I, I, I knew they were involved but whether they were the principal consultant, I don't know.

Okay. You are aware that they were involved in planning for the Macquarie University campus?---No.

Does that sound right, though, to you?---I don't have a view.

You don't know. You accept that they have been involved in major projects, haven't they?---Yes.

40

And they are a reputable organisation, can I suggest?---Yes.

Mr Manoski, do I take it that there's no obligation for council to keep the government department – sorry, I withdraw that. So following the Gateway Determination, is it the case that there is no obligation on council to keep the government department abreast of how and in what ways they are satisfying the conditions?---That's correct.

Can you, have you still got volume 9 in front of you?---I do.

Can you just turn to page 111, please? Just before I take you to that, one of the conditions of the Gateway Determination was a preliminary acid sulphate soils assessment to address the requirements of Section 117 direction 4.1 acid sulphate soils. Do you recall that?---Yes.

10 Just briefly can you just explain what that is about? Before I take you to this document?---It's just ensuring that the soil conditions on that particular site will enable the development as proposed to happen without any undue environmental consequence.

Okay. Now if you go to page 111, do you see that is an email, there are two emails. I'm directing your attention at one third of the way down. An email from a Ms Lisa Ho to Assad Faker. Do you see that?---Yes.

20 And relevantly, it says, "Hi Assad", and then second sentence reads, "One of the conditions of the Gateway (prior to execution) is the submission of a preliminary acid sulphate soils assessment to address the requirements of Section 117 directions."?---Correct.

"You indicated an ASS report/assessment was initially submitted with the development application (DA 468/2011) with the subject site and this report may be sufficient." It then goes on, "Could you confirm whether acid sulphate soils report for DA 468/2011 would adequately address the department's requirements." Do you see that?---Yes.

30 So this, do you accept, this would appear to be an email from the member of the council planning staff to the, described as the, as the owner or the proponent inquiring of whether a report that he sourced satisfies a Gateway condition? Correct?---Yes.

And so it's an inquiry as to whether a report that the proponent source satisfies the Gateway condition and – I'll withdraw that. Now, is there anything, do you see any problem with that?---I don't know who Assad Faker is or, or his - - -

40 MR MOSES: If I could just object. I'm not sure what the question's aimed at. Problem with what exactly?

MR PARARAJASINGHAM: No, I'll clarify that.

THE COMMISSIONER: Do you want to clarify that?

MR PARARAJASINGHAM: I'll clarify. So, just to accept for the moment that Assad Faker is the developer of the Homer Street property. Just accept that from me. And Ms Ho is a staff member in the Urban Planning Department of Canterbury.--- Yes.

And I'll describe what the content of the emails is. Do you see any difficulty with a council staff member making this particular inquiry of the developer in order to satisfy a Gateway condition?---All that she's asking is, does it address the department's requirements. He - - -

But he - - -?---His, his answer is - - -

THE COMMISSIONER: Let him finish.

10

THE WITNESS: His answer is effectively, in the following email, would be sufficient and I guess it would be up to Lisa or whoever's the assessing officer to make a determination whether it's, it is adequate.

20

MR PARARAJASINGHAM: But is this not an example of someone effectively sourcing out an inquiry to be made an inquiry to the developer that is to make pursuant to the Gateway Determination?---Again, there's nothing that's out of the ordinary with that. The, the planning proposal, sorry, the proposal submitted to the council would include a raft of information which, which is required under the guide prepared by the Department of Planning, and again, it's, it's dependent on the, the complexity of the site and Do you have any complexity of the development. The, it would be at the discretion of the council to, one, consider those reports prepared by the proponent and it's, it's quite, the acid sulphate soils are quite mechanical in terms of it's a very technical document, and if the proponent is happy to, to rest on, on that information, I guess it will be then the responsibility – as with, with all development applications, all planning proposals – to rest with the council officer to be satisfied that it's, it will meet the requirements of, of the Gateway and adequate information for the council officer to be making any report or, or merit assessment.

30

So, is your answer that you see nothing improper in this inquiry made of the developer by the council staff member?---I don't.

You don't see anything improper? No, I'm not, I just want to know what your answer is.---No. I, I, I don't, I don't.

I have nothing further. Thank you, Commissioner.

40

THE COMMISSIONER: Thank you. Mr Moses.

MR MOSES: Thanks, Commissioner. Mr Manoski, I just want to ask you a few questions. You've been taken in to some detail by Counsel Assisting to the Gateway Determination, which is at volume 9 of the brief of evidence. I think it's page 107, which is Exhibit 2 to your statement, which is Exhibit 53. Can I just ask that you go point 1 on the page, the third dot point. Counsel Assisting asked you questions in respect of this issue of an additional study. Can you see that?---Yes.

In your statement of evidence, which is Exhibit 53, can I ask that you turn to that now for me, please? It's the first statement.---Yes.

In that statement, you address the issue of the report from Olsson Architects at paragraph 21. Do you have that in front of you? I hope I've referred you to the right statement.---21 or 24?

10 Paragraph 21 when you say that you review the report.---Oh, reviewed the report. Yes. Correct.

And you go on to say in paragraph 25 that if the Olsson report was the additional study and was not publicly available then this would be a breach of the condition that was in the Gateway Determination.---Yes.

Correct?---Yes.

20 And you then go on to say that you understood a separate study was prepared by JBA, March 2016, and was placed on exhibition with the planning proposal. That's paragraph 25.---Yes.

You weren't in the department, were you, when this occurred?---No.

No. And in respect of JBA, at the time that you prepared your statement were you aware that that separate study had been commissioned by the proponent?---I was not.

30 No. And in relation to the Gateway Determination that I've just taken you to the conditions in 1, the third dot point, did you envisage in relation to that Gateway Determination that if the council obtained an additional study that accurately represents and addresses the impact of future development on the character of the local area, that it was to be the subject of the public exhibition?---That's correct.

40 And they would have to have some very good reason – I withdraw that. The director of planning would have to have some very good reason for telling his staff in effect to suppress the publication of that report but in fact to publish a report which the developer was putting forward in support of the property. Correct?---I agree.

So if the director in effect gave that direction or told staff to do that, he's going to have to have some pretty good reasons to explain why that was done.---I agree.

And in the world of planning as it is with medicine, it is not good practice to go to different doctors, as it were, to get the answer you want to a particular problem. Correct?---Correct.

The role of the council is to get the right answer in relation to a proposal. Correct?---Correct.

Not the one that suits a particular person.---Correct.

And if you were to depart from the study that council obtained, one would think there would need to be a paper trail, that is some sort of reasoning in writing that explains why the director took that view. Correct?---Yes.

- 10 Thank you. Now, in relation to the questions asked by my learned friend for Mr Stavis, he I think asked you some questions that at the time that a proposal gets put before council or a development application, I hope I do justice to his question, I think he was putting to you that there is nothing wrong with a council officer informing the applicant or the proponent as to the difficulties with their application or proposal. Do you remember that line of questioning?---Yes.

And I think you agreed there was nothing wrong with that. Correct?
---That's correct.

20

But do you agree that there would be something wrong with in effect planning staff in effect coming up with and spending time coming up with alternate solutions for a developer or a proponent?---Absolutely, yes.

Because that is not their job, is it?---No.

