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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 THURSDAY 26 APRIL, 2018

AT 10.00AM

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

THE COMMISSIONER: Now, Ms Mitchelmore, any administration we have to deal with?

MS MITCHELMORE: No, Commissioner. We'll be continuing with the examination of Ms Dawson this morning and then - - -

THE COMMISSIONER: Ms Dawson, can you come forward, please? And I think we'll have Ms Dawson re-sworn. Affirmation, sorry.

MS MITCHELMORE: Ms Dawson, I might have your statements returned to you and at the same time, it might be convenient to provide you with a copy of volume 9 of Exhibit 52, just so you have it.---Yep. Thanks.

10 I want to ask you, Ms Dawson, some questions about Homer Street, 15-23 Homer Street. Do you recall a planning proposal in respect of the property being lodged in May of 2014?---I do.

The applicant was Croycon Investments?---Yes.

And Mr Assad Faker was associated with that company. Is that right?
---That was the name on the, on the application.

All right. If I can take you to that application. It's volume 9, page 1.
---Ah hmm.

20 And just looking at that page, I think it's being brought up on the screen but you've got the hard copy in front of you, so the applicant's name was Assad Faker, and just dropping down to the property owner's agreement there's a reference to Croycon Investments reversed with Mr Faker's signature. So am I right in thinking that the owner of the land was Croycon Investments?
---I would presume so, yes.

30 Yes. Now, there's a number of lots identified as comprising the site of 15-23 Homer Street. The zoning of the property at the time was B1, Neighbourhood Centre LEP, under the LEP. B1 Neighbourhood Centre, what was the zoning, what was the general nature of that zoning?---It was a local, identified as a local sort of shopping centre but, but not, not along a main street type shopping centre. So it allowed retail commercial on the ground floor and you could have residential development above, but low, much lower scale and much smaller in area are those centres, really to just serve the local needs of the neighbourhood, immediate neighbourhood.

40 I see. Now, if I can take you to the, sort of about point 7 or 8 on the page in relation to the purpose of the application, I'm still on page 1, the proposal didn't seek to change the zoning but rather to amend the permissible uses and amend the height standard. Is that right?---It was to retain the B1 but it also wanted to reduce the area of commercial at the ground floor level and to allow some residential at the ground floor and it wanted to change the height, yes.

Yes. Can I take you to page 2 which is a rezoning checklist.---Ah hmm.

The second of those items is, "Have you discussed your proposal with council's strategic planning staff?" And the answer is ticked yes. Were you

involved in any discussions about this site before the application was submitted?---I don't recall, no.

Were there members of the team who would generally be the persons that would be consulted in relation to this type of pre-lodgement discussion?

---It would be the team leaders of the urban planning section.

So Mr Farleigh. Is that right?---Yes.

10 And do you know what the purpose of that discussion generally was?

---For this site or in general?

20 Just general.---In general it would be to have a chat with the proponent and to make sure that they were aware of the types of studies they might have to look at or issues, whether it might be, you know, traffic or economic or some of those issues so that when we got the planning proposal in they would have addressed all the relevant matters. So it was that, but also for us to get an understanding of what they were proposing, we might give them some advice, well, actually maybe you've been too ambitious, have you thought about maybe pulling back.

I see. All right. Do you recall Mr Farleigh reporting any discussion of that nature in relation to this site?---No, I don't recall.

If I can take you to page 4 of the volume 9.---Ah hmm.

30 This is the planning proposal that was submitted with the application, and on page 6 there is an aerial view of the site. Am I right that it's the wedge-shape that is outlined in red - - -?---Yes.

- - - on the aerial photograph?---Yes.

So it's on the northwest side of Homer Street. Is that right?---Correct.

And the bridge that can be seen in the photo, that's the Undercliffe Bridge. Is that right?---I'm not certain of the name of it but it's on Illawarra Road.

40 I see. Okay. Thank you. Can I take you to page 7 on which there's a discussion of the planning controls. And that identifies the B1 zoning, but looking at the paragraph underneath the diagram - - -?---Ah hmm.

- - - it prohibits residential accommodation except for shop-top housing, which I think you've identified, and that the planning proposal proposed an amendment to the controls to allow residential development to occur at ground level behind street front retail as well as above it. Is that, that's right?---That's correct.

And I note the next paragraph says, “Relevant to the site, the LEP contains a development standard limiting building height to 10 metres but no development standard for floor space ratio.” In the absence of a specific FSR control, how did the council generally control matters such as bulk and floor space?---That would largely be through assessing or making assessment through the urban, looking at urban design of what was being proposed and, in particular, around this time we had the apartment design guidelines, so we would look at all the principles that would need to be met as a part of that urban design guideline, apartment, sorry, apartment design
10 guideline, to test what FSR might be appropriate. But my recollection is that they didn't use FSR in the business zoning in the Canterbury LEP.

I see. All right. Can I take you over to page 8 which is the objective for the proposal which is to facilitate high density residential development of the site at 15 to 23 Homer Street with an active commercial frontage to the street, and to achieve that objective, they seek to amend the permissible uses and amend the height. Is that right? That's the way that they seek to achieve that objective?---Yes.

20 All right. And at page 10 there is a section starting, “Justification of the planning proposal”, and that of course was a requirement of any planning proposal to justify a departure from the LEP. Is that right?---Yes. Yes.

And in terms of justification, one was looking among other things for justification against the broader planning framework. Is that right?---That's correct.

Can I take you in that context to page 17, which is dealing with environmental, social and economic impact and then just dropping down to
30 under the heading Context and Setting, there's reference to an urban design report that accompanied the proposal and then identified some salient points relating to contextual impact. One of the matters identified in the third bullet point was that the building envelope should be set back three metres from the street to align with apartments, then a three metre setback from Stafford Walk and north western boundary to provide landscaping and retain existing use with essential planning area, and then 18 metre slash five storey height to match apartments, stepping down as turns corner to the river. Can you explain what is meant by stepping down as turns corner to the river?---I think what we're saying there is that it may start off at five
40 storey and then as you've got closer to the river it would reduce to four storey, three storey, two storey, so that as it was immediately adjacent to the river and the walk, riverfront walk, it wouldn't be so imposing. So again, as it turns the corner to the river, so as it just abuts the riverside walk.

I see, okay. Of course this isn't your report?---No.

It's just a document that's been prepared?---Yeah.

But that's your understanding of the term stepping down?---Yes. Mmm
hmm.

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

10 All right. And then taking you to page 21, this is the start of the urban
design report to which that section of the planning proposal referred. Can I
take you to page 31 of that document which is called, is titled, Suggested
Site Strategy? I'm not sure if your copy like mine is as difficult to read?---It
is difficult, yes.

But it may be that the screen might be a bit clearer so we'll just see if that
might assist. It looks like it's not much better, but I just wanted to focus on
the diagrams for a moment?---Yes.

So looking at the bottom of the diagram, it sort of forms in a corner, and
then heading to the top of the page to the right, that's Homer Street, is that
right? The boundary is going along Homer Street?---Yes.

20 Is that correct?---That's correct.

And then at the top of the page, where there's, "Prominent corner," that's the,
perhaps where the property ends and then then the road proceeds over the
bridge and you just see very faintly, the green shaded area, there's a
reference to Stafford Walk. Is that right?---That's correct.

So that's heading along the river, is that right?---Yes. That's correct.

30 That's the riverfront. And there's reference there to having a setback from
the slope and the flood line. So, is the flood line, is the flood identified on
that document, on the diagram to your knowledge?---Yes, it could be
because the one-in-100 flood level impinged on, on that northern edge of the
of that, that, those allotments but I can't, can't say for sure if that's what it
was.

All right. And then in the middle of the diagram, there's a reference, "Step
built form down around corner." So, as the building turns - - -?---Step
down, yeah.

40 - - - from Homer Street, around to the river, it was proposed that the
building stepped down. So that's the height of the built form stepping down
as it went around the corner. Is that right?---That's correct. That's correct.

All right. And then at page 32, oh sorry, just before we leave that page.
Looking again at the bottom of the diagram towards the corner where the
diagram meets the corner, there's a reference there to potential five storey
height. Do you see that?---Yes.

So that was what was proposed by the proponent with their urban design?
---Yes.

And if I can take you over the page then to the suggested building envelope. Again, it's not terribly easy to read but it has the same shape as the diagram on the previous page. Is that right?---That's correct.

10 So, it's got the same orientation with Homer Street, along the right hand side of the diagram and the river working its way from right to left across the top of the diagram. And do you see, Ms Dawson, a reference, sort of where the built form turns to the L, to "one storey step". Do you see that?---Yes. Yes.

And then there's another reference to one storey step as we've turned the corner towards the left hand side of the diagram. Do you see that?---Yes.

So, as you understood the proposal, there was to be two steps down in built form as it turned and went along the river. Is that right?---Yes.

20 And is it the case that next door, sorry, just looking at the left hand side of the diagram. There was, there was existing apartments that had been built. Is that right?---That's correct.

30 So, was the stepping down that's mentioned at the far left hand side of the diagram, is there some intention to accommodate the views of the apartment next door?---The, the adjoining residential apartment building stepped right the way down to single storey towards the river but it was, I think four storeys, presented as for storeys at the street on, on Homer Street. And there were windows on its north, on the, on its north, on the north east walls of that apartment building. So, to a large extent, I think they would have had their views obscured by this building, the lower levels, yes.

Yes. Now, you refer, Ms Dawson, in your statement at paragraph 23, to Ms Ho being assigned to conduct the review of the proposal in order to formulate a response. Was that the common practice within the planning team, to allocate someone who had primary carriage of formulating the response of the planning offices?---Yes.

40 And did you allocate the person in each case or was that Mr Farleigh, as team leader?---it was generally Mr Farleigh but obviously we took into account all of the, I think we had about 16 planning proposals on the go, so it was, whoever had the, the time to some extent, yes.

Time and capacity?---Yes, yes.

Yes. All right. Now, you say in your statement that you recall that through this process that the team spoke about the proposal. I just want to clarify who you mean when you refer to the team.

---Predominantly in this case it would have been Warren Farleigh and Lisa Ho, but very often when we were talking generally about planning proposals or work that was on the go, you know, it would be fairly normal for us to discuss each other's projects, but the two lead people were Warren Farleigh and Lisa Ho.

10 All right. And your recollection as set out in your statement is that no one in the team supported the applicant's proposal as it wasn't a good fit for the area and well outside the existing controls. Can you recall whether you shared that view?---Yes, I did. There was a previous draft Development Control Plan for that area and it was of a much lower scale and there had been a fair bit of work done around the, I think they called it the Undercliffe draft DCP, so it was supposed to be a much lower-scale B1 area, but also had to relate to what we believed was important, which was the river.

I see. So you refer there to a draft DCP, so that was something that hadn't been promulgated. Is that right?---I'm trying to recall. It may have been part of it included in the subsequent amalgamated or DCP that was part of the 2013 or 2012 Canterbury DCP.

