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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 2.00PM

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

THE COMMISSIONER: We're ready for Ms Dawson?

MS MITCHELMORE: Yes. If Ms Dawson could be recalled, yes.

THE COMMISSIONER: Thank you.

MS MITCHELMORE: Thank you. Ms Dawson, just before the luncheon adjournment I had taken you to a document in volume 13 at Exhibit 52 at page 60, which was an email exchange between you and Mr Stavis in relation to Mr Annand's preferred option C?---Yes.

10 And he had disagreed with you about it being out of context on the corner, but he did agree that it must comply with the SEPP 65 setbacks. Is that right?---That's correct.

And he then sent, if I can take you to page 62, shortly after your exchange he sent an email, Mr Stavis sent an email back to Mr Annand and his staff copying you in, referring to the fact that it had been brought to his attention that the report presumed that the adjoining land would be rezoned and that he didn't believe that that assumption could be made as there were no plans at that stage to rezone. So that was consistent with the matter - - - ?---Yes.

20 - - - you'd raised, and as a consequence, the setback should remain as nine metres if that's what SEPP 65 requires and FSR calculated accordingly. Mr Stavis then said, "You need to be as accurate as possible when calculating the FSR as it will be scrutinised." By including that in the email to Mr Annand, did you understand Mr Stavis to be referring to anyone in particular?---Not in particular, no.

30 Can I take you then to page 63, the next page, following very close, so it may be that there was some crossover, you've sent a further email to Mr Stavis requesting Mr Annand to clarify that the recommended heights had been seen in the context of the adjoining properties being four to five storey or remaining with eight and a half metre height. Do you see that?---Yes.

And the RDS didn't support the rezoning of the adjoining properties on either Punchbowl Road or Canterbury Road, and you say that you'd struggle with a six storey building but an eight storey building adjoining one and two storey development, you believe, is out of context. So you were raising that query with Mr Stavis. Is that right?---That's correct.

40 And the concern you had was that, in the recommendations that Mr Annand had made, he may not have considered the surrounding context of the adjoining properties. Is that right?---Yes.

Is there any reason why you were going through Mr Stavis rather than raising these matters with Mr Annand directly?---By that time I was of the view that Mr Stavis was dealing directly with Peter Annand and almost that, I got the feeling that we were not just, we were just being a referral.

And what led you to have that understanding? First as to the involvement, direct involvement or interaction between Mr Annand and Mr Stavis?
---Well, you can, I think you can get that feeling from the email trail. I felt that I wasn't even being cc'd on some of the emails from Mr Annand, it had started to become apparent that I was, I was part of the process but I hadn't, I didn't feel that I was now the lead in the process.

10 The fact of your omission from certain emails between Mr Stavis and Mr Annand, was that something you were aware of at the time?---Only, no, only for example, I think where Warren Farleigh had forwarded something to me where I hadn't been included. But no, other than, and yes, it was just the overwhelming view, feeling that I was now being side-tracked in the process.

I see. I think you referred to your role as being something in the nature of a referral.---That, that's, that's how I started to feel. I didn't feel that I was, I was leading or, or, not that I would, but my team would be taking the lead in terms of managing the consultant. It seemed to have been taken over by Mr Stavis.

20

THE COMMISSIONER: And when you say, "Managing the consultant," would that be dealing with any enquiries that the consultant may have, feeding the consultant particular information, for example, the one that you refer to in your email about the adjoining properties?---Yes.

30 MS MITCHELMORE: Can I take you to page 65, Ms Dawson. It's the case that you did send an email – again this is all happening within a short space of time – directly to Mr Annand and Mr Stavis raising the setback to the Punchbowl boundaries. So, that was an additional setback issue to the one that you had raised with Mr Stavis previously? Is that right?---Yes. Correct.

And again, that was because there was no plan to rezone that area, is that right?---That's correct.

40 Now, over the page, Mr Stavis I think responded to your email but not directly responding to you but responding to Mr Annand and his associate, Lili, indicating that his view was, "I don't think we can insist on the nine metre along Punchbowl Road even though it's a busy road as the DCP only requires a six metre setback." Was that your understanding of the DCP?
---I think there, I was talking about building separation on the side boundary.

I see. So you were talking about the boundary and you, the side boundary, and he was talking about something different?---I think he was talking about the front boundary, the, the road frontage boundary.

I see. So you were at cross purposes, were you, in terms of your communication with Mr Annand - - -?---I think so. Yes.

- - - and Mr Stavis' response? Is that right?---Yes.

But he has picked up in that email to Mr Annand and Lili that your position should take into account the existing context. So that was something you had raised and was putting that to Mr Annand in this email. Is that right?
---Yes.

10

Now, can I take you to page 71, this is 9 September and you were copied in on an email from Ms Avval of Annand and Associates to Mr Stavis and Mr Farley, which attached a final draft of the planning proposal document. And if I can then take you to page 91, which is an email sent just over an hour later, again by Ms Avval to the same parties, indicating, "Hi, everyone. Please disregard the previous email as it was sent by mistake. Do you recall that exchange of emails?---Yes.

20

Were you aware at the time that the email, when it says it was sent by mistake, that the email was withdrawn at the request of Mr Stavis?---No, I didn't know at the time.

Because he wanted to review it before you or Mr Farleigh saw it.---No, I wasn't aware of that.

Were you aware at the time that before you received the next iteration of the report, which was on 14 September, 2015, that Mr Stavis had already reviewed it?---No.

30

Are you aware of any other occasions in which Mr Stavis to your knowledge asked to be sent a revised report from a consultant in advance of you or other members of your team receiving it?---Not that I'm aware of.

Can I take you to page 94 which is an email from Mr Annand copying you in on 14 September to a final draft of the document. Can I take you to page 98 of that document in relation to Issues and Constraints, there's a section?
---Ah hmm.

40

And just after about halfway down the page there's a reference to "Further apartment development can be expected over time, east along Canterbury Road, therefore side setbacks of six metres for the four levels and nine meters for the next two levels are justified." Is that a proposition that you agreed with?---No.

And there's then a reference to it being possible that further apartment development may be considered north along Punchbowl Road but no council documents suggest so at that stage, and that in this case setbacks of six metres for four levels and nine meters for the upper levels would only be

appropriate if care was taken to minimise overlooking of properties to the north. And to emphasise the corner at the bottom of the page, “Two-storey tower could be permitted with dimensions of about 13 metres to Punchbowl Road and 20 metres to Canterbury Road.” Do you see that?---Yes.

In terms of that discussion of the context, Mr Annand ultimately on page 108 of his report remained of the view that option C remained the preferred option. Is that a conclusion, or in relation to that, what was your view?

10 ---Well, I believe somewhere in this report there was a table and I think that this option wasn't compliant with the apartment design guidelines, so to my mind it didn't minimise impact on the adjoining properties and it really didn't take into account the required building separations or the context of the site.

And is that a view that you recall raising with Mr Stavis at this point?

---In a conversation, I think I had a few conversations with him.

And can you recall what his response was?---He felt that this is what Peter Annand was recommending and he was an urban designer.

20

The inference being that one should accept his views. Is that right?

---I guess this was prepared by someone who has expertise in the area and as such it should be a document that we would be able to use to justify the planning proposal.

In terms of the merits of the report did Mr Stavis express a view?---I think he obviously supported it because he, he didn't disagree with it.

30 Can I take you to page 115 of volume 13? You were included in an email dated 30 September about a meeting sought by Statewide?---Mmm hmm.

Do you recall attending a meeting on or around that time?---No, I don't recall.

After that point you appear to have come off the email exchanges in relation to this site. Was there a reason for that?---I don't know for certain why, but a number of planning proposals, I don't think, were moving ahead as far as I was aware in terms of the associated studies, so yes.

40 THE COMMISSIONER: Sorry, would you say that again?---I began to feel that planning, a number of planning proposals that we had where maybe we disagreed with what the proponent was looking at or wanting, they didn't seem to be moving ahead, they sort of hiatus, because some of them we sat on for months.

MS MITCHELMORE: When you say they were sat on, were they sat on by the council, by the officers or - - - ?---Well I think it became that we were waiting, waiting for further feedback from the proponents following, maybe,

studies, etcetera, having been undertaken and that they, I think some of those studies may have been given to the proponents but I don't know, but it seemed to be then that we just sat on them, we couldn't move them ahead which was, you know, we do have a 90 day turn around frame but a lot of them, there were a number of planning proposals which fell into that sort of category where I think they maybe wanted, did they want a different answer? I don't know.

10 Do you have a recollection of that in relation to this particular plan?---I don't recall this moving forward at all when I was there.