No. Thank you. I have no further questions of the witness. Thank you, Commissioner.

- 30 THE COMMISSIONER: Can I just ask, you said you agreed that it would not be part of their job. Is there any other reason why it would not be appropriate?---It's not, it's not their – I guess the responsibility of a planning officer is to identify what the best outcome for a site is, size-wise, density, design, what have you. It's, it's not their role to be amending or massaging, so to speak, a proponent's proposal, their role is to assess their proposal, provide any concerns, and then it's up to the proponent in a development application sense to amend and if they choose not to amend it would be assessed on the information before the assessing officer.

- 40 Right. Thank you.

MR MOSES: Just picking up on that question the Commissioner asked with the Commissioner's leave.---Sorry.

Otherwise then in effect the town planner, who is meant to be an umpire, becomes a player on the field basically, they're basically then going to have to assess their own suggestion that they've made.---My view is you'd start losing your objectivity at that point.

Yes, thank you. I have no further questions, thank you, Commissioner.

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Just on the same subject, if I may, Mr Manoski, when you say it's the job of the councillor planner to achieve the best outcomes in respect of the various planning features, you mean, I take it, within the regulatory framework provided by the planning instruments that apply?

10 ---Absolutely, absolutely.

So I just want to come back, then, to this expression that's being used in the last few questions about planning staff coming up with solutions. And I ask you specifically, in your opinion, was it in 14/16, if it's any different then from now, the job of planning staff to try to find ways in which development proponents could get around planning controls?---I would say absolutely it's not their role, an assessment officer's role.

20 So if a particular development standard or planning control posed an impediment to a development proponent's proposal, be it a DA or a submission for a planning proposal, did the planning staff at council have a role to play in trying to help the developer get around or, to use my friend's word, massage that particular control or submission or application so as to prevent it appearing that there was a contravention in as much as the application of submission came up against a planning control?---You're asking if that's part of the role of an assessment officer?

Yes, in council?---Absolutely not.

30 You say absolutely not. Do you want to speak to that?---I just feel very strongly that it's not, the role of the assessment officer is to do just that, is to accept a proposal from a proponent, to assess it within the bounds of the Act which is the Development Control Plan, the Local Environment Plan, any state, any regional planning policies or strategies and it's within those bounds to make an informed recommendation, whether it's to a delegate of the council itself or to a planning panel. They're not there to find solutions for proponents.

40 Just to complete the circle on this, the other body that made decisions was councillor comprising of councillors when it came to planning proposals and development applications that were determined by councillors?---Mmm hmm.

Was it the role? You can answer this any way you like?---Mmm hmm.

Did you see it, do you see it as the role of councillors when they're the consent authority to provide solutions to developers when development

controls pose an impediment to maximising lot yield, for example?---No. I don't see it as their role.

10 And if council staff through the director of city planning put up a report saying that in respect of, let's say, a development application it exceeds limits imposed by development controls, did the council comprising of the councillors have a role to play in solving that problem? I appreciate that we're now injecting the political decision makers into the equation and so that's why I'm asking you whether it's a different situation?---I guess at that time, again, time has moved on and the councillors have no role in the assessment of the DA. I'm talking about applications, sorry. And for the councillors to, I disagree it's the role of councillors to inject themselves to look at options or solutions for a proponent with a view to getting an approval. My personal view is that the role is to, of a councillor, is to consider the report that's provided to them by their council staff, consider any recommendations and supporting information and make a decision whether to agree with that or, again, it's within their right to disagree with that as well, as the decision maker. But not there to look at options or to draw options or to find solutions for a private party, so to speak.

20

What if the council is comprised of a majority of councillors who could be described as pro-development and wanted to see the controls loosened in their application to particular development applications?---So, my view on that would be, my advice to the council would be if there is a change in approach towards being more pro-development, in your words, rather than looking at development on a site by site ad hoc basis, so to speak, which would require rezoning by rezoning. We would, we as a council, would need to look at the planning settings. So, you'd turn your mind to increasing density, increasing height, identifying the most appropriate areas for where the additional density should go rather than doing it on a site by site basis. So, it's more undertaking a more strategic planning long term view on how an area should, at the discretion of council, wants to see change in its area. My advice would be to looking at it on a more broader strategic planning basis as opposed to a more site specific basis.

30

Is that a process that would involve greater transparency as to what is occurring or what is going to occur or what council wants to occur in respect of a particular precinct, for example, than determining it on a lot by lot basis?---So, my view would be yes, one in terms of you can undertake ongoing or extensive community consultation.

40

As part of a process of review and controls?---As part of a process of review, that's right, and it also gives you greater certainty from a community perspective in terms of how an area will change, as opposed to the ad hoc approach.

Commissioner, that's all my questions but I have expanded the subject matter of the questioning, it may be, Commissioner, that parties might have

a question that they want to ask in light of that and so at the risk of blowing the matter out even further, I'd invite you, Commissioner, to invite - - -

THE COMMISSIONER: Yes. I'll just ask are there any questions following on from those questions? All right. Mr Manoski, I think you now are excused.

MR BUCHANAN: Excused, is my application.

10 THE COMMISSIONER: Yes, you're excused. Thank you very much.

THE WITNESS EXCUSED

[2.43pm]

MR BUCHANAN: The next witness, Commissioner, is Gillian Dawson. Ms Mitchelmore will take this witness.

20 THE COMMISSIONER: Thank you, Ms Mitchelmore. Ms Dawson? Will you take an oath or an affirmation?

MR MOSES: I'll just thank my learned friend for reminding me that there's an application that we'd like make in respect to section 38, Commissioner. Thank you.

THE COMMISSIONER: You've had a discussion?---Yes.

10 I'll just again, emphasise that the exception to the protecting given in the declaration is if you give any untruthful evidence during the public inquiry. That can for evidence for an offence of give false and misleading information to the Commission.---I do.

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

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

MS MITCHELMORE: Thank you, Commissioner. Your name is Gillian Dawson, is that right?---It is.

40 You are currently employed at Inner West City Council in the role of manager (strategy and policy). Is that right?---I am, yes.

And you've been in that role since 10 July, 2017?---Yes.

Before your employment with the Inner West City Council, you were employed by Canterbury City Council?---No. It was Leichhardt Council.

I see. And then before Leichhardt Council, it was Canterbury City Council?---Yes.

Is that right? Leichhardt Council, did it form part of a merger to become the Inner West City Council?---That's correct. Yes.

And so your employment then continued from Leichhardt to Inner West City Council?---But in, but also in a different role.

I understand. Ms Dawson, you provided a statement to investigators dated 28 March, 2018, is that right?---That's correct.

10

Can I provide you with a copy of that statement?---Thank you.

And can I take you, Ms Dawson, to paragraph 27 of that statement?---Yes.

Was there a correction that you wanted to make to that paragraph?---It should have been November, 2014.

I see, rather than November, 2015?---Yes.

20 That's in the first line of paragraph 27?---Yes.

Can I take you back then, to paragraph 4, Ms Dawson, of that statement. You say you were employed with Canterbury City Council from 17 February, 2014 as a manager (land use and environmental planning). Is that right?---That's correct.