20

All right. Can you recall when it was prepared, the Undercliffe draft DCP to which you referred?---I think it was around 2010.

So well before your time - - -?---Yes, yes.

- - - with the council?---Yes.

30 Yes. So when you say not a good fit for the area, that being the view that you had and that of the other officers, I just want to explore what you mean by that.---Well, we looked at its position, it was sort of a gateway to Canterbury Council, it was, there was an important, the Cooks, the Cooks River was there so it was a very important cycle and pedestrian open space regional sort of connection through there. There had been a development application approved on the opposite side, everybody knows as the Adora Chocolates, and that had, the development application there that had been approved I think was a maximum of three storeys, and again it was this, when we were looking at future desired character for that area we wanted it to be lower scale so that it was sort of, I think they called it a comfortable fit human scale because it was, it was an important part of and gateway to, not only Canterbury but also access to the Cooks River.

40

I see. And when you say that the proposal was well outside the existing controls of the area - - -?---Mmm.

- - - obviously they were seeking to extend, go beyond the height control. ---Yes.

But were there other controls that you were referring to there?---Really it was the height, the height in particular that we were most, and obviously another matter then would be if you're looking at the FSR, but, but to some extent I guess we would take the height as the first, first issue and we just felt that it was, the level of development and it would become quite overbearing from that human scale immediately around Stafford Walk which was that walkway.

That's the riverfront.---Yes, the riverfront walk.

10

Yes. All right. Can I take you to page 38 of volume 9.---Ah hmm.

Now, this is the report to the City Development Committee for a meeting of 13 November, 2014 in relation to the planning proposal. Did you have any involvement in the preparation of this report as it was submitted to the committee?---I had a, I reviewed it.

I see. So you reviewed it before it was submitted?---Yes.

20

And you agreed with the recommendations that are stated therein?---Yes.

Can I take you, just looking at the summary.---Yes.

There's a reference in the bullet point 4 to, "Previous planning studies for the site have concluded a height limit of 10 metres to be appropriate for the subject site and surrounding area." Is that the draft DCP that you've referred to earlier in your evidence this morning?---Yes, yes, it is.

30

Were there any other planning studies that are being referred to in that fourth bullet point?---Not that I'm aware of.

So it was predominantly the draft DCP for that area?---Yes. Yes.

All right. And then the next bullet point observed at the predominant building height was three to four storeys and after that the next bullet point, the proposed 18 metre height is not recommended however some increase to allow a new building to more closely match the adjoining building in terms of height and stepping down could be considered. Is that right?---That's correct.

40

So referring to the adjoining building, that was the apartment block that had been built on the site next door?---Yes.

All right. So the maximum building height that was recommended was 14 metres which is in the next bullet point. Is that right?---Yes.

But the last bullet point recommended that a planning proposal be prepared to amend the maximum building height and to be set at 14 metres on part of

the land 15-23 Homer Street and allow ground floor residential uses on part of the site. So that was, of course, aside from the height the other thing they were seeking to do was not to have - - - ?---Yes.

- - - commercial only on ground floor but to have residential as well. Is that right?---That's correct, yes.

10 So that part of the planning proposal was supported and in relation to height there was support for an increase in height, but not to the extent that was sought by the proponent. Is that right?---Only part of the site for that 14 metres, so there were other heights for stepping down to the river.

All right. Now if I can take you to page 39, at the bottom of the page there's a reference to development history?---Mmm hmm.

And I think you refer to a development application having been approved for 2-16 Homer Street, Earlwood, which is across the road - - - ?---Yes.

20 - - - from this block, and that was the Adora Chocolate site?---Yes.

There's also a reference in the third bullet point to an approved development application for a part of this site, 15-19 Homer Street. That is further elaborated upon from page 41. Is that right? At the bottom of page 41? ---Yes.

So what had been approved for a part of the site was construction of a two storey mixed use development and that approval was still valid at that time?---Correct. That's right.

30 At page 42 there's a reference, or sets out what the current or what the request was, looking at about halfway down page 42. So setting out the two aspects of the request for the planning proposal. Is that right? Those two aspects?---Yes.

And that was summarised in the table and on the diagrams over the page on page 43. Is that right?---Yes. Correct.

40 And just looking at figure 4, what was sought was a height of 18 metres across the site. Is that right?---Yes, that's correct.

All right. And then page 44, looking at the paragraph before the diagram, there was a reference to the scheme envisaging a five storey mixed use development along the front, stepping down around the corner from five storeys to four and then stepping down to three along the western edge where it would join the residential development at 25-33. So that was the block next door. Is that right?---Yes. Correct.

And the estimated floor space ratio was 2:1. Is that right?---Correct.

And that was significantly greater than the 1.49-1 on the adjoining building and on the Adora site across the road. Is that the site as it had been approved for development?---On the Adora site, yes, that was the development application that had been approved.

10 All right. And then going over to page 45, there's a reference to evaluating the height aspect of the planning proposal and the justification that had been advanced was that it could facilitate a similar scale of development to the apartment block next door. Is that right?---That was the view, yes.

And the proposal, sorry, the report here indicates that a review of the approved DA plans doesn't support this. Now, is that approved DA plans for the building that had been constructed already?---Constructed. Yes.

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

20 So, the proponent had submitted that that building had an overall height of 17 and a half metres?---There was a component of the building that was 17 metres but that wasn't as it presented to Homer Street. I think that was, it was the ridge line about 12, 12 metres back from the street. So, it presented to Homer Street as, I think four storey, which was less.

Yes. So if I can just take you ever the page, you can see a diagram showing the building heights at 25-33 and I think when you say that the height, the top height as indicated, was back from the street. That's the, the sloped ridge that you've referred to at the top of the diagram which adjoins the top blue dotted line. Is that right?---Correct.

30 Which is at a height of, I think the height given for that blue line is 17 metres, is that right?---That's right.

All right. So, the view of the officers was that at the street frontage the highest point of the building was 13 metres, is that right?---That's correct.

And that the ridge or the skillion roof was 17 metres but it was set back and only occurred for a very limited part of the building?---That's right.

40 All right. Staying on page 46. There is a diagram at the bottom of the page which had formed part of the officers report which showed that an 18 metre height would be significantly higher than the existing building next door. Is that right?---Yes.

And that a 14 metre height would be approximately the eaves of that building. Is that right?---That's correct.

And a 12 metre height would be slightly higher than that building?
---Correct.

So, over the page, the planning report observed that there was merit in allowing a height increase on the subject site but the proposed 18 building form with an estimate of FSR 2:1 on the site was considered excessive and out of scale with the predominant built form of the area. Is that right?

---That's correct.

And that's a view with which you agreed?---Yes.

- 10 And there was also a concern that the development of that scale would contrast with the existing predominant building height?---Yes.

And would be out of scale with the yet-to-be-constructed Adora site across the road?---Correct.

All right. So, it was for those reasons, there was also an indication that, while it was reasonable to pursue a higher built form, that should be moderated by an objective of stepping down towards the river?---Correct.

- 20 So, the proponent had actually proposed to do that, to step down. Did planning officers, including yourself, envisage something more than what the proponent had proposed?---Yes, yes.

- All right. Are you able to explain what the officers had in mind in that respect?---Well, we felt that, as it, as you've got, I mean looking at what was, had been approved on the Adora site, and what we were looking at, we'd probably say, maybe a maximum of two storey as, as it was actually adjacent to the, the river. Or it, you know, about 8.5 metres or something, 10 metres, something like that, depending if, of course you've got higher floor to ceiling heights with the commercial component. But, but we felt that it yes, that, that was really it. It was, really, wanting it to related to, A) the river and, B) to relate to what had been approved on the other side of the road.
- 30

All right. And was it for those reasons then, that the conclusion was that part of any proposal along Homer Street, could be higher?---Ah hmm.

So, that was proposed at a 14 metre height along Homer Street?---Yes.

- 40 But the rest of the site should have the current maximum height, which was 10 metres?---Yes. Correct.

And that could accommodate two and three storey buildings along the front of the river?---Yes. Two storey, probably.

Two storey. And just looking back at page 47, there was a note that a 14 metre height limit should not be applied to the entire site but only part of the site, where it adjoins the building to the south which would ensure that

required heights could be complied with in a future DA and wouldn't seek to obtain any increased height over the entire site. Is that what the officers had in mind?---Yes.

10 Just looking then at the conclusion on page 48, there's a reference to, "again, just confirming that the proposed height was excessive, 18 metres, and it could set an undesirable precedent for other B1 zones and as such cannot be supported". When you reviewed the reference to undesirable precedent, what was your understanding of that reference?---B1 zones are usually, well, they're local neighbourhood centres or shops and you wouldn't expect that density of residential development to be in our small neighbourhood centres, so we were, it was saying basically that we should, we didn't really see why this one should be any different and that you would expect a lower scale of development there. So I think that's what we were referring to here.

And in terms of setting an undesirable precedent, if the planning proposal was approved to that scale in this zone - - - ?---Yes. Yes.

20 - - - for this site, that could allow other proponents to rely on that in support of a similar proposal in another area of the local government area?---Yes. Yes. Correct.

That had that zoning?---Yes.

30 All right. Just looking at the recommendation that was made by the offices then it was that a planning proposal be prepared to amend the maximum building height to exceed 14 metres on part of the land, so that was along Homer Street, and in the car at maximum height he retained for the remaining part of the land on the site, and then ii) dealt with the other aspect of the proposal which was to amend the existing uses to allow approximately half of the northern part of the site to accommodate ground level residential uses. Is that right?---Yes, correct.

At this time, 13 November 2014, were you acting in the position of director (city planning)?---Yes, I was.

40 So you attended the meeting of the City Development Committee when the proposal was discussed?---Yes, I was.

Did Ms Ho attend the meeting as well?---I don't recall her attending.

Did Mr Farleigh attend?---No, I don't recall.

What, if anything, do you recall of the discussions in the meeting about the report on 15-23 Homer Street?---I think that there was some discussion about, or a statement made about, yield and feasibility, but I felt that there

wasn't that much discussion, there'd been no prior discussion with me or contact made about it.

Can you recall to the extent that there was discussions, who was participating in those discussions on part of the council?---I can't, no, but I would imagine, no, I won't, I can't, can't say I absolutely recall.

10 If you can't recall, if you can't recall, that's fine. Can I take you to page 50 of the, of volume 9? This records the resolution of the council which was moved by Councillor Hawatt and seconded by Councillor Vasiliades. First was that a planning proposal be prepared to amend the maximum building height to be set at the same height as the building next door which is 17 metres. Was there any discussion that you can recall at the meeting about the height of the building and the need or desire for it to be the same as the building next door?---I, no, I can't, can't say with certainty.

But that was a departure from the recommendation of the offices?---That's correct.

