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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 WEDNESDAY 20 JUNE, 2018

AT 9.30AM

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

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

THE COMMISSIONER: Ms Mitchelmore.

MS MITCHELMORE: Yes, Commissioner. The first witness this morning is Ms Lisa Ho.

THE COMMISSIONER: Right. Ms Ho. Now, Ms Ho, you're represented. Have your legal representatives had a discussion with you about a direction under section 38 of the Act?

10 MS HO: Yes.

MS BULUT: Yes. Ms Ho would like to take the benefit of section 38, please.

THE COMMISSIONER: All right then. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all the 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
20 and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL THE 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
30 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.**

THE COMMISSIONER: Now, Ms Ho, do you take an oath or an affirmation?

MS HO: I'll take an oath, please.

THE COMMISSIONER: Ms Mitchelmore.

MS MITCHELMORE: Yes, thank you, Commissioner. Your name is Lisa Ho. Is that right?---Yes, that's correct, yeah.

10 And you are presently employed by Canterbury-Bankstown Council. Is that correct?---Yes.

You've been employed by the council and its predecessor, Canterbury City Council, since 2005. Is that right?---Yes, that's correct.

And you've otherwise been employed in planning roles since approximately 2001. Is that right?---Yes, that's correct.

20 And you hold a degree in town planning from the University of New South Wales. Is that correct?---Yes, that's correct.

You have made a statement to investigators in this matter, it's dated 28 October, 2016. Is that right?---Yes, that's correct.

Can I provide you with a copy of your statement, and if I can ask for the witness to be given at the same time volume 9 of Exhibit 52. So, Ms Ho, just looking at your statement - - -?---Ah hmm.

30 - - - and paragraph 3, you've indicated that in your time with Canterbury-Bankstown Council and previously Canterbury City Council you've worked principally in the urban planning section as an urban planner. Is that right? ---Yes, that's correct.

And the urban planning team worked on strategic planning issues for the local government area. Would that be fair characterisation of what the team did?---Yes.

40 And paragraphs 6 and 7 of your statement you refer to a particular planning proposal that was submitted in relation to 15-23 Homer Street, Earlwood, which you were tasked to review. You mention in paragraph 6 that the main element of the proposal to your recollection was to raise the height from the control height of 10 metres to 18 metres across the entire site. Is that right? ---Yes, that's correct.

And is it right that a further element of the proposal was to have residential development on the ground floor, which wasn't ordinarily permitted under the control. Is that right?---Yes, that's correct, yeah.

Now, in paragraph 12 of your statement you indicate that following your review you reached the finding that you could only support a small portion of the land going up to a certain height. Is that correct?---Yes, that's correct, yeah.

And you recorded that finding in your report to council. Is that right?---Yes, that's correct.

10 So if I can take you to volume 9 which is also in front of you, at page 38. You'll see this is a report to the City Development Committee for the 13 November, 2014 meeting in relation to 15-23 Homer Street, Earlwood. And is this a report that you were primarily responsible for preparing?---Yes.

Yes. And did you prepare that in consultation with anybody else in your team?---Yes. So I prepared it with my team leader, Warren Farleigh. Yes.

So, he was your team leader. And Mr Farleigh reported in turn to Ms Dawson, is that right?---Yes. To Gillian Dawson, yep.

20 Yes. At this time. And just looking at the summary of the report, the finding that was reached was that the, I'm looking at bullet point 6, the proposed 18-metre height limit is not recommended to be supported but some increase to allow a new building to more closely match the adjoining building, in terms of height and stepping down, could be considered and the conclusion that was reached by you, in consultation with Mr Farleigh and Ms Dawson, was that a maximum building height of 14 metres on a part of the land was recommended and then the rest of it was to remain at the 10-metre control height. Is that right?---Yes, that's correct, yeah.

30 And you also indicated, dropping down a couple of bullet points, that given the dimensions and location it was recommended that part of the site be permitted to have ground floor residential uses. So, that was another departure from the control. Is that right?---Yes.

But that was considered to be appropriate given, as you say, the dimensions and location of the site?---Yeah. That's correct. And we also sought advice about the viability of having the entire area for ground floor commercial and it was advised that it's not as, not that viable. So that's why we allowed it. So we also sought advice on that.

40 I see. So what you're saying, what you're saying there is that because, in terms of the advice that you received, it was that the area might not support all of that ground floor area being a commercial premises. Is that right? ---Yes, that's correct. Yeah.

Now, subsequent to your report, the council met and passed a resolution in relation to the planning proposal. If I can take you to page 50 of volume 9, and this is the minutes of the meeting of the City Development Committee

on 13 November, 2014. And you'll see at the bottom of the page is the resolution which was moved by Councillor Hawatt and seconded by Councillor Vasiliades, that the planning proposal be prepared to amend the maximum building height to be set at the same height as the building next door, which was 17 metres. Is that 17 metres across the site?---Yeah. That's how, that's my understanding of it, that it applies to the entire site. Yeah.

10 And the second bullet point was to allow approximately half of the northern part of the site to accommodate ground level residential uses. Can you recall, when you made the recommendation, what proportion of the ground floor you were contemplating would be used for residential uses?---It was more towards, it was more to allow, like, a portion of that site for, for residential uses, which is the northern part of, which was for, fronting the, the river, the Cooks River, and then the rest has been retained as commercial use. Yep.

20 I see. Can I take you to paragraph 15 of your statement. So paragraph 15 is where you've referred to the council's resolution. At paragraph 16, you say this was not a good outcome for planning. Do you see that?---Yes.

Are you able to explain to the Commission why you had the view that this, i.e. council's resolution, was not a good outcome for planning?---Yeah. So, to have a 17-metre height limit across the site would mean that you have a building that's really excessive and would be out of character of the area, that was envisaged for the area, which wasn't like, five, five storeys, three storeys. So, it, it would be out of keeping of the area and it also will have impacts, especially for the adjoining flat building.

30 THE COMMISSIONER: The adjoining what, sorry?---The residential flat building that's next door to the site.

MS MITCHELMORE: So, when you mention – I might just ask you to speak up a bit Ms Ho, if you can?---Yeah, yeah. Sure, yeah.

40 When you mention the impact on the adjoining residential flat building, what do you mean by that, what sort of impact are you speaking of?---So you basically have a very tall bulky building with walls along the side where there's units, there's actually residential units next door at the adjoining flat building, and they've got windows and balconies facing onto the wall and there will be impacts in terms of overshadowing and sunlight and they'll, and there will be loss of views as well.

I see. So views and overshadowing - - -?---Yeah.

- - - would be the primary impacts on the building - - -?---Yes.

- - - next door.---That's correct, yeah.

All right. Now, the resolution of council went to the department for the department to consider making a Gateway Determination. Do you recall that?---Yes, I do.

And were you responsible for putting the material to the department or drafting the material that went to the department?---Yes. So I put the planning proposal together and it was subsequently reviewed by my team leader manager, Gill Dawson, yeah.

10

And then submitted - - -?---And then submitted to - - -

- - - under cover of a letter from the general manager to the department. Is that right?---Yes, I believe so, yeah.

Yes. Now, in relation to the Gateway Determination once the department received it, is it the case that you dealt with Ms Helen Wilkins in relation to it?---Yes. So she was our regional contact person for our, for the council and she dealt with mainly planning proposals in council, yeah.

20

Yes. So just taking you to paragraph 22 of your statement, you've indicated that she was the planning officer within the department tasked to review the planning proposal and she asked you a number of questions. You indicate in your statement in the next sentence that she asked you to provide justifications for the height. Did Ms Wilkins express to your recollection any particular concerns about the height as resolved by council which prompted her to ask for that justification?---I can't recall, but I know that with the department, when you're sending stuff for a planning proposal they do need detailed justification for it, because it's another level of assessment for them. So because there wasn't any, anything to back up the height that was resolved, that's why she sought that, that's why she sought that clarification.

30

I see. And you indicate that you couldn't provide a justification for the height and led her to the council's resolution. So is it the case that you provided her with the council's resolution or did you just direct her to the minutes, can you recall?---I can't recall, but I, I, I think when I sent her the planning proposal it may have been submitted, the report and the minutes would have been submitted as part of the planning proposal package.

40

I see.---Yeah.

Is that ordinarily the case, Ms Ho, that you would submit the resolution and minutes with the planning proposal?---Yeah, we normally do.

Yes.---And it's a public document so they can also view it anyway.

Yes.---Yeah.

Okay. All right. Now, the Gateway Determination that was made is at page 107 of volume 9. If I can just take you to that. And you'll see that there was a number of conditions that were attached to the determination, and the first of them was that prior to public exhibition the planning proposal is to be amended to include first a preliminary acid sulfate soils assessment to address the requirements of section 117, direction 4.1, acid sulfate soils, an amended key sites map to show ground floor residential development on the northern half of the site, and further justification to support a maximum building height of the 17 metres on the site, and in relation to that an additional study that accurately represents and addresses the impact of future development on the character of the local area is to be made available with the planning proposal during the exhibition period. Ms Ho, was there any reference to your recollection in the Gateway Determination or the covering letter, and the covering letter I should indicate is just the two pages back, if you've got the hard copy there, pages 105 and 106, that the additional study be independent of the council?---I don't think it mentions that.

20 Okay. Similarly was there any reference in the determination to a requirement that the additional study be independent of the proponent? ---I think it's (not transcribable) on that.

Is it the case that you had, well actually, if I take you to paragraph 24 of your statement, you refer to discussions with Mr Farleigh and Ms Dawson about the additional study. Was the issue of who should prepare the report a matter that you discussed?---Yes, it was.

30 And that includes whether that person should be independent of the council and the proponent?---Yeah. So, we were, we did conclude that it should be an independent study, that be done, that, that, not the proponent, but it'll be, a council will be engaging someone independent to do that review, to do that additional study, yep.

Yes. And if I can take you to page 110 of volume 9, you'll see that there's an email from Ms Dawson to the urban, to, to an urban planning list. Were you a member of the urban planning email group?---Yes, I was, yep.

40 So, do you recall receiving this email of 23 March, 2015?---Yes, yep.

And if I can just take you to the last paragraph, there's a reference to who should commission or undertake the study. The recommendation of Ms Dawson was that council commission the study, given the potential threat of having the delegations removed in the event that the department considers the studies don't provide adequate justification. Do you see that?---Yes.

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

Was there any discussion of the council preparing the study or would that just not be something within the role of the council?---It wouldn't be in our role, because it's more specialised in terms of an urban design and we don't have that specialty in our section, yeah.

I see. Thank you. Can I just take you back to paragraph 24 of your statement. You say there that the additional study had to be independent of the proponent's planning proposal. It's the case we've just gone to the document that the Gateway Determination itself didn't require that it be independent, but that was a view that the planning team within the council formed, is that right?---Yes, that's correct. Yep.

All right. And you say at the end of that paragraph that, "Failing to adhere to the determination has significant ramifications." Are you able to explain what you mean by, "Failing to adhere to the determination has significant ramifications"? What are those ramifications?---So, that would mean that the planning proposal delegations which the department had given council may potentially be taken away in terms of that we won't be able to manage the planning proposal and it may not be progressed as such, if it doesn't, if it's not, if you don't supply the development material to support that proposal.

I see. And if I can then just take you to paragraph 25. You refer to the council then proceeding to locate an independent expert. As you've indicated, they've got the technical experience. The resources – you resources, council's resources – couldn't meet the demand. And "To have an external consultant do the work would remove any perceived bias against the planning department." I'm just wondering what, if any, bias were you considering might be perceived in the planning department preparing an urban design report or study for this project?---Well, the bias is that, we want to engage someone independent so that, because we've, our planning section obviously has a view of the proposal and that's why we've decided to use someone independent, so they can provide us with that, an independent advice that's separate to our, to, to council's view.

So, when you say, "Council's view," do you mean council officer's view?---Yes. Council officer's view, yes.

Yes. And what was that view?---Well, that view is that, that proposed height is not acceptable.

Not acceptable, did you say?---Yes.

Sorry, I just didn't hear you.---Yeah. Not, yeah, yeah, it's not, not something that we would support, yeah.

THE COMMISSIONER: And that was reflected in the report that you originally sent to council?---Yes. That's correct, yes.

MS MITCHELMORE: All right. If I can take you to page 111 of volume 9, you'll see that there's an email from, there's two emails on the page. The first is from you to Mr Assad Faker, dated 1 April, 2015. Mr Faker was the proponent of the planning proposal. Is that right?---Yes.

Or the planning proposal was made on his behalf, is that right?---The planning proposal, I believe was made by the planning consultant but Mr Faker is the owner of the site, I believe, yep.

10

Yes. All right. And you're asking him about the acid sulfate soils report in that email. Is that right?---Yes, that's correct.

And that of course was the first of the three bullet points in the Gateway Determination as to the amendments that were required to the planning proposal. Is that correct?---Yes, that's correct, yeah.

And you refer in your email to the fact that an assessment had been initially submitted with the development application for the subject site and this report may be sufficient. Do you see that?---Yep.

20

So it's the case that there was an existing consent with relation to at least a part of this site, is that right, at this time?---Yeah. So the consent, there was a consent for two of the three sites, so yes, yeah.

30

And Mr Faker replies to you on 2 April, which is the top email on the page, indicating that the report submitted with DA 468/2011 would be sufficient and adequately addressed the department's requirements. Should you require anything else, please let me know. I'm just wondering, why could the council rely on that study which was commissioned by someone associated with the proponent but not rely on an urban design study prepared or commissioned by the proponent. What was the difference to your mind?--- So this acid sulfate soils is more of a technical document and it was fairly recent which was done for that, for that site and was something that had to be addressed in the Gateway condition. So we thought it was sufficient at the time, yeah.