Noting that you began, and I think you can see this from paragraph 3, that you began with Leichhardt Council on 18 January, 2016. Are you able to recall with you finished your employment with Canterbury City Council?
30 ---Yes. I resigned on 19 December and I finished on, would that have been 14 February, the Friday before the Monday.

Oh, I see. So just before you commenced with Leichhardt?---Yes. Correct.

The Friday before you commenced on the Monday?---Yes.

I see. It's the case, Ms Dawson, that you've worked in the planning area, including with other local councils since 1995?---Yes. Prior to, I was working as manager of environmental and land use planning at Leichhardt
40 Council for three years and prior to that, at Holroyd Council and manager (strategic planning) from 2000 to 2008.

Thank you. You indicate in paragraph 4 that in your role as manager (land use and environmental planning) with Canterbury City Council, you managed various teams. Is that right?---That's correct.

And you, in turn, reported to the director of city services?---Or city planning, I can't recall. Yes.

Yes. I was about to ask whether you also knew of that as director (city planning)?---Yes.

When you commenced with the council, the director was Mr Marcelo Occhiuzzi. Is that right?---That's correct.

And he resigned in October, 2014?---Yes.

10 And then from early 2015, Mr Spiro Stavis took up the position. Is that right?---He actually commences at the council from, from the beginning or March, I think. In terms of at, at the office.

I see. Now, in the period between Mr Occhiuzzi's departure and Mr Stavis starting in the role of director (city planning) is it the case that you acted in that position?---Yes, that's correct, I was the acting director.

20 For the interregnum period between the two officers?---Yes, although I must admit there was a period of time where I was told I wasn't the acting but I still continued in the role in terms of the delegations, but it was sort of split between myself and George Gouvatsos.

I see. All right. Can you recall if in that period, when that was, did you start and then come to share it and - - -?---It, I think it started to occur in January, or sorry, I think I removed the acting from my emails but I was still in effect the acting.

I see.---And I was paid as acting.

30 I see. And at whose direction did you remove the acting from your - - -? ---I think that came from the general manager.

Was any particular reason advanced for that change?---No.

40 No. All right. In relation to the teams that you managed, the first of them was the urban planning team. Are you able just to outline for the Commission what work that team performed?---So they looked at planning, well, mainly it was around the strategic planning. So they looked at section 94 planning, which is you know, developer contributions, they also looked obviously at planning proposals and developing strategies, undertaking relevant studies and also looking a Development Control Plans. So it was all around that strategic planning, all the work involved in developing that, that sort of work.

Can I take you to paragraph 24 of your statement. You say that part of "our role," and I interpolate role of this team, is to consider the impacts of proposals, strategic merits and current controls over that area. When you

refer to proposals, is that planning proposals?---That's planning proposals put forward by, by developers, as opposed to ones initiated by council.

I see. And when you say strategic merits and current controls over that area, is that in reference to the proposals that you might be assessing at any given time?---Yes.

10 Right. And when you refer to strategic merits, what do you mean by that?
---I mean for example if someone was wanting to rezone industrial land to residential then a key issue for us would be the impact on the employment lands or economic development within the area, so we would actually probably review or undertake some employment lands or economic studies to justify whatever was being proposed. So it's a case of we would, we would look at things, you know, we would prefer to be it from an evidence base as opposed to just ideas coming forward.

And when you're looking at the concept of strategic merits, you're looking at it from a whole of the local government area. Is that right?---Yes, yes.

20 So not just focussed on specific lots. No, ad hoc, ad hoc rezoning is something that you would try to move away from because you need to see things as a bigger picture and have a strategic approach with the entire LGA.

And you've mentioned ad hoc rezoning. In considering ad hoc rezoning would that require you to consider the broader strategic merit of such a rezoning?---One of the things we would have to consider as part of any planning proposal is we'd have to put forward justifications and you would normally try to justify it in terms of how does that sit maybe with other strategies of council, maybe it's a Residential Develop Strategy or whatever,
30 you would try to put it in context of those, those larger issues.

I understand. You refer also in paragraph 24 to current controls over the area. Are you referring there to the Canterbury LEP and DCP?---Yes.

Development Control Plan. And they'd be amended from time to time.
---They would be, either by council or through planning, private planning proposals.

40 When you commenced at the council did you have previous experience in your roles with other councils in terms of making amendments to an LEP in respect of a particular site or sites?---Yes.

In terms of the approach at Canterbury Council were you give any briefing when you started in relation to the procedures at Canterbury City Council for seeking amendments to the Canterbury LEP?---Not per se, but obviously I was, when I came on board there had been a Residential Development Strategy which had been adopted by council and for example that was

leading into a number of proposed zoning changes, so obviously I had to pick up the history of what was already in train, but otherwise you would also go by the guidelines put out by the Department of Planning. I mean there are sort of guidelines as to, to what are the processes you should follow.

Yes. And in your employment with previous councils, you were familiar with those guidelines?---Yes.

- 10 Did you sit down with Mr Occhiuzzi to get an understanding of the processes that were employed at Canterbury City Council?---I didn't think the processes were really any different, it was just moving forward with the various strategies that were already, had been adopted by council and what that meant in terms of moving forward with the LEPs.

At around the time that you started with the council were you provided with the Canterbury City Council Code of Conduct?---Yes.

- 20 Did you receive any training in relation to the code?---I can't recall per se but in most councils we would, as part of an introduction to each new council, I think there may have had to be an online process for that in terms of confirming I'd read it.

Okay, I see. All right. Can I just take you to that document, it's in volume 2, perhaps if Ms Dawson could be given volume 2? It starts at page 38? ---Mmm hmm.

No, 39?---Yes.

- 30 And can I just take you, Ms Dawson, to page 44 which sets out the key principles, and these are principles that you familiarised yourself with in reviewing the code. Is that right?---Yes, if this was the code. Yes. Yes.

And in particular, under the heading 'Impartiality' there were key principles about making decisions on merit and in accordance with statutory obligations when carrying out public business. Is that right?---Yes.

- 40 And then can I take you to page 50 of the code? There's a heading there, 'Development Decisions'. Pardon me a moment. There's a reference in 3.10 to ensuring that development decisions are made, are properly made and that parties involved in the development process are dealt with fairly. Can I ask what your understanding was of the word fairly in that context? ---I mean, to my mind it would be that you're not dealing, you're not giving favouritism to any one particular party, that you would be basically assessing and looking at the applications or proposals based on their merit.

I see. And then in 3.11, there's reference to, "In determining development applications you must ensure that no action, statement or communication

between yourself and applicants or objectors conveys any suggestion of willingness to provide improper concessions or preferential treatment.” I note that refers only to development applications. Is that a principle that you also applied in relation to planning proposals?---Yes.

Thank you. That volume can be returned. Ms Dawson, I’ve just been handed something that indicates that you did attend code of conduct training on 19 March 2014. Does that sound - - - ?---It could be, yes.

10 And that you signed a document indicating that you understood the code of conduct and undertook to perform any role in accordance with the code. Does that jog your memory at all?---Not particularly but we have code of conduct training at most councils so I couldn't recall which one. We just done each one online and had to go through it.