I see. Can I take you, Ms Dawson, to paragraphs 42 and 43 of your statement? In paragraph 42, you refer to having an off the record meeting with the Department of Planning and the Environment regarding council resolutions in mid-2015 with Ms Wilkins. Was that a meeting that you had face to face or was that over the phone?---I had been chatting with her over the phone but at this time there was already a scheduled meeting. We have quarterly meetings with the Department of Planning with the regional team, and following that meeting I just chatted with her sort of off the record, it
20 wasn't part of the official agenda or anything, and I can't remember when it was but, again, it was just to reinforce that they should read not just the resolutions of council but maybe the council reports as well.

Can you recall whether as a matter of practice, council reports were provided with planning proposals when they were sent to the department? ---At other councils, yes, but when I arrived at Canterbury Council I was told that that wasn't practice and it arose out of a previous planning proposal whereby a report had gone up to council in regard to a planning proposal and officers had recommended refusal and the department, and then that
30 was sent off to, a recommended refusal went to the council meeting and the council recommended the support of the planning proposal, and then all the documentation was prepared, sent off to the Department of Planning and in their assessment of the planning proposal, the team leader's report which is also available on the LEP tracking website for the Department of Planning indicated the difference between the council officers recommendation and the council resolution. And my understanding that there was, this was before I arrived, that as a consequence of that, there was a directive given that we should only send the council resolution and not the report. That's not to say they can't look at the report because it's a public document on the
40 council website, but it wouldn't necessarily be sent as a matter of course.

THE COMMISSIONER: And who issued the directive?---I don't know. It was before I arrived.

MS MITCHELMORE: Who informed you of the directive on your arrival?
---The team leader. The team leader - - -

Is that Mr Farleigh?---Yes.

I see. All right. And in this conversation with Ms Wilkins, were you suggesting to her that she look at the council officer's reports?---Yes.

10 In assessing whether or not to make a Gateway Determination in relation to planning proposals submitted by Canterbury Council?---I think to some extent it was, we got the impression when we were receiving their letters to us about lack, information lacking in the planning proposals, I think to some extent some of us, some of the staff, were saying we can't give any more information, this is the council resolution. So it was part and parcel of just alerting her to the fact that we may not be giving them all, you know, all the justifications because we didn't have anything, and they should read the report to see maybe why.

I see. And can you recall what her response was to what you told her? ---She took it on board, she was aware of the political process. She'd worked in local government as well as at the department, so she understood where we were coming from.

20 Did she express any particular concerns to you in relation to the planning proposal she'd received from Canterbury?---Not particularly.

After that call or that discussion with her, were you involved in the submission of any further planning proposals to the department?---I'm trying to think. The, when the, possibly, I'm just, I can't think of the timeline, quite frankly. I couldn't say without looking at the timelines for various planning proposals, sorry.

30 In terms of the issues that you raised with Ms Wilkins, did you raise those matters with Mr Stavis at all?---No. Not in particular, no, I didn't.

Did you raise them with Mr Montague?---No.

The general manager?---No.

In paragraph 43 you refer to looking for other work because you felt the view point of officers was not being properly considered. Properly considered by whom?---By the director, among others, yes.

40 Who were the others?---Obviously we were, we, I mean, I'd already started to get an understanding of where the council stood or so in terms of their decision making, and also Mr Stavis, so I had come to the conclusion that we didn't have the same approach to the strategic planning.

I see. And when you say you tried pushing back on reports, what do you mean by pushing back?---I had already advised Mr Stavis that if I was asked to prepare a report as an officer's report which I felt I couldn't support or

wasn't justified, then my name and my team's name shouldn't be on it, it would have to, he would have to write that report.

What was his response to that?---He just heard me out but by that time I think we'd already agreed that we didn't get on in terms of our viewpoints.

10 Did you raise these concerns that you had and your relationship with Mr Stavris with the general manager?---No, and to some extent maybe I felt that maybe some of this was coming from the general manager. But again, I had no proof, but that was, I think that that was the perception we had within, you know, within the teams.

But again you had nothing concrete - - - ?---No.

- - - in relation to that?---No.

That's speculation on your part?---It is.

20 Is that right?---It is.

Commissioner, that's the examination.

THE COMMISSIONER: Thank you. Mr Neil?

MR NEIL: Thank you, Commissioner. Ms Dawson, I appear for Mr George Vasil?---Mmm hmm.

30 And I'd just like to ask you a few questions about the site at 15-23 Homer Street, Earlwood. Do you still have your statement with you dated 28 March 2018?---Yes.

Thank you. And do you still have a volume of documents, volume 9, in which you have, I think, identified some documents already? Could I ask if the witness be shown volume 9, please, Commissioner?

THE COMMISSIONER: Yes.

40 MR NEIL: Thank you. Now, ma'am, you were the acting director of city planning at the former Canterbury Council I think from about 10 November, 2014 to early March, 2015. Is that right?---That's correct.

Thank you. And in your statement, if you just look at paragraph 27, please, you make mention that that at a meeting in November 2015 - - -

THE COMMISSIONER: I think she corrected it to '14.

MR NEIL: Which, which is, yes, is to be 13 November, 2014. Is that the one we're talking about?---Yes.

Thank you very much. Thank you, Commissioner. There was a resolution to allow 17 metres across the entire site at 15-23 Homer Street. I just want to seek your assistance on this height matter. If you look at page 42 in volume 9, please, do you see there a reference to 25-33 Homer Street?
---Mmm.

Page 42 of volume 9.---Yes.

10 In the centre of the page it says 218 but at the bottom right they have the volume pages.---Yes.

Do you have that one?---Yes, I have the right page.

Thank you. Now, as I understand it, correct me if I'm wrong, what's being spoken of is the adjoining development to 52, to 15-23 Homer Street is the centre development mentioned in the table towards the top of that page, being 25-33 Homer Street. Is that right?---In terms of, in terms of the apartment building that's already there.

20

Well, it's what's been called I think the adjoining development or the place next door. It's the one that has 12.9 metres height to eaves - - -?---Yes.

- - - and the 17 metres for this small section. Do you see that?---Yes.

Thank you. Now, if you look, please, at page 38 of volume 9, this is a summary of a report by the director (city planning). Was that in fact your report?---No. The director of city planning at the time this report was written, and included in the business paper - - -

30

Was Mr Occhiuzzi?---Yes.

Thank you. At about the centre of the page there's a dot point headed The Proposed 18 Metre Height Limit. Can you see that?---Yes, yes.

And it says, "Not recommended to be supported, however some increase to allow a new building to more closely match the adjoining building in terms of height and stepping down towards the river could be considered." And so do you see that?---Yes.

40

Then if I could just take you to pages 40 and 41. At page 40 there's reference to 25-33 Homer Street, Earlwood. Do you see that?---Yes.

And then I think perhaps you just have to answer orally for the transcript to be taken down.---Yes. Sorry, sorry.

Thank you. And if we go over to page 41 it's talking about the adjoining property at 25-33 saying, "The development contains three interlinked

buildings, the development progressively steps down the slope of the site.”
Do you see that?---Yes.

Now, is stepping down important because if you’ve got a gradient and the street slopes say down towards the river, if the height of a building is to be the same entirely across the site, then as you’re progressively going down the hill you’re getting progressively a higher building from the street level, aren’t you?---But we would normally measure that from the natural ground level.

10

That’s what I’m saying, from the natural ground level, let us say, if you don’t step down the building you’re going to have a building that is of the same height right across. Correct?---The natural ground level as probably at the Cooks River would be significantly less than the natural ground level on Homer Street.

Exactly. What I'm putting to you is this – it goes without saying, does it not, that you'd need to step down a building height if you've got a gradient?
---So, maybe we should be talking in terms of storeys, not height.

20

Well, whatever we're talking about, what we don't want is a building that doesn't take account of the gradient but maintains the exact same height as starting at the top of the gradient. Do you follow?---Not really.

Well, what's the purpose of having stepping down?---To my mind, it would be a case of it, it presents as a four storey in Homer and by the time it gets to the Cooks River, that adjoining site is only two storeys high. So, it, we're not talking about height. When you say it steps down, in terms of the number of storeys has reduced as it goes down the site.

30

Well, now, all right. Was the adjoining property at 25-33 Homer Street on the river side of 15-23 Homer Street or the opposite side from the river?
---Can you repeat that?

Well, which was the closer to the river? Which of the two properties? 15-23 - - -?---Both, both of, both of them had frontage to the river.

40

Which was, is it possible to say which was higher up the street from the river?---Okay. The apartment building was further from the river which is presented as four storey and by the time it got to the river, it, it, it, it was a sort of, a two storey.

Thank you. Now, if you go, please, to page 50 of volume 9, we see here that there is a resolution that was passed with the actual voting at page 51. The resolution is shown at page 50. Do you see that?---Yes.