20 And the second resolution was if the planning proposal received a Gateway Determination to proceed, then the Canterbury Development Control Plan be amended so that it would be consistent with the proposed LEP amendment and exhibited with the planning proposal for public comment. Now, the terms in which the planning proposal was approved to be prepared contrasted not only in terms of the maximum height of the site but also the original recommended had referred to two heights, 14 metres for Homer Street but the rest of the site to 10 metres. Was there any discussion that you can recall at the meeting about a differential height being applied? ---No, there was no discussion that I recall.

30 THE COMMISSIONER: At this meeting what is your role, do you contribute of your own volition or do you wait for questions to be asked of you?---I have to wait for questions to be asked of me and then it would be responding through the mayor.

And can you recall whether there were any questions about the officers' proposal?---There was no discussion - - -

40 Or sorry, or questions asked of you, I'm sorry?---I don't recall, not at this meeting.

And are you usually asked questions or it just depends?---It can vary, it varies. It depends on the nature of the report and the council that you're, you're working at. Very different approaches.

MS MITCHELMORE: Do you recall any surprise at the ultimate form of the resolution that was approved?---I was quite surprised, yes. There had been no discussion with me prior, but it wouldn't be unusual if they were

putting forward maybe a different recommendation as a resolution and a motion that they might contact the director and ask questions about it and would there be any issues, but in this respect there was nothing. I hadn't been contacted prior.

Right.

10 THE COMMISSIONER: And do you know, what do they have in front of them? They've obviously got the report from the council officers and the original proposal put forward by the proponent.---That would be part of the attachments to the council report, yes.

All right.---And I believe the proponent would have been in the gallery as well.

MS MITCHELMORE: Ms Dawson, if I can just take you to paragraph 27 of your statement, and this is the reference to the councillors having resolved to allow 17 metres across the entire site.

20 THE COMMISSIONER: Can I just ask - - -

MS MITCHELMORE: Oh, of course.

THE COMMISSIONER: And if the proponent is the gallery I take it their roles, do they get an opportunity to talk?---Yes, they can register to speak and I recall that they did speak I think.

All right. Thank you.

30 MS MITCHELMORE: And so far as you can recall them speaking, was it Mr Faker that you can recall or you can't recall?---I wouldn't, no, it wouldn't, I, I don't recall ever meeting Mr Faker but - - -

So it may have been the consultants on behalf of Mr Faker?---Yes, yes, but I can't, I can't remember, yeah.

Do you recall any submissions being made by them at the meeting about the height of the building?---I can't but I'm positive they would have been there but I have nothing, I can't recall.

40

I see.---It was quite a few years ago now.

Yes. If I can just return to paragraph 27.---Ah hmm.

You indicate that you did not think the resolution was appropriate, considering all the factors. So that was - - -?---Yes.

- - - your personal view of the recommendation as it was approved?

---The resolution, yes, correct.

Sorry, the resolution, sorry, not the recommendation. And when you say considering all the factors, what factors are you there referring to?

10 ---I think all the matters that we'd addressed in the council report in terms of the desired future character, the nature of the, what we, the building height next door, the approved buildings development across the road, we just felt that it was, it, it was, I didn't think that 17 metres had been justified. So from our perspective when we were doing a planning proposal we felt that we weren't necessarily in a position to support that.

Can I take you now, Ms Dawson, to volume 9, page 55.---Ah hmm.

There's a reference, that's an email from you to Mr Robson on 11 December, 2014. Do you have that?---Yes.

20 Can you recall the background to your preparation of that email?---We just had a request from the mayor to provide this advice and I recall that Lisa Ho, the officer who'd been responsible for the, assessing the planning proposal prepared this. It was all theoretical and it was just that we'd been required or been requested to provide that advice.

I see. Did the request come to you directly as director?---It did as acting director, yes.

And did you review the information in the email before you sent it?---Yes.

30 Can I just, looking at the table that's a comparative analysis showing potential dwelling yields on the site and likely build form outcomes based on different heights and other rules. So looking at what was approved, that's the last column towards the right hand side of the page at 17 metres? ---Yes.

40 And what was recommended by the officers is in the second column going from the left hand side of the page or the third column in terms of actual column numbers. So the difference in terms of FSR as recommended by the council officers, it was 1.4:1, sorry, estimated FSR, it was 1.4:1 and as resolved by council, 3.75:1 based on 75 per cent site coverage. Is that right?---Yes.

And then the heights were different and in terms of the density, as recommended by council officers, there could be 18 dwellings but on what was approved or resolved by council, there could be 47 and that estimate was based on extrapolating height over the majority of the site. Is that right?---Yes. And we didn't look at too much in terms of assessing it in relation to the adjoining building. I guess we were just making very broad assumptions there.

So the 47 didn't include assessment, for example, if the building was to step down. It was just an assessment taking the 17 metres across the site?---Yes. Yes.

And then there's a reference underneath the table to the concept plan showing a building stepping down and that the different heights would need to be applied on the site for that to happen, but a 17 metre limit across the entire site could enable a building with a much greater footprint, so the potential footprint was one that would permit 47 dwellings applying that 17
10 metre height across the site?---Potentially, yes.

But that of course wasn't what had been proposed as part of the proposal that the proponent had submitted. Is that right?---That's correct.

Do you recall any discussion subsequent to the city development meeting about the stepping down of the height of any building on this site with Mr Robson?---No, I don't recall.

Do you recall any discussions about the stepping down of the height at the
20 building with any other councillors?---No.

Do you recall that a resolution was subsequently prepared and moved in relation to the height limits that sought to step down the height in the same way as the building next door?---In February, was it?

Yes, that's right?---Yes. I do recall.

If I can take you to page 94, this is the papers for the council meeting, 26
30 February, it may actually be in the minutes, and you will see at the top of the page there is a reference to 15-23 Homer Street, Earlwood, Amendment to City Development Committee Resolution. Do you see that heading?
---Yes.

And there was a motion that Councillor Hawatt was to move but in respect of minute number 449(i) dated 13 November 2014, the intent was that the proposed building at 15-23 Homer Street is to be at similar height and stepping down next door and that accordingly, an appropriate amendment be made by the planning division and be brought back to council for consideration before seeking to Gateway for determination. Do you recall
40 that being submitted to you in advance of the meeting?---I don't recall, but for the acting director's comments to be written there, it probably was submitted maybe prior to that meeting.

So, you were still the acting director as at 26 February, 2015, is that right?
---Yes.

And the comments that you've made there – I'm sorry, this is not the minutes. It's the papers, obviously, given that your comment is there. That

the adjoining development is four storeys, 14 metres at Homer Street frontage, stepping down in height towards the Cooks River. "A small portion of the building is set back 12 metres from Homer Street, reached 17 metre." And that is a reference to the skillion roof that we've gone to in the diagram earlier, is that right?---That's right.

10 You've then said, "A planning proposal to affect the council resolution on 13 November, was prepared and sent to the Department of Planning and Environment on 15 January, for a Gateway Determination. What did you intend to convey by making that comment?---That comment was basically that we'd already progressed the planning proposal in accordance with the November 2014 resolution of council. So, that was, it was already now with the Department of Planning and was being assessed. So, if they wanted us to report to council before sending to Gateway, that had already passed, we'd already sent it in for a Gateway Determination.

20 I see. Was there some mechanism by which you could have retrieved the planning proposal as submitted, or - - -?---If they had passed a, a resolution then we could have definitely contacted the Department of Planning and say, "We withdraw the planning proposal and we'll send in another one."

In advance of a Gateway Determination, there was nothing concrete on which anybody could proceed. Is that right?---I mean, they hadn't issued the Gateway Determination so we could have asked for it to be retrieved or to withdraw.

30 Sorry, withdraw. And that is something that could have been done on, had Councillor Hawatt proceeded to move this resolution?---That's, that's correct.

All right. So, your comments were providing an update to the council as to the status of the planning proposal, is that right?---That's correct.

All right. The minutes are at page 95. You'll see that this is the minutes of the meeting and the motion is recorded at about halfway down the page and it was, it stated that, "With the leave of the council, the above motion was withdrawn." Was there any discussion at the meeting about the motion prior to its being withdrawn?---I can't recall.

40 Did any of the councillors contact you following the submission of your report to this, indicating that the proposal had already been submitted?---No. Not that I can recall, any councillors contacting me.

Did you receive any enquiries saying, "Yes. The planning proposal has been submitted. Can we withdraw it and resubmit"?---I can't recall anybody contacting me.

With an enquiry about of that nature?---With an enquiry in relation to this.

All right. Was there any explanation given in the meeting as to why the motion was withdrawn?---Not that I can recall, no.

All right. Now, Mr Con Vasiliades, who was a member of the council at that time, sent an email to Mr Stavis about this issue on 6 March, to which Mr Stavis replied, copying you in. Can I take you to page 96 of volume 9, and you'll at the top of the page, an email from Mr Stavis to Councillor Vasiliades, copying in a number of persons including yourself and the
10 general manager and that is replying to an email from Councillor Vasiliades to Mr Stavis earlier in the day. Is that right?---Yes.

And the issue that was raised, or one of the issues that was raised by Councillor Vasiliades was the issue of Homer Street and the intention of the council that the height not be 17 metres throughout the site. Do you see that in the third paragraph of the - - - ?---Yes.

- - - MO and the next paragraph says, "The reason this motion was
20 withdrawn is that Gillian", that's you, "indicated that the planning proposal was prepared and sent to the department as per the resolution." That's consistent with your report?---Yes.

That formed part of the papers. Is that right?---Correct.

Do you recall giving that indication verbally in the council meeting?---I don't recall.

And there's reference in the last paragraph to Mr Vasiliades being one of the
30 councillors who voted to support the item and there was a request that Mr Stavis discuss the matter with the general manager, Mr Montague and yourself to ensure that the outcome of the proposal is not 17 metres height throughout the site but as per the draft resolution. And a 17 metre height throughout the site should have the word "not", or, "would be appropriate in this location." Do you recall having any discussions with Mr Stavis about this issue and the scope of the planning proposal subsequent to this email on 6 March?---I don't recall meeting him specifically about this but that was more around briefing on all of the matters that we were dealing with. I
40 don't recall a meeting specifically to discuss this.

Do you recall, in the context of your briefings to him about where things were up to, discussing this issue?---I think we just advised him that it was, we'd sent it off to Gateway but, for a Gateway Determination, and that we were waiting for a response, but I don't recall any discussion about us withdrawing it at this point in time because we didn't have a council resolution.

Do you recall any discussions with Mr Montague on that subject?---No.

If I can go then to just the planning proposal that was submitted to the council, sorry, submitted to the department which is at page 57 of volume 9, it's under cover of a letter from Mr Montague to Ms Helen Wilkins of the department. What was Ms Wilkins' role, can you recall?---She was part of the city east team so she, they had a team within the department that dealt with, there were area bays who dealt with our planning proposals so she was part of that team and one of our main contacts.