Thank you. Now, can I take you back to your statement, Ms Dawson, at paragraph 5? You’ve identified the persons within the urban planning team, so there was the team leader Mr Warren Farleigh, planning officers Mr Tom Foster, Mr (not transcribable) and Ms Lisa Ho. So, they were the permanent
20 officers within the team. Is that right?---Yes. Tom Foster wasn't there when I first commenced but he did join us shortly after if I do recall correctly.

I see. And from time to time he would get contracted in to assist if there was a lot of work on at any particular time. Is that right?---Yes. That's correct.

Now in your statement at paragraph 19, you say that from your observations and interactions with members of the planning team, is that the urban planning team there that you're referring to?---In relation to this, yes.
30

Yes. And you believe they were very effective even though there was a lot of work, and you believed their decision making skills, application of relevant laws, rules and other controlling elements were considered appropriately in relation to planning proposals. The views you there express about the officers in the team and their abilities, were they views that you had at the time you were employed with the council?---Yes.

And that was based on your interactions with those officers?---That's correct.
40

Now in terms of those interactions, Mr Farley was your direct report as the team leader?---Yes. Correct.

And he was in turn the direct report for the officers Mr Foster, when he arrived, Mr (not transcribable) and Ms Ho?---That's correct.

And any other contractors?---Yes. Although one of the contractors used to report directly to me, I think, yes.

And why was that?---She was just working on a, on a major project and at that point I think it was easier for her to report to me.

And it's the case that although you didn't just liaise with Mr Farley, you dealt with, regularly, each of the individual officers?---That's correct.

Both face to face and in writing?---Mostly face to face.

10 I see. In relation to email communications, was there a practice within the team at the time you were managing it in terms of which officers would be copied in for communications with applicants for planning proposals?---It was usually, I would always include Warren Farley as the team leader and then it would be whoever was dealing with that particular planning proposal, would also be CC'd.

And would the planning officer involved in, or with responsibility for the proposal know to copy you and Mr Farley? Was that the practice?

---Generally, yes, I think. Yes.

20

And what about communications with consultants who were retained to do work for the team?---Once they'd been commissioned, we would usually advise them who were the main contacts for them to communicate with. It may not include me, but it would be the person who was responsible for running that. Yeah.

Was the director of city planning usually copied in on emails with applicants and consultants?---Not generally, not during the day to day process, no.

30

If he was communicating with such persons, applicants or consultants, did he usually copy you and Mr Farley on his correspondence?---I'm aware that he would do it sometimes, yes. Whether he did it all the time, I don't know.

No, of course. Was there a practice within the team for who would be copied in to communications with Mr Stavis?---Depend what the nature of the matter was.

40 What about planning proposals?---It may be that we circulate maybe to Warren and Spiro and myself, Mr Stavis, but it would, it would, I think it would depend on an individual basis of what was appropriate, like, maybe something had come in and we were trying to get a bit of an impression of what everybody was thinking about something, then we may communicate to everybody at the same time. It would vary.

Yes. It wasn't a general practice, it would depend upon - - - ?---No.

- - - the circumstances in each case?---Yes. Yes.

What about communications with councillors in relation to planning proposals? Was that done primarily by the director of city planning, at the given time, Mr Occhiuzzi or Mr Stavis?---Yes. The councillors were really supposed to go through to the director.

10 And in relation to such enquiries, to your recollection, were you often copied in on that sort of communication if it was relevant to planning proposals?---It may come to me if he was wanting, or the director was wanting me to provide a response that he could then provide back but if there was no response required from me, I may not be, be advised or CC'd.

All right. Now, Ms Dawson, just briefly, there were two other teams that you, as manager, were responsible for. The first was the GIS team.---The geographical information systems. They did all of our mapping.

I see. All right. And then the environment team.---That's correct.

20 Are you able just to explain the environment team?---So they would be looking after education programs in relation to the environment, maybe with one of the bush-care groups. It would be looking at environmental policy. It would also look after corporate matters like trying to get maybe lowering our energy use or, and things like that. So, it was all, all based around that environment area.

All right. You refer in your statement, at paragraph 4, to the development application or DA team, which was managed by Mr George Gouvatsos. So that was a separate team?---Yes.

30 So that wasn't within your silo? That was - - -?---That's correct.

40 That was Mr Gouvatsos' silo, as it were? Was it the case that your urban planning team worked closed with Mr Gouvatsos' team or were they fairly separate?---They were fairly separate unless there was a matter that we consulted on. Like, it may be a case of when they have some planning controls that they were saying weren't working for them, so they might come to us and say, maybe when you're looking at your Development Control Plan, obviously, maybe we can look at maybe doing a bit, bit of work around that. But also, I guess, we worked within the same area, so we, we were always talking with each other and that was not necessarily about the same matters. Yep.

I see. In your role as manager of land use planning, did you regularly attend meetings at council or committee meetings at council?---Quite regularly. Not, I wasn't necessarily on the front desk but I would often attend to see what was happening. Or if there was a specific matter which was quite complex, then I might, might be asked to attend in case they needed response to any questions.

I see. So you weren't required to attend?---No.

But you'd attend, sometimes for interest and sometimes in relation to specific matters on the agenda for council where your assistance might be required?---That's correct.

So, did you attend meetings at the City Development Committee of council?
---Yes. From time to time.

10

All right. Can I just ask you some questions about the general manager, Mr Montague?---Ah hmm.

In your role as manager of land use planning, are you able to tell me the level of your direct or frequency of your direct interaction with Mr Montague in that role?---Quite limited. Not much.

20

Would you say it was weekly or daily, monthly?---It depended, maybe it might depend on the, on the nature of the projects we might have happening at that time or was I asked to attend something like a mayor ex, which was if the director couldn't attend, which was a meeting usually before what, I think what was going to go up to council meetings. So, I might attend something like that and, but generally, I wouldn't really see him on a daily basis. No.

All right. Outside of your attendance at council meetings or committee meetings at council, did you have much direct interaction with councillors?
---No.

30

All right.---Sometimes we would get phone calls but not really, no.

All right. Can I take you then, I just want to ask you some questions about Mr Occhiuzzi. And can I take you to your statement at paragraph 8. You indicate, you state your belief that he had a good knowledge relating to planning commensurate with the role of director and he performed well in that role. And that was at the time based on your interactions and observations of him?---Yes.

40

What was the frequency of your interactions with Mr Occhiuzzi?---Quite frequent. Our offices were almost adjacent to each other, so the three, there were three offices and the PA to the director, so we were just a bank, so the door was always, he was an open door person.

All right. So at least daily?---Absolutely, yes.

If not more than once daily?---Yes.

And he was open to you approaching him without any need for formality of meetings or the like?---That's correct.

You've also indicated that, I think this is in the second sentence of your statement, you're able to approach him and put forward staff ideas and proposals. Is that right?---That's correct.

So he was quite engaged and happy to engage with you. Is that right?
---That's correct.

10

And with other members of your team?---Correct.

You refer in paragraph 9 of your statement to an awareness from conversations with Mr Occhiuzzi of there being what you refer to as substantial pressure for planning related matters to have shorter turnaround times. Did Mr Occhiuzzi tell you whether that pressure was coming from any particular persons?---I got the impression it was some councillors but I don't know if he actually said to me which councillors, but I think we used to surmise who they might be, but he never really said.

20

He didn't identify - - - ?---No. No.