And the first part of it is talking about a planning proposal. Now, just to ask you about that briefly, this is a resolution that is designed to be the

foundation of a planning proposal that would go to the Planning Department, is that right?---That's correct.

And it talks about amending the maximum building height to be set at the same height as the building next door, which is 17 metres.---Correct.

The height, generally, of the building next door was below 17 metres but the maximum was 17, correct?---Correct.

10 And I just want to get this clear. If 15-23 Homer Street had been allowed at a height of a maximum of 17 metres, without any specific reference to stepping down, what would have happened if the building had been built in accordance with 1(i)? Would it, in fact, ended up stepping down or would it have been some building in which the whole site height retained itself at 17 metres?---My reading of that is you would end up with a building which could, would be five storeys across the site. It's anywhere across the site, they would, you could go to at least five storeys with no stepping down.

And that would be clearly undesirable, wouldn't it?---It would.

20

And it virtually goes without saying that you'd have to, whatever words you used, in fact, step down the development, wouldn't you?---I mean, what we're looking at is setting the height of building and that's what we're doing. At the development application stage, it's another matter. At development application stage, the proponent would probably try to meet the maximum that was permissible and they would argue, well this is what you have in your Local Environmental Plan. And so, we would like to establish up front what is permissible on the site because if that person then resold the site, before they even developed it, then again, someone purchasing may think, oh, it's allowed. You know, seven metres height of building across the entire site.

30

All right. If we just go back to page 38 of volume 9 for a moment, please, what the planning proposal in dot point in the centre of the page was saying-- - ?---Mmm hmm.

- - - that there could be some support for an increase to more closely match the adjoining building in terms of height and stepping down. Now, if you then look at the proposal at page 50, sorry, the resolution at page 50, volume 9, in order to achieve some stepping down, would it have been effective to, in paragraph 11, refer to a height of 17 metres with some stepping down? ---It would probably be best to fit it around maybe the recommendation put by council officers on page 48.

40

Thank you?---Where we talk of setting the maximum, but also what the remainder of the site should be. That would probably be the best way.

THE COMMISSIONER: And sorry, is that the first dot point on the page?
---Sorry, yes, the first dot point on page 48.

Down the bottom under, "Recommendation"?---Yes. Yes.

MR NEIL: So 14 metres and current maximum 10?---Yes.

10 Can we take it that if, if the 14 metres went up to 17 metres, similar wording
to what you're showing us at page 48 would be adopted and you would
either retain the 10 metres or something between 17 and 10? Is that right?
---Well, I wouldn't know because it didn't actually happen, but that's
what - - -

All right---? - - - we would probably look for, yes.

20 Thank you. All right. Now if you look, please, at page 94 of volume 9, the
amending motion which was withdrawn but is shown at page 94, and it
speaks of an intent that the proposed building at 15-23 Homer Street,
Earlwood, is to be of similar height and stepping down as next door. Do
you see that?---Yes.

In other words, whatever words we've used, it's talking about a concept of
15 to 23 Homer Street should be stepped down the same way or in the same
way as the place next door had been stepped down. Correct?---That's what
that says, yes.

30 Thank you. Thank you. And at least as far as it goes, you would consider
that to be a good thing, would you?---Again, it doesn't state heights so from
my perspective I was looking at a resolution, I would be looking to be more
detailed with specific heights.

But it's better than leaving it as 17 metres across the whole frontage of the
site, isn't it?---It would be part way there, yes.

40 All right. Thank you. And when this motion came forward you made the
comments that are shown at the page in about point 3 that the adjoining
development was four storeys, 14 metres, at Homer Street frontage, stepping
down in height towards the Cooks River frontage. They're your words,
aren't they?---Mmm hmm.

And that a small portion of the building was 17 metres. And then you later
said just a few lines later that the planning proposal had been sent to the
department on 15 January. Correct?---That's correct.

And a short time after that as appears at page 95 in the centre of the page,
the amending motion was withdrawn. Correct?---That's correct.

Now I just want to ask you if you'd have a look, please, at page 57 of volume 9. That is the letter which I understand on one or other of the copies is countersigned by yourself, it's dated 12 January, it seems to have been said posted 15 January. Do you see that?---Yes.

And that is the one that sends the proposal to the department. Correct?
---Correct.

10 Now, can I take it that it's not unusual to have some time difference between the date of a council making a decision to send a planning proposal to the department and the time at which the proposal goes to the department because much work has to be done in the council planning division to prepare the proposal?---Correct. In this case it was two months.

Thank you. That would not be unusual, would it?---Especially given the Christmas period, yes.

20 All right. Thank you. So it's not as if the proposal can go off the day after the council resolution?---No.

No. Thank you. And the proposal goes to the department, amongst other reasons, because that allows another authority to consider this matter. Correct?---Correct.

And to make what's called the Gateway Determinations about it. Correct?
---That's correct.

30 Perhaps I might be wrong with this, but could you tell me this. If the council had resolved not to put forward a proposal to the department, can the proponent nonetheless go, put the proposal before the department?
---They can go to the department if we have gone past the 90 days - - -

Right.--- - - - in terms of putting the report up to council to determine whether the council supported a planning proposal, and they can also ask for a review and go straight to the department if council refuses a planning proposal.

40 Thank you. But ultimately if either one of those takes place or if the council itself decides to put forward a proposal it goes to the department for its Gateway Determination. Is that right?---That's correct.

Yes, thank you. Thank you, Commissioner.

THE COMMISSIONER: Mr Andronos?

MR ANDRONOS: No questions, Commissioner.

THE COMMISSIONER: Now, Mr O'Gorman-Hughes.

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

THE COMMISSIONER: Mr Pararajasingham?

MR PARARAJASINGHAM: Thank you, Commissioner.

Ma’am, just briefly, I appear for Mr Stavis. I just have some brief questions for you. Just staying with the Homer Street property.---Ah hmm.

10

The decision to engage Mr Olsson following the Gateway Determination, who made that decision?---I believe that, I think we discussed who might be an appropriate consultant and I think because we were looking to do it quickly and that we wanted to just seek one, we had council’s procurement guidelines to follow and I believe that Mr Olsson was listed as a supplier on the local government procurement list, so that if it was under \$5,000 we only needed one quote, and he was on that list.

20

And when you say we, who are you referring to?---That was in discussion with Mr Warren Farleigh and Lisa Ho.

And you were familiar with Mr Olsson’s work, I take it?---No, I wasn’t.

Are you aware whether anyone else who made the decision was?---I believe that Mr Warren Farleigh may have come across his work previously and thought it was good.

30

Sorry, I missed that last bit?---Sorry. I believe Mr Warren Farleigh may have either used him in the past or seen some of his work and thought that looking at the list of urban design/architect that he would, he would probably be able to do the job.

So was it your understanding that Mr Olsson was someone who had been engaged by council previously?---I’m not sure, I can’t say that, I hadn’t employed him, it may have, may have been prior to that.

40

THE COMMISSIONER: Can I just ask, the procurement list that you referred to, is that council-specific?---It’s a mixture. Council had its own procurement policy and so depending on the amount of money involved, we, we had, we could either get one quote or we required three written quotes of course or go to tender, and certain companies who I think were on the local government procurement list, where they had been, they’d been assessed as being on the local government, if we, and I think they were listed and we had a separate document I recall and we could go to one of those and if it was under 5,000 we just needed one quote.

Okay.

MR PARARAJASINGHAM: And were you responsible for briefing Mr Olsson?---Not necessarily. I was, I signed off on the brief to him and the engagement but wouldn't necessarily – Mr, Mr Farleigh and Lisa Ho could have had that briefing, I didn't need to be at everything. I don't recall being at that one.

10 Sure. And you understood that Mr Olsson's task was to provide an additional study potentially justifying what had been set out in the planning proposal?---Yes, we set out in the brief the matters that he had to look at.

And it's the case that Mr Olsson was also provided with the report by council staff which was ultimately rejected by way of council resolution. Correct?---Mmm hmm. Yes.

Why?---Why would we hide it?

But why would you provide that information to Mr Olsson?---I guess it was a public document.

20 Sure, but why did you think that that was relevant to the task that he had to do?---I guess it pulled up the issues of what was happening in the vicinity like the Adora Chocolates DA, and then we could provide him with more information there. It also talked about the adjoining development and we could then give him the information there, but I don't know why we shouldn't give it to him.

30 That's fine. Is it the case that you were advising Mr Olsson as to council staff's position on the issue?---Look, he knew the council staff position but he was engaged as an independent person, he was neither the developer nor was he us, and we were asking for, I guess, a third viewpoint as to what might be appropriate.

You said he knew the position. How did he otherwise know council staff's position?---Because we put it in the brief.

Right. So, - - - ?---But just because we've put it in the brief, we're going to him for his expert advice.