- 10 I see. And it's been signed by Mr Montague, in fact he signed, presumably following your submission of the planning proposal to him. Is that right?
---Yes. There would've been a planning proposal, this letter and I would do, countersign the yellow copy which I presume this would've been the yellow copy so that he knew that it was ready for him to sign and that I had checked the contents.

- I was going to ask why you had signed, was that a practice that you had of doing that?---Yes, so not that it would be, we would countersign the final copy and then the top copy was the one that was sent to the department or
20 for any formal communication with council.

And that was to indicate with Mr Montague that you had checked it and it was consistent with the council's resolution?---Yes, correct.

The planning proposal itself starts at page 58. Who prepared that document or had primary responsibility for preparing that document? Can you recall?
---That was Lisa Ho.

- 30 Did you have any input into its preparation?---Not other than a final review, it was predominantly pulled together by Lisa and Warren Farleigh at the review.

I see. Was the proposal the subject of any discussion with Mr Montague before it was submitted or at the time it was submitted?---No.

- 40 Was that usual for you not to have any discussions with him but just to submit for his approval and - -?---You might go up and have a chat if it was a complex one and we've thought that there might be any questions, but generally there would be, there would be a covering memo very often and then it would be just left in with his staff for his signature when he had a moment.

Can I take you to page 60 of the document.---Ah hmm.

And this is just the background to the proposal which refers to the resolution of council at the outset. Is that right?---Ah hmm. That's correct.

So that sets out what the purpose of the planning proposal is in effect.

---Correct.

Is that right?---Correct.

And the document steps through the statutory requirements for a planning proposal. Is that right?---Yes. We sort of had a template that we would populate with it to make sure we covered all of the relevant matters.

10 Yes. At page 65 there's a section on the possible development scenario.
---Ah hmm.

And there's reference there to the urban design report, which I think looking at the bottom of the page was attached to the proposal that was submitted to the department. Is that right?---Correct.

20 And there's a reference in the second paragraph to the scheme envisaging the five-storey mixed-use development but stepping down around the corner from five to four along Cooks River and then stepping down to three storeys, so the stepping down was something of which you notified the department in the planning proposal.---Yes, because that was contained within the applicant's proposal that they lodged with us.

I see. Can I take you to page 67.---Ah hmm.

And again this is consistent with statutory requirements, just setting out what the objective of the planning proposal is.---Ah hmm.

30 And indicating that it was to amend the uses and to amend the height. And just looking at the table, there's a reference to floor space ratio, under "Current," it says, "No FSR." That's a reference is it to the fact that there was no standard for FSR. Is that right?---Former Canterbury Council, they did not provide FSRs in their business zones, it was just height.

I see. And so there was no change to that because - - -?---Correct.

- - - there wasn't a standard control.---Yes, correct.

40 All right. In relation, can I just take you then to page 69, Justifications. There are a series of questions that are set out there. Are they standard questions that have to be answered?---Correct, yes, they are.

And looking at question 1 referring to, "A planning proposal is the result of any strategic study or report," just speaking generally in relation to height where a planning proposal involves taking the maximum height limit of a building beyond what's permitted in an LEP or a DCP is it usually the product of a strategic study or report of not necessarily?---Not necessarily. In many instances they are, but it doesn't have to be.

What other considerations would come into play in justifying an extension of height limits?---It could be just acknowledging that there is increasing development in a particular centre and maybe the proposal would, would be consistent with what's been requested. I mean it could be as simple as that. So it's a little bit, yes.

All right. Now, you recall that a delegate of the Minister for Planning made a Gateway Determination?---That's correct.

10 Can I take you to page 107, which is the determination and it was made under cover of a, it was provided under cover of a lawyer at the same date. Going to the determination, the first part of the determination refers to the person, or the officer who is delegate for the Minister, having determined under section 56, subsection 2 of the Environment Planning and Assessment Act that an amendment to the LEP to facilitate high density residential development at 15-23 Homer Street, with an active commercial frontage to the street, should proceed subject to the following conditions. Looking at the first of those conditions, and specifically the third bullet point. Can I just get you to read that for me? Just to yourself.---Yep. Oh, do you want me to read it out, sorry?

No, no. Just to yourself. Have you read it? Sorry.---Yes, I have, yes.

Did you understand the reference to further justification to support a maximum building height of 17 metres and additional study as separate requirements or were they related?---I thought they were related. You needed a study to justify, that's, the 17 metre height.

30 All right. And when you reviewed the document of the determination, what did you understand by the need for the study to, "Accurately represent and address the impact of future development on the character of the local area"?---To my mind, it was reference to what, what did, what was the desired future character for this area. We'd already undertaken some work previously so I read it in that context, because that changed.

40 Right. Oh, sorry, when you say, "That changed," what, what do you mean? ---I mean, previously we had the, the draft about the control for the Undercliffe precinct which was that B1 zone. So, to my memory, when I was looking at future development on the character of the local area, it was just saying have we, have we dismissed that study now, and in which case, we need a study to look at that issue.

I see. All right. Did you discuss that particular condition with anyone from the department?---Yes. I contacted Helen Wilkins from the Department of Planning and wanted to get a understanding of, of what they were asking of us because I hadn't, I just wanted clarification.

I see. Did you want clarification as to the content of what was being asked for you or - - -?---I guess the process. They asked for another study. Was that a council, was that to be prepared by council? Was that to be prepared, could it be prepared by the proponent? Did we have to forward it to the department prior to placing it on exhibition? Did they want to, to signoff or, or see it or view it before we, we proceeded to exhibition. So, it was around those matters.

10 Can you recall what Ms Wilkins said to you in response to the questions that you were asking?---It didn't necessarily have to be prepared by council and also that we, there wasn't really a role for the department to review any study that we commissioned or, or whoever undertook that study, prior to it going on public exhibition but that it had to be exhibited concurrently with the planning proposal when it went on exhibition. And she advised that the department would review the, the exhibition material and she said that if, need be, they could always, well, if they, if they felt that it wasn't appropriate, they could always lodge their own submission to the planning proposal exhibition. So, then, in effect, it became an unresolved government agency objection.

20

I see. Was there any requirement to notify the department when a planning proposal went on exhibition?---We wouldn't normally, no.

So what was the mechanism by which, in circumstances where the department said, well, it will review it when it's exhibited, was there any mechanism by which the department would be informed that it was on exhibition?---Only if we advised them.

30 I see. All right. Can I take you, Ms Dawson, to page 110 of volume 9? And this is an email from you to Urban Planning. Was that a shorthand for a contact list that you had?---Yes, so it was the, so that would've gone to everybody, Warren Farleigh, Lisa Ho and the others within the land use planning unit.

And the date is 23 March 2015, so shortly after receipt of the Gateway Determination, and I think in paragraph 30 of your statement you say that you wrote this email to inform your staff of recent developments and your discussions with Ms Wilkins?---Correct.

40 And consistently with what you've said to us, in paragraph 3 or the third paragraph of your email, it says, "In terms of who undertakes these additional urban design studies, that is up to council." As you understood what Ms Wilkins had told you, council could commission the study but so also could the proponent. Is that right?---Correct.

And then in the next paragraph you indicate that the studies don't have to go to the department before, again consistent with what you've said, and then the indication that department would review it on exhibition and if they

considered that the study hadn't adequately justified the proposed height, the department had the option of making a submission, thereby constituting an unresolved government agency objection. What was the issue or what issue did an unresolved government agency objection create in terms of the progress of the planning proposal?---It meant that if council had the delegated authority to, in regards to the planning proposal, as soon as we got an agency objection then we basically had to resolve that government agency objection before we could proceed further with the planning proposal.

10

So the objection had an impact on the validity of your delegation as you proceeded - - - ?---Yes, correct.

- - - without resolving that objection?---Correct.

Is that right?---Correct.

20

And you indicated in the last paragraph in terms of who commissions or undertakes the urban design studies, you recommended that council commissions the studies given the potential threat in quotes of having our delegations removed in the event that the department considers that the studies do not provide adequate justification. Referring to that as a threat, that was simply referring to the - - - ?---Yes.

- - - potential - - - ?---Yes.

- - - for the department to raise an issue in terms of the content of the study at the point of exhibition?---Yes.

30

In view of that, why did you recommend that council commission the studies rather than the proponent, in view of that?---I guess I also felt that if the proponent commissioned the studies there would be a perceived conflict of interest. Obviously they wish to maximise yield on the site and I felt that if theirs was the study, then I was of the view that there was the potential that it may argue for more development that could actually occur and hence I felt that it would be better if council had an independent study commissioned and undertaken, but we felt confident that the department would consider, had dealt with the matters appropriately.

40

So there was less risk?---Yes.

In your view of an agency objection being made if there was a report that council had commissioned that was independent of the proponent?
---Correct.

All right. Can I take you to paragraph 32 of your statement. You indicate there that Mr Olsson was engaged to complete the additional study to which the Gateway Determination referred.--- Yes.

And is it the case that you signed the letter engaging Mr Olsson, do you have a recollection of that?---Yes.

You say in your last sentence of 32 that you were aware that the review by Mr Olsson did not support the applicant's proposal in its entirety. Do you recall reviewing Mr Olsson's report when it came in?---Yes.

10 Can I take you to volume 9, page 141. That's Mr Olsson's study that's dated 16 June, 2015. Do you see that?---Yes.

And that's the report that you recall reviewing when it came in. Is that right?---That's correct.

Do you recall forming a view as to its contents, namely whether you agreed or disagreed with it?---He'd done some 3D modelling for it and we felt that when we read through it that it was a good, a good report that had gone into the relevant matters appropriately.

20 Just looking at page 151 - - -?---Ah hmm.

- - - of the document, it states in the third paragraph that he provided the development impact study that had been requested - - -?---Ah hmm.

- - - following the Gateway Determination, and it advised, so this study advised that a 17-metre height limit would be excessive for the site and recommended alternative height limits. So that was consistent with the view that council officers had reached, that the 18 metres that had been initially sought by the proponent would be excessive.---Yes, correct.

30

And Mr Olsson gave some reasons for why that would be, he didn't consider it to be appropriate and noted in the next column that he would also comment on the related issues of FSR and permitting ground floor residential usage. Can I take you to page 168, and this showed an elevational view of recommended, and this was Mr Olsson's recommended levels for the Homer Street fronting component, and dropping down to the penultimate paragraph on that page there was reference to the development stepping down toward the Cooks River and steps in from the 25-33 Homer Street development, so helping to preserve the privacy in use of balconies and windows at that development. So that was the development next door. Is that right?---Correct.

40

And the tallest component of their recommended, so Olsson's recommended envelope varied from 13.2 and 14.5 metres above natural ground level, giving an average height above ground level of 13.85 metres. Is that right? ---Correct.

And over the page at 169 where the FSR calculations and the way that that worked out on their recommended envelope was 1.29:1. Is that right?

---Correct.

Did you discuss the contents of the report as Mr Olsson submitted it in June 2015 with Ms Ho or Mr Farleigh?---I think with both of them.