Who did you surmise that it was?---Probably Councillors Hawatt and Councillor Azzi.

And on what basis did you reach that?---I think if you went to council meetings or attended council meetings then it was apparent that maybe certain councillors had more interest and involvement in planning and seemed to be pressing for certain outcomes, maybe, and also I did, I remember attending a briefing with, for councillors, like a workshop, and again I would suggest that those two councillors were prominent in terms of their, what they wanted to see.

30

So, again, this is not something that you obtained directly from Mr Occhiuzzi, he did not identify who the, who the source of the pressure that he referred to?---No, no.

It's just an understanding that you had on the basis of your observations?
---Correct.

40

Of councillor behaviour in this period. Is that right?---Yes. Correct.

Did the pressure which Mr Occhiuzzi discussed with you relate to only the need to turn DAs around quickly, or did it also relate to the outcome of particular DAs?---I was really only aware of the timeframes as being the key issue. I wasn't necessarily aware of a demand for specific outcomes, no.

And is that the same in relation to planning proposals?---At that point, probably. We hadn't really progressed too many, I guess the only one that we'd started progressing was Homer Street as well as the LGAY planning proposal arising out of the Residential Development Strategy, but I also know that there was some pressure around wanting us to work on the Development Control Plan.

So that was independent of the planning proposals?---Yes. Yes. And that was, in particular, I think they wanted us to look at Canterbury Road.

10

When you say, "They wanted us to look at Canterbury Road"?---
Councillors, councillors.

Councillors. Was that the council as a whole?---Again, I think a lot of that came from just maybe a few of the councillors, but there was not, I mean, to some extent yes, there was a need to look at Canterbury Road. We did recognise that.

20 Yes. What was it about Canterbury Road that needed to be looked at?---I think in particular it was around, can we look at introducing laneways to the rear, so, running parallel with Canterbury Road to provide access to, you know, rear lane access to any residential development that was occurring and also around the transition between the buildings on Canterbury Road and the lower density residential dwellings to the rear.

30 And were they matters that came up in the context of consideration of the Residential Development Strategy, to your knowledge?---Not, not really, to my knowledge. But I wasn't there for the Residential Development Strategy. But it did come up following that, because I know that we were due to, I think – I think a report was put up and then it was deferred and nothing, it didn't get any further than that.

Ms Dawson, can I ask you now some questions about Mr Stavis?---Ah
hmm.

40 Are you able to indicate what the level of your frequency of interaction was with Mr Stavis?---Reasonably frequent in terms of his office was virtually adjacent to my office, so again it might be a case of, you know, putting my head around the door and if I had an issue just say, "Have you got time now?" But in terms of more formal meetings, and it might only be in relation to specific matters, and they might be programmed in the calendar.

Are you able to compare or contrast your level of interaction with Mr Stavis as compared to Mr Occhiuzzi?---I think Marcelo would engage with us and probably listen to us a bit more, whereas sometimes when we were looking at, talking about Mr Stavis then you sometimes wondered whether he agreed with you or took on board what you were saying. There wasn't that same engagement.

I see.

THE COMMISSIONER: Did you know Mr Stavis before he started?---No.

MS MITCHELMORE: What was your assessment of Mr Stavis's level of knowledge of strategic planning concepts and issues?---I, I didn't, I didn't believe that he had as much knowledge, for example, as other directors that I've worked with. I felt that he, he maybe had more knowledge around
10 development applications, and so I didn't think that it was at the same level from a strategic planning perspective, in terms especially of the – well, the, the processes and, and things like that. And when I look at strategic planning, for example, I put quite an emphasis on, on it coming from an evidence base and justified.

I see. Did you feel that you were able to engage with Mr Stavis where you had a difference of opinion? Were you able to challenge him about, about his views?---Look, I would challenge. Whether those, that got taken on
20 board, I'm uncertain.

Right. And similarly, he would challenge you from time to time?---Yes, possibly, yes.

Do you have a recollection of that?---No, I'm just trying to think. He would sometimes fire back in an email that he disagreed with me. So from there, yes, you would say that it was a challenge.

Yes. And, of course, it's possible that different views can be taken as to the application of strategic planning policy and the merits of particular planning
30 proposals and their justification, is that right?---Yes.

Did you ever have any exchanges with Mr Stavis in relation to a planning proposal as a result of which you didn't consider he was acting consistently with the role of council officers to assess proposals in accordance with their merit?---Well, two in particular, obviously, which is the 21-23 Homer and 998 Punchbowl Road.

Are they the only two that you can recall? I'll come to those in more detail. I'm just wondering if you can identify any others.---I guess to some extent
40 it's – I mean, probably it's not in my statement but I'm just thinking on this – is the fact that at one point we would be proceeding with planning proposals and at the same time the proponents have actually lodged development applications. So it was like there were two things running along at the same time, and so what do you – should you not be looking at the development application if the planning proposal hasn't yet gone through? It was like they were trying to achieve by clause 4.6 what they'd also lodged as part of their planning proposal.

And that was a matter that you raised with Mr Stavis. Is that right?---I think that it was a case of he was aware that we had concerns that the planning proposal hadn't gone through, we hadn't even got a Gateway Determination maybe, that, but at the same time the assessment was occurring as a clause 4.6.

10 And can you identify why you had a concern about that?---Well, with Canterbury Road in particular the concern was that a number of properties that had been included in the Residential Development Strategy LEP, as consequence of an RMS objection we were required to undertake a traffic study for Canterbury Road, and what was happening was that it felt that applicants were trying to bypass the larger Residential Development Strategy and the need for a traffic study by lodging individual planning proposals with us.

I see. I think one of those might be 998 Punchbowl Road, which was on the corner of Canterbury Road. Is that right?---That didn't require a traffic study.

20 I see.---But I think like five, is it 570?

570-580 Canterbury Road.---Yes. I think that, that one was supposed to wait until there was a traffic study by RMS.

Just in terms of the sequence of planning proposals and development applications - - -?---Yes.

30 - - - just more generally, why in your view does the planning proposal need to be determined in advance of the development application?---I guess that comes around to the viewpoint what should clause 4.6 be used for. Is it, I mean I'm not in the development assessment team but I think we'd had discussions within our team that if you're asking for at least two storeys additional height, that is not an inconsiderate increase in heights, and, and they had also lodged a planning proposal with us to do that very same thing.

I see. Was this a matter, you say within "Our team." Was that within the urban planning team?---Yes, yes.

40 Did you have any discussions about that with Mr Gouvatsos from the DA team?---We had, we would speak from time to time I believe about the, the issues before us or with the individual planning officers but yes.

But just in relation to that specific issue of - - - ?---They were aware because I recall that I think someone initially put their head in my office and said, "Isn't there a planning proposal in for this site?" Yes.

So where it was occurring the DA team and the urban planning team might have some interaction - - -?---Yes.

- - - in relation to that. Just pardon me a moment. All right. Can I take you to paragraph 11 - - -?---Ah hmm.

- - - of your statement. You refer there to discussions with, this is in the second sentence on, discussions with Mr Stavis where he indicated to you that his contract was initially only for 12 months and that he had a long list
10 of KPIs that he was required to meet for his contract to be extended beyond 12 months. And you, did you ever see, KPI, key performance indicator?
---Yes, yeah.