40

I see. So it is of a more technical nature in terms of what it needs to contain. ---Yes.

Is that right?---Yes, that's right.

All right. As compared to an urban design study requiring justification of height.---Yes.

Is that correct?---Yes, that's correct, yeah.

All right. Can I take you then, Ms Ho, to page 113 of volume 9. It's the case that you liaised with Mr Russell Olsson of Olsson Associates in relation to preparation of the urban design study. Is that right?---Yes, that's correct, yeah.

10 And this is an email from you to Mr Olsson of 6 May and you describe in the second paragraph what you were looking for, for a height study, and you attach a background information sheet which includes the council report and DP&E, so the department's Gateway Determination and you ask for him to get back to you if he'd be interested in doing the project. Can I just take you to page 114 which is the attachment, the background information. Is it the case that in briefing an independent expert you would ordinarily brief them with a copy of the officer's report in relation to the site?---Yes, we normally do, and that's just to provide all the information available to them so that they can do, carry out their study.

20 I see. So in terms of – well, I'll just ask you to confirm why you drew the difference between the officer's report and the council's resolution to Mr Olsson's attention?---Oh, yeah. So that was drawn because, that was to explain why, why that, that requirement in the Gateway condition was required, to explain that, that the, the council had resolved to, with that height limit, the 17-metre height limit, yeah.

I see. All right. Now, it's the case that Mr Olsson provided you or he undertook the project. Is that right, that he undertook the study?---Yes, yes.

And he provided you with a draft report I think in about June of 2015. Is that right?---Yes, yeah.

30 If I can take you to page 174 of volume 9 you'll see that again there's two emails on the page. The bottom email is the email from Mr Olsson of 18 June, 2015 where Mr Olsson refers to having prepared a draft report for you to read and indicates that he's done more than simply address the height question because there were other issues that he considered warranted discussion. And then in your email at the top of the page which is 8 July, 2015, you apologise for taking so long to respond back and, "We have reviewed the report and have made a few comments which I've tabled in the attachment." Can I just ask who the "we" is in that, if you can recall who you were referring to?---It would probably be myself, Warren and maybe
40 Gill, but principally Warren so - - -

So, Mr Farleigh and yourself, is that right?---Mr Farleigh. Yes, yes.

And then you say, "If you could make the changes, that would be great." Can I just show you pages 175 and 176. So, this is a, a table with the, a section of the report on one side and commentary on the other. Do you see that?---Yep, yep.

Is this a document that you prepared?---Yes, yep.

And perhaps in consultation with Mr Farleigh, is that right?---Yes, that's correct. Yep.

10 Yes. And you'll see that some of the matters in the commentary are just correcting factual material. So, if you look at the fourth bullet point in the introduction section on page 175, you'll see there's a reference to the land ownership details needing to be corrected. So, there was just a factual inaccuracy. Do you see that?---Yeah, yeah, it's is, yep.

20 But other requirements or comments in the commentary were more substantial. So, for example, the second, the third bullet points in the box, in the introduction box about needing to emphasise why the requested information from the department can't be supported through your analysis and the third bullet point, "Need to have strong reasons why the 17-metre height cannot be supported." Were the comments in the table of a type that you would normally make in relation to a report of an independent consultant?---Yeah. I mean that's normally all we would do for reports, just to have a look and see whether or not it's, it's like a review, it's our commentary about whether or not it would be factual or whether or not it needs, certain things need to be, further information needs to be provided. Yeah, that's kind of like a normal process, yeah.

So that's a normal process?---Yeah, yes, yes.

Yes. And would it be normal to set it out in a tabular format like it is attached to the email to Mr Olsson?---Yeah. Most of the time, yes, yeah.

30 Right. You indicated in your covering email, if I can just take you back to page 174, you said to Mr Olsson, "If you could make the changes, that would be great." Your expectation was then, was it, that the matters you drew to Mr Olsson's attention in the commentary would be amended in accordance with what you suggested. Is that right?---Yeah, I believe so. I, yeah. So, it's more of, it's not really asking them to make an changed. They're recommendations more like, fixing up the report that they've got, that they, they've submitted. But, yeah.

40 Right. So, you're not changing the substance of the recommendations that the consultant has actually made, is that right?---No, yeah, that's correct. Yep.

In preparing a table of comments of this nature – and it may be that you partially just answered the question – what's your understanding of the limits of the type of comments that you can make in relation to an independent consultant's report?---Well, it's more like making sure that the facts are in place and whether or not, whatever arguments they've got in place, but not it's substantial or it needs, it need further beefing up, that kind

of stuff. But we wouldn't normally suggest you know, changes to the recommendation, their recommendation.

THE COMMISSIONER: I'm sorry, you wouldn't?---No. No, it's not something, no, that's not something that we would we do.

You wouldn't suggest a change in the recommendation?---In the, in the, in their recommendations, yeah. That's correct.

10 MS MITCHELMORE: Right. Now, it was apparent from Mr Olsson's draft report that he didn't support the height increase to the planning proposal that council had resolved to adopt. Is that right?---Yes, that's correct.

And is it the case that you had a discussion with Ms Wilkins at the department about that?---Yes. I do recall, yep. In an email.

Yes. So, if I can show you page 177 of volume 9, you'll see there's file note that has your name at the bottom. Is that a file note that you prepared of a
20 conversation that you had with Ms Wilkins on 14 July, 2015, is that right?
---Yes, yes.

Did you make that call to Ms Wilkins of your own initiative?---I may have spoken to Warren before and then we said we'll approach, we'll speak to Helen about, about what to do with this, the outcome of that report, of that study.

Yes.---Yeah, mmm.

30 Yes. Now, can I just ask you, in relation to file notes, was it your practice to file note conversations with departmental officers, all conversations?---Ones where, where it's important I do a file note, yeah.

So you considered this conversation to be important for the, for the proposal. Is that right?---Yes, yeah.

Can I take you to the fifth bullet point and the second – so this is recording HW, Ms Wilkins advising as follows, and the second bullet point was,
40 “Where a study has been carried out that cannot meet the conditions of the Gateway Determination council needs to form a position on the matter, that is whether to support the height recommendation in the study or revert back to the original recommendation on the planning proposal which would necessitate a revised planning proposal.” Do you see that?---Yes, yeah.

Was there any discussion with Ms Wilkins about obtaining a further study that might meet the conditions of the Gateway Determination?---No, no, not that I'm aware of.

Was that something that you and/or Mr Farleigh and Ms Dawson considered?---No.

Why not?---I mean we just had that, the study in place and we thought that that should be sufficient, but we didn't really think that an additional study would be, an additional study on top of Mr Olsson's study would be appropriate.

10 I see. Did you provide your file note or a copy of your file note to other officers to review?---Not, not this one, no.

Right. Was the content of the file note matter that you discussed with Mr Farleigh?---Ah, yes, yes. So I did give feedback to Mr Farleigh about the discussions with Ms Wilkins, Ms Helen Wilkins.

Yes. Did you discuss the conversation that you had with Ms Wilkins with Mr Stavis?---No, I don't recall.

20 Right. Can I take you to page 178 of volume 9. You'll see that that's, there's again two emails on the page. The bottom one is from Bronwyn Horn. Was Ms Horn someone who worked with Mr Olsson at Olsson Associates?---Yes, I believe so, yes.

Yes. And she has said, "Please see the attached Homer Street study with revisions as requested." Are you able to recall if the revisions to which she's there referring those in the table that you sent Mr Olsson by email on 8 July?---Yeah. So those changes were in response to the table of amendments, our comments in that email I believe, yeah.

30 I see. And then you had a further clarification that you've added or you've suggested be added to the report in your response to Ms Horn of 20 July. Is that right?---Ah, yes.

Okay. Around this time, Ms Ho, 20 July, do you recall attending any meetings in relation to this proposal, either with Mr Stavis or the proponent or otherwise?---Sorry, what time was it?

40 It's around 20 July. So around the time that you were sending this email back to Mr Horn.---I don't recall, but we did have a meeting but I can't recall when, with Mr Olsson and Mr Stavis.

All right. Is that the meeting at which you might have taken a file note, that was a later file note I think on 8 September, 2015. I was just asking you about sort of earlier in the piece, 20 July.---No. I don't have that, I don't recall a meeting at that time, no. There was a September meeting.

Yes, yes. You say in paragraph 34 of your statement that, if you've got your statement there, that Mr Stavis was enquiring with you during this

process, when the matter would be going to public exhibition and that he, “Took over the process.” Are you able to explain what you mean by, “Took over the process”?---I think he had more dealings with, he may have had more dealings with Russell Olsson in terms of the study and he may also have had, I’m not sure, but he may also have had dealings with the applicants or the owner, which I wasn’t, which yeah, and so, I, I can’t, yeah, he, and, yeah, he did question about, yeah, he did ask questions about how the planning proposal’s progressing from time to time, yeah.

10 In relation to your comment in that paragraph that he took over the process, are you able to recall when, or approximately when, he took over, to your mind, he took over the process?---It’d probably be before that, before that meeting that we had in September. So, it would probably be a, a month or two before that. So, July-August, I don’t, yeah.

All right. If we can turn to that meeting. So, that was on 8 September, and it’s the case that you prepared a file note of that meeting which is at page 181 of volume 9. If I can just take you to that, just to refresh your memory, and that was with Ms Dawson, yourself, Mr Stavis, Mr Farleigh and Mr
20 Olsson. Is that right?---Yes.

And, just looking at paragraph 35 of your statement, you recall that Mr Stavis spoke and had a better understanding of the proposal and recommended schemes. Do you see that?---Yes.

In your file note, you refer in the first bullet point to a modelling of the two developments schemes being provided by Mr Olsson and that showed two differing scenarios at different vantage points. I just want to ask you to tell us where we find that modelling and I want to take you to volume 10 of
30 Exhibit 52, at pages 106 to 107. I just wanted to ask whether this is the modelling that you are there referring to?---Yes. So, yeah, he provided that kind of modelling at the meeting, to show the different scenarios.

Yes. So, just looking at page 106, there’s two side-by-side models, is that right?---Yes.

The model on the left-hand side is the proposed Homer Street envelope. And when it says, “Proposed,” that’s as proposed in the planning proposal, resolved by council, is that right?---That’s correct, yes.
40

And the, the right-hand side, is the recommended envelope. So that’s the envelope that Mr Olsson was recommending. Is that right?---Yes, that’s correct. Yes.

And you can see the building at various vantage points on pages 106 to 107, with both the left-hand column and the right. So, you can see the differences in the recommended heights, as between what council resolved and what Mr Olsson was recommending. Is that right?---Yes, that’s correct.

And, to your recollection, was what Mr Olsson recommending the same as what the council officers had recommended, or was there some difference?
---There was a slight difference in that the building that's immediately adjoining the, the residential flat building, he, Russell Olsson recommended a smaller height, at eight and a half, whereas council recommended 14 metres at that point. So a slight difference, but in general it was similar, a similar envelope, yep.

10 So, it was a similar envelope to what you had recommended in your, the initial report to council. Is that right?---Yes. It's a similar, but I think their scale is a little, slightly smaller. Yep.

I see. All right. Can I take you back to volume 9, and to page 197 of that volume. You say in that, in your statement that you've seen this document within the planning file. Is it a document that you were provided at the time?---No. No, not that one.

20 No. Right. Is it the case at this time you were still the officer responsible for the proposal?---Yes, I was, but it wasn't really moving because of we weren't able to provide a study to support the planning proposal at the time.

I see.---Yeah.

So this wasn't a document that you were provided by or given by Mr Stavis or shown by Mr Stavis around 23 December?---No, no.

30 As the officer with carriage of the planning proposal would you have expected to be shown a copy of a document of this nature in relation to the site and the proposal?---Ah, yes, yeah.

Would it be unusual for you not to have been shown a document of this nature in relation to a proposal of which you're primarily responsible?
---Yeah, I would expected to have seen it, yeah.

40 All right. You say in paragraph 36 of your statement that what you've read, and is that from what you've read in the document, if you can confirm, that Stavis was recommending amendments to the proponent's planning justification report. Do you see that?---(No Audible Reply)

I'm looking at the second sentence, sorry, the first sentence at paragraph 36 of your statement I'm looking at.---Yes, yeah.

So when you say you understood from what you have read, is that what you read in the annotated document or from something else?---Yeah, so it was the annotated writing, yeah.

Right. And you've said this is unusual and he should remain independent. Can you explain to the Commission what it was about the amendments that was unusual?---I think it was, the amendments were related to suggestions of how to, how, the amendments were to, provided to the, to the proponent's planning consultant about what changes can be made to support the justification in that planning report. Yeah, it was like suggestions, yeah, which is, I thought a bit odd, yeah.

10 And if you want to go back to pages 175 to 176 with your comments on Mr Olsson's report, I'm just wondering what was it about Mr Stavis's comments that struck you as unusual as compared with the comments you put forward to Mr Olsson, what was the difference between them that you considered to be unusual by comparison to the changes you suggested to Mr Olsson?---Yeah. So my changes were more, or suggestions were more like factual base and things that may need further support to provide their justifications and with Mr Stavis's one, it's more in line with suggesting how things can be worded or added or things that need to be provided to, you know, to state their case. But yeah, I'm not really, I'm not, I can't, I really can't remember exactly what the changes were for Mr Stavis's
20 comments so - - -

THE COMMISSIONER: I was going to ask you whether you could turn to page 197 and give an indication of a comment.

MS MITCHELMORE: Yes.

THE COMMISSIONER: Sorry.

30 MS MITCHELMORE: No, no, no, that was - - -

THE COMMISSIONER: Great minds?