And can you recall what their view was of the report?---My understanding, recollection is that they supported it.

10

Did you discuss the contents of the report when it came in with Mr Stavis? ---I don't recall the conversation but we would have, we would have.

You say in your statement at paragraph 33 that the study and the review was completed and submitted to council. Can you recall whether that happened before you ceased employment with the council or afterwards?---This was, his review was lodged with council, sorry, was – can you just repeat that question?

20 Yes. So, I'm just looking at paragraph 33- - - ?---Yes.

- - - of your statement, and you say, “Olsson completed his review and study which was submitted to council.” Perhaps I should clarify what you mean there by council?---Offices.

Okay, sorry. I had misunderstood what that meant?---Yes.

30 Before you left the council were you involved in any discussions with Mr Olsson about his report?---There was a meeting organised with Warren Farleigh, Lisa Ho, Spiro Stavis and Mr Olsson and myself.

I see. Was that after he had submitted the report to you?---Yes, a number of months after, I think.

I see. Can you recall any discussions about the report on that occasion?---I can't, I didn't recall at the time of this but obviously I've read the evidence since so I don't know what you want me to say there. But I do recall now having read the evidence of that meeting, yeah.

40 What is it that you can recall of the meeting?---I do recall that it became quite heated, the discussion, and, but there was a different - - -

THE COMMISSIONER: Who became heated?---Sorry?

Who became heated?---I think I did. There was a difference of opinion, Mr Stavis felt that the proponents proposal was a better outcome and that we were being too conservative and my view was that we shouldn't be there

purely to maximise developer's potential, we also had to look at the public interest.

MS MITCHELMORE: So in so far as you can recall Mr Stavis saying that he thought the proponent's proposal had the better outcome, what was, in terms of better outcome, what was your understanding of what he was getting at there?---That greater height and density on the site would be a better outcome.

10 THE COMMISSIONER: And that proposal was their original proposal that was put to council?---That was my understanding of their planning proposal, yes.

Not the 17 metre throughout the site that the council - - - ?---I can't recall between the two but I know that the idea that we were looking at maximum 14 metres and stepping down was obviously less than either of those two options.

20 MS MITCHELMORE: And of course the planning proposal that had been submitted, that was a planning proposal resolved upon by the council? ---Correct.

It was the council's planning proposal. Is that right?---It become council's planning proposal once, I mean, when we put it in through Gateway with the relevant planning authority, so by default they actually become our planning proposal even though it's a proponent lead planning proposal.

30 And that was the planning proposal that sought 17 metres across the site? ---Correct. Correct.

And Mr Olsson's study was in relation to that planning proposal?---That's correct.

Is that right?---Yes.

40 So in so far as the proponent had sought 18 metres, that was off the table, as it were?---To a large, yes, I mean, the council resolution was 17 and that was what we lodged and that was part of the Gateway Determination. So if we were to up it to 18 then that would require a separate resolution council.

I see, all right. Ms Dawson, did you become aware at any stage before you ceased employment with the council that JBA was retained by the applicant to carry out a study along the same lines as Mr Olsson?---No.

Not while you were at the council?---Not while I was at the council, but I was aware that I think Mr Olsson's study had been provided to the proponent which, you know, is not too unusual.

That would be something that would happen in the ordinary course?---Yes.

In relation to a planning proposal?---Yes, correct.

Where the council commissions a study that's relevant to a proponent's site?---Correct.

10 All right. Ms Dawson, I wanted to then move to a different site which is 998 Punchbowl Road, Campsie?---Is that, it's actually Punchbowl, sorry.

I'm sorry?---It's actually Punchbowl.

Sorry, 998 Punchbowl Road, Punchbowl?---Punchbowl, yes.

Right, I'm sorry. You say in your statement in paragraph 34, the last sentence, that there is significant history to this site. Some of that history had occurred before you arrived at the council. Is that right?---That's correct.

20 So the LEP, yes, I wonder, I note Ms Dawson has been coughing and I note the time. I wonder whether it might be appropriate before I start in detail on 998 Punchbowl Road that we take a break and can resume?

THE COMMISSIONER: And you can consume some Strepsils, or - - -

MR MOSES: They're honey and lemon flavoured.

30 THE COMMISSIONER: All right. I think that's probably a good idea. If we can take about 15 minutes, thank you.

SHORT ADJOURNMENT

[11.25am]

THE COMMISSIONER: Thank you, Ms Mitchelmore.

40 MS MITCHELMORE: Thank you, Commissioner. Ms Dawson, I was asking you just before the adjournment about the history of 998 Punchbowl Road, Punchbowl and it's the case that the Canterbury LEP was made in 2012, is that right?---That's correct.

And there were a number of submissions made in relation to the LEP about particular sites which led to, rather than then forming part of the LEP, a Residential Development Strategy that would consider those separate submissions, is that right?---That's correct.

And the Residential Development Strategy was endorsed with amendments at a council meeting on the 31st of October, 2013?---Correct.

So, that's before your commencement with the council?---That's correct.

And as you've said out in your statement in relation to 998 Punchbowl Road, this is at paragraph 36, the Residential Development Strategy indicated or anticipated that there'd be an FSR for this site of 1.8:1 and height of 15 metres. Is that right?---Correct.

10 And a zone of R4. Are you able to tell the Commission what R4 was?---It's a residential high density zone. R3 which was the surrounding area was medium density, so we had different controls. So for the surrounding medium density it was an FSR of 0.5:1 and a height of 8.5 metres whereas R4 could be higher than that.

I see. Now the related planning proposal was exhibited in June of 2014. Had you commenced with the council by that time?---Yes, I commenced in February 2014.

20 And were you involved in the preparation of the planning proposal for exhibition?---In a review role, definitely, yes.

In response to that exhibition, do you recall that a submission was made on behalf of the owner of 998 Punchbowl Road?---There, I don't recall so much the submission, I know that when we prepared our council report in terms of reporting a draft planning proposal up to council, we went with, I guess, the, well, there must have been because the initial council, I'm sorry, I'm a bit confused here.

30 There was a resolution- - - ?---Resolution, yeah.

- - - in relation to the Residential Development Strategy?---Strategy, correct.

And then there was a planning proposal to give effect to that resolution? ---To that, yes. That's correct.

And that was exhibited in June of 2014?---Yes.

40 Can I take you by way of assistance, Ms Dawson, to volume 11 of Exhibit 52? And volume 9 can be returned?---Retained?

No, returned?---Returned, thanks.

Can I take you to page 139 in volume 11? Page 140, so the next page of that?---Mmm.

And you'll see that the subject matter of the letter is 1499 Canterbury Road, Punchbowl?---Mmm hmm.

Do you see that?---Yes.

Was that another address or an alternative address for 998 Punchbowl Road?---Yes, it was a corner site so it was known as two different addresses.

And this was a representation in relation to the planning proposal currently on exhibition?---That's correct.

10 Do you recall seeing this document at or around the exhibition of the planning proposal?---It looks familiar but I'm not certain when I saw it.

Do you have any recollection of reviewing this document?---No.

All right. You refer in paragraph 37 of your statement to the planning proposal being considered at a meeting of council on 2 October 2014. Can I take you to the business paper for that document which is page 152 of volume 11?---Mmm hmm.

20 If you've got that there. And this, of course, was a planning proposal that related to a number of different sites. Is that right?---That's correct.

Can I take you to page 157 of the officer's report. Can I just ask before I take you to the specific content, you had a role in the, certainly in the review of this report?---Yes.

Is that right? And what about its specific content?---We had discussed a number of the sites, this being one of the sites in more detail, yes.

30 And when you say, "We", that's members of the planning team. Is that right?---Yes. Yes.

Were there any particular officers responsible for this document in particular?---I think it was Allan Shooter in particular.

I see. So just looking at page 157.---Ah hmm.

40 There's a heading, Submissions for Individual Sites. And the report notes that nearly all of the, aside from general sort of broader agency submissions there were submissions that related to specific sites, and at the bottom there's the statement, "It should be noted that those submissions which have requested additional density or rezoning which was not part of the exhibited planning proposal will be considered as a separate report to council. They are described in general terms in the relevant discussions below." So is it the case that submissions such as that submitted by Statewide on behalf of the owner which sought additional density or rezoning would be, consideration of that would be postponed until after the planning proposal had been approved and would be considered separately. Is that right?

---My understanding that they were additional sites that hadn't been part of the exhibited planning proposal.

Oh, I see.---Whereas Punchbowl Road had been part of the exhibited planning proposal - - -

I see.--- - - - but with a lower FSR.

I see.---Yeah, yeah.

10

All right. Can I take you then to page 173 - - - ?---Ah hmm.

- - - which is the specific report about 998 Punchbowl Road, Punchbowl, also known as 1499 Canterbury Road, Punchbowl.---Mmm.

And the proposed changes are in a table under the two diagrams. So the zoning was changing from R3 to R4, the height from 8.5 metres to 15 metres, and the floor space ratio of 0.5:1 to 1.8:1. Is that right?

---That's correct.

20

And there's a reference to two site-specific submissions having been received, one objected to the proposal and the other was from a consultant on behalf of the owner and sought an increase in building height and FSR. ---That's correct, yes.

Over the page there is reference to addressing the issues raised first in the submission objecting to the proposal. Do you see that?---Yes.

30

And one of the issues that was raised by this objector, looking at about point 6 on the page, there's a heading, 'Issue. Loss of privacy and security will arise from people being able to see into property.' Do you see that?---Yes.

Do you recall whether this person who made the submission objecting was an adjoining resident or landowner?---Yes, yes, he was the adjoining landowner immediately to the north on Punchbowl Road.

40

I see. And there is a reference in the text under Response in the large paragraph that it was agreed that the proposed increase in height may pose some challenges in terms of the interface of the site with the adjoining lower-density zone.---That's correct.

So that's the zone in which this objector had his property. And that the LEP usually allow, applied an FSR between 1.6 and 1.8:1 to land with a maximum building height of 18 metres, so as the proposed maximum height was proposed to be 15 metres it was recommended that a lower FSR be applied, given its relationship to the adjoining properties.---Correct.

And the need to ensure adverse impacts on the adjoining lower-density land is minimised. Do you recall any discussions amongst members of your team, Mr Shooter, Mr Farleigh, about that issue?---We did have some discussion, and again we were comparing it to what, what, the relevant FSRs elsewhere in the Canterbury local area and I know we did compare looking at the various FSRs and heights, you know, what matched with what.

10 I see.---And just acknowledging that this was an isolated site surrounded by a lower density, so we felt that we should err and go to the 1.5:1.

I see. And then at the bottom of the page there's a heading, Request for an Increase in Building Height and FSR. Now, this relates to the submission that came from - - -?---Yes, yes.

- - - the owner of the site. Is that right?---That's correct.

20 And the owner sought an increase in the building height from 15 to 16 metres because of a lift overrun issue. And over the page at 175 you'll see that response wasn't, that request wasn't supported.---Ah hmm.