Did you ever see the KPIs about which Mr Stavis was talking to you?
---No, no.

You indicate in the last sentence that you were led to understand that both the general manager and councillors had input to those KPIs with the objective being to reposition council to be more pro-development. Now, is
20 it the case that you came to have that understanding by reason of the conversations with Mr Stavis?---that's correct.

Can you recall what Mr Stavis said to you that gave you that understanding that his KPIs had that particular objective?---Obviously there were issues that my team were going to be responsible for in terms of him achieving his KPIs and I think that that was why he, he was talking about it to me, and it was just general along the lines of we should be more facilitative in terms of helping applicants to, you know, to, I guess in helping them to get their
30 desired outcomes, not necessarily, you know, maybe it's with DAs to maybe reduce the time taken and maybe allow a little bit of leeway.

And, sorry, what about planning proposals, just your area?---Planning proposals in terms of my area, it was a case of just moving them forward but he didn't necessarily, at that point because he'd only just come on board, I don't think he had a good understanding of all the planning proposals that we had before us, so he didn't go into the details of the planning proposals at that stage.

I see. But the idea of moving them forward was something that, in the
40 course of discussions, he, with you, tied to his KPIs. Is that right?---That's correct.

And did he indicate to you, and I'm just focused on the last sentence of your paragraph 11, did he indicate to you how he came to understand that the general manager and the councillors had had input with that particular objective in mind of repositioning council to be more pro-development?---I just got the impression that this is what, I believe there must have been a

meeting with the general manager as part of that process, but he didn't spell out to me but that was the general impression I got.

And so from what he said to you, your understanding was he believed that his achievement of KPIs set for him would realise and underlying objective of repositioning council to be more pro-development. Is that right?---That's correct.

10 And he needed to achieve those KPIs in order to have his contract extended?---Correct.

Is that right? Did he identify any particular councillors as having input into the KPIs?---No.

In your experience, is the use of KPIs for council officers for such an objective something that commonly occurs in a council officer context?
---Not usually. It would be around maybe turnaround times or achieving certain timeframes, it might be, or responding to customer inquiries, you know, but those would be fairly set and so, yes, you would be given maybe
20 some targets but they're usually quite general in that respect, or if maybe you've been given a specific project as one of your key targets for that year then it may be for completion, but it would be around what you thought. You would usually have input into the timeframes as part of that, and that might be part of your performance review on an annual basis.

So am I right in understanding it would be relating to you getting through certain, say, numbers of proposals but as to what - - - ?---Yeah.

- - - the outcomes of those planning proposals would be, that was not
30 something that - - - ?---That's correct.

- - - in your experience would ordinarily form part of KPIs?---That's correct.

Can I take you, Ms Dawson, to paragraph 10 of your statement?---Mmm
hmm.

You refer there to a lot of pressure coming from the general manager, Jim Montague, Councillors Michael Hawatt and Pierre Azzi for developments to be approved, and you say that you have this awareness from various
40 conversations with Mr Stavis and Mr Gouvatsos and things you'd been told by development assessment staff. I just want to break those categories down, if I may. Dealing with conversations with Mr Stavis first, can you recall if you had one or more conversations with him in particular on this subject?---In terms of development applications? Yes.

In terms of development applications?---I recall, I think, meeting with George and Spiro together, because I think it was a manager's meeting.

I see?---So it was really along the lines of we need to get some development applications out.

And did Mr Stavis indicate or give a reason why?---I was aware that inquiries were coming from other, from councillors as to where things were at.

10 I see?---And where they were in the process, and I believe that sometimes there was a lot of those inquiries in relation to maybe just one development application.

And is that something that you surmised or was that something that was said to you by Mr Stavis?---That was more probably George, George Gouvatsos.

20 I see. So in terms of Mr Stavis, just focusing on him, did you hear directly from him as to pressure coming from Mr Montague or Councillors Hawatt and Azzi for developments to be approved?---He, he would say that in a meeting but I wouldn't necessarily know the details of the development application, it would just be sort of a general statement.

I see. And what about planning proposals?---Other than being asked maybe on more than one occasion, "Where are you at with that planning proposal? It's urgent, we have to get it out." There might be those sorts of questions asked of me.

And in the context of saying, "It's urgent, we need to get it out", would he explain why he was saying it's urgent, we have to get it out?---No. I thought it was maybe the developers were asking him those questions.

30 So that's pressure not coming from - - - ?---No.

- - - Mr Montague or the councillors, that's coming from the external parties?---Yes, although I am aware that from time to time maybe the general manager took an interest in planning proposals.

What about the councillors?---I never really had a direct contact with councillors throughout most of this time, they would go to the director and when I was acting director I don't recall really much contact at all.

40 So is it the case that Mr Stavis in these conversations didn't differentiate in terms of, or identify even, the source of the pressure that he was talking about?---We got the impression that it was councillor and general manager related but did he actually say, "I'm being asked by X councillor to do this"? No, he didn't.

Dealing then with Mr Gouvatsos, you've indicated that he was present in meetings with Mr Stavis. Can you recall conversations with Mr Gouvatsos

about pressure coming from the general manager or Councillors Hawatt and Azzi for developments to be approved?---Yes.

Can you recall if those conversations occurred when Mr Occhiuzzi was director?---Not, not, no, not so much.

But did they occur when Mr Stavis was director?---Yes.

10 So - - - ?---But there had been some pressure because I know that George didn't want to be acting director because of the pressure he felt he was under when Marcelo left.

So when you say there had been some pressure, you're referring to pressure on Mr Occhiuzzi as director?---And possibly as a, you know, maybe then it went down to the next person to deliver on that which would've been George's team.

So it just came down the line?---Yes. Yes.

20 In your conversations with Mr Gouvatsos about this concept of pressure coming from the general manager or Councillors Hawatt and Azzi, was he recounting a direct experience of witnessing or being subject to this pressure or was he passing on information he'd obtained from, for example, Mr Occhiuzzi or Mr Stavis?---He would usually talk about, he felt that development applications were being requested to maybe report it up to council meetings and IHAPs and that it was taking precedence, being pulled out of the usual system, maybe people not having enough time to work on them adequately and that side of thing, it was as if there were some development applications that were given priority above others.

30 I see. So he was reporting to you about the impact, perhaps, of the pressure?---Yes.

Did he attribute developments being taken out of sequence in an assessment process to pressure coming from the general manager or those two councillors?---It came, well, I think sometimes, I, I think I recall it was sometimes from the general manager but I, I don't recall, I couldn't put my, say categorically that he was advised that a particular councillor wanted something.

40 Did Mr Gouvatsos ever say to you that pressure was being applied to assess developments favourably, even if he or his team didn't have a favourable view of their planning merit? Or was it more just to get DAs through?---I think, I think that sometimes they weren't happy with the final report. Sometimes you can accept a little bit of change to reports or things like that but I got the, I got the understanding that maybe they felt that the final recommendations may have been not entirely what they would normally put forward.

When you say, "They," are you - - -?---The staff, the assessment staff.

I see. Did Mr Gouvatsos raise these concerns with you in relation to any particular developments?---No.

It was just a more general statement?---Yes.