MS MITCHELMORE: Yes.

THE COMMISSIONER: Sorry, I'll - - -

MS MITCHELMORE: No, no, no, no.

40 THE COMMISSIONER: If you want to continue?

MS MITCHELMORE: No, of course, Commissioner.

THE COMMISSIONER: Would it help if you had the hard copy of the - - -

MS MITCHELMORE: I think she's got the hard copy, Commissioner.

THE WITNESS: Yeah, 197, yeah.

MS MITCHELMORE: Ms Ho, if you'd like to take a moment to look at the annotated copy which might assist you to answer the question.---I think that, I think his comments is more to help assist the, the planning, assist the planning consultant's reports.

MR STANTON: Commissioner, it's very hard to hear at the back.

THE WITNESS: Oh, yeah, sorry.

10 THE COMMISSIONER: Sorry, Ms Ho.

THE WITNESS: So yeah, I think that his comments are more to provide assistance for the report, to provide further justification, so it's, yeah, it's more, almost like it's supporting but it's also at the moment, at the same time providing firm assistance to the, to the report.

MS MITCHELMORE: I see.

20 THE COMMISSIONER: So if you go to page 205.---Yeah.

It's an illustration of some of the comments on the – I'm sorry, are you there?---Yes.

On the right-hand side, "How will this satisfy" - - -?---ADG.

30 - - -"ADG separation distances, setbacks," and then, "Need more detailed analysis and explanation."---Mmm, mmm, yeah, that kind of stuff. It's more like – you won't make that kind of comment if you don't support the, the, the report.

Ah hmm.---So it's more, yeah, it's, the comments are more like assistance to support the proposal, to support what's in the planning consultancy report.

MS MITCHELMORE: And is that the basis, Ms Ho, on which you were concerned, just going back to your statement in the third sentence you said, "This was unusual and he should remain independent."---Ah, yes, yeah.

40 So what was your concern about, what gave rise to your concern that Mr Stavis was not remaining independent?---Well, he was, he was almost, he looked as if he, I mean in these comments it's almost like an assistance to the JBA report. So I didn't, that was my concern in that.

I see.---Providing that kind of level of assistance.

So that was a level of assistance beyond what you would ordinarily expect from planning officers in your experience?---Yes, yeah, yeah.

In terms of Mr Stavis's involvement, he of course was the director of city planning, in your experience of other directors over time, was the nature of the comments Mr Stavis was making consistent with someone holding the position of director of city planning?---Well, yeah, my past experiences, I haven't had directors have that kind of level of involvement with planning, planning proposals and like, and all these types of planning and planning reports, so yeah, there's less involvement compared to Mr Stavis.

10 And that's just from your general experience?---From, yeah, from my general experience from former directors, yeah.

And that would include Mr Occhiuzzi, you worked under Mr Occhiuzzi for a period, is that right?---Yes, that's correct, yeah.

All right. Can I take you, Ms Ho, now to page, volume 10, if you've got volume 10 there, and page 36 of volume 10. You'll see that this is provision of additional plans. Your name appears at the top in the top right-hand corner next to Location. Do you see that?---Yes, yeah.

20 So is it the case that you were still the contact person on this planning proposal as at March 2016?---Yes, I was.

What was the level of your involvement in progressing the proposal at this time, March 2016?---The proposal was basically put on hold at the time because we couldn't really progress it from, because we needed to have a document to support the planning proposal and the document that we had, which was the Russell Olsson one, didn't support it so we weren't able to progress it, which is, the next stage was to go to be placed on public exhibition.

30 Yes.---So if we were to exhibit it, those documents need to be consistent and support the planning proposal so - - -

Yes. You'll see that what was attached to the cover sheet was a copy of the planning justification report from JBA. Do you see that?---Yes, yep.

40 Are you able to recall when you first became aware that JBA was preparing such a report?---I may have heard from discussions with the team that that was happening but I can't like, it was just things that you, you would hear in the team but I wasn't aware of like, no one, I wasn't directly told about it.

Right. Do you recall receiving this JBA report on or around 18 March, 2016?---Yeah. Somehow I became aware of it at that time. So, it may have been given to me. I can't really recall, yeah.

Yes. And was March, 2016 the first time that you'd seen the report?---It may have been, yes, yeah.

Yes. And you reviewed the report at that time, at or around that time?
---Yes. So, I did have a look at that report.

And you prepared a file note of your review of that report, is that right?
---Yes, that's correct, yep.

And that file note was dated 19 April, 2016, is that right?---Yes, that's correct.

10 And I can just show you that. It's at page 77 of volume 10. Just to confirm, that's the file note that you prepared, is that right?---Yeah.

Just taking you back to your statement, in the context of your preparation of this file note, you say, "I had significant concerns about the integrity of Stavlis and the process that was being undertaken and I felt that the proponent was being favoured." In relation to your statement there that you felt the proponent was being favoured, was that a view that you formed at this time, namely March-April of 2016?---That's, yeah, when the, when that JBA report came into, came into play, yes, yep.

20

And are you able to recall the reasons why you formed that view, that the proponent was being favoured?---I guess because, that Mr Stavlis was more involved with the planning proposal and that he's also sought a separate report to be prepared to support the, the planning proposal. That's kind of where I came from in terms of him trying, Mr Stavlis, you know, favouring the proponent in that sense, in that he was more proactive in the - - -

How did you, I think you just indicated that you were aware that Mr Stavlis had sought the additional report from the proponent. How did you know that? What was the basis for your knowledge there?---I don't recall but I think there may have been discussions at the, at the team, with the team at the time, that that happened but I wouldn't have, yeah.

30

So, from discussions with the team, by the team, do you mean Mr Farleigh and Ms Dawson?---Yeah, yeah.

I see. So, it was something that you heard but not something of which you were, you had heard from Mr Stavlis. Is that right?---That's correct. Yes.

40 Right. Can I take you to paragraph 39, you've indicated that you remember after you wrote the file note, "He approached me and asked me for a copy." Who's the, "He," in that sentence?---That's Spiro, Mr Stavlis.

Right. Had you provided the file note to anybody else?---I think Warren might have been given a copy of it.

Mr Farleigh, is that right?---Yes, yes.

Right. And did you provide a copy to Mr Stavis when he asked you for a copy?---Yes, yep.

Yes?---Yes.

All right. Now, it's the case that, and looking at paragraph 40 of your statement, that a further version of Mr Olsson's report was written. Do you see that?---Yep.

10 Did you have any role in liaising with Mr Olsson in relation to that further version of the report?---No, no.

Did you review the report when it came in?---I wasn't asked to review it but I, I think I may have seen a version of it. But, yeah.

But you weren't formally asked to review it?---No, no.

I see. Did you, all right. Paragraph 41, you talk about the proposal being put on exhibition. What role, if any, did you have in terms of putting the
20 proposal on exhibition?---Yeah, so I, I would be involved with that process in terms of putting all the material to be available, to be on public exhibition, which is you know, putting it on, online, on council's website, at the, at the service centre, the customer service area. So, I would have a, a role for that, that's my role.

So, you're responsible for collating the material?---Yeah. I'll be responsible putting that, yeah, putting the material together.

I see. And you say you did that after speaking with Mitchell Noble, who
30 was the manager within Planning at that time. So, is it the case that Mr Noble had taken over from Ms Dawson?---Yes. At that time, yes.

At that time, all right. And you refer there to Mr Noble saying to you, "Use the JBA report," which excluded the Olsson report. Do you recall any discussions with Mr Noble about which reports to include other than what you've reported in paragraph 41?---No. I just recall that direction. No. I can't, yeah.

Can I take you to paragraph 42 of your statement, you refer in the last
40 sentence, to having spoken of your frustrations with Mr Farleigh but you didn't feel comfortable in raising this matter with higher ranking council staff. I'm just wondering, who the higher ranking council staff, if you can identify what positions that they would hold, who you might consider raising that matter with?---That would be my, the director and probably the general manager.

So Mr Stavis and Mr Montague at that time?---Yep.

And why was it the case that you didn't feel comfortable raising it with either of those persons?---I don't know, I didn't think they were approachable at the time.

THE COMMISSIONER: Sorry, you didn't?---I think they were, I didn't feel comfortable and I didn't think they were approachable at the time.

10 MS MITCHELMORE: Ms Ho, just finally, do you have any recollection of, over the period of this process, meeting with Mr Faker at all personally? ---Only discussions on the phone and we may have had that initial meeting before, before reporting the matter to the council. So, there was an earlier, there was only one meeting, face to face, yeah.

Just to get the time of that, that's before you put in your report to council in relation to the planning proposal, is that right?---That's correct. Yes, yep.

I see. All right. Commissioner, I have no further questions.

20 THE COMMISSIONER: Thank you. Mr Neil?

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

THE COMMISSIONER: Mr Andronos?

MR ANDRONOS: No, questions, Commissioner.

THE COMMISSIONER: Mr O'Gorman-Hughes?

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

THE COMMISSIONER: Mr, sorry, Mr Drewett?

MR DREWETT: No, Commissioner.

THE COMMISSIONER: Sorry, could you stand up and - - -

MR DREWETT: I'm sorry. I've got no questions, Commissioner.

40 THE COMMISSIONER: Mr Pararajasingham?

MR PARARAJASINGHAM: Yes, Commissioner.

THE COMMISSIONER: Thank you.

MR PARARAJASINGHAM: Ma'am can you hear me all right?---Yes.

I represent Mr Stavis. I've just got a couple of questions for you. Is your evidence that you are the person who physically prepared the report to council concerning the planning proposal, correct?---Yes.

Is it the case that what was expressed in that report was shared by other members of the planning staff?---They reviewed it, which is my team leader, Warren and manager, Gill Dawson, and yes, they've agreed with my recommendation.

10

Sorry, are you able to look at me when you answer my question?---Yeah, yeah, sorry, yeah.

But certainly you understood that they agreed with your position?---Yes.

Was it often the case that opinions within the planning department were of a similar nature?---So how do you mean?

20

I mean was it the case that generally you all kind of landed on the same position with respect to a particular planning proposal?---Yeah, most of the time, but there would be justifications for it.

Sure. So your answer is yes, to my question?---Um - - -

THE COMMISSIONER: Well, I think she answered. She agreed but said there would be justifications for it.

MR PARARAJASINGHAM: Yes. Thank you, Commissioner.

30

THE COMMISSIONER: That's fair, Ms Ho?---Yes.

MR PARARAJASINGHAM: Ma'am, it's the case that when council effectively rejected the recommendation in your report, you took that personally, didn't you?---It was more professionally.

Sure. But you took that as a criticism of you professionally. Correct?---To some extent, yes.

40

Well, have you got your statement there with you?---Yes.

Can you just go to paragraph 17, please, and there it reads, "This significant change and staff recommendations by councillors I believe question my professional integrity and ability as a planner." Correct, that's what appears there?---Ah, yes.

And that was your feeling at the time, wasn't it?---Yes.

And it's the case that the entire planning department took this rejection by the council as a slight on them professionally. Correct?---Yes.

Can I ask, up to 13 November, 2014 when council passed that particular resolution, what was the relationship like between the planning department and councillors, just generally?---We didn't really have much contact with them.

10 What views did the planning department hold about the councillors and the job they were doing?

THE COMMISSIONER: I've got a concern it's a very general question. I think to have some probative value you might need to identify who within the department we're talking about.

MR PARARAJASINGHAM: Sure. Well, what view did you have about the job that the councillors were doing?---(No Audible Reply)

20 THE COMMISSIONER: And sorry, can I – this is around the time that Ms Ho prepared her initial report?

MR PARARAJASINGHAM: Yes, it's limited to that.

THE COMMISSIONER: Yes.

30 MR PARARAJASINGHAM: So at around the time that you prepared your report to council regarding this particular planning proposal, what view did you have about the job that the councillors were doing?---I didn't really have a view.

Sorry?---I didn't really have a view. I just expected them to represent their elected community.

Did Ms Dawson express a view to you about her feelings as to the job that the councillors were doing?---Not that I'm aware of.

Did anyone else in your team express any such view?---Not that I'm aware of.

40 Now, prior to Mr Stavis commencing in the role as director of planning, what did you know about the circumstances in which he was appointed?
---There was, I, there was a slight drama with his appointment I understand.

Okay. I'll just stop you there. When you say a slight drama, what do you mean by that?---In terms of how he, how, in terms of, in terms of like how, in terms of who, I mean there was a bit of, how do you say it, I mean there's, I can't, I can't, there was a bit of drama in terms of it was all in the papers about how he was appointed so everyone knew in the council.

What were you told about the circumstances in which Mr Stavis had been appointed?---I can't really remember actually.

Are you able to say whether others in your team held any particular view about the circumstances in which Mr Stavis had been appointed to director of planning?---I can't recall. I don't recall there was any, the view quite neutral.

10 You're saying the view was neutral?---Yeah.

Are you sure about that?---Yes.

There was no scepticism at the circumstances in which Mr Stavis was appointed?---Not that I'm aware of, no.

Well, a moment ago you said something about drama, right?---Mmm.

20 Is it your position that there was no response by people within your team to that drama?---Well, personally I didn't, I didn't have any view.

Right. So now you're saying you didn't have any view. What about any others?

THE COMMISSIONER: You were asked some questions.---Yeah.

You answered that there was, I think you said a slight drama re the appointment was in all the papers.---Yes.

30 Now you've answered that you didn't really have a view about it. When it was in the papers did any of your colleagues express a view to you? ---They may have made some comments about it but you know, it wasn't anything sceptical or anything like that. It was just, just office talks I guess to some extent. Yeah, it was quite neutral, like it is.