But there was also an increase in floor space ratio sought from 1.8 to 2.2:1 to maximise building form on the site. So, this was going in the other direction to what the council officers had arrived at on the previous page in terms of decreasing the FSR. This sought to increase it further from 1.8 to 2.2:1. Is that right?---That's correct.

30 And the response of the officer's report was to cross refer back to the previous response where a lesser FSR was recommended, and there's a reference in the paragraph under response to the diagrammatic scheme of not appearing to take into consideration road widening on the site. What can you tell us about the issue of road widening on this site?---RMS had, were intending to acquire, at some point in time, part of the, the land fronting Canterbury Road and as such, it was actually identified in a land acquisition map, a further land acquisition map, as required for road widening.

40 I see. And the scheme that had been supplied by the owner didn't take the road widening into account?---That's correct.

And the other issue identified was that it didn't appear to comply with relevant DCP setbacks?---Correct.

So that's setbacks from the boundaries as stipulated in the DCP?---Yes.

And the report also identified that it was inconsistent with other FSRs in the LEP and would exacerbate amenity issues on adjoining land. In terms of amenity issues that would be exacerbated, were they the issues of privacy

that the person objecting had raised?---Yep, yep. Or it could be solar. It could be all sort of things like that. So, you would want to have some building separation to try and minimise those matters.

I see. And again, can you recall discussion of the submission that was put in by the owner but requested the addition of the FSR?---I know that we, we looked at and discussed generally, the issues around the site. I'm presuming, I can't recall but I'm presuming we did discuss the, the land owner submission, if it was in the report, yes.

10

Yes. And the ultimate recommendation was to reduce the FSR from 1.8 to 1.5:1, consistent with what the report had earlier stated. Is that right?
---That's correct.

And not support the height or FSR increases requested by the proponent. Is that right?---Or that which was exhibited. Because it was exhibited at 1.8:1 as well.

20

Yes. Now, insofar as there was a change from what had been exhibited, as recommended, namely the decrease in FSR from 1.8 to 1.5, there's a reference in the penultimate paragraph on this page to revision of planning proposals. Are you able to outline what your understanding of that paragraph in the report is?---We had exhibited it at one height and now, if we were to change that height and FSR, then would we, would it be considered significant enough that we would have to possibly re-exhibit or, or seek a, a further determination from the Department of Planning. Usually you can revise a planning proposal if it's minor, especially if need be, if you're responding to objections. Maybe you reduce something slightly to respond to an objection and so when you put it back to the department, or, or you know, as part of that process, then it, if may be that you wouldn't have to seek further Gateway Determination from the department because you were actually responding to the communities concerns.

30

And as I understand this paragraph, the view was taken that because the FSR reduction was minor, it wouldn't need to, it wouldn't require a revised planning proposal, is that right?---That's correct. Yep.

40

What if the increases sought by the proponent had been, if the officers have been of the view that they should be supported. Would that had required a revised planning proposal and forwarding to the department?---To my view, yes. Because you need to give the community an opportunity to respond to planning proposal and that's through the exhibition process and especially where you've received objections but you're then potentially increasing any adverse impact, then that should be, to my mind, re-exhibited.

I see. Now, as you state in the last sentence of paragraph 37 of your statement, at its meeting of 2 October 2014, the council resolved to increase the FSR which was a departure from the exhibited proposal and it was also a

departure from the recommendation in the office's report. Were you present at that meeting?---I can't recall if I was present at that meeting.

All right. If I can take you to page 227 of this same volume, volume 11, and this was the resolution of the council, and the second last bullet point on that page, that's the resolution of which you were subsequently informed about 998 Punchbowl Road. So that was keeping the height at 15 metres, so no change to height, but the increase in FSR consistently with what the proponent had sought in the submission. Is that right?---That's correct.

10

Now consistently with the officer's report to council about changes needing to be made to planning proposals in such circumstances, the change to FSR required a revised planning proposal to be prepared and submitted to council. Is that right?---That's correct.

20

Do you recall liaising with the department in relation to 998 Punchbowl Road and other sites in respect of which changes were made to the planning proposal at the council meeting?---There had been a number of conversations because this was actually quite complicated because we had an unresolved government agency objection from Roads and Maritime Services, so a number of planning proposals couldn't, a number of the properties couldn't proceed without a major traffic study for Canterbury Road being undertaken. So it split up the exhibited local plan into a number of separate ones, so this was one of the separate ones that didn't need a traffic study, RMS had said this site didn't need a traffic study, and when we discussed it with her this is one of the ones, because it had changed, that we needed to move it forward now as a separate planning proposal.

30

But can I take you, Ms Dawson, to page 230?---Mmm hmm.

And this is an email from Ms Wilkins, sorry, the top of the email is from Mr Farleigh to Mr Shooter, but it includes an email from Ms Wilkins?---Mmm hmm.

At 7 November 2014 that starts, "Hi Gill"?---Yes.

40

So is it the case that you received an email from Ms Wilkins dealing with the subject matter in this email?---I think this came from Warren Farleigh to me, but I think the original email had been to Warren Farleigh, I think.

THE COMMISSIONER: But, "Hi Gill"?---No, you're right. Maybe I had forwarded it to Warren, okay, yes.

MS MITCHELMORE: Yes. It starts, "Hi Gill"?---It is.

Does that assist your recollection?---Yep. Mmm hmm.

Okay. Just then in the email, Ms Wilkins sets out some guidance about how to progress the planning proposal?---Mmm hmm.

And if you drop down to about point 5 on the page, there's a reference to the particular resolution?---Mmm hmm.

And that it changed part 2 of the explanation of the provisions substantially, and then just dropping down, because, dropping down to the last bullet point, increases to the increased FSR for 998?---Yeah.

10

Relevantly constituting densification but hasn't been strategically justified? ---Correct.

Do you see that?---Correct.

And is that the case that there was no, at this point in time, strategic justification?---There was no strategic justification, in fact this site in the Residential Development Strategy recommended that it not be rezoned to R4 even.

20

I see. That's going back again?---Back again, yes.

Back again to before your time at the council?---Yes.

Is that right?---Correct.

Yes. And in circumstances where those changes were made in response for community consultation - - - ?---Yeah.

30

- - - the advice from the department was that council would need to do a revised planning proposal?---Correct.

Either for everything or over the page it could carve out from the planning proposal items such as 998 Punchbowl Road in respect of which further work had to be done?---Correct.

Is that right?---Correct.

40

And that was, as you understand it, what subsequently happened?---Correct.

That 998 was taken out of this planning proposal and progressed separately?---Correct.

All right. Now in terms of the preparation of that planning study, that was prepared by the council. Is that right?---When we got the Gateway Determination, we then commissioned an independent study, yes.

I'm sorry, we might be across purposes. I'm talking about the revised, so there was a need for a revised planning proposal in respect to 998 Punchbowl Road?---Okay, sorry, yes.

That was prepared by the council?---That's right.

Is that right?---Yes.

10 Rather than the proponent?---Yes, in accordance with the council resolution.

I see. Can I take you to volume 12 of Exhibit 52? And page 1 of that volume is the planning proposal that was prepared?---Mmm hmm.

Is that right? Can you recall which of the officers in your team had primary responsibility for this proposal?---I think this was Tom Foster.

And on the cover there's an aerial view of the site which shows the, it being a corner site sitting on the corner of Canterbury and Punchbowl Roads?
---Yes.

20

And if I can take you to page 5, there's the aerial photo again but there's also a view of the site so at this time it was a service issue. Is that right?
---Yes.

Just heading over to page 9, this is the possible development scenario and it was anticipated that an application for a residential flat building would be submitted once any changes to zoning and development standards were in place. It's the case that at this time, of course, no development application had been submitted. Is that right?---That's correct.

30

But you had the submission that had been made to the planning proposal in relation to what may be anticipated for the site?---Correct.

If I can take you to page 10 which, again, consistently with the statutory requirements set out the objectives or intended outcomes, and the objective was described as being to facilitate high density residential development on the site and the proposed increase in FSR would facilitate maximisation of the residential development opportunity. So in other words, the proposed increase would facilitate lot yield. Is that right?---Yes. Increase lot yield, yeah.

40

And then looking at page 12 which is the justification for the planning proposal there's reference to the fact that it was partially a result of a strategic study, being the Residential Development Strategy, but it sought to depart from those findings from the RDS which had recommended that the current development standards be maintained, and then there's a reference to the submission. Just looking at page 12 and the report more generally,

did you review the report before it was submitted?---I would've read the report.

Do you recall having a view about, and if you need to look at the remainder of the justification feel free to do so, but about the adequacy of the justification for the planning proposal?---From our perspective we were, to some extent, just enacting a council resolution so we didn't really have any other studies to justify it.

10 And what was your view about the merits of this planning proposal from a strategic planning perspective?---I felt that it wasn't consistent with any sort of strategic direction of the council or of other work that was being undertaken by the Department of Planning.

And do you recall having any discussions with officers at the planning team about the merits of the proposal?---Not myself, not specifically, no.

20 All right. You've indicated that you were, in this report, in effect, implementing a resolution that had been made by council. Did you have a concern about submitting this planning proposal to the department?---I mean, councillors do have a, have a role in setting strategic policy direction at a council and it's a legitimate role of theirs. So, it was a council decision. However, maybe through the process, of, of going through a Gateway, maybe the Department of Planning might want to request more information if they felt that, that, that it was something that they may not support. But, but generally it's a council resolution and it's policy and, and we usually have to implement it.

30 Yes. Now, at page 33 of this document, sorry volume 12 you, it's a memo of 6 February, 2015, from you to the general manager, and this is perhaps one of the memos that we were saying was your practice to provide him with.---Correct.

Which is the attaching of the planning proposal and it was submitted for his approval and signature and you've referred there to the council resolution to which it refers. Is that right?---That's correct.

40 I think you mentioned earlier in your evidence that you would sometimes sit down with Mr Montague in relation to planning proposal when you were submitting them for his signature. Can you recall whether you had any sit-down discussions with him in relation to this proposal?---No.

When you say, "No," you don't recall or you - - ?---I, I don't believe I did sit down.

Now, at page 34, Mr Montague has submitted or signed a submission of the planning proposal to the department and again, you countersigned, consistent with your practice that you've identified. Now, the department's

response was quite swift in circumstances where the letter of Mr Montague was signed on 10 February, there was a response to Mr Foster on 16 February. Do you recall reviewing that letter when it came in?---It was brought to my attention.

I see. Is that, and by Mr Foster?---Yes.

10 And it raised a number of issues with the proposal, including in the second paragraph, I'm sorry, I'm on page 35. The second paragraph, there was a concern that, on a preliminary review, that they – and there was a number of planning proposals that had been submitted – that they do not contain adequate information to proceed with assessment, and one of the requests that was made was that council submit additional information to demonstrate adequate justification for the 2:1 FSR.---That's correct.