40 Did you think that Mr Olsson might agree with council staff's position? ---He may or he may not. I don't know. He differed slightly to us, his view at the end was slightly different from the officers.

I'll ask my question again. Did you think at the time that you briefed Mr Olsson that he might agree with the position of council staff?---I don't know.

I have no further questions.

THE COMMISSIONER: The question of when you were briefing an expert like Mr Olsson including the council officers report, is that something that you usually include in the briefing documents?---I guess we try to give as much a picture and a story of the planning proposals, so, but it also included the proponents, it included council officers, anything that we felt that needed to be considered, and we also wanted him to look at it in terms of also SEPP 65 and those sorts of matters, and he was an expert in that area.

10 All right. We're up to Mr Moses.

MR MOSES: Thank you, Commissioner. Ms Dawson, Counsel Assisting asked you some questions in relation to the consideration of proposals and timing issues. I think you answered in response to one question that, and this may have been around September 2015, that this is the effect of what I understood your evidence to be, that there weren't decisions being made in relation to certain proposals. Correct?---There were a number of planning proposals, yes.

20 They weren't the subject of decisions?---Yes.

And is the reason for that because staff were concerned to say no or reject those proposals out of fear of being criticised?---I don't think it was that we weren't making the decisions. It was as if we were coming to certain decisions and maybe that information was being given to the proponents, maybe the proponents were then being given more and more time to get back to us but sometimes, you know, there would be months that they wouldn't get back to us whereas at other councils where I've worked at, we would progress things along. You know, you're not going to get back to us, well we're progressing this, but it was as if we weren't allowed to progress things because, well we're allowed, it's that they were given almost an open time frame to get back to us on matters.

30

So a wide latitude being provided to them?---Yes.

THE COMMISSIONER: Sorry, so you would provide, for example, a report to a proponent and then as you said just wait until the proponent initiated either further contact with you or something else happened?---On a number of planning proposals, yes, which isn't the normal course of doing matters that I've been used to. We maybe advised them of an outcome if we've undertaken a specialist study and I'd suggest if they wanted to give us any comments, but this is what we were proceeding on the basis of, and maybe they would get back to us within two to three weeks, but otherwise we would then progress the planning proposals. But that wasn't happening.

40

MR MOSES: And were staff told that they needed to be more cooperative in terms of helping applicants to get their desired outcomes?---Not to my team, no. Well, not in those, those words, no.

Did anybody ever suggest that to you?---No.

Now, Counsel Assisting asked you questions on 24 April, this Commission, as at page 617 to 618 of the transcript in relation to 570-580 Canterbury Road, and in relation to that I think you gave evidence that there were two development applications as well as a planning proposal?---There was, I'm trying to think of the exact things. There was one development application which was in keeping with the, I think the six storey height limit. There was
10 a planning proposal lodged to increase the height from 18 to 25 and then there was another DA, and I believe to increase the height to eight storeys.

You've told us in paragraphs 13 to 14 of your statement, I think you said that you had spoken to Mr Stavis about this issue?---In relation to the, the separation, yes. I, I felt that number 2 Chelmsford needed to be taken into consideration.

And I think your evidence was to the effect of – and these are my words, not your words – but you thought that the submitting of a planning proposal and
20 development applications was an unusual step?---Well, the fact that the two were progressing at the same time, it was as if, well let's see which one gets there first. I think one required a clause 4.6 of over two storeys.

That's correct.---And, and then the other one was as if that didn't get through, then they would have the planning proposal. Or, were they relying on the planning proposal in terms of justifying it to the DA team, I don't know.

Did you regard this as gaming the system?---Yes.
30

Now, in relation to 642-658 Canterbury Road, Counsel Assisting asked you some questions in relation to this issue at page 622 of the transcript. And this is relation to the meeting at which Mr Annand attended in May 2015 with Mr Montague, Mr Stavis and Councillor Hawatt, correct?---I'm, and I'm certain it whereabouts Councillor Hawatt but I don't have access to my council calendar.

And is this the effect of your evidence, that you were of the view that pressure was being put on Mr Annand in that meeting?---Yes. I did.
40

And you were upset that that pressure was being placed upon Mr Annand? ---I thought that it, that, that he was an independent consultant who was attending that meeting. It's unusual for someone to be badgered so much that they feel, in my, this is my words, that they had to change their viewpoint on what their recommendation was.

And in that meeting, was Mr Stavis advocating the proponent's point of view?---Yes.

And what about Mr Montague?---I don't really recall him saying.

Thank you. Can I then ask you some questions about Homer Street?
---Yes.

15-23 Homer Street. At paragraph 28 and Exhibit 4 of your statement – I think, Commissioner, this is page 55, volume 9 as well – this is the email I think that you submitted to Mayor Robson. Correct?---Correct.

10

And that was at his request?---That was at his request.

And did he tell you why he needed that information?---No.

No. Okay. And by that stage, had this matter already been dealt with?---It had already been to council and we were preparing the planning proposal.

Okay. But the mayor didn't ask you or didn't tell you why he wanted you to put this together for him?---No.

20

And was that usual sometimes for you to prepare such a briefing to the mayor in relation to matters such as this?---It wouldn't be unusual. If they asked for information, we would then provide it, yes.

Okay, thank you. And Commissioner, just for the record, some of what's contained in that information is contained in Exhibit 53 which is Mr Robson's statement and next to it is the submission to ICAC. In relation to the Homer Street property you were asked some questions by Mr Neil for Mr Vasiliades in relation to a document that appears at page 94 of volume 9. If that could be placed onto the screen. My friend asked you some questions in relation to the resolution that Councillor Hawatt moved, so it's at page 94 of volume 9?---Mmm hmm. Yes.

30

I'll just wait for that to come up on the screen. So he asked you some questions in relation to a resolution that Councillor Hawatt moved at item number 1. Do you see that?---Yes.

Yes. So the intent was that the proposed building at 15-23 Homer Street, Earlwood is to be a similar height and stepping down as next door. Do you see that?---Yes.

40

Do you know where those words came from?---No, I don't believe so.

Do you know who suggested the wording of that resolution to Councillor Hawatt?---I don't believe it was me.

No?---No.

No. But I'm asking you do you know who did?---No. No.

Okay, thank you. Do you know whether Mr Vasiliades suggested those words to Councillor Hawatt?---No, I don't know.

You just don't know.

THE COMMISSIONER: Sorry, George or Con?

10 MR MOSES: George Vasiliades. Yes. Can I then ask you some questions about 998 Punchbowl Road which Counsel Assisting asked you some questions about a short while ago? This relates to paragraph 42 of your statement if you want to come to that?---Mmm hmm.

This off the record discussion with the Department of Planning mid-2015, that was with Ms Wilkins?---Yes.

20 Was this, in effect, a cry for help to the department in relation to what was going on at the council?---I don't know if it would be called a cry for help, I just wanted them to be aware of the facts, but I also believed some of my staff were also beginning to talk to (not transcribable)

And was this the concern, that you didn't, that you didn't want the department to have any negative view about you or your, or the people in your team about the quality of decisions that were coming out of council by making it clear that these decisions were not based on reports that your professional staff were preparing?---That's correct.

30 And that you were telling the department that they should look to the reports that are available online?---That's correct.

So is this the case, that the Department of Planning, if they were properly resourced or had a cast of mind to do it, could actually check council resolutions up against the actual reports which council staff are preparing? ---Yes, they can online.

40 And if they so chose, whether they were so inclined or resourced, they could then conduct an audit and question in effect, if I can be blunt, what the hell is going on here, in relation to decision making processes within a local government authority?---They could, yes.

I have no further questions. Thank you, Commissioner.

THE COMMISSIONER: Ms Mitchelmore?

MS MITCHELMORE: I have no further questions, Commissioner. Could Ms Dawson be excused?

THE COMMISSIONER: Yes, you're excused, Ms Dawson.---Thanks.

Thank you.

THE WITNESS EXCUSED

[3.00pm]

10 MS MITCHELMORE: Commissioner, the next witness is Ms Felicity Eberhart.

THE COMMISSIONER: Ms Eberhart, we just might clear some of the folders. And do you take an oath or an affirmation?

MS EBERHART: Affirmation.

MR MOSES: Commissioner, there's a section 38 application.

THE COMMISSIONER: I assume you've had a conversation with either Mr Moses or one of the legal team from the council?---Yes, yes.

10 I'll make a direction under section 38. Can I just emphasise that the protection the direction gives you is for everything. An exception to it is if you give false and misleading evidence in your answers to questions asked during this public inquiry.---I do.

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

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

THE WITNESS: I do.

MS MITCHELMORE: Yes, thank you, Commissioner. Your name is Felicity Eberhart. Is that right?---That's correct.