MR PARARAJASINGHAM: You said that there were perhaps some comments made. What were those comments?---I can't recall, sorry.

40 THE COMMISSIONER: You said there were some comments but they weren't sceptical.---Yeah.

When you say sceptical, what are you - - -?---Anything sceptical, questioning why he was appointed or anything negative I guess.

So your recollection is nothing negative about what Mr Stavis personally or as - - -?---Yeah, yeah.

Ah hmm.---Yeah, I don't recall.

You don't recall that?---No.

Okay.

MR PARARAJASINGHAM: What had you heard about Mr Stavis professionally before he commenced as the director of planning?

---I've only heard that he's worked at past councils and where he used, what his past, where he worked in the past.

10

Were you, did you come to learn that Mr Stavis had in 2013 applied for a position of team leader development assessment operations within Canterbury Council, is that something that came to your attention prior to him commencing as the director of planning?---No. I only found out recently through this inquiry.

Are you able to say whether any others in your team knew about his failed attempt for the role of team leader in 2013?

20 MR MOSES: If my friend can just clarify when, because we now know that to be the fact through these proceedings, and is my friend suggesting it whilst Mr Stavis was employed, prior to his employment or subsequently to these proceedings?

THE COMMISSIONER: If you can just identify the time?

30 MR PARARAJASINGHAM: Yes. I understand that you're telling, you're saying that you only very recently came to understand that Mr Stavis applied for a role at Canterbury Council in 2013. The question I'm asking you is, are you aware whether anyone else in your team was aware of that fact prior to him starting in the role of director of planning?---No. Not, not that I'm aware of.

You were asked some questions about the Gateway Determination. Just one moment. Could my friend assist me and place page 107 of volume 9 on the screen, please? Ma'am, you have before you a copy of the Gateway Determination, yes? At point 1, or firstly, point 1, you understood those matters under point one as imposing obligations on council, correct?---Yes.

40 And that really, the things listed there were matters that council had to discharge in compliance with the Gateway Determination, correct?---Yes.

And it was your understanding that those matters were not to be left in the hand of an applicant, correct?---Yes. But depending on the type of, depending on what is required.

Well, could I just draw your attention to the first bullet point, which reads, "From a preliminary acid sulfate soil assessment, to address the

requirements of section 117, direction 4.1, acid sulfate soils.” Certainly on the face of that, there is no guidance as to where or how that report should be sourced, do you accept that?---Yes. That’s correct.

Just very briefly, what is the purpose of a preliminary acid sulfate soils assessment, just very briefly?---it’s just to check that the, the site doesn’t have any acid sulfate soils, where, where a proposal involves excavation, extensive excavation because the site has, I believe the site is quite close to an area that has a high level of acid sulfate soils.

10

THE COMMISSIONER: So, if you excavate such a site and it does have a high level soil - - -?---If it, no, it’s determined if, yeah, if, if the proposal, if the, if the proposal involves detailed excavation, and there’s, and it would be likely to be exposed to acid sulfate soil, so that’s why we need to do that with assessment.

And just putting at a level of generality, is it fair to say that that assessment is really about assessing whether there’s any significant adverse environmental impacts from the proposed used of the land, if I put it that way?---Yes.

20

When you described it previously as very much a technical report, and this is going to be put in very general terms, is it a matter of somebody with appropriate technical skills to go and do a test of the soil to determine what level of acidic nature it had or something?
---To measure, yes, that’s correct, yes, yes.

Okay.---So it is something that’s technical and you would need technical expertise on that, to do that, yeah.

30

And in a way, as long as the person had the expertise and was using the appropriate measurement device - - -?---Mmm, mmm, mmm.

- - - it’s a little bit black and white?---That’s correct.

It’s got this level of - - -?---Yes, so yes or no, yes, that’s correct, yeah.

Okay.

40 MR PARARAJASINGHAM: And I think it was your evidence that, well, if you just turn to page 111 of that same volume, this is the email exchange between yourself and Mr Faker. In your email to Mr Faker, the third paragraph you say, “Could you confirm whether the acid sulfate soils report for DA 468/2011 would adequately address the department’s requirements.” There you are inquiring of Mr Faker as to whether a report sourced by him would satisfy that first dot point. Correct?---Yes.

And then above, his answer is to the effect, yes. Correct?---Yes.

And that's what you rely on. Correct?---Yes.

Right. So I'm not being critical here, but clearly for at least that dot point you saw no problem with relying on the applicant to satisfy the requirement. Correct?---Yes, but as I mentioned, it's a technical report so it's not something that could be very biased on, it's a black and white analysis.

10 Did you ever sight the assessment report?---Yes, I did.

You read it?---I did, yes.

Very quickly perhaps?---Can't recall, it's been a while, yeah.

But you do have a memory of - - -?---I did, I did read it, yes.

Yes. And from the face of it, it satisfied the requirement?---Yes.

20 And certainly you accept that on the face of the Gateway Determination itself there was nothing preventing you from taking the course that you took. Correct?---Yes, yes, yeah.

I just want to ask you now about engaging Mr Olsson to prepare a report. Mr Olsson was and is an architect. Correct?---Yes.

And he is an expert in his field. Correct?---Yeah.

30 Can I ask, around the time that Mr Olsson was engaged, how often was your department engaging the services of experts?---I mean if, if it's needed we do, we, it's quite, I can't, I can't tell you the extent but it's quite, you know, we would, normally would engage it if it's specialised services that we need.

Sure. I suppose the question that I'm asking, is it something that was happening on a regular basis?

THE COMMISSIONER: Are you suggesting for example monthly or - - -

40 MR PARARAJASINGHAM: That was my – yes. Monthly?---No, no, not monthly, no.

Okay. Then if not monthly, then how often?---Say, say for example this, for a project we would normally maybe just engage one consultant, so it depends on the number of projects we have, so we may have monthly, it could be every second or third month that we engage someone.

Sure. And in terms of the decision to engage the expert, who makes that decision?---It would, well, I would have discussed it with my team leader,

Warren Farleigh, and we would have further discussions with Gill Dawson, so it was, it would have been a team discussion.

Okay. So is it the case that every decision to engage an expert is a team decision?---Yeah, I believe so, yes.

10 And is it just a matter of people kind of talking about, well, you know, so-and-so would be good for this or is it quite a relaxed kind of discussion that takes place?---No. I mean, we do have our, we do, council does have a procurement policy in terms of how we go about engaging external consultants.

20 Can you just explain that to me, what that is?---So we've got a procurement process where, you know, there's a procedure involved in engaging people outside council. So, for example, we're engaging an urban design consultant, it really depends on the costing involved and then whether or not we can engage them directly or need to go through a more detailed procurement process. So, and it also depends if they're on our supply list as well.

That was my next question. You said a supply list. What does that mean? ---So a list of preferred consultants or suppliers that council use.

So for architects, are you able to say how many were on that supply list as at the time that Mr Olsson was engaged?---It wouldn't be many but I can't recall exactly how many, but there wouldn't be a lot.

Less than 10?---Maybe, yeah.

30 THE COMMISSIONER: Sorry, maybe less than 10?

MR PARARAJASINGHAM: Less than 10?---Possibly or a dozen. Like, 10 or 12. I'm not sure. Yeah, maybe more, a little bit more.

THE COMMISSIONER: You think 10 or 12?---Yeah.

40 And is there a process that if somebody is on the supply list, do they have to apply beforehand? Or how do you get on the supply list?---They will have to demonstrate another set of, go through another level of assessment with our governance section in terms of complying with, you know, the procurement process. But, yeah, so they will have, that would dealt with, be dealt with by our governance section, yeah, mmm.

MR PARARAJASINGHAM: Is there any kind of ranking or ratings system within this supply list?---No, no. Not that we're aware of.

Had you had any previous dealings with Mr Olsson prior to engaging him on this particular project?---No.

So can you just tell me how it was that Mr Olsson came to be engaged for, for this project?---So I believe he had done some work for council in the past and the work was good so, and there was discussions with my team leader – Warren Farleigh at the time – that we could use Mr Olsson to do the job.

So is it the case that you understood him to be a preferred expert on that particular supplier list?---Yes.

10

THE COMMISSIONER: And, sorry, what do you mean by preferred?---So the procurement, the, the list of suppliers has, has a list of all the consultants and they're the preferred list of people, list of consultancies that we - - -

Sorry, so by the fact that he's on the supplier list, he's preferred?---Yes, that's correct, yes.

And within the supply list was there anybody else, in a sense, who had more preferred or - - -?---I can't recall but I think we might have had a look at the list and, you know, Mr Olsson was probably the preferred one above any, above any other supplier, consultancies.

20

And what was that based on?---So it was, so it was based on his past work with council and the type of work that was produced. So that's how we assessed it.

MR PARARAJASINGHAM: And certainly you understood Mr Olsson to have quite a good working relationship with people within your team, correct?---I don't, I'm not sure if he's done work in our team but he's probably done work in the other teams.

30

Let me put it another way. A good working relationship with people in the department.---Yes, I believe so, yes.

In your statement and in the attachments – and I won't take you to them – it's the case that up until the point that Mr Olsson produces his report, you and others in your team have a number of conversations with him, correct? ---Sorry, can you say that again?

Up until the point that Mr Olsson kind of hands over his report, you and others in your team have conversations with Mr Olsson, don't you?---We had but it wasn't frequent. So, we would have reviewed it and then discussion would take place.

40

And it's the case that, on a number of occasions, certainly you and others conveyed to Mr Olsson, the fact that the planning department had initially rejected the applicant's planning proposal, correct?---That would have been

the background information I gave to Mr Olsson when he, as part of his preparation of the study.

Sure. You're telling me why you did it but you accept that you did it?
---Yes.

10 THE COMMISSIONER: Well, I think to be fair, that's different from what you put to Ms Ho. You said on a number of occasions. I think her answer was, "We provided that information to Mr Olsson a sense upfront."---First hand, yeah. Upfront, yep. Yes.

I think the question was going at, did you repeat- -?---Yeah, afterwards, yeah. Yeah, I sense that no, no, we didn't have frequent discussions. The only, it was very minimal and it would have only been after we've reviewed, after Mr Olsson's completed his, his, his assessment of the study. Yep.

You had further discussions with him?---Yeah. And that's when, yeah, yep.

20 MR PARARAJASINGHAM: Yes. My question was directed at, to the proposition that in one or more conversations with Mr Olsson, you conveyed the fact that the department of planning had rejected, had initially rejected the applicant's planning proposal, correct?---It wasn't conveyed that much (not transcribable). It was only, pretty much, that, that, that background information sheet that I gave, gave to Mr Olsson and he then became aware of the situation afterwards, so he didn't further question council about it.

30 So, your position is, you relayed that to him once. Is that what you're saying?---Yes, yep.

And you said that you understood the point of the exercise was for Mr Olsson to prepare an independent report, assessing he applicants proposal, correct?---Well, he, he, he was tasked to prepare a study that's required by the Gateway Determination.

40 I understand that, but the reason that you kind of contracted that out was because, from your perspective, you wanted an independent person to do it, correct?---Yes, that's correct, yes.

And indeed, you were taken to something in your statement where part of the reason, this is at paragraph 35, part of the reason an external consultant was used was to remove an perceived bias against the planning department, correct?---Yes.

Did you tell Mr Olsson, was the planning department's position conveyed to Mr Olsson and in so doing, did you think he would agree with the position that the planning department took initially?

THE COMMISSIONER: Sorry, I'm confused by that.

MR PARARAJASINGHAM: Sorry, I'll start that again. Did you think that Mr Olsson would agree with the position that the planning department took initially in respect to the applicant's planning proposal?---I don't know. We, all I did, all we, you know, what we did was just provide him that information and it's up to him to decide, go through, goes in to his assessment.

10

Did you think by letting Mr Olsson know that the department didn't agree with the applicant's planning proposal, did you think that would be a matter he would take in to account in his assessment?

20

MR MOSES: Commissioner, I think that's based on a false premise. As I understand it, I don't think there's any controversy about this, that the department's position was that it was looking for justification in relation to the height proposal that was being advanced. That was the whole purpose of the Gateway Determination as I understood it. But I may be wrong, but that was my understanding. I think my friend may have perhaps misunderstood the evidence in respect of that issue, but certainly the documentary evidence seems to support the position that the department basically was looking for something to justify what the council was proposing, rather than agreeing or disagreeing, as I understand the evidence, Commissioner.

30

MR PARARAJASINGHAM: Yes, with respect I have understood the evidence. My question is directed towards what was in the minds of the people in the Department of Planning. They had initially rejected the applicant's proposal. It went to council. A resolution was made that, this witness has agreed, effectively rejected the department's proposal, department's recommendation. Mr Olsson is then engaged. The Gateway Determination is provided. Mr Olsson is engaged to answer one of the conditions. My question is, what expectation, if any, the department had as to what was going to be the contents of Mr Olsson's report.

40

MR MOSES: I think we're at cross purposes, Commissioner. I withdraw my objection as well. The Department of Planning I think my friend's referring to is the Department of Planning within the council.

MR PARARAJASINGHAM: Yes, sorry. Yes, that's - - -

MR MOSES: I think that is what he was saying. We're at cross purposes.

THE COMMISSIONER: Yes, I think - sorry, Ms Mitchelmore.

MS MITCHELMORE: I'm sorry, no, it just, it might be of assistance if - obviously Department of Planning has particular connotation of the state

department. It might be preferable to refer to them as the Urban Planning Team, just, just to draw a distinction between - - -

MR PARARAJASINGHAM: I'm happy to do that.

MS MITCHELMORE: - - - the department and the team of which Ms Ho was a member.

THE COMMISSIONER: I think that's a very sensible suggestion.