10 Did you ever take up what Mr Gouvatsos raised with you with Mr Occhiuzzi or Mr Stavis?---The only thing, possibly, was in relation to, to one where I think a DA was being assessed and I remember putting, having a discussion with Spiro that, "Hang on, you've got to take in to account that the property behind, you need to allowed, you've got to, you should possibly amalgamate with one, one isolated property because otherwise you aren't going to get the separation, building separation to the lower density property to the rear." So, and that was, came as a consequence of someone popping their head around and, and just asking me a question that we know what was happening there in relation to strategic planning.

20 I see. Was that something that Mr Gouvatsos raised with you directly or did that come from another source?---It came from another planner.

I see. In relation to that particular enquiry?---Yes.

I see. And insofar as Mr Gouvatsos reported pressure to you or pressure that he felt in terms of advancing development applications, is that a matter of concern that you raised with Mr Stavis?---No.

30 Did you ever take it up with Mr Montague?---No.

You've also referred, in paragraph 10, to conversations with development assessment staff about pressure from Mr Montague or councillors. Can you recall, sorry, I'll withdraw that. I'll ask the first question. Development assessment staff, they are officers of Mr Gouvatsos' team? Is that right? ---Yes. Correct. Correct.

40 Can you recall conversations with any specific development assessment staff?---I would suggest that there were a number of staff who weren't happy generally with the environment, the culture at, at the, at the council at one point with, and in particular, they, I guess they felt that there was, there weren't, their assessments were not necessarily considered and maybe, people were saying, you, you need a different outcome.

I see. Were there particular development assessment staff? Are you able to, to identify who they were?---There was the team leader of assessments who, who I, I know resigned as a, you know, during that period.

So who was that?---Stephen Pratt. I think that was his name. So he, he left the council because he, he felt that he was, I think he felt very uncomfortable with things that were happening.

I see. Any other development assessment staff?---There were a number of assessment staff. There was another one who felt that he was being pressured. He, he also left council, and that was Sean Flahive, I think. But he actually also returned to Ireland, so I'm not sure what was the, whether, what it was.

10

What was the motivator.---What was the motivation.

Yes. When you spoke to these officers about their unhappiness, if I can put it that way, were they recounting direct experiences or was it more what they'd heard, say, from Mr Gouvatsos?---I think that some of them were it was direct experience, but I couldn't say which development applications they related to. It was just the general, I guess, the approach that was being taken was not how they felt that assessment, the assessment statutes should be operating.

20

And to the extent that there was applications where there was a focus for it or a particular outcome, did the staff who raised these concerns with you attribute that desire for a particular outcome as coming from anybody in particular, be it the general manager or councillors or the director of city planning?---I, I do recall in one incidence that it came from the general manager in relation to one development application, but I couldn't say which one it was.

30

And with whom did you have that conversation, can you recall?---I think that was with Steve, the former team leader of assessments.

That was Mr Pratt, did you say?---Yes.

Did any of the officers with whom you spoke ever say that pressure to approve development or assess it favourably was coming from Mr Stavis? ---I couldn't say with, with certainty.

40

Can I take you to paragraph 12 of your statement, where you refer to development application 591/2014 for 570-580 Canterbury Road, Belmore. Do you know who was the owner of that site?---I, I'm not a hundred per cent certain but I believe Statewide Planning were involved.

I see. All right.---So the owner, I wasn't a hundred per cent certain but I would presume that it would have been someone. Mr Demian, maybe.

All right. Now, this is a development application, of course. What was your role in relation to it, given obviously you deal with strategic planning and not development applications?---Okay. This was one – it was actually a

planning proposal in for this site. This is one of those where it was part of the Residential Development Strategy planning proposal and it was one of the sites where RMS had advised that it should be put on hold until a traffic study had been done for the length of Canterbury Road. So that was on hold, but then notwithstanding a planning proposal was then lodged for that site separately by the applicant to try and circumvent.

10 Do you mean a development application rather than a planning - - -?
---There was two running at the same time. There was both a planning proposal and a development application.

I see.---When I was, when I recall it, there was a development application initially, which I think was approved, and then there was, I think they were then looking at an additional two storeys and that was, so there was a, a, I think a separate development application for that at the same time that the planning proposal was moving forward.

20 I see. So in terms of the concerns that you identify in paragraph 13, was that in relation to the development application?---I think it was the development application, and I remember that one of the planners had put his head around my door to say – I think he asked me was the land behind going to be rezoned. And I said, no, there's no proposal for that land to be rezoned.

I see. So the land behind, is that 2 Chelmsford Road, Belmore?---Yes. Well, 2 Chelmsford Road was already zoned as B5.

30 B5, yes.---But then immediately past that it was R3. So we're looking at a 0.5:1 and a height of 8.5 metres.

I see.---And so there was this one single lot, which was zoned B5 but wasn't part of the development application.

And that was 2 Chelmsford Road? Is that right?---Yes.

And you say in the last sentence that, being a single narrow lot, it would be difficult to develop the site if left isolated?---That's correct.

40 And that - - -?---Because of the, the building separation requirements, there would have to be a nine-metre building separation from the lower density to the higher density.

I see.---Which was almost the width of the lot.

You refer to, I'll just take you to paragraph 14. You say that you recall discussions around the possible rezoning. Was that, was that at the same time as this development application was being considered or was that at an earlier time?---It was around that time when I was made aware of what was

happening. I, I, I've, I had a chat with Spiro in terms of have you thought that, actually, that land isn't, there's no proposal to rezone that land, because apparently there had been a thought that, well, it's okay because that land is likely to be rezoned. That is the lower density R3 zone land. And that's when I, I, I had a chat saying, no, there's no proposal to rezone that land so you'd have to presume that it isn't going to be rezoned.

10 So in terms of assessing development application to planning proposals in relation to particular land, you proceed on the basis that the status quo will remain unless there is something in the works to the contrary. Is that right?
---Yes.

And you said that your view was that there was no proposal to rezone, so in accordance with what I've just put to you, the presumption is the R3 would remain. Is that a view that you expressed to Mr Stavis at the time?---Yes.

20 And you referred to excluding 2 Chelmsford Road from the proposed development site would effectively sterilise that land. Was there some proposal at some point to include it?---Not, not that I'm aware of.

All right. So when you say excluding, it was just it didn't form a part of the proposal and that created an issue for that land because of its particular area and the setback issue that we've referred to?---And normally, yeah, you wouldn't want to isolate lots and I know most councils would have a policy about, about maybe, you have to prove that you've consulted with the owner of the lot, that, and that's recorded in writing, et cetera, so that you can confirm that they are aware that it may result in an isolated lot which may prevent being able to develop that to full potential down the track.

30 And when you say that, that's because of the DA being approved in relation to 570-580, which creates a setback difficulty in terms of the area of the building on 570-580. Is that right?---Yes. So, yeah. So, the, the, the lot, which was 2 Chelmsford, while being zoned to be B5 – which in theory could be developed to, say, six storey – because of the setback requirements under the Apartment Design Guide would find it very difficult to be able to achieve those setbacks. So, normally you would amalgamate all of those lots and you would share the development potential over those lots.

40 And that would have a corresponding impact on the value of 2 Chelmsford Road. Is that right?---Correct.

You indicate that you raised that with Mr Stavis. Can you recall what his response was?---I can't recall what his response was but I believe the DA went forward, notwithstanding.