20 And to clearly demonstrate that it has strategic merit. What was your understanding of that request?---I mean, it, as a consequence of this, we, we, our understanding was that we had to, council had to undertake a body of work, which was maybe an urban design review or, or study to, to look at this site, to actually see what, what an appropriate height, well, FSR might be for this site. To actually demonstrate that it would have minimal impacts on the surrounding area.

And that's referred to in the third paragraph of the letter, there was a direct request from the department to submit an adequate urban design assessment?---Correct. Yes, sorry, yes.

30 And there was also a request to submit an adequate environmental assessment report? - - -

All right. Now you've indicated I think in your statement that Mr Peter Annand was retained to prepare an independent urban design report. Is that right?---That's correct.

And at page 36 of the volume, volume 12, is an agreement with Mr Annand which you have signed at page 38?---Correct.

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

40 And there was a timing for his study was requested by Friday 17 April. You can see that on page 38?---Yes. Correct.

Can I take you to volume 12, page 156? This is a letter from you to Mr Matthew Daniel of Statewide Planning in relation to 1998 Punchbowl Road, Punchbowl. Is it the case that Statewide Planning were consultants for the owner of the site? Is that right?---Yes.

And do you know who the owner of the site was?---I don't recall at the time noticing the name, I mean, I've obviously seen since but at the time I wasn't aware of who the owner was, per se.

I see. And you've referred to the fact of the planning proposal and its preparation and its submission to the Department of Planning and the response from the department that further justification was required. In the third paragraph from the bottom of the page, you refer to it being subsequently confirmed with the department that this urban design study should be of an independent nature. Can you recall discussions with the department around that requirement?---I think what it was, was we've had that, a previous conversation with Helen Wilkins from the department and, which was in March, but I can't recall what it is in relation to this date so I'm not 100 per cent certain, I can't recall the timing of the various conversations and which one it related to.

But in so far as it was confirmed with the department that the urban design study should be of an independent nature, did you mean by that independent of council?---To my mind it should be, yes, it should be independent of both the proponent and council but we would commission it.

All right. And do you recall having any understanding of why the department was of the view that it should be independent?---No.

In paragraph 40 of your statement you referred to the report of Mr Annand coming in?---Yes.

And you were not entirely happy with its content in so far as it set out some options rather than making decisive recommendations. Is that right?---I get confused, I saw so many versions of it in the end, but some of them had options, some of them didn't have options. I think the very early ones didn't have an option.

Yes. It was the case, though, that in terms of FSR the report did not generally support an FSR of 2.2:1?---That's correct.

Is that right? But rather something closer to 1.8:1?---Yes.

If I can take you to page 176 of Volume 12? I should say the start of the report is at page 171 but I'm just looking at 176. There is in there a reference to a preliminary review?---Mmm hmm.

And the first bullet point was the proposal as set out in the proponent's planning proposal report, just stopping there, it was of course the council's planning proposal report. Is that right? Rather than the proponent's?---I'm not certain here whether he was referring to the proponent's submission.

I see.---I'm not certain there which one he's referring to.

I see. But the planning proposal report was of course prepared by council?
---Yes, that's correct.

But anyway, that the proposal was not able to be, generally not able to be supported.---Ah hmm.

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

10 And there is a reference to, in the third bullet point that an FSR increase from 0.5:1 to 2.2:1 was in the view of Mr Annand an overdevelopment of the site. Is that right.---Correct.

And he was suggesting that a maximum FSR of 1.8:1 would be more appropriate and would be likely to gather a development outcome compliant with the primary development controls for the site.---Correct.

20 And can I take you to page 181. This was Mr Annand's conclusions. He suggested there was potential to alter development controls in a number of respects, so to increase the building height to 15 metres but perhaps with a corner tower to seven storeys. So is that on the corner of Punchbowl and Canterbury Roads - - -?---That's - - -

- - - there might be slightly higher - - -?---Correct.

- - - building height?---Correct.

30 And then to rezone it to R4 and permit localised building heights to seven storeys at the corner, but that was dependent upon first the provision of the proposed street widening to Canterbury Road as required by RMS and improved provision and location alongside open space.---Correct.

In relation to the road widening issues, that's one of the issues I think that you raise in your statement at paragraph 40, that refers to what you've already said to us, namely that there was already in place at this time an acquisition notice that related to some part of this site to be acquired for road widening?---That's, yes, but some future date identified by RMS, yes.

40 Yes. Was road widening in relation to this site a matter that you discussed with Mr Stavis in the course of considering the planning proposal?---I made him aware of the requirement for road widening, because it's actually one of the maps associated with the Local Environmental Plan, so it was a matter that you had to consider, not optional.

And if I can show you page 279 of volume 12.---Ah hmm.

It's an email from you to Mr Stavis. So this is attaching the map I think you just referred to.---Yes.

Is that right?---Yes, correct.

Can you recall whether you provided that to Mr Stavis in response to a request made by him?---I can't recall, or whether it was from a discussion, I can't recall, but I did provide it so that he was aware.

All right.---I think it may have come out when we started to see the draft planning, the draft urban design study.

10

You also refer in paragraph 40 of your statement to the privacy objection having been made in the course of the exhibition. And you also refer to it being an isolated site. This is in paragraph 40 of your statement.---Correct.

20

By isolated do you mean isolated in terms of the proposed zoning of R4 as opposed to R3?---It was, it was surrounded by medium-density zoning, it was on a busy road, it wasn't located close to any, I think it was over almost one and a half kilometres to the train station, it wasn't near shops, it was just an isolated site that was being I guess considered for rezoning because it was a gateway site, it was the entry point to Canterbury Council.

I see. And insofar as the proposal was to rezone it from R3 to R4 - - -?
---Mmm.

- - - would development of the nature that was anticipated, namely residential apartments, would that have been permitted in the R3 zone?
---No.

30

All right. In so far as you say in the last sentence of paragraph 40 that there was a lack of services and the proposal did not meet any strategic merit, in relation to lack of services, what do you mean by that?---Normally you would try and locate your higher density residential areas close to train, I mean, train stations, there were a lot of train stations in the former Canterbury Council area, this had I think just a number of bus services, but there were no shops, there was no, there was no centre, so it was just one isolated site, so people would have to walk a long way to be able to even go to the corner store, or something.

40

So when you say services, you mean services for residents- - - ?---Yes.

- - - of any potential future building?---Correct. Yes. Yes.

Now you say in paragraph 41 that there were a number of meetings and internal processes that took place in relation to this planning proposal. And you refer to a number of meetings. Did some of the meetings include the owner and or his representatives?---I don't recall meeting with the owner.

But you have a recollection of meeting with the representatives of the owner in relation to the planning proposal?---I can't recall. That's not to say it didn't happen but I can't recall. It was mainly internal staff meetings.

Mainly internal, all right. Did Mr Annand attend any of those meetings?---I don't recall meeting with him but he may have met with others.

I see. Do you recall meeting with Mr Montague in relation to this site?---No I don't.

10

Do you recall attending any meetings in relation to this site with councillors?---No.

Now it's the case that work continued to be done by Mr Annand on his report, that it was an (not transcribable) process in relation to this report, is that right?---That's correct.

20

Can I take you to page 285? This is an email in which you were copied in from Mr Foster to Mr Annand and also Mr Farleigh and Ms Ho on 24 June 2015. It refers to two sites but in relation to Punchbowl Road there was an issue raised by Mr Foster about the side setbacks for four storey components need to increase to nine metres to enable compliance with new apartment design code setbacks?---That's correct.

And that would apply to any DA lodged on the site?---That's correct.

30

So the purpose of making amendments, Mr Annand making amendments, was to bring any planning proposal into line so that any development assessment would then be consistent with the planning proposal. Is that right?---That's correct.

And that lead to revisions being made to Mr Annand's report. Do you recall that?---Yes.

Specifically, if I can take you to page 112, which is a later report of Mr Annand, to the one I showed you earlier, at page 112 there was, you can take it from me, the addition of a section titled Compliance with Apartment Design Guidelines. Do you see that?---That's correct.

40

And you recall that being added - - - ?---Yes.

- - - in relation to the setback issue?---Correct.

And you've indicated, sorry, Mr Annand has indicated by reference to the Apartment Design Guideline that the clause, namely the clause in the design guide, which could reduce achievable FSR further from 1.8:1 to 1.5:1, need not apply in the present case because of the adjacent properties being likely to be up zoned at some stage and the building could be designed so the

balconies didn't directly look down. Do you recall any discussions about that aspect of Mr Annand's report?---I know that it generated a number of emails going backwards and forwards. My view was that there should never be a presumption if we've got no council resolution or strategy making any recommendations of the effect that land might be rezoned in the future and, in fact, as part of the Sydenham to Bankstown corridor strategy that was being undertaken by the Department of Planning at that time, they had looked at trying, should they extend the Punchbowl precinct further and they decided that there wasn't enough strategic merit because it was too far away from the train station so, again, that was reinforcing our view that in the short to medium term there was no intention to rezone that land.

Can I take you to volume 13 of Exhibit 52?---Okay.

And to page 15 of that volume. This is an email from Mr Stavis to you of 5 August, forwarding an email he'd received from the applicant's architect and asking you to prepare a response and a timeline about when the planning proposal would be sent through to the department. And if I can just drop down to the email of the architect, which is at the bottom of the exchange on page 15, there is a reference to 998 Punchbowl, corner Canterbury, "Re: setbacks. Who do I talk to? Anything ready for us to work off?" Do you recall whether or not the setbacks issue had been the subject of meetings or discussions with the architect at this time?---Council, council architect or the proponent's architect, sorry?

The proponent's.---Not that I'm aware of. I wasn't even aware until you said that that was from the proponent's architect because there's no, no address.

No, I see. It's just, there's a reference in Mr Stavis' email to it being from the applicant's architect.---Okay. So it is, yes. So, not that I'm aware of, no.

And just over the page is your response, is that right? Where you've set out the timing?---Yes.

At this time, are you aware or do you know whether or not the owner or those retained by him had seen any version of Mr Annand's report?
---They may have done because I believe that one email from Mr Stavis referred to letting the cat out of the bag, so I don't know if that meant that maybe the proponent had seen a copy. I don't know.

All right. If I just go back to Mr Stavis' email on page 15. He had made the request of you preparing a response about, and also including a timeline and that he needed it this week. To your knowledge, was there any urgency attending the planning proposal?---I mean, we were trying to process planning proposals in a timely manner. In theory, there is a 90-day process after which a proponent can ask for a Gateway review or pre-Gateway review to the Department of Planning. So, in theory, I could have, you could say that we tried to move things along but I, I think in this instance, it

seemed to be that the proponent was maybe looking at, and this is what I surmise, is that they were looking at what our, our consultants had said. So, we would try to report fairly quickly but very often, it, it seemed to be that we were waiting for further information to come back to us.

I see. And then going back to your response to, to Mr Stavis. You've indicated that the timing, 10 September was report to CDC, that's the City Development Committee, is that right?---Yes.