10

MR PARARAJASINGHAM: Yes.

THE COMMISSIONER: Mr Pararajasingham, could you state your question again, please.

MR PARARAJASINGHAM: Yes, yes. Yes, yes. I apologise, ma'am. I'll try it again. Did you think that Mr Olsson would come to a similar view that the Urban Planning Team came to with respect to the applicant's planning proposal?---Sorry, can you say that again?

20

Sure. Did you think that Mr Olsson in his report would come to a similar view that the Urban Planning Team came to when considering the applicant's proposal?---I mean, when, I mean, Mr, Mr Olsson when he, when he did his assessment he was, all the information was available to him, so we just, that's his view, so - - -

And when you say "all the information was available to him" that included the Urban Planning Team's position on the applicant's planning proposal, correct?---Yes. But we had to supply him with that information to, so that he could understand why he had to do that study.

30

I understand.---Yeah.

I understand what you're saying, yes. Ma'am, just finally, can I just take you to page 197 of volume 9. You were asked some questions about the JBA report and some comments that Mr Stavis had made within the document. Do you recall being asked those questions?---Yes.

Can I just take you first – sorry, bear with me – can I take you to page 204. Do you see on the left there it reads, "Needs more detailed analysis." See that on the left-hand side? The handwriting.---Yes.

40

Yes.---Yeah.

Can you go over the next page, to page 205. On the right, the handwriting, middle of the page, says, "Needs more detailed analysis and explanation." Do you see that?---Yeah.

If we go over to the next page, 206, on the left hand side again, it says, "Need to contextualise analysis." Can you see that?---Yep.

And if you go over to page 208, do you see on the left hand side, "Needs to provide greater analysis and detail"?---Yep.

Page 210, on the left had side, handwriting, "More detailed analysis required." And at page 212, left hand side, "Needs more detailed analysis and explanation/justification." It's the case that, in the main, Mr Stavis was simply posing questions of the author of the JBA report, wasn't he?
10 ---Sorry? Can you say that again.

It's the case that in the main, Mr Stavis was merely posing questions to the author of the JBA report, correct?---Questions?

Yes, he's asking questions?---Well, he says, "Needs more" - - -

Sure. No, I'll, yes, I understand what you mean.

20 THE COMMISSIONER: I think it's more suggesting more detailed analysis is required.

MR PARARAJASINGHAM: Yes. He's requesting further information, isn't he?---Yes. It's more suggestions, yes.

Yes. Certainly in those entries that I took you to, there is no suggestion made as to the contents of the report, is there?---No.

And, I mean, is there anything wrong with a director of planning seeking further information from the author or a report?---I think it's more, I think he's got more than that kind of stuff, than just seeking information in the report, though.
30

In terms of the answer to my question, is there anything wrong with a director of planning seeking further information from the author of a report?

MR MOSES: Sorry, is my friend saying that as a general proposition or about the actual report that the witness was being asked a question about? Because she attempted to answer the question and then he said, "Answer my question." So, with respect, he can't do that, so he'll have to identify, is that a general proposition or is it about this report? Before an unfair proposition is put to the witness.
40

THE COMMISSIONER: I think that's a fair comment.

MR PARARAJASINGHAM: Well, I think it was intended to be a general question and if that wasn't clear, I apologise.---If it's a general question, I don't think it's unusual, yep.

And certainly that's not dissimilar to what you were doing when you were making suggestions about the Olsson report, correct?---Well, my suggestions we, we a lot of, more factual and stuff, as opposed to trying to get them to you know, beef up a report or, or support something.

Well, ma'am, you keep saying that, but certainly in the entries I've taken you to all that Mr Stavis is doing is asking for further information, isn't he? ---But if he's asking for more information then it suggests that he's supporting that document.

Commissioner, that's not responsive to what I'm asking. I'm almost done here, ma'am.---Yeah. Sorry, can you say that again?

Sure. Well, I've forgotten what I asked.

THE COMMISSIONER: I think the witness did answer the question. She included an explanation, but I think it ultimately may help me, so - - -

20 MR PARARAJASINGHAM: Certainly. I'll move on.

THE COMMISSIONER: If you can progress.

MR PARARAJASINGHAM: Just finally, ma'am, you gave some evidence about Mr Stavis' involvement as the director of planning, and you drew a distinction between his involvement and Mr Occhiuzzi's, correct?---Yes.

30 You certainly, do I take it, you weren't aware of any conversations that Mr Stavis was having with the general manager and the councillors as to his role, I take it?---No.

You never sighted Mr Stavis's contract, I take it?---No, I haven't.

You had no idea about his KPIs, I take it?---No.

No further questions.

THE COMMISSIONER: Mr Stanton, did you have any questions?

40 MR STANTON: No, Your Honour, sorry, no, Commissioner, excuse me. Thank you.

THE COMMISSIONER: Mr Moses?

MR MOSES: Yes, thank you, Commissioner, just a few questions. Ma'am, I'm just going to ask the Commission just to put up on the screen page 48 of volume 9 of the brief. This just summarises, when it comes up

on the screen shortly, your recommendation appears at the bottom of that page. Is that correct?---Yes.

And basically could only support a small portion of the land going up to a certain height. Correct?---Yes, that's correct.

And if you go to page 50, if we could go to page 50, you'll see there that what the council resolved was to have the height set at 17 metres. Correct? ---Yes.

10

And the concern that you had was, this was complete opposite in effect to what the planning recommendations had proposed?---Yes, that's correct, yeah.

And you weren't aware of any justification for that resolution by the councillors. Correct?---Yes, yeah, I wasn't aware at all.

And you felt that this was not a good outcome for planning.---Yes, that's correct, yeah.

20

Now, can I ask that you be shown page 92 of volume 9. My learned friend, Ms Mitchelmore, took you to this. This is the communication with Ms Wilkins and this is an exchange of emails. Your communications with Ms Wilkins at this time was in order to progress what the council had determined. Correct?---Yes, that's correct, yeah.

And if you look to point 4 of Ms Wilkins' email to you at the bottom of that page there's a reference there to justification for this blanket 17-metre height increase. This is the additional information. Do you see that?

30

---Yeah.

Now, what Ms Wilkins was after you was information about the justification for the height limit. Correct?---Yes, that's correct.

And you couldn't provide that?---No, I couldn't.

Because you weren't aware of what the council had relied upon to come to that conclusion. Correct?---Yes, that's correct, yeah.

40

Okay. And that is a matter that the council had to justify to the department not the proponent of the planning proposal. Correct?---Yes, that's correct, yeah.

And we heard evidence from you that the department issued a Gateway Determination which required a justification as to the height through a report. Correct?---Yes, that's correct, yep.

And if you go, if the Commission could put up on the screen page 177 of volume 9, this is a file note of the discussion is it that you had with Ms Wilkins from the department?---Yep, yeah.

And as I understand it, the Olsson report which you communicated to Ms Wilkins you said that it did not support the proposal. Correct?---Yeah, that's correct.

10 And Ms Wilkins informed you that council needed to comply with the condition. Correct?---Yes.

And it needed to form a position on the matter. Correct?---Yes, that's correct.

And that once the position was formed, the proposal could proceed to exhibition. Correct?---Yes, that's correct.

20 Now, just in your discussions with Ms Wilkins from the Department of Planning, did she express any concerns to you about what was going on here in relation to the council's proposal for the 17-metre height uplift?---No, but that's why she, she didn't express concern but she wanted to, wanted, sought clarification from council in a form of the additional study so that the department can have a clear idea as to why it should be supported, why that 17 metres should be supported.

30 Okay. Thank you. And it was after this, was it, when the Olsson report came back that Mr Stavis became hands-on with the matter and took over the carriage of the file concerning Homer Street?---Yeah, he was, yeah, so he, he had meetings that I wasn't involved with, probably with Mr Olsson and the owner, but I'm not sure, but yeah, I wasn't involved in that at all.

So just go to paragraph 35 of your statement. There was a planning meeting that took place on 8 September which you gave evidence about earlier. Correct?---Yes.

And Mr Stavis indicated there that he had a better understanding of the proposal and the recommended schemes. Correct?---Yeah.

40 And was it at this meeting that Mr Olsson said he could only support a small increase in height?---Yeah, a small, yeah, not, a small addition, but yeah, not excessive amount, full - - -

He couldn't support the 17, 17 metres.---Yeah, that's correct.

And was it after that meeting that you ceased to have any involvement in the day-to-day carriage of this matter for the Homer Street property?---Yeah. Up until, up until it had to go on exhibition, which was late, in the beginning of 2016, yeah.

So when, when did you cease having day-to-day conduct of this file?
---Yeah, probably at the end, from the end of 2015 until the time when the,
when the JBA report came through which was probably March or
something.

In March of 2016?---2016, yeah.

10 So you continued to have involvement up until March 2016?---Yeah, that's
when it went on exhibition.

Okay.

THE COMMISSIONER: Sorry, and you had a role in making sure the
relevant information that had to go onto the website for the public exhibition
was compiled and put on the website?---Yes, that's correct, yeah, yeah.

20 MR MOSES: And you've told us that you read the planning file, even
though you ceased having day-to-day carriage of the matter, and that's when
you saw, is this right, the document that appear in volume 9 of the brief at
page 197, which is the document that counsel for Mr Stavis was asking you
some questions about with the handwritten notes of Mr Stavis on it?---Yes.

And you had some concerns, I think you've told us, about seeing the
notations on that report of JBA. Correct?---Yes, that's correct.

And if you go to page 214, if we can go to page 214 of that report - - -

30 THE COMMISSIONER: Sorry, can I just interrupt. The document at page
197 with the handwriting, you said that you hadn't seen the document at the
time and you weren't shown it by Mr Stavis round December, though you
had an expectation you would have been shown it. When was the first time
you saw it?---The handwritten one?

Yes.---Probably beginning of 2016.

All right.---Yeah, like, January/February, like the beginning of 2016.

40 And that was when you just looked at the planning file and saw it was on
the file?---I can't remember how I saw it but I did sight it.

You did see it.---Yeah.

Okay.---I did sight it, yeah.

Thanks, Mr Moses.

MR MOSES: Thank you, Commissioner. So if you go to page 214, one of the comments that appears at the bottom of that page is more detailed analysis and justification required. Was that one of the comments that you were referring to earlier as comments that you in effect thought was not really the role of the director, to be prompting, as it were - - -?---Mmm.

- - - improvements to a report - - -?---Yes. So it's - - -

- - - for a proponent?---Yeah, it's - - -

10

And if you go then to page 216 where it notes there, "More detailed analysis required as advised in earlier comments," again that is something in effect seeking an improvement in the report in relation to something that would support a proponent's application?---Yes, I'll take that as so.

And is it your concern this, to understand it, that the director of planning should not be playing that role of, as it were, assisting the proponent of an application to have a report prepared that will support the proposal because that person is meant to be independent from that person, correct?---Yes, yes.

20

It's a bit like, a referee taking the ball and running with it?---Yep.

Was that your concern?---Yes.

Yes. We could use AFL analogies, that might assist the Commissioner.

THE COMMISSIONER: I was about to correct you by saying, "An umpire."

30

MR MOSES: That might assist the Commissioner better, could be an umpire, yes. Yes. We have a lot of Mexicans here, Commissioner. So in relation to page 197, if I can just go back to that, if I could. Just in relation to the reference there that this should not be misconducted as approval or support of the proposal, well, was it your concern that, in effect, what was being written in this document were comments that were being made to improve the report so that it could be approved?---Yes, yes, it is.

40

Thank you. I've just got a few questions for you. I note the time. I should be about three minutes, Commissioner. There was a memo that Ms Mitchelmore took you to, which is the file note of 19 April, 2016, volume 10, page 77. You prepared this file note to set out your concerns about what had occurred in relation to the Homer Street planning proposal?---Yes, yep.

And is the reason why you prepared it, was that you were troubled about the way in which the process had been followed by both elected council officials and also Mr Stavis?---Yes, yes.

And you wanted a record kept of the file as, in effect a council employee to set out your concerns about how this matter had evolved?---Yes, that's correct. Yep.

10 Did you ever think at any stage that this was a matter that you should escalate to the office of the general manager? I'm not being critical of you, I just want to understand because the Commission will need to make some observations or findings in terms of recommending perhaps how these matters can be dealt with better in the future. So did you ever think that this is a matter that should or could go to the general manager?---Yeah. It would have been something that should be highlighted, yep.

Yes. Is there a reason why that wasn't done?---I guess, as I mentioned, they weren't, they didn't appear approachable.

THE COMMISSIONER: You, sorry?---They didn't appear approachable.

MR MOSES: The general manager didn't appear approachable?---Yeah. At the time, yeah.

20

You raised it with, did you, your team leader and your manager, your concerns about this matter?---Yes, yep.

And you informed, I think, Mr Farleigh, that you had prepared a file note about the matter, correct?---Yes. That's correct.

And did Mr Farleigh also share your concerns about this Homer Street proposal?---Yes. Yes, he did, yep.

30 And I think you told Ms Mitchelmore that Mr Stavis approached you about this file note, correct?---Yes, that's correct.

And is that because Mr Farleigh informed him of the existence of the file note?---Yes. I believe through an email, yes.

And Mr Stavis asked you for a copy of it?---Yes.

40 And you can't recall whether you gave him a copy or not?---I don't know whether I gave him a physical copy or he looked on, in the file note, in the actual file where the file note was held.

And under the code of conduct training which you undertook with the council, and I mean, I can take you to the document, but you understood, didn't you, that if there was a matter potentially of corruption that you felt was occurring, that was a matter quite apart from the internal reporting processes within the council you could report it to the Independent Commission Against Corruption?---Yep.