I see. But you can't recall any particular response in terms of addressing the planning issue that you had raised with him?---Correct.

Did you yourself have any direct experience of Mr Montague pushing for particular planning proposals to be taken forward?---There, I would say then that that would be one for 642-658 Canterbury Road.

All right. If I can take you to that. You refer in paragraph 15 to that planning proposal. And this is, am I right, one of the properties in respect of which the planning proposal was on hold because of the RMS traffic studies to which you referred?---Correct.

10 And Statewide Planning had lodged a separate planning proposal, you've said there that it's to bypass the process for other sites along Canterbury Road. What do you mean by bypass?---They were hoping that they didn't have to wait for the Canterbury Road traffic study that council had commissioned to be completed. So, it was, they didn't want to wait for that outcome so they lodged their own planning proposal and an accompanying traffic study.

I see. And you indicate in paragraph 16 that Ms Ho was the planner overseeing that proposal. Is that right?---That's correct.

20

But it was nonetheless a matter that you discussed as a team.---Yes.

And you indicate that there was a concern with the requested height and density of the proposal. Is that a concern that you had?---Look, the planning proposal was for 30 metres, so that's probably nine, 10 storeys. There were no other sites really along Canterbury Road, and in fact that's the sort of height that you would expect sort of in a town centre as opposed to, you know, along a busy, a busy main road. So you know, you would expect to see that in somewhere like, you know, Canterbury or something like that
30 where you've actually got a train station, maybe some shops and thing like that, where you'd be looking at placing high density. So 30 metre was, we didn't, it was nowhere else along Canterbury Road at that point, other than in the Canterbury town centre.

I see. So it was out of context - - -?---Yes.

- - - with the rest of the area.---Yes.

40 And is it for that, well, why did you retain Mr Annand in those circumstances?---I believe that Peter Annand was involved in the preparation of the draft Canterbury Road master plan. So I think his name was put forward as a, as someone because he'd already, was familiar with, with Canterbury Road and had been party to developing the Canterbury Road master plan.

And he ultimately did not support the planning proposal to its full height of 30 metres.---That's correct.

But did support the proposal to the extent that it would go to 25 metres on the corners with Canterbury Road.---Yeah.

Is that right?---Yeah. But, but then it would, yes, and then it would be lower along Canterbury Road. I think it was, I can't recall how many storeys but yes, it would be lower along the Canterbury Road frontage.

Are you able to recall what happened following the submission or the preparation by Mr Annand of his report, was that circulated to Mr Stavis?
10 ---Mr Stavis would probably have, would have had a copy of that, yes.

All right.---And I know that we met with, I believe we met with Peter Annand as well.

That's your team - - -?---Yes.

- - - with Mr Stavis and Mr Annand or - - -?---I can't recall if Mr Stavis was there but I think that we just wanted to go through the assessment by Mr Annand.
20

I see. You refer to a subsequent meeting with the proponents and their consultants, the general manager, Mr Stavis, Councillor Hawatt - - -?
---I think it was Councillor Hawatt, I'm having second thoughts now but I think it was him.

All right. But to the best of your recollection - - -?---Yes, yes.

- - - he was there.---Yes.

30 And Mr Annand to discuss the proposal?---Yes. Ah hmm.

And in paragraph 17 you put that meeting in about May of 2015.
---Possibly. I don't have access to any of my calendars from that time, yeah.

Now, you say in paragraph 18 that at that meeting you believed that Mr Annand was, quote, "Backed into a corner." Are you able to explain what you mean by that?---The proponent and also Mr Stavis were robust in their discussions and views around what could be achieved on the site.
40

Just stopping you there. In terms of their robust views, were they of the same view?---Yes, different, different to Mr Annand's view. So they were, they felt that the site could achieve much greater development and I think it was, I haven't been in a meeting where I almost felt that Mr Annand was, his views were attacked, I think you could almost say. It was, it was robust.

All right. So insofar as there was a robust putting of a different view, I think you've indicated that was by the proponents and Mr Stavis.---Ah
hmm.

Were those views, contrary to those of Mr Annand, expressed by anybody else at the meeting?---Sorry, can you repeat that?

Yes. I think you've indicated that the proponents of Mr Stavis?---Yes.
Mmm hmm.

10

Were very robust in their disagreement with Mr Annand about what could be achieved on the site. Did anybody else at the meeting express disagreement with Mr Annand?---I can't recall. I just recall that at the end of the meeting, I felt that Mr Annand had changed his viewpoints during the meeting and that I had never been in a meeting that had got, I don't know, just the way the meeting went, I had never attended a meeting that sort of took that bang before. It was, I felt that he was really pressured and backed in a corner, I felt that it just was inappropriate.

20

To the extent that there was conduct in that respect by Mr Stavis, did you consider that to be appropriate?---It, I felt that it was the proponent's view point that was taking precedence rather than maybe what might be a good design outcome.

I see.

THE COMMISSIONER: You said one of the councillors before - - - ?---I recall there was a councillor and I think it was Councillor Hawatt.

30

Was that unusual?---Generally, yes. Yes. I think I've had one other meeting where a councillor was present but I don't recall them saying anything.

MS MITCHELMORE: And in this meeting you don't recall Councillor Hawatt saying anything?---I don't recall it so maybe he didn't. If, yes, I can't really recall who said what at that meeting but the general outcome was that Mr Annand had changed his viewpoint and went with what the proponent was pushing forward.

40

You've indicated that the general manager was also present. Can you recall the level of his involvement in the meeting?---No, I can't.

Was it unusual for Mr Montague to be at a meeting of this nature?---Yes.

It was?---Yes.

Can you recall how many other meetings with proponents and consultants you attended when Mr Montague was present?---I think there may have been one in relation to a boarding house, but that would've been it, I think.

I see. All right. So aside from that particular meeting, sorry, I withdraw that. So in so far as that meeting was concerned, you recall views being expressed forcefully by the proponents and consultants and Mr Stavis?
---And backed up by Mr Stavis, yes.

10 Backed up by Mr Stavis, but nothing specific in relation to Mr Montague?
---No, can't recall.

And nothing specific in relation to Councillor Hawatt?---No.

Commissioner, I was about to move on to 15 to 23 Homer Street which may take a little time. I was wondering if that may be a convenient time?

THE COMMISSIONER: Appropriate time.

20 MS MITCHELMORE: Yes.

THE COMMISSIONER: All right. Ms Dawson, if you can return on Thursday. Thank you?---Thank you.

THE WITNESS STOOD DOWN

[3.58pm]

30 THE COMMISSIONER: Do we need to have a discussion just about changing witness orders at the moment?

MS MITCHELMORE: Yes. There has been some discussion about that Commissioner, as I understand it, I understand that we'll be circulating a further - - -

THE COMMISSIONER: A revised list.

40 MS MITCHELMORE: A revised list, yes, that's right. There's some difficulties with one of the council witnesses attending in the second tranche so some arrangements have been made to accommodate that hopefully in this tranche.

THE COMMISSIONER: And that will go up on the website, so if everybody can have a look at that.

MS MITCHELMORE: Yes.

THE COMMISSIONER: All right then. Any other issues at the moment?
All right. We're adjourned until Thursday morning.

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