40 Am I pronouncing your name correctly?---Eberhart, yes.

And you're presently employed by Canterbury-Bankstown Council as a planner?---No, I'm at Sutherland Shire Council.

I'm so sorry, Sutherland Shire Council. Before your employment with Sutherland were you employed as a planner for Canterbury-Bankstown Council?---That is correct.

And before the amalgamations you were employed by - - -?---Canterbury.
- - - Canterbury City Council?---Yes.

You've made a statement to Commission investigators in relation to the matters the subject of this inquiry. Is that right?---That is correct.

10 Can I provide you with a copy of that statement, which is dated 16 March, 2017 and forms part of Exhibit 53. Can I just ask you some questions about your role at Canterbury City Council, so before the amalgamations. You commenced in September of 2015. Is that right?---That's correct.

And at that time council staff were organised into teams. Is that right?
---Yes, we were.

And what was the name of the team that you worked in?---Development Assessment I believe.

20 And you've indicated in paragraph 6 of your statement that when you started in that team, Stephen Pratt was the team leader. Is that right?
---He was for three days and then he left.

I see. And he was replaced by a Mr Andrew Hargreaves. Is that right?
---That is correct.

And did they report in turn to Mr Gouvatsos?---Correct.

30 And he in turn reported to Mr Stavis as director of city planning?---Yes, that's correct.

Now, shortly after you commenced your employment with the council you were asked to assess some plans relating to a section 96 application for development at 51 Penshurst Street, Roselands. Is that right?---That is correct.

And a section 96 application is of course an application under section 96 of the Environmental Planning and Assessment Act to modify the development consent. Is that right?---That is correct.

40 You refer in paragraph 6 of your statement, if you'd like to go to it feel free?---Mmm hmm.

To being allocated that work by the review allocation panel?---Yes.

Was that a process that was set up internally within your team for the allocation of work?---All work was looked over at the team leader and they would allocate it, they would review the file and write comments.

And if I can take you to annexure 1 to your statement, unfortunately it's not paginated but it's the first document behind page 12 of your statement, the last page of your statement?---Yes.

So this is the review allocation panel checklist in relation to 51 Penshurst Road. Is that right?---That is correct.

And you've indicated that the team leader would review an application and make comments. Is that right?---Yes.

10

And can I take it, or perhaps I can ask, whose handwriting is this on the document?---I think it is Steven Pratt's because I didn't work under him, I didn't get to know his handwriting, but I can tell it wasn't Andrew Hargrave's.

20

All right. Okay. And in relation, it identifies 51 Penshurst Road. Can I just confirm the modification application that this was relating to? Can I take you to page, actually if the witness can be shown volume 7 of Exhibit 52? It's page 81 of that volume, just to bring it up on the screen?---Sorry, what page was that?

Eighty-one. So can I just ask you to confirm that that's the modification application that the panel checklist was referring to?---That is correct.

And just looking at page 81, there's a reference to the modification system, the modification being for a pump out system for the storm water. Do you see that on page 81?---Yes.

30

And then over the page on page 82 at point 5 there's a point to put in the reasons for requesting the modification and it says, "I was unable to obtain an easement from the neighbours. All of them have too many services, etcetera, along where the easement could be located and an email was sent to", someone Sheaperd, "Jade Sheaperd with the appropriate information on 13 May 2015". So that was the reason, according to the proponent, for requesting the modification. Is that right?---Correct, yes.

40

And was it your understanding when you reviewed the material that the modification was required because the consent that had been granted was a deferred commencement consent?---That is correct, yes.

So before the conditions of the consent would come into operation in relation to developing the site, the consent required satisfactory written documentation to be submitted to council about the creation of an easement. Is that right?---Correct, yes.

And that easement was for drainage?---Yes.

In relation to downstream properties. Is that right?---Yes.

And the modification application was made because the owner of the site was having trouble obtaining the consent of downstream, the owners of downstream properties to getting the easement?---That's what I was aware of, yes.

Now when you received the modification application, were there plans accompanying the application to your recollection?---I think it might've been storm water plans as that was the matter being assessed.

10

Can I just take you back to annexure, the annexure 1 to your statement? In point 6, there's a heading referrals and a statement development engineer. Are you able to recall why a development engineer referral was required? ---Because the matter revolved around stormwater.

Okay. And the indication in comments was a weighed outcome of referral advice and proceed to determination. So that was what you understood your role was?---Yes.

20

All right. Can I then take you or can I ask you this question, Ms Everhart, was there a separate DA file in relation to the development consent that was being modified?---No, the file would've been altogether from memory.

So the modifications sat on the same file as the development consent that had previously been granted?---Yes.

All right. So you had access to all of the material?---And even if it wasn't, I could have gone and pulled it out from the records team.

30

Now, it's the case that the modification application was referred to Mr Richardson, who was the development engineer employed by the council, is that right?---That's correct.

And, if I can show you page 145 of volume 7, if you can have a look at that. That's an email from Mr Richardson to you of 20 October, attaching a memo in relation to 51 Penshurst Road, Roselands, is that right?---Sorry, I've got the wrong page.

40

That's all right. Page 145.---That would have been the memo attached to it, yes.

And the memo at page 146 is Mr Richardson's report on the modification application. Is that right?---Yes. That's correct.

Can I just ask you, under the heading Current Situation there's a reference to the, "Proposed development must have gravity drainage." Did you understand what that meant?---I understood that it just had to fall with gravity. That was my understanding at the time.

And there's a, Mr Richardson there refers to that being a requirement of the DCP. Is that right?---That's correct.

And there's been a reference to where a downstream property owner has rejected the offer to acquire an easement and there's reference there to section 88K of the Conveyancing Act which could be a means of achieving compliance with the deferred commencement condition. Section 88K is a mechanism by which the court can order an easement to be obtained. Is that right?---That is my understanding.

All right. So going over the page, Mr Richardson's recommendation at page 147 was consistent with the requirement of the DCP, that it must be drained by gravity. Can you see there that in the last paragraph Mr Richardson suggested an alternative to acquiring an easement, which may be filling of the site to provide gravity drainage of the roofed and paved driveway areas, leading yard areas to drain naturally over land. And he said, "This is purely an engineering perspective. Other considerations may impact on the viability of this proposal." Can you recall whether, in your view, that was feasible from a town planning perspective?---It wouldn't have been feasible. From memory of the conversation that I had with him, it would have to be at such a height that would increase the height in that zone and it would also create further implications on relation to overshadowing and privacy. So, it would not be a good town planning outcome.

All right. So, from his perspective, from an engineering point of view, it was okay. From your perspective, from a planning perspective, it was not appropriate?---That is correct.

Now, is it the case that you sought a second opinion of Mr Richardson's assessment?---I did. It was the, the application was for multi-units. It was my first at the time and I just wanted to ensure that I had enough response, that I had a consensus before going to the applicant and saying, "This is where council stands."

And you sought that second opinion from, is it Mr Rouhana?---Rouhana, yes. Millad.

R-o-u-h-a-n-a, is that right?---Correct.

And at page 151 of volume 7, is that the second opinion that you received from Mr Rouhana of 22 October, 2015?---Yes. That is his response.

And he similarly, expressed the view that the, what was proposed didn't comply with the DCP?---Yes.

Now, at page 159, the same volume, it's a file copy of a letter that you sent to the proponent, Mr El Badar of 26 October, 2015, is that right?---Yes, yep.

And you refer in the first paragraph to having completed a preliminary assessment of the application and noted there were still outstanding issues. What do you mean by a preliminary assessment?---It's an overview of the information that we first received from council and whether or not we would consider it appropriate at the time. Often, we will go back and we will seek amended plans or information.

10 I see. And in this case you've indicated to Mr El Badar that you pointed out the requirement of the DCP for drainage by gravity in the second paragraph?---Yes.

And you indicated that, or you've raised the possibility of, section 88K of the Conveyancing Act as a means of, perhaps, addressing the issue of not being able to obtain easements from the neighbours?---Yes.

And then you point out that there were two options going forward, explore other avenues to address the deferred commencement condition, or withdraw the application?---Correct.

20

Now you've asked for a response by 16 November, this is over the page on page 160, by 16 November or the application would be refused?---Correct.

Do you recall, and this is in paragraph 14 of your statement, attending a meeting on 29 of October 2015 with Mr Stavis, Mr Rouhana, Mr El Badar and Mr El Badar's engineer?---I do recall attending that meeting.

And what do you recall of the discussions at that meeting about the modification application?---Not much.

30

To the best that you can?---A lot of it was talking about an alternative solution and going down the 88K avenue. That is what I do recall.

Okay. Can I take you to annexure 5 to your statement? It's the case that you made some notes in the course of this meeting. Is that right?---Yes, I did.