You understood that?---Yes, yes, I did.

And at this stage, that is at the time that you were preparing your file note, that I've just taken you to, of April, 2016, had you formed the view that there was impartial exercise of any decision-making processes by Mr Stavis or any council officials to you weren't in a position to form a completed view?---I probably wasn't - - -

10 THE COMMISSIONER: Did you turn your mind to it?---Sorry?

Did you turn your mind to it?---Maybe not, I, yeah, I don't, I don't, didn't really think through that, no. Yep.

MR MOSES: Thank you.---Yep. Thanks.

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

20 THE COMMISSIONER: Can I just ask you, the memo of April, you discuss that with Mr Farleigh?---Yes.

By that time, did Mr Noble come on board? This is April 16.---I don't, I think Mr, I think Mitchell didn't start until May, so he may not have been aware of it at that time, yeah.

30 And access to your file note, are your files kept, is there a paper copy and also an electronic copy?---Yes. So, we keep a paper copy on the file and we also file it on our document management system, which is like DataWorks, so we save that on that, save it on there as well. So there's an electronic and a hard copy.

And Mr Stavis as director, would have he had automatic access to anything on the file, on your document management system?---Yes, yes. He would have access to them, yes.

I'm just wondering why he asked for a copy. You probably can't answer that.---He could, he could have viewed it on, on our data, on our document management system but yeah, maybe just, I could have electronically emailed a copy to him, yeah, yeah.

40 Sorry, Mrs Mitchelmore?

MS MITCHELMORE: Commissioner, I have no further questions for Ms Ho and she can be excused.

THE COMMISSIONER: Yes. Thank you very much.---Thank you, thank you.

You're excused.

THE WITNESS EXCUSED

[11.32am]

THE COMMISSIONER: Look, I note the time. We'll take a morning tea break. If we can be all back here at about quarter to, please.

10 **SHORT ADJOURNMENT**

[11.32 am]

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Commissioner, I call Assad Faker.

THE COMMISSIONER: Right. Mr Faker.

MR STANTON: May it please the Commission, I seek leave to appear for
20 Mr Faker.

THE COMMISSIONER: And have you been authorised before for Mr Faker or not?

MR STANTON: I have indeed.

THE COMMISSIONER: All right.

MR STANTON: I have indeed, Commissioner. I wouldn't have the
30 temerity - - -

THE COMMISSIONER: Well, if there's any doubt, that authorisation is granted.

MR STANTON: I wouldn't have the temerity to do, I wouldn't have the temerity to do otherwise.

THE COMMISSIONER: All right. Now, Mr Faker, do you take an oath or
40 an affirmation?

MR FAKER: An oath.

MR STANTON: Commissioner, could I assist the Commission by indicating Mr Faker will avail himself of a section 38 direction.

THE COMMISSIONER: Right. This has been explained to you, Mr Faker?---Yes, it has.

10 And there's a very, as I'm sure Mr Stanton's explained to you, there's a very important exception which is if you don't tell the truth in your evidence at this public inquiry. 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 objection in respect of any particular answer given or document or thing produced.

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 OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR

30 **THING PRODUCED.**

THE COMMISSIONER: Ms Buchanan.

MR BUCHANAN: Thank you, Commissioner.

Mr Faker, what is your occupation?---A developer.

And was that your occupation in 2014/2016?---Yes, it was.

40

And was there a company called Croycon, C-r-o-y-c-o-n, Investments Pty Limited of which you were a director and sole shareholder in 2014/2016? ---That's correct.

Did you have other companies that you used for the purposes of your business?---I do, yes.

And you did in '14/'16?---Yes, I would have, yes.

And were two of those companies Bay Street Constructions Pty Limited - - -
?---Yes, that's correct.

- - - and F&H Developments Pty Limited?---Yes, that's right.

10 In the period, I might just extend it one year at the moment, 2013/'16, can
you recall how many properties there were in which you had an interest as a
developer?---'13 to '16. Probably five or six, but some of them, like, there
could be three or four properties that equate to a site, if you know what I
mean.

I understand. And how many of those properties were in the Canterbury
local area?---Two.

Which were they?---Homer Street, 15-23, and I'm not sure if it was in that
period, there might have been a couple which we were requiring in Una
Street as well, a different property.

20 How do you spell Una Street?---U-n-a.

U-n-a. Thank you. And what stage was the Una Street site at in say 2014?
---Nothing's changed since I've bought those properties, so they're houses
and like a carwash and that sort of stuff.

30 Was there a development application in which council in respect of the Una
Street property?---No. Council did, they were doing some studies and stuff
which we put in a submission but like just as a, out of interest, but no, no
formal application or anything like that, no.

And no rezoning application?---No.

And Homer Street, 15-23 Homer Street, of course ultimately there was a
planning proposal that council resolved on that you've heard the last witness
talk about.---Yes, that's correct.

And that was a result of a submission that some consultants of yours put
forward to council?---That's correct.

40 We'll come to that later. Can I ask you about some individuals, please.
---Sure.

In the period 2014/2016 did you know a person called a person called
George Vasil?---Yes, I did.

And when did you first meet Mr Vasil?---I think it would have been at a
charity function for the former mayor, Robert Furolo. He had a charity

function raising funds for different causes and I probably would have met George there through his brother, Peter.

And in what year or bracket of years?---I, I don't know, probably, I don't know, 2013. I'm not sure exactly so whenever that function would have, probably '13, '14, yeah, probably in around that sort of period maybe.

10 Thank you. And in the period 2014/2016 what was the, how would you describe the nature of your relationship with George Vasil?---I didn't really as such have a relationship with George. I met him at the function but I didn't really have much of a relationship with George.

Had you been to his office?---You're talking about the real estate agent?

Yes.---Yes, on numerous occasions, because I had dealings with Peter.

And who did you understand Peter to be in relation to George?---I knew he was his brother after he introduced him, yes.

20 And is Peter's surname Vasil or Vasiliades?---I believe it's Vasil.

Right. I'll come back to Peter in a moment. How often did you meet George Vasil face-to-face after you had first met him at the function for Mayor Furolo?---I might have seen him a couple of occasions at the office.

And that's George Vasil's office?---Ray White in Earlwood, yeah, the real estate agency, yes.

30 How often did you talk with George Vasil on the phone after you'd first met him?---I don't believe I really spoke to him on the phone. I might have called him once maybe, I, but no, not often at all.

And thinking of that occasion where you may have called him once, what was that about?---Actually, I don't know if I actually did call him. I mean, I might have seen him. I might be getting a bit confused going back in time, but I might have just seen him, yeah, but if I did, well - - -

40 Well, I'm not asking you to speculate. So, I'm after your memory, if you wouldn't mind at the moment. So, you don't have a memory of having a telephone conversation with George Vasil after the time you first met him? ---Probably not. I mean, I could, like I said, I could be getting confused with whether I actually spoke to him in person or it was a phone call but it probably would have been in person.

Michael Hawatt, Councillor Michael Hawatt, did you know him?---Yes.

And how did you come to first meet him?---Again, I'm not sure. Might have been at that same function possibly. I, again, I'm not particularly sure

but how did I meet him, well, I actually probably gave him a call after we went through the process with regards to our planning proposal, when, just before it went to council. So - - -

In relation to Homer Street?---Yes, that's correct.

10 And in the period 2014-2016, what was the nature of your relationship with Councillor Hawatt?---I called him on numerous occasions, so I could chase up what was actually happening, happening with our application because there was, as you can appreciate, there was a lot of delays and there was a lot of issues that we weren't aware of, and so I wanted to lobby him, I guess, to sort of see if he can help in any way, to see what our position was and if we can get our, you know, get our application through.

And did you meet Councillor Hawatt face to face?---I did, yes.

And how many times?---Probably seven or eight times.

20 And what was the purpose of those meetings?---Again, just to follow up what was happening with our application, where it was at, probably to have a bit of a whinge on why it's taking so long and, and I, I guess the extraordinary amount of work that we were actually doing for a planning proposal and, and we were asked to provide so much information from council that we felt was probably not in light of a planning proposal. There was some information that was requested that was probably required at a development application stage. So, there was a lot of information that was required and it sort of kept changing so, we, we were getting a bit disillusioned with the whole process and what was happening and, and I guess you could say I was venting, saying, "Look, you know, what's going on?"

30

And when you say, "We," to whom are you referring?---My consultants because obviously they're the people that would put forwards our case. And again, I'm not well versed as they are in looking at certain rules and regulations and, and things of that nature but they were getting frustrated as well with the amount of information that was required and - - -

40 Did you meet with Councillor Hawatt and any of your consultants?---There was one meeting I recall, which was at, at council, council with Councillor Hawatt and my consultants and I believe Spiro, yes.

Spiro Stavis?---Yes.

And at what stage was proposal when that meeting occurred, as you can best recall?---Well, that, that was, I, I, well, that would have been probably right to, again, depending on how you're looking at it but from our perspective, it was probably three years down the track. It was after it had been to, it had been to council. They had made their, their resolution. They'd come back,

so it was after that period. Probably around '14 or something like that, I would imagine, '14-'15.

And on the other occasions that you met with Councillor Hawatt, were you by yourself?---Yes.

Did you regard Councillor Hawatt as your friend?---No, not really, just - - -

10 Why was it that it was Councillor Hawatt out of all the councillors on
Canterbury Council that you were dealing with in relation to the Homer
Street proposal?---If I recall, actually before it went to council I actually, I
think I actually called Councillor Kebbe I think but she never showed up,
and Councillor Hawatt was the other one. I understood that he was, like,
you can say pro development I guess and obviously we were trying to put
forward our case and I felt he was the person to speak to.

20 How did you learn that he was pro development?---We had the previous
application that was actually approved onsite, I mean I just out of, went to
meet him and you see how people were sort of, you know, how they were
conducting themselves I guess and I, and I thought he's, yeah, somebody
who might be able to help.

30 And the telephone calls you had with Councillor Hawatt, were any of them
about anything other than the Homer Street development?---No, no, pretty
much just about that. I mean I, I might have mentioned or asked what was
actually happening with council studies from the other property, and we
were always told that they were doing some traffic report, they were doing
some other type of reports and stuff, so we just sort of, that was it, but
predominantly it was all about Homer Street.

And when you had meetings with Councillor Hawatt was it always about
Homer Street?---Pretty much, yes.

You know that council amalgamated, Canterbury Council amalgamated
with Bankstown Council. If I inform you that the date was 12 May, 2016,
you'd accept that?---Yes, I would.

40 Did you understand that a result, a consequence of the amalgamation was
that the councillors all lost their jobs essentially?---Yes.

And a new general manager was appointed. Did you understand that?
---Yes.

And did you have any dealings with or contact with Councillor Hawatt after
the amalgamation of Canterbury with Bankstown Council?---No.

And why did you not have any further dealings with Councillor Hawatt?
I'm sorry, with Mr Hawatt as he would then have been?---Actually probably

would have even been before that as well where I had no contact because I'd seen some media and stuff like that to be honest and I took a backward step and, when that was, and then, I mean it was what it was, I guess, and I had no dealings with him after that at all.

THE COMMISSIONER: Sorry, you said you - - -

MR BUCHANAN: And what was the media that you saw?

10 THE COMMISSIONER: Yes, you saw media?---Oh, some, they had some lunches at Il Buco, whatever, and all this sort of stuff about Canterbury Council and there was some, you know, media attention and I mean I took a backward step I guess.

MR BUCHANAN: And did you think that involved Councillor Hawatt?
---I, I can't recall exactly now, but I mean see - - -

Can I ask you this question - - -?---Yes, sure.

20 - - - if it makes it any easier?---Sure.

Why did you take a backward step from Councillor Hawatt when you saw the media about lunches at Il Buco?---Well, I mean if you read the media and you see what was going on you think, whoa, jeez, you know, it's not something I want to be involved with and, you know, well, I guess it just didn't feel right so I took a backward step.

30 And does that mean that you didn't have any communication with Councillor Hawatt after the publication of lunches at Il Buco?---Well, I'm not sure if it was exactly after then but in and around that sort of period I would imagine.

Did you - I'm sorry.---yeah, that's right.

Did you talk to Councillor Hawatt about what had been published in the media about - - -?---No.

- - - lunches at Il Buco?---No.

40 Did he talk to you about that?---No.

Did you talk to anyone else about that?---No.

Did you have anyone else then that you could talk to at council about the Homer Street development once you took that backward step from Councillor Hawatt after you saw the media about the Il Buco lunches?
---My consultants continued the process, because it was a very, very long process and my consultants were always in, in contact with council staff.

Did you ever make any payment of any sort to Michael Hawatt?---No.

Did you ever provide Michael Hawatt with any benefit?---No.

Can I ask you now about another person?---Sure.

Jim Montague, he was general manager at Canterbury City Council in the period 2014 up to amalgamation in May 2016. You recall that?---Yes.

10

When did you first come across Mr Montague?---I didn't.

All right. Did you ever have any dealings with him?---No.

Did you have any phone conversations with him?---No.

Was he a person that you thought you might be able to get information from about what was happening with the Homer Street proposal?---No.

20

And was he a person that you thought might be able to help progress the Homer Street proposal?---No.

Even though he was general manager?---I, I had no need to. Like I said, I felt we had a very good relationship with the council staff and for the year and a half or two years that we were preparing our proposal, we had no need for anybody. We felt, felt that it was going well. It was only at the last minute that, when the recommendation came out, that I even decided that I wanted to speak to Michael or talk to any other councillors to see if we could get the support of, of what appeared to be a U-turn in a council's position.

30

And when you say, "Recommendation," you're talking about the council officer's recommendation?---Correct, yes.