10 And that was because a new resolution of council was required as the heights had changed?---Correct.

Is that a reference to the height of the tower?---On the corner.

On the corner. And then the planning proposal would be submitted to the department on 30 September. Is that right?---That's correct.

And then there's be issues associated with their own timing?---Correct.

20 All right. Can I take you then to page 18 of volume 13. You'll see that there's an email at the bottom of the page is your email to Mr Stavis of the timeline, which we've just gone to on page 16. Is that a response from Mr Stavis on 12 August at 9.22, saying he had a meeting with the GM and Charlie this afternoon re. the Harrison site and following this 998 was raised. "Can you please see tomorrow so I can brief you?" Do you recall receiving that email?---Yes.

30 Do you know who Charlie is, in so far as there's a reference to "meeting with the GM and Charlie this afternoon"?---That would've been Mr Charlie Demian, Damian. Yeah.

I see. Do you recall attending a briefing with Mr Stavis?---No. With the proponent, or just with - - -

No, no. He's asked - - - ?---He would've - - -

- - - to see you?---Yes. Yes. Yes.

40 So that he can brief you?---Okay.

Do you recall having a meeting with him on the subject of 998 Punchbowl Road?---I don't recall but it was probably a meeting, yes.

All right. If I can take you then to page 17, so just working back, there's an email from you on page 17 at the bottom of the page which says, "Spiro, can you please confirm what exactly we are being asked to consider for this site as we want to contact Peter Annand for a quote"? Do you see that on page 17?---Mmm hmm. Yes.

And was it the case that Peter Annand was required to do further work in relation to the site after this date?---Yes.

And the subject of the work is referred to in Mr Stavis' next email. Is that right? Going up the page at 18 August?---Yes. Correct.

10 So, "pick up some of the lost FSR by increasing the height on the corner of Punchbowl Road from 21 metres to 25 metres." Is that right?---Yes.

So Mr Annand in his report had recommended 21 metres?---On the corner, yes.

For the corner, and so there was a suggestion that that be increased to 25. Is that right?---Correct.

And bringing it more into line with the council's resolution in terms of FSR?---Correct.

20 Can you recall why Mr Stavis made that request of you?---I can't recall it but I think it was in relation to that, maybe the, obviously discussions with the proponent.

You can't recall any specific discussions with Mr Stavis in relation to that? ---No, and I don't recall seeing a written anything from the proponent on it.

30 And in your response to Mr Stavis, you've said, "We can't see this site in isolation from its setting and we'll want any study review to address that issue as well"?---Yes.

And what was your initial reaction to the suggestion that Mr Stavis made in his email to which you were there responding?---I, I mean, I was of the view that 15 metres was probably not appropriate and then increased to, increasing density, so obviously we're getting 21 metres now 25 metres, I didn't support. And I made that apparent.

40 Yes. And Mr Stavis said that in his email to you on 18 at the top of the page at 10.11 that he agreed or concurred, "I concur". Do you see that, the top of page 17?---Yes.

And so he agreed, he was expressing agreement with what you've said in your email about site isolation?---Yes.

Can you recall whether he continued to agree with you on that subject?---I wouldn't suggest he agreed with me, no.

Is that subsequent to this email?---I would suggest that he may have put that in writing but I don't see anywhere in any discussions with me that he felt that we should be asking or looking at it with a bit more thought and rigour.

What do you mean by thought and rigour?---It was as if the developer was right, we were wrong, and it seemed to be lopsided in terms of where was, I don't know, the developer was right and the aim was really to maximise yield on the site.

10 I see. And that was anything that Mr Stavis said to you directly in terms of conversations with the owner, that was just an impression?---I don't know. I didn't really have conversations with the owner. I'm just saying that in terms of how he reacted in relation to what we were saying, I can't say that it necessarily changed his mind.

I see. And just before we leave that page, just dropping down to Mr Stavis's initial email about his requirement to pick up some of the lost FSR and "lost" is in inverted commas, do you understand what he meant by "lost" FSR?---I don't know, unless it was potentially because we'd pointed out
20 that there need to be larger setbacks, that maybe there was going to be road widening, so whether that was what he was referring to, so it was almost, there was an (not transcribable) FSR on a site that had to be accommodated somewhere within, within the proposal.

THE COMMISSIONER: Just before we leave that page, in that email he says, "Anyway, I'd like to be present at any meeting."---Mmm.

And then you respond after referring to not being able to see the site in isolation and then you said, "Following that we can arrange a meeting."
30 What meeting are you - - -?---I think that was with the, with the architect, Peter Annand.

Ah hmm.---I don't actually recall meeting with Mr Annand.

But that's your understanding, it would be a meeting with Mr Annand?
---Yes, yes, yes.

MS MITCHELMORE: Okay. Looking at page 19, Ms Dawson, you forwarded that email to Mr Farleigh.---Correct.
40

And is it, is that in accordance with your normal practice?---I just wanted the team leader to be aware of what was happening, yes, in relation to a site.

And it's the case then that Mr Farleigh at page 23 wrote to Mr Annand in relation to the additional work, copying, copying you in. Is that right?
---Correct.

And there's reference to "we" having been instructed to model the implications of a 25-metre building on this site.---Correct.

And the instruction to which Mr Farleigh is referring is the instruction from Mr Stavis. Is that right?---Correct.

And the request was made of Mr Annand to do that. Is it the case that you subsequently saw a further urban design review from Mr Annand?---We, I believe we did in September.

10

Yes. Can I show you page 30.---Mmm.

It's an email from Ms, it might be Avval from Mr Annand's firm.---Yes.

It's sent to Mr Stavis and Mr Farleigh. You're not copied in on this email. ---No.

20

But do you recall, the date is 4 September, 2015. Do you recall seeing the urban design review of August 2015 at page 31 at around the time it came in?---I think I did see it, because I think that I commented on it. I think this is the one I commented on but it would have been provided to me by Warren Farleigh if it was.

I see.---Because I don't seem to be on that list.

Before receiving that document were you aware of any communications taking place around this time between Mr Annand and Mr Stavis?---No.

30

Would it be unusual or usual for Mr Stavis to have communications with consultants on planning proposals without you or other members of the team being involved?---It would be unusual in terms of normal approach because my team would be dealing with the matters, but so yes, it would be unusual.

Can I take you to page 32.---Ah hmm.

This is in Mr Annand's report and refers to what he had previously provided and recommended and in the text box is that council had asked him to further review. Is that right?---Correct.

40

And at page 39 Mr Annand set out a fact of there would be potential of the site would be strongly influenced by the various setbacks that he there identifies, and then sets out a number of options in relation to the development FSR with the acceptable height but with different setbacks. Is that right?---Correct, yes.

And at page 41 he indicates that option C was his preferred option, and that involves the eastern setback. Is the eastern setback Canterbury Road or

Punchbowl Road?---The eastern setback I think we're talking there was in relation to the side boundary.

Oh, I see.---I think he's referring to the setback.

All right. And he said that was acceptable given likely future development to the east. Was likely future development to the east something that was contemplated at the time?---No.

10 And then the northern setback is 50 per cent compliant. So where was the northern setback, looking at this diagram?---So that's on the northern edge. So the top. So 50 per cent compliant, it should have been a nine-metre setback to the lot boundary where, as he is saying, part of it is six metres, which isn't compliant, but then he had indicated there that there would be an area of communal open space, so that would be compliant there.

I see. All right. And then he says that FSR achievable is about 2:1. So still not, not 2.2:1 but 2:1, and that was his preferred option which carries over to the conclusion on page 44, is that right?---Yes.

20

Over the page, at page 45, this is on the same day as that email was sent by Mr Annand attaching the report, Mr Stavis sent an email back attaching some minor corrections, but otherwise he was happy for Mr Annand to finalise it. Did you discuss the report with Mr Stavis before he sent this email?---No.

Did you have any opportunity to discuss it with him?---I don't think I did. I'm just looking at the timelines. They're on the same day.

30 Yes, the first email is sent at 10.09 and Mr Stavis's email is sent at 10.46. ---No.

Do you know whether Mr Farleigh discussed the report with Mr Stavis before he sent the email at 10.46?---Not that I'm aware of.

Do you recall whether you agreed with the content of the report when you reviewed it?---I didn't agree with it.

40 Why not?---We'd been asked to prepare a justification and look at it to see how it met SEPP 65 and the apartment design guidelines, and they even acknowledge here that it's not compliant. So, no, I didn't, wouldn't agree.

Can I take you to page 60. About point 5 on the page, so at the bottom of the page is the email that Mr Stavis sent at 10.46 back to Annand and Associates, and then you have written to him at 10.57, this is on the same day, indicating that you had serious concerns about the preferred options. Do you recall doing that?---Yes.

You set out your reasons why you had serious concerns, and you said to Mr Stavis, "Can we please discuss it at the end?" Do you see that?---Yes.

Did that discussion occur?---I don't believe it did that day, but I can't recall if it was after that.

There's an email at the top of the page from Mr Stavis to you, saying he disagreed about it being out of context on the corner, but he did agree with you that it must comply with the setbacks under SEPP 65.---Correct.

10

And he would speak to Peter.---Correct.

Aside from his response in that email, do you recall any further discussion with him about that issue?---I think, I mean, just generally about our planning approach I think there was a discussion.

And that was a discussion that you had with him one on one, is that right? ---Yes.

20 Can you recall - - -?---I can't recall when it was but it was around that time.

Can you recall the content of the discussion?---It was – we obviously had a different approach to strategic planning and it was put in those context, that we, I felt that we should be, we shouldn't always, I felt that it was too development led as opposed to looking at it in a strategic way.

I see. And that's a concern that you raised with Mr Stavis directly, is that right?---Correct.

30 And what was his response?---And I'm not sure when this was held but I do recall also saying that I wouldn't sign off on any reports that I disagreed with. It would have to come from him. So - - -

Do you recall what Mr Stavis's response was to these comments that you made?---I think he just listened to me. I think we were disagreeing on a number of things at that point.

Commissioner, is that a convenient time?

40 THE COMMISSIONER: Do you have much further?

MS MITCHELMORE: I don't have a lot but there may be questions for Ms Dawson. I don't know.

THE COMMISSIONER: And your throat. You're probably - - -

THE WITNESS: No, it's not too bad, actually, at the moment.

THE COMMISSIONER: Can I just see how many people have got questions of Ms Dawson?

MR NEIL: Probably about five minutes, Commissioner.

MALE SPEAKER: No questions.

MALE SPEAKER: No, Commissioner.

10 MALE SPEAKER: Commissioner, I'll be about five, 10 minutes tops.

MALE SPEAKER: About five, 10 minutes maximum.

MS MITCHELMORE: And I should say I've probably got another 15 minutes.

THE COMMISSIONER: All right. We'll have the luncheon adjournment.

20 **LUNCHEON ADJOURNMENT** **[1.02pm]**