So again it's difficult to find but you'll see annexure 5 is a diary, extract of a diary?---Yes.

40

For 29 October?---Correct.

And is that your diary?---That's my diary.

Okay. And there's a heading 51 Penshurst and a couple of comments that you've made, so the first is, "DA lodged, architect accepted DC with easement." Is that development, sorry, deferred commencement? ---Deferred commencement.

“Applicant was confident that deferred commencement will be achieved”, and then, “architect’s action”. Is that right?---That is correct.

Can you recall who made those comments in the course of the meeting?---I believe it was the applicant.

Okay. There is then a reference to 88K being mentioned?---Mentioned.

10 Do you see that? And can you recall who raised that or what the discussion was?---I cannot recall who raised it.

All right. The next comment you might need to help me with, “Applicant to provide evidence to”, I can’t quite make out the next two words?---Two or that, and 88K’s being achieved.

I see. Okay. So either to provide evidence or that an 88K had been achieved. So what was the evidence that was to be provided to your recollection?---I do not recall what evidence, I’d only, was quite new in
20 planning at the time and I was told evidence has to be provided. This was the, this was from Mr Stavis and that’s what I was, I was told.

Okay. Now, it’s the case, and I can take you to page 166 of volume 7, you received some further information, sorry, 166 from the proponent’s solicitor. Is that right?---That is correct.

And that, again, referred to some, again, the difficulties that they had had with obtaining the easement from the owners?---Yeah.

30 Is that the various owners of the lots that were required? And indicating in the last paragraph on page 166 that Mr El Badar had made all reasonable attempts to obtain a drainage easement and was presently being unreasonably obstructed - - - ?---Mmm.

- - - by the adjoining owners. In paragraph, and then requesting the council to look favourably on his section 96 application which would seek, which would remove the requirement for an easement and incorporate a pump out system?---Yeah.

40 You said in paragraph 17 of your statement that you had an understanding that if an easement couldn't be required, then a pump out system was the only other feasible alternative. Do you see that?---Sorry, I think I'm missing a page.

Paragraph 17 of your statement, and that’s on page - - -

THE COMMISSIONER: 6.---Yes.

MS MITCHELMORE: - - - 6 of 12.---Yes, yes, yes.

What was the basis of your understanding in that regard?---It was just the advice that I was given from the engineers that they informed me that if you couldn't do via gravity this was the only other alternative solution.

Okay. All right. And so when you say engineers, was that Mr Richardson or Mr Rouhana?---Mr Rouhana.

10 And it's the case that you referred the plans back to him. Is that right?
---That is correct.

And you ultimately received a report from him on or about 19 December, 2015.---Yes.

Can I take you to page 217 of volume 7. This is an email exchange between you and Mr Stavis, you sending an email to him at about point 5 on the page, giving him an update that a draft report had been written for the DA 41/2015A and you were awaiting the engineering comments. Is that right?
20 ---That's correct.

And he, on 11 December, so that's some five days later, to you and I think to Mr Rouhana, is that Millad R?---Yes.

Saying, "Has this DA been finalised? Super urgent." Do you see that?
---Yes.

Before receiving this email had Mr Stavis inquired of you as to the progress of this modification?---Once before he'd inquired, but other than that it was
30 just through the emails.

Right. As you came to work with him more, was it unusual in your experience to make that kind of inquiry?---He would make certain inquiries but this one he probably inquired a little bit more than any other.

I see. As a general matter if Mr Stavis asked you to prioritise particular matters, would you do so?---If it was a direction from a director, yes.

And would such instructions come from him directly or through a team
40 leader ordinarily?---Directly.

Okay. Can you recall if Mr Stavis gave you a reason as to why finalising this modification application was, quote, "super urgent?"---No, he didn't.

The Commission doesn't have a record of a written response from you, but did you respond to Mr Stavis?---I don't believe I did.

At this time, this is 11 December, you were still waiting for a response from Mr Rouhana. Is that right?---Yes.

And he of course was also copied in on this email.---Yes.

10 You say in paragraph 21 of your statement that the assessment of this application was a fairly normal time frame in terms of what would be expected from an application of this nature. I'm just wondering, what time frame are you there referring to?---I, it would have – the application came in in August and I believe my letter was sent in October and we were looking at December finalising. That is several months, so I do believe that was a normal time frame.

All right. And you'd only recently started with the council, but as you - - - ?---Yes.

Can you tell me if that was your experience of the time frame?---Yes.

20 Now at page 231 of volume 7 is the engineering assessment that you received from Mr Rouhana. Is that right?---That is correct.

So that was on 19 December?---Yes.

And he again refers in the second paragraph to non-compliance with the DCP but in the fourth paragraph, should council accept alternative methods of stormwater disposal the most appropriate would be the method that was proposed by the applicant, namely the pump-out system.---Yes.

30 And there then follows a series of requirements in relation to the system that Mr Rouhana considered should be imposed. Is that right?---That is correct.

And that would be as conditions of the consent to the modification. ---Correct.

Can I take you then to your development report which is at page 219 of that volume, volume 7. Now, you've signed and dated that report 18 December. Are you able to explain why it's dated before your receipt of the engineer's report?---Either I've got the date wrong or the engineer has the date wrong.

40 Okay. It's certainly the case that you had the engineer's report at the time that you finalised your report?---Correct.

And indeed the conditions that he recommended are picked up in your report as recommended conditions of consent?---Yes.

Can I just take you to page 223 of the volume 7. This is within your planning report and this is the assessment part of your report, Assessment of Section 96.1A Application.---Yes.

And insofar as the first requirement – that the modification is of minimal environmental impact – that was, in your view, a requirement that was satisfied in the present case?---Yes.

Because the only modification was the alteration of the stormwater system?
---Correct.

10 And similarly, B) the requirement to be satisfied that the development was substantially the same, again, because it was only modifying the stormwater, it was substantially the same development as had been the subject of the original consent?---That's correct.

And then going over the page, there's reference to the requirements of section 79C of Environmental Planning Assessment Act.---Yes.

20 And just dropping down to about halfway down the page, which was a requirement under that section to consider the provisions of any Development Control Plan, is that right?---Yes.

And you've referred, about halfway down the page, to the fact that the, what was proposed was a departure from the Development Control Plan that was enforceable at the time?---Yes.

And you state in the next paragraph, "Should we accept alternative methods? The most appropriate would be by mechanical pump out system, which was what was proposed." And there was then some discussion of the requirements for that pump out system that would be required.---Yes.

30 Before you finalised the report in which you, I think ultimately, looking at the conclusion of page 226, that you recommended that approval be made of the application. Do you recall discussing the issue of noncompliance of the pump out system with the DCP with anybody in your team?---No. I don't recall that.

Did you discuss it with your team leader?---No. I don't recall.

Did you discuss it with Mr Stavis?---I don't recall that.

40 Now, you say at paragraph 24 of your statement that after you finalised the report, you went it to Mr Hargreaves. Is that right?---Correct.

And do you recall whether he made any comments or suggested any changes to the report as he provided it?---No, he didn't.

He didn't?---I, I would have kept a copy of it added on to the file.

All right. And there's nothing on the file by way of a further copy amended by him. Can I take you then to page 237, that's the notice of modification or a file copy of the notice of the modification. Is that right?---Yes. That is.

And looking at page 237, it modifies the development consent by first of all, deleting the deferred commencement condition. Is that right?---That's correct.

10 And then deleting a series of conditions that related to the old stormwater system. Is that right?---Yes.

And then inserting or rewording condition 38, to relate to the new pump out system.---Yes.

That was subject of the application. And the conditions there came from Mr Rouhana's memo to you of 19 December?---Yes.

20 There's a handwritten note at the top of that page that I think says, "DA mod," posted on 23/12/15 and then it says, "DA consent needed to be modified, 10/02/16."---Yes.

Are you able to recall what happened in respect of the latter part of that note?---Yes. I was approached by the development engineer and I was informed that I had incorrectly put the conditions in the consent. I spoke to Mr Stavis about it as he had sent emails and enquired in the process. He informed me that I need to contact he applicant so that we have not included some conditions of consent and would he be willing to come in and surrender the consent and we would give him the new consent with the missing conditions.

30 I see. And the misunderstanding on your part related to a part of his memo at the beginning, which you had understood to be commentary but was in fact conditions?---That is correct. Yes.

40 And is it the case that you did attend a meeting with Mr Stavis and the applicant in relation to this issue?---What occurred was Mr Stavis was in a meeting with the applicant regarding another application, I believe. He was on site, Mr Stavis brought me into the meeting just to explain what occurred, the applicant was, thanked us for bringing that to his attention, was happy to swap the consents to ensure that he had the proper consent with all conditions.