About the submission that your consultants had made for a rezoning of the 15-23 Homer Street site?---That's correct, yes.

40

If I can just go through a little bit of history, just to establish that we're on the same page there, is it right that in about May 2011, you purchased 15-19 Homer Street, Earlwood?---Yes. That, well that's when we settled, yes correct. It would be that time.

And you purchased it through Ray White Real Estate, Earlwood?---Yes, that's correct.

And the agent through whom you bought it was Peter - - -?---Vasil.

And was he your agent or the vendor's agent.---No. He was the agent selling the property. That's the first time I met him.

Now, you mentioned that there was an earlier approval . I just want to clarify that, if we can. There was a DA number 468/2011, and for the record I'm looking at volume 9, page 111, which, given the year, that's in that numbering label, means that the application was lodged in 2011?
---That's correct.

10 Is that the application you're talking about?---Yes.

Can you just very briefly tell us what that was?---Well, at auction, I bought the property and then obviously, I - - -

This is 15-19?---15-19. I commissioned my consultants, spoke to council, whatever they had to do and council wanted us to purchase the property next door because they didn't want a land blocking issue with - - -

20 An isolated - - -?---An isolated site, yes. We tried. The gentleman didn't want to sell his property, so then we moved forwards, prepared a development application for our site. We got approval and then probably, I don't know, eight-twelve months later, which site to build it. We sent our consulting engineer to do a dilapidation report on the property next door.

30 Dilapidation report?---Yes. And the gentleman then decided he wanted to sell. So, he wanted too much money. We didn't want to, obviously it was, wasn't worth the money he was asking and we were going to move ahead. He rung council and now, how Davie contacted my consultants, somehow, anyway, we decided to go and have a meeting. We had a meeting with the then manager, Marcelo Oruzzio [sic].

40 Occhiuzzi?---Occhiuzzi , sorry. With one of his senior planners. They were very helpful, we tried to work together to see, look, this guy wants to sell his property, he wants big money and what can we do here? And we tried to work through different scenarios of how we could probably best move forward. Council was keen on us actually acquiring the property. We had probably a couple of meetings, a couple of my consultants got some legal advice on what, whether we can use the current DA and different instruments to get another approval. We couldn't do that and it was suggested by council, then by staff that "Look, your, probably, best way forward is if you want to change all these guidelines and stuff. Youse will probably have to do a planning proposal." I wasn't too happy about that because I knew it would take a long time and I said look, if I'm going to go down that path I'm at a minimum going to be asking what's, what's next door, a similar height as next door. Now, obviously they couldn't say yes or not but they said well, you're well within your rights but you'll obviously have to justify. And then that's how the whole process started. So then we had a couple of meetings and we got our consultants on board, did the

studies and, and then that's how we then progressed to lodge a planning proposal.

So can I just go back a little bit in that story.---Sure.

You got a development consent in respect of 15-19.---That's correct.

Is that right?---Yes.

10 And at last in part if not entirely as a result of council's suggestion that they didn't want 21-23 Homer Street to be an isolated site you went through a process but ultimately did acquire 21-23?---That's correct.

And when did you acquire 21-23?---Well, obviously after we got the development application. Probably around '13, 2013.

2013?---I think '13, '14.

20 Thank you.---It was a long settlement period.

Now, then if I can just ask that you be shown volume 9, pages 1 to 2 of Exhibit 52, please. You can see it on the screen there.---Yes.

And the first page is all you need to look, you recognise that as being a rezoning application that you signed in respect of the properties?---Yes, that's correct.

30 And you at some stage around the time of signing and lodging that application retained consultants?---Yes, that's correct.

Is that right?---Yes.

And if I can ask for us to go to page 4 of volume 9. This is the first page, the title page of a planning proposal prepared by a John Pagan, P-a-g-a-n, of Burrell, B-u-r-r-e-l-l, Threlfo, T-h-r-e-l-f-o, Pagan Pty Limited. Is that right?---Yes, that's right.

And they were planners were they?---Yes, that's correct.

40 That you had retained to provide the material that you were advised would be required for the rezoning application to be approved?---Yes, that's correct.

And in addition there was an urban design report by Studio Zanardo, Z-a-n-a-r-d-o, the first page of which is page 21. Thank you. Their report is dated April, 2014. The report by Mr Pagan is dated May, 2014. Is that about the time that you received those documents?---Yes, that's correct.

And were they lodged in support of your application with council?---That's correct.

Now, the basic elements of the proposal were to increase the height of the building limit to 18 metres.---Initially, yes.

And to include in the design a stepdown from the building front on Homer Street of that building height limit as it went towards the river?---That's correct.

10

Now, did you communicate at all with George Vasil or Con Vasil about this rezoning submission?---No.

Who did you talk to at council about this rezoning application?---The planner at the time, what was his - - -

Marcelo Occhiuzzi?---Yeah, Marcelo, and I think it might have been George Gouvatsos, I'm not sure, one of his senior planners, we met with them on a couple of occasions.

20

Did you communicate at all with Jim Montague, the general manager, about this application?---No.

Now, the Commission has information indicating that a meeting was scheduled for Monday, 20 July, 2015 at a meeting room at council, council chambers, involving yourself and Lisa Ho - - -?---Yes.

- - - and Spiro Stavis and Gillian Dawson. Now, that's the meeting being scheduled.---Okay.

30

Do you have a recollection of a meeting occurring with any of those people around July of 2015?---Not with those people, no. 15 July, no. I've never met Gillian Dawson.

Yes.---Sorry, who were the other people?

Spiro Stavis?---Yeah, I've met, yeah.

40 When did you first meet him, what was the context, what were the circumstances in which you met him?---That would have been after the planning proposal went to council, then I think went to the department to Gateway, then it came back, more information was required for justification so it would have been in that time period.

Now, I've indicated to you that that was 2015.---Yeah.

I want to take you back to 2014, if I can, please. I hope I haven't confused you there. In 2014 was there a meeting with your consultants and council

planning staff in about August 2014?---That sounds about right. That would have been with Warren Farleigh and Lisa Ho then.

And John Pagan?---John Pagan.

Bruce Threlfo?---Yes.

Michael Zanardo?---Correct.

10 And yourself.---My consultants, yes.

THE COMMISSIONER: And you attended?---Yes.

MR BUCHANAN: Now, can I ask you this. If we could go to page 36 of volume 9, please. I'm putting in front of you an email conversation. The first email is from John Pagan, it commences almost halfway down the page.---Ah hmm.

20 At 4.28pm on 2 September to Warren and Lisa. Were you aware of this email?---Yes, I imagine John would have asked me and I was happy for him to, because at that meeting if I recall I think Warren brought up the fact that he was a bit uncomfortable with the 18 metres - - -

Yes.--- - - - and my consultant suggested the only reason he used that is because that's what's a common instrument in, like, the council guidelines and things like that, that's the only reason he used it, but we were more than happy to reduce it by a metre or whatever it was because it was never our intention to get six storeys, it was only our intention to try and achieve what was similar to next door. That was our intention and we had no problem.
30 They were the two concerns that they raised predominantly that residential use, which obviously you said we're happy to increase, so at that stage, like, this was the first time we'd actually met Warren and Lisa, before that it was oh, I always forget - - -

Mr Occhiuzzi.---Mr Occhiuzzi and somebody. We'd met them on a couple of occasions. So we were working towards a common goal and what we could work with council staff, so there was no need to talk to anybody else, see anything or, you know, so that, we had done that. We got to this point. They raised these as issues. We were happy to work with them.
40

Did they raise or was there discussed – in your presence, anyway – the issue of stepping down the building height limit as the building envelope progressed towards the river?---That, that was, that was driven from my consultants. That wasn't to do with council staff. Michael Zanardo was not comfortable in having it any other way, so that was what we put forward to them.

And I'll just draw your attention to the bottom of the second paragraph of John Pagan's email. "Of course, as set out in the Zanardo report, is intended to step the development down around the corner from five to four to three storeys."---That's correct.

Indicating the building height limit, the envelope, would be progressively reduced.---With our study it was 17 metres, 14 and 10, whatever it, yeah.

10 You were copied in on the planner's response to that at the top of page 36. So on 3 September you would have seen that correspondence.---Yes, that's correct.

Now, then you became aware of the council officer's report to the City Development Committee.---That's correct.

20 And we could go to page 38 of volume 9. You can see on the screen there a summary of the contents of the report, and then on page 48, if you could just turn to that in the hard copy volume in front of you, at the bottom there's the recommendation, "Planning proposal. Be prepared to amend the maximum building height to be set at 14 metres on part of the land (along Homer Street) and the current maximum height of 10 metres be retained for the remaining part of the land at 15-23 Homer Street, Earlwood."---Yes.

You saw the report?---A few days before the meeting, yes.

And you weren't happy with it?---No, I wasn't.

30 And was its recommendation a surprise to you?---It was, considering the amount of work that we'd put in, yes.

And you said that you spoke with Michael Hawatt.---Not, not, this is now, yeah, at this stage, yeah, no.

Not at this stage?---No. This is now when I saw the recommendation before the meeting. This is when I would have spoken to him.

Oh, I see.---Yes.

40 And is that the first time you would have spoken to him?---Yes.

And how did you get hold of him in order to speak to him?---I think, well, like I said, I know he was probably pro-development. I did, I probably, I was talking to Peter, Peter Vasil, and George probably in the office. I mentioned to him what had happened, you know, because I had never sought any help from anybody before because there was no need to. It was all going really well. Now, what happened was suggested, look, it might be an idea to speak to, to Michael and outline exactly what's happened and then perhaps there's something that could, you know, show him the history

and see, you know, if, if he can help, well, he can support you. Now, I think this might be a bit, like I said, this might be a little bit different to my earlier evidence. Was it a private hearing?

I'm just asking you to answer my questions now, if you wouldn't mind.

---Okay. Yes.

THE COMMISSIONER: Can I just ask you, you said it was suggested to speak to Michael. Who suggested it?---George.

10

MR BUCHANAN: And did he give you Michael's contact details?---I honestly don't recall but possibly, yes.

And did you contact?---I did.

And what happened when you contacted him?---We went and had a coffee. I, I showed him the reports and what had happened. Told him about the history and I thought if, I said if he would be able to support us I'd appreciate it.

20

And was this before the meeting of the City Development Committee at which the report was going to be considered?---Yes. It would have been before, yes.

And did Michael indicate how he intended to respond, how he proposed to respond to you?---Well, he asked what our position was and we said look, this is the history. These are the meetings we've had. You're more than welcome to go back to council and have a look how many meetings we had and the people that we've discussed this with and we felt it unreasonable, I mean we, all we were asking for was a height similar as to the building next door, nothing more, nothing less.

30

But in the meeting that you had with Mr Hawatt did he indicate what he intended to do, if anything, as a result of what you've told him?---Oh, well, he said he'd talk to other councillors, whatever, and it might be an idea to talk to some councillors and I think I might have tried to call like I said Fadwa Kebbe and spoke to her I think but she never showed up and then I just went to the meeting and was hoping that they would be able to support maybe a change and, and see if we can actually stick to what we had put forward.

40

Did you speak to any councillors other than Michael Hawatt and Fadwa Kebbe?---No.

At this point of time when you're - - -?---Yes, no.

- - - trying to get something done about this report?---Yeah.

You didn't speak to any other councillors at that time?---I think I might have, look, you're talking about five or six years ago. I probably would have called a couple but I mean, you know, it's not something that I usually do so, yeah, but Michael was the one that I was relying on to hopefully, you know.

What were you relying on him to do?---To look at our circumstance, the meetings we'd had, the work we'd put in and if he could support our proposal.

10

Well, that's one vote. There's more than one councillor on council. Were you expecting him to talk to councillors and to persuade them to look with favour upon your position?---Well, like I said I spoke to, well, I hoped that he could do, yes, I hoped so.

Did he talk to you about that?---No.

Did you talk to him about him lobbying other councillors?---Well, if it was necessary, yes.

20

That's something that you raised with him, you wanted him to get other councillors to vote against the recommendation and in favour of your planning proposal?---Not to vote against the recommendation as such. To adjust it if they could because - - -

Yes.---No, I was just saying because the - - -

And what adjustment did you discuss with Mr Hawatt?---The height limit. Nothing else.

30

And what did you say to him as the adjustment you were looking for? ---Well, pretty much what our consultants had put forwarded, just that height limit because every, nothing else in the, in the council staff's report varied. It was all consistent with what they put forward.

Now, you know that there was a meeting of the City Development Committee on 13 November, 2014. This is page 50 of volume 9. And so it's just over halfway down the page. Do you see that there?---Yes.

40

At item 12, "In respect of 15-23 Homer Street, Earlwood moved Hawatt, seconded Vasiliades. 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." And then it went on. Do you see that?---Yes.

And over the page, on page 51 is recorded the result of the vote. There were three against and five in favour. Had you spoken to Councillor Vasiliades about this?---No.

Had he been present when George Vasil had recommended that you see Mr Hawatt?---No, I don't recall, no.

Did you ever speak to Con Vasiliades about your planning proposal?---No, I didn't.

10 THE COMMISSIONER: Why not, because you've got the contact with his uncle and also his dad?---To be honest I didn't think I needed to speak to anybody. I thought it was just the, like I said the amount of work that we'd put in and all, and the time that went into it, it was just like, it was a last-minute, like when we actually saw, I think whenever they put the report out, it might have been on a Tuesday or Friday, whatever it was, it was only a few days before the meeting so I was a bit in shock I guess you can say and, and then I guess spoke to Michael and explained the situation, rang a couple of people and left it at that.