So ultimately that consent as originally provided to him, he surrendered that. Is that right?---Yes, he brought it back to council.

And it was then reissued with all of the conditions picked up in the modifications?---That is correct.

Right. And at page 251, can I just ask you to go to that and confirm that that's the consent with all of the conditions as corrected?---Yes, that was the new consent.

All right. Now, at the time of preparing your statement you were shown an extract of business papers for the City Development Committee of the council dated 11 June 2015 which reported that Councillor Hawatt had made a less than significant nonpecuniary interest disclosure or declaration in relation to the original DA. Do you recall that?---I do recall that.

10

At the time of your assessment of this development application were you aware of that?---No, I wasn't.

Is it the case, I think you refer in paragraph 32 of your statement to having seen some correspondence from Councillor Hawatt in an email chain? ---And I do believe I have got confused with Councillor Hawatt and the lawyer.

20

I see?---Yes. So, it was the lawyer acting on behalf of the applicant.

I see?---Being able to look over the file again I've confirmed that it was the lawyer acting on behalf of the applicant, not Councillor Hawatt.

Okay. So when I look at paragraph 32 of your statement where you say you recall seeing correspondence from Councillor Hawatt in an email chain, is it the case that having looked at the file, that that is not a recollection?---That is not a recollection, no.

30

That is consistent with the file. Is that right?---That is correct, yeah.

All right. And is it the case, you indicate in your statement that neither his inquiry, which is what you believed at the time that did not have any impact on the timing of the assessment or your, the outcome that you recommended. Is that right?---That's correct, yes.

Is it the case now that you can't actually see a communication from Councillor Hawatt on the file. Is that right?---Correct, yes.

40

And can I ask you did Mr Stavis' involvement have any effect on your assessment of this application?---No, it didn't.

Either in terms of the priority that you gave it or the outcome that you recommended?---No, it didn't.

Commissioner, that's the examination.

THE COMMISSIONER: Thank you.

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

MR ANDRONOS: No questions, Commissioner.

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

MR MOSES: No questions, Commissioner.

10 THE COMMISSIONER: Thank you very, sorry?

MS MITCHELMORE: Yes. Could Ms Everhart be excused?

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

THE WITNESS EXCUSED

[3.33pm]

20 MR BUCHANAN: Commissioner, whilst the decks are being cleared, the next witness is Matthew Stewart.

THE COMMISSIONER: Mr Stewart.

MR BUCHANAN: Before Mr Stewart is sworn, can I tender a statement made by an Ian Woodward, W-o-o-d-w-a-r-d, manager of development at Canterbury Bankstown Council dated 26 April 2018?

30 THE COMMISSIONER: Thank you. The statement with, sorry, the statement of Ian Woodward dated 26 April 2018 will be Exhibit 62.

#EXH-062 – STATEMENT BY IAN WOODWARD DATED 26 APRIL 2018

MR BUCHANAN: I can indicate that it is not proposed to call Mr Woodward, the statement speaks for itself. I apologise for interrupting.

40 THE COMMISSIONER: Now do you take an oath or an affirmation?

MR STEWART: An oath.

MR MOSES: Yes, Commissioner, an application is made pursuant to section 38.

THE COMMISSIONER: You've had a discussion about a direction under section 38?---I have.

10 Again, you probably heard what I said to the previous witness, the exception to the protection given by the direction is if you give false or misleading evidence during this public inquiry?---Yes.

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

20

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

MR MOSES: Thank you, Commissioner.

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Commissioner. Sir, your name is Matthew Stewart?
---Yes, it is.

40

And are you general manager of Canterbury Bankstown Council?---Yes, I am.

Mr Stewart, for how long have you been general manager of that council?
---Since 12 May 2016.

And that was the date when the government proclaimed the amalgamation of Canterbury City Council and Bankstown City Council. Is that right?

---Yes, it is. Yes.

And it was a date pursuant to which the offices of general manager of each council were vacated?---Yes.

And a general manager, or an interim general manager appointed to the amalgamated council. Is that right?---Yes, that's correct.

10

And were you the interim general manager appointed that day?---Yes, I am.

And for how long did you remain interim general manager?---I still remain interim general manager today.

Can I just ask you to give us a little bit of more recent history for your career? It was, you were the general manager of Bankstown City Council?

---Yes, I was.

20

And for how long?---Since 2011.

Was that your first position as general manager of a council?---Yes, it was. I was acting for many months before that time but my first appointment as a general manager.

And before that acting position at Bankstown Council, had you held any other position in local government?---Several. Before that I was the director of assets and infrastructure at Bankstown Council.

30

Yes?---Before that I was manager (roads and infrastructure) at Bankstown Council.

Yes?---I was also manager (city works) at Penrith Council, and I had various team leader and team member roles at Bankstown Council going back as far as 2002.

So you'd been at Bankstown Council since 2002?---Except for a short period of time when I was at Penrith, yes.

40

At Penrith, thank you. Mr Stewart, you've made a couple of statements but there's only one that I want to focus on dated 28 March 2017, if I could provide you with a copy, please?---Thank you.

Please feel free to consult that if it will assist you in answering a question. In particular can I just take you through paragraphs 5 and 6 of the statement. These set out your understanding of your role as, let's call it general manager at the amalgamated council. Is that right?---Yes.

And on pages 2 to 3 that sets out your key accountabilities.---Correct.

Those I take it are of the same nature as those you had when general manager at Bankstown Council?---Very similar.

Excuse me a moment. Now, at some stage in your tenure at Bankstown Council as general manager, it I assume came to your attention that the government was proposing to amalgamate a number of councils, at that stage unnamed?---Yes.

10

Unidentified. And then at a later stage, I want to suggest to you January 2016, the government signalled an intention to amalgamate a number of identified councils.---Yes.

And amongst those was Canterbury City Council and Bankstown City Council?---Correct.

As at January 2016, did you know Mr Montague at Canterbury City Council?---Yes.

20

How long had you known of him?---I'd known of him longer than I was the general manager. I can't say how much longer but I'd known, I'd known of him for a long time.

When did you first meet him, as best as you can recall?---It would have been after becoming appointed as the general manager of Bankstown Council.

30

And between that time and 12 May, 2016, what was the degree of or frequency of personal dealings with Mr Montague?---I would say relatively frequently. I met often general managers of surrounding councils and councils across Sydney. Mr Montague and myself were both members of SSROC where we had monthly managers' meetings which would put us in contact with each other in a personal space every month of every year since my appointment, at the very minimum.

Can you just spell out that acronym?---The Southern Sydney Regional Organisations of Councils, SSROC.

40

Okay. And you've adverted to your knowledge of Mr Montague at Canterbury Council as having been of long standing. Had you been aware of the nickname, "The king of Canterbury?"---No.

Did you ever come across that sobriquet?---Only when I read it in the newspaper.

And when did you read it in a newspaper?---I think that was around the January of '15 in the Sydney Morning Herald.

In the context of a story about council-funded lunches at a restaurant in Enfield call Il Buco?---Yes.

Before that you hadn't heard of that expression at all?---No.

Can I ask, once you read that, is that a nickname that you'd like to be known by?---Absolutely not.

- 10 Why not?---Well, for myself, I'm there to serve the community and serve the people, and I'm also very much there to serve the employees at the organisation. I'm not there for myself and I felt that that was a very unfair title to be put on anybody, Jim included.

I want to take you, if I can please, to paragraph 41 on page 11 of your statement where you refer to a conversation with Mr Montague that you identify as occurring on 15 December, 2014, after a meeting you had both attended at the Office of Local Government about the governments Fit for the Future forms for New South Wales Local Government. Can I ask you,
20 you had previously met Mr Montague to the particular meeting, is that right?---Correct.

Can you tell us in your own words about the conversation you had with Mr Montague on that occasion?---After the meeting where there was a number of general managers briefed, Mr Montague and myself were talking and he was expressing frustration that, through his recruitment process for the director of planning, that Councillors Hawatt and Azzi were favouring Mr Stavis and he did not favour Mr Stavis.

- 30 Did you know who he was talking about when he spoke of Councillors Hawatt and Azzi?---Yes.

How had you come across knowledge of them before?---I'd come across most of the councillors at all the neighbouring councillors, councils and I had met Councillors Hawatt and Azzi previously at local government conferences. And when I say met, introduced to but I didn't know them.

- 40 At the time of this conversation with Mr Montague, did you have any understanding of the role or any particular role that those two councillors, either of them, played on Canterbury City Council?---I had some sense from previous conversations with Mr Montague. He referred to them as the junta and they made his life very difficult by being very demanding, very opinionated and didn't listen very well to advice that he provided them. So, I knew he had difficulties with them.

When did you first hear the word "the junta" used by Mr Montague in respect of them?---Oh, I can't recall. My only recollection is, is that it was

more, they were more referred to together as that, not Councillors Hawatt and Azzi, only as that when he was referring to them in the plural.

And you knew who he was talking about?---I did. At, at first I didn't. So, I had to seek, seek understanding. And I didn't know what junta meant until I looked it up, and when I looked it up that definition accorded with the way Jim described his experience with them.

10 At the time of this conversation that I've asked you about, after the future reforms presentation on 15 December, 2014, had you heard of or did you know Mr Spiro Stavis?---No.

Did you ask Mr Montague who Stavis was?---No.

Did he say who Stavis was?---No.

Did he say anything about Stavis?---Only that he didn't want to employ him as his director of planning.

20 Did he indicate why he didn't?---I can't recall that I was provided with detail. My sketchy recollection is that there were other candidates that he preferred and that he was uncomfortable with the strengths with which Councillors Hawatt and Azzi preferred Mr Stavis.

30 If I can take you please, to page 3 of your statement, paragraph 7. You've told us that in January the government had signalled an intention to amalgamate Canterbury with Bankstown City Councils. In paragraph 7, you tell us about a contact you had with Mr Montague by phone which was on or about 30 March, 2016, asking for a meeting to discuss council amalgamations. Are you able to say where you get that date from at the time you made the statement?---Well, he's asking about a meeting which I believed to be on 30 March and my recollection was that the call was made either that day or, or the day before.

And had Mr Montague discussed with you amalgamation of the two councils before then?---Yes. All general managers were talking with one and another around what was going on. It was extremely common.

40 You say in paragraph 8 that you told Mr Montague a meeting could be held at Bankstown City Council offices if he wanted to discuss the amalgamations, but you didn't see any point because there had been prior discussions?---Correct.

And you've indicated in your statement the dates as best as you recall when those occurred, the rough dates, pages 3 and 4. And you say Mr Montague didn't want to meet at the offices of Bankstown City Council?---Correct.

And said he'd get back to you. Is that right?---Correct.

Your mayor was Councillor Asfour, do I pronounce his name correctly?
---Correct.

And you advised him about the contact, you say, in paragraph 10 of your statement. And had a discussion with him about it?---Correct.

10 Is that right? You say you had also informed Mr Montague that any decision to amalgamate was ultimately a matter for the Minister and that you'd have to accept the decision made by the New South Wales Government. Was that something that you had said to Mr Montague on a prior occasion when these discussions occurred?---Yes, and to other general managers.

As at March 2016, I withdraw that. Various councils took varying positions to the idea that they should be forced to amalgamate with another council, as you would know?---Yes.

20 And some spoke of mounting legal challenges to a decision to force them to amalgamate. You recall that?---Yes.

Had Bankstown Council taken a position by March as to whether it proposed to challenge a decision to amalgamate with Canterbury Council?
---Yes, it had.

And what was that decision?---It chose not to legally challenge based on legal advice with respect to the process but also the chances of success.

30 And I think in your statement you talk about, in paragraph 11 and I'll come back to the main part of it in a moment, you talk about voluntary, voluntarily amalgamate. Do you mean by that not objecting, not taking a step to try and prevent amalgamation from taking place?---Correct. Bankstown Council have taken the position that it didn't support amalgamations, it wasn't going to enter into the process voluntarily and that it opposed the notion and had had resolutions to that effect.

40 And just so that we have the full context, did you have an understanding as at March 2016 as to Canterbury's position on this?---My understanding is that it had settled on preferring to amalgamate with Bankstown Council but I can't recall with any certainty whether it had had a first and preferred position to stand alone.

So when you refer to, in the third line of paragraph 11 of your statement, that "an approach to voluntarily amalgamate with Canterbury City Council, this was contrary to the decision of the council whom we served"?
---Correct.

Which decision are you talking about there?---To make the decision to amalgamate was not the decision of Bankstown Council, certainly.

You've spoken in paragraph 12 of your statement about your understanding of Canterbury City Council's position from conversations, I take it, that you'd had with Mr Montague. Is that right?---(No audible reply)

10 And you've referred there to a conversation following the SSROC meeting that I think you referred to earlier?---Yeah. So, on 3 March there, there was an SSROC meeting where the indication from Mr Montague was that his councillors were moving towards a position of favouring amalgamating with Bankstown Council.

Paragraph 13, you say Mr Montague subsequently contacted you later in the day or on or about 30, requesting that Mayor Asfour and you attend a meeting at the home of Bechara Khouri in Enfield and he gave you the address of a house in Enfield. Is that right?---Yes.

20 The next paragraph you say you'd never been to the home of Mr Khouri prior to being invited on this occasion, but did you know who Bechara Khouri was - - - ?---Yes.

- - - at that time?---Yes, I did.

Who was he?---A friend of Jim Montague.

30 And how long had you been aware of Mr Bechara Khouri?---As best I can recall I met him for the first time at a local government conference, an Australian local government conference in Canberra in 2012.

Had you had dealings with him between that meeting in 2012 and the events you've described from paragraph 14 onwards?---I had some dealings with him, I did.

40 And what were those dealings? This is as general manager at Canterbury? ---Correct. On occasion I would see him in the company of Jim as, as a friend of Mr Montague and he would also attend the offices of council with applicants from time to time, not often, but it had occurred up until this point in time.

Applicants for development?---Yes.

Had you taken part at Bankstown in meetings at which Mr Khouri was present, you yourself?---Before this time I think I may have, but I don't have - - -

How frequently?---Infrequently. Infrequently.

Are they meetings organised by Mr Khouri?---Some of them were.

That's to say approaching you or your office to set them up?---Or officers themselves. My recollection before this time, most of them were as a result of the applicants themselves making appointments with staff in the organisation.

And you'd find on the say that Mr Khouri was tagging along?---Yes.

10 In paragraph 14 you've identified one of the developers or the applicants as being Dyldam and another one as Charlie Demian and a third as Ziad and Marwan Chanine. Is that right?---Correct.

And they were all development proponents who you had had meetings with at Bankstown with Mr Khouri present?---Correct.

Now, before passing from that, what did you understand to be the purpose of those meetings with you? This is while you're at Bankstown.---Before amalgamation?

20

Yes.---Very much, well, I would say entirely before amalgamation they were literally introductions and door-opening and then the meeting was conducted by Bankstown Council staff in conversation with the applicant. I attended only on occasion where the staff felt that the issue had come to an impasse and I needed to go and provide some support to them, but most of the meetings were between staff and the applicant directly, and only about DAs and planning proposals.

30

But were there meetings that had been organised, because I think I asked you a moment ago, as you understood it by Mr Khouri approaching you or your officers?---Yes. I would say it felt unnecessary.

For you to be in attendance?---For him to even get involved.

For Mr Khouri to get involved?---Absolutely.

40

Because?---For example there was a proposed planning proposal by Dyldam on a large site in the Bankstown CBD. Dyldam had a large team of people who were quite capable and engaged at a professional level with our staff and his involvement seemed entirely unnecessary to me.

Thinking of those meetings, after the meetings were over did you have discussions with staff as to how the applications concerned should be progressed?---No.

So what did you see as your function by virtue of being present at those meetings?---So when I had large applications and the applicants requested that I be in the meeting I'd make a judgement call on a case-by-case basis.

Some of these, especially the planning proposals were quite significant changes within the CBD and they were early, very early in their, in the process, where I went to monitor what was happening and what was going on. I then left it with the staff, especially given that my staff were very competent and kept me briefed on anything that had come to my attention.

10 To what extent at Bankstown did you involve yourself in the work of your, and I'm going to call it, the planning department or development assessment department?---As little as possible. I obviously have a very busy job. So, I try to avoid it as much as possible. But what drew my attention to DAs or planning proposals – so planning matters – would be complaints from councillors, I would certainly want to inform myself, or where applicants were being, on, on significant proposals, being persistent and difficult in trying to breach our controls or overdevelop sites. My staff may alert me to it and ask me to attend if, if we're dealing with larger developers or developers that are, for want of a better term, frequent flyers in putting applications through the council. I'd make sure I'd go and support the council staff with their position or listen and inform myself what was going on.

20

Were any of Dyldam, Demian or the Chanines frequent flyers, in the sense that you've used that term?---I would say Dyldam wasn't, no. Charlie Demian was, yes. And Ziad and Marwan Chanine weren't really on my radar whilst I was general manager of Bankstown Council.

Commissioner, I was going to turn to a different subject. There's probably about half an hour of evidence at least, with this witness and I note the time.

30 THE COMMISSIONER: All right. You can come back tomorrow?---Yes, I can.

Yes. All right. We're adjourned until tomorrow morning at 10 o'clock.

THE WITNESS STOOD DOWN [4.10pm]

AT 4.10PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.10pm]

40