20 MR BUCHANAN: You didn't think you needed to get as many votes as you could to make sure that the recommendation of 14-metre building height limit was not accepted? An easier way of getting the building height back to what you had sought would have been to have approached the councillor who was the son of George Vasil, wouldn't it?---Probably.

Why didn't you?---I really don't know, I, well, I didn't.

Well, did you get an impression from George Vasil about what his opinion was about the problem that you laid out before him, as a result of which he said, "Oh, you should go and see Michael Hawatt"?---Not, no, not really because we really didn't discuss it that much.

30 Did George Vasil think the recommendation was a good thing or a bad thing?---I honestly don't recall but obviously it would have probably been, you know, it's not something I discussed with George. Like - - -

You knew at the time that his son was a councillor at Canterbury City Council?---I probably would have.

40 Did you expect that George Vasil would ensure that his son voted against the 14 metre height limit and reinstate the 17 to 18 metre height limit?---I honestly had no expectations.

It seems a bit strange that you wouldn't had discussed with George Vasil, getting a contribution towards achieving your goal from his son, given that he was a councillor.---I don't know.

Well, because it seems a bit strange, it sort of suggests that you mightn't be telling the whole truth in saying that you didn't.---Well, I am telling the truth.

Now, I'm just giving you this so that you understand the history. If I can ask you to go to page 89 of volume 9 and that should be a letter. You can see that it's to the Department of Planning and Environment, signed by Jim Montague and it says that on 13 November, council resolved that a planning proposal be prepared to amend the building height limit to the same and the height next door, 17 metres. And attached to this letter is the planning proposal and relevant supporting documentation. Can you see that?---Yes.

10 And then at pages 58 and following, a copy appears of the planning proposal that council submitted to the department. Did you see that planning proposal yourself?---No. I'm just trying to see if it's my consultant's work or a council document.

It's a council document.---Oh, well, no. I wouldn't have seen it, no.

20 Well, did you understand that once council had resolved that a planning proposal had been prepared to change the building height control on that site, that that proposal needed to be prepared by council and that it needed to be sent to the department for the department to make, what was called a Gateway Determination?---I don't understand the mechanics. Like, well, but yes, I knew there was a process to - - -

And that it required, it involved the department essentially approving the proposal.---Yes.

Did you understand that?---Yeah, no, I, yes, I knew that.

30 And did you understand that the approval might be subject to conditions? Did you understand that?---Okay. Yes.

Thinking now, if I can just remind you that the council resolution was on the 13th of November 2014.---Yes.

Do you have a recollection of after that resolution had been passed – I withdraw the question. Were you present when the resolution was passed? ---Yes, I was.

40 Did you become aware of some controversy or concern about the wording of that resolution?---Yes.

When did you first become aware of that?---There was a lot of uproar amongst the councillors themselves and, to be honest, I didn't realise what had happened. And then later when I, now they'd passed or made the resolution, I thought, oh, jeez, this is, you know, it doesn't actually reflect what our application was.

The resolution itself?---Well, not the resolution. The height. I guess it depends on how you look at it. I'm, like I said, I'm not a technical or, you

know, like a planner or anything. But, yeah, there was a bit of commotion in the chambers. People, you know, saying different things and accusing each other of things and I, I thought, wow. But anyway, that's what had happened on the night.

I just want to separate out, firstly, you say there was some argy-bargy on the night in council, the council meeting.---Ah hmm.

10 But on the other hand did you have any notice given to you of what the wording of the resolution would be?---No, no.

So at what stage did you have a thought that that doesn't sound right, the wording of the resolution?---Oh, probably, probably whenever we, I actually read it the, the next day or whenever it came out, a few days after that, I would imagine.

20 And what was your concern?---Well, how people can misconstrue things. The 17 metres, when we, our, our reports clearly show the 17-metre height limit going down, like you said, stepping down to 14 to 10, and the way it read was 17 metres. So, again, I don't know how it sort of looked on in, within council, their staff, how they treat it or don't treat it. I, I don't know. So that's, that's what I thought, well, you know, it's a bit strange. And then I, only when I, when I've read some of this stuff that it's, the, the interpretation was 17 metres across the whole site, and that was never the intention.

30 So did you have any discussions with anyone about this?---Michael mentioned to me that they, they were going to try and fix it because they had had, they had made an error, and I said, well, mate, do what you need to do. It's, like, I mean, what, what, there's nothing I can do about it. And, and I believe they made an attempt to try and fix it but, what, obviously it didn't work.

THE COMMISSIONER: Did you point out to Mr Hawatt that there was an error?---No, no. It's not, not for me to - - -

40 So he came to you and said - - -?---He would have, but it could have been, like I said, three, four days a week, whenever, it could have, like, after the fact that, look, the motion was passed 17 metres. Now, you know you're building stepping. I said, yeah, that's, okay, you don't have to tell me. Just go and look at our application because that's what it, what it shows. And that's, and even when we've made the amended application, or not amended but providing more information and different consultants, that's always been the case.

MR BUCHANAN: So can I just establish, who did you talk to about this issue of how the resolution might be construed as to whether it was 17 metres across the site or not?---Michael Hawatt.

Yes. Anyone else?---I don't believe so.

Did you talk to Jim Montague about that issue?---No. I've never, I've never spoken to Jim Montague.

THE COMMISSIONER: Did you speak to George Vasil?---Oh, I've spoken, but - - -

- 10 No, no, no. Sorry, about the error.---Oh, yeah, no. I don't, I wouldn't think so. I mean, I might have mentioned. Like I said, I've, I do go there. Not frequently but I do go there. Like I said, Peter looks after my properties and things, so, and I might have seen George here and there, and might have mentioned something. But not, not, not, that's, no, not really.

MR BUCHANAN: What we're trying to establish though is actually what did happen as best as you can recall and I can just put the Commissioner's question to you again.---Sure.

- 20 Was there any discussion between you and George Vasil or involving you and George Vasil about how this resolution might be misconstrued as a 17-metre height limit applying across the whole site?---Look, it's very possible, like, it's very possible, but like I said, it was never our, it was never, well, it's not something that I can control or, or do, but yeah, it's possible that we could have discussed it.

Is George Vasil a person at that time who you discussed council issues with?---No.

- 30 Or planning issues with?---No. I mean out of, like I said, a couple of times we might have said, like, just in general, but nothing specific, no.

Now, you told us that an attempt was made to fix the issue.---Only, I only
- - -

What's your memory of what happened in that regard?---There was, there was, like I said, there's no memory. It only came up when I saw it in the documents.

- 40 And - - -?---I didn't realise that they actually tried to do and to, to, to rectify or to clarify what the position was. A lot of things, this was all done in council, in-house staff, whatever they - I'm not privy to that, to that sort of information.

Well, if the witness could be shown volume 9, page 94, please. This is a minute, part of the minutes of a meeting of council held on 26 February, 2015, and at the top of the page you can see that - - -?---Ah hmm.

- - - in respect of 15-23 Homer Street, amendment to City Development Committee resolution, there was a motion recorded, that is to say Councillor Hawatt saying, this is what I'm suggesting should be done.---Ah hmm.

And then it says, "In respect of resolution," and then it identifies the minute number, "Dated 13 November, 2014, 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. Accordingly an appropriate amendment be made by the planning division and be brought back to council for consideration before sending to Gateway for determination." Were you there at this meeting?---No, I wasn't.

Okay. And were you told what happened?---Well, like I said, that was with that conversation where they had made an error or whatever, again, I don't know what he'd said, but something to that effect and that they would have to fix it up, and I said, "That's not a problem."

And did you find out whether it was fixed up or not?---No, I didn't.

20 Well, did you always think that there was a problem then with the resolution appearing to propose a 17-metre building height limit from one end of the site to the other?---Not, not on the night, because like I said, it was a few days later that I, whatever it, whenever it came up.

Yes.---So it might have actually come up in the conversation that, well, that's not our intention, we're going to need to fix it, and they tried to fix it.

30 But you didn't find out whether any actual attempt was made, apart from what you've just read here - - -?---Ah hmm.

- - - you didn't find out whether any actual attempt was made or what happened in that regard. Is that right?---Look, Michael said they were going to try and fix it.

Yes.---And that's, and that's all I, I know, and I said - - -

And you don't know whether it was actually fixed?---Well - - -

40 Is that right?---No. Well, no.

Well, what I'm trying to find out is, does that mean that you continued thereafter to think, oh, there's a problem, people might misconstrue this planning proposal to mean that we're after 17 metres from one end of the site to the other?---After this point we had to provide more information, all the information that we continued to provide showed the stepping down in the building. Our intentions never changed. So what - - -

THE COMMISSIONER: I don't think you're being asked that.---I'm, I'm, okay.

I think it's more – I'm sorry, Mr Buchanan.

MR BUCHANAN: No, Commissioner, I'm trying to, I apologise for not finding the right words - - -

THE WITNESS: I'm sorry.

10

MR BUCHANAN: - - - to convey the question I'm trying to ask, but you had a concern once the resolution was passed that it was worded in a way that might be misconstrued - - -?---Ah hmm.

- - - as meaning that you wanted 17 metres from one end of the site to the other and no stepping down. That was your concern. Is that right?---Well, again, not on the night because I didn't, it just - - -

Yes, but - - -

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THE COMMISSIONER: No, no, no, no.

THE WITNESS: Yeah, later.

MR BUCHANAN: But it was raised with you, or you - - -?---It was raised, it was raised later and the fact they were going to - - -

Did you continue to have the that concern?---Well, not really because it was, like I said, it was never our intention, we never - - -

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THE COMMISSIONER: No, no, no. But, I think what Mr Buchanan's getting at, there's obviously been some, from your perspective, some miscommunication, in your proposal was always stepdown, but you've got that blanket resolution by the council, which you say Mr Hawatt told you, I think there might be an error, it can be construed at 17 metres across. It's going to the department. Did you have any concern, not from your perspective, "This is what we wanted," but if it's going to the Department of Planning, there might be a continual stuff up with the department thinking that it was a 17 metre across, which was going to have repercussions on whether you could proceed with your development. Did you ever look at it from that perspective, that there might have been a problem and how are we going to fix that problem?---Well, I thought they would fix the problem. They - - -

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Who's, "They"?---Council.

MR BUCHANAN: Right. And what did you do to find out whether council did fix the problem?---Well, we proceeded with providing more

information and more justification reports and all those reflected what we had always been doing, the stepping, not the 17 metres blanket.

Well, I'm going to be suggesting to you later that that's not correct but I just want to come back to this question. You understood that your rezoning application depended upon the department approving it?---That's correct, yes.

10 And what the department was given was not what you had asked for, you knew that? Well, you knew that the department was being asked to approve a rezoning that was 17 metres from one end of the site to the other, didn't you? Because that was what council had asked for.---Well, I guess, I guess so.

And did you think, or did anyone suggest to you that, "Gee, that might be a problem because it's such a radical proposal that it might be rejected"?
---Well, I mean, all I can say is, I don't know what you want me to say, like I said, we - - -

20 It's not what I want you to say. We're trying to find out what you were thinking at the time.---Well, we never thought like that. We, we, we put forward what we thought was a - - -

Just you, just you. Don't worry about the council or consultants.---I, I put forward, I put forward what I through whereabouts a fair proposal.

30 Yes. But I'm not asking you about that. I'm asking you about, once you understood that the department had before it, a request to rezone for 17 metre building height limit from one end of the site to the other, did you think there was a problem?---To be honest, I didn't really even think about it.

THE COMMISSIONER: Even though Mr Hawatt raised with you, "There's an error, we've got to fix it"?---And I assumed they fixed it. I, I shouldn't have done that, yes. I accept that.

40 MR BUCHANAN: Don't you think, I withdraw that. When you commissioned your consultant's reports, the aim was to get a rezoning, not to get a rezoning rejected, wasn't it?---Of course.

And you knew that if you asked for too much, the request would be rejected, didn't you?---That's fair enough, yes.

And so, if a building envelope was going to be too high or too big, the chances were that the planning proposal would be rejected?---I guess so.

And all your money would be down the drain? You appreciated that at the time, didn't you?---Of course.

And what did you do about that? You didn't want that to happen, did you?
---Of course not.

So, what did you do to try to prevent that happening?---Well, we went in with further justification reports, as we were asked from council.

And are you talking about the JBA report?---Yes.

10 You know that that report actually asked for more than 17 metres, don't you?---I don't think so, no. I will disagree.

See, by the time it came to the JBA report being commissioned, was your thinking that "No-one's really raised this issue with us, the 17 metres from one end of the site to the other. Let's see if we can get it"?---Not at all.

Can the witness be shown volume 9, page 52? You might be able to find it in the hard copy volume, Mr Faker. I just want you to have a look at this page. Before this inquiry started, had you seen that page?---No, I don't
20 think so, no.

If I suggest to you that it's a draft for a motion by Councillor Hawatt to fix the 17-metre resolution, were you shown a draft?---No, I was not.

Thank you. Did you have any conversation with Councillor Hawatt about the fact that the motion to try to fix the resolution was withdrawn, didn't succeed?---No, I didn't.

Was there no, no consideration that you gave to what should be done next?
30 ---It's a council matter. It's like, I mean, I can't tell him or staff how to do certain things or how to pass motions or how to fix or – we just went in with a planning proposal and, again, I, I can't tell them how to do their jobs or, you know. I'm not a councillor. I don't understand the mechanics of resolutions and – I knew there was an error and I, I understood that they were going to try and fix it.

But that's what you'd asked Councillor Hawatt to do in the first place, wasn't it? To influence council decisions in favour of your planning proposal. Isn't that correct?---Not to, to have a look at the planning
40 proposal, and if he thought he could support it, then, yes.

And to get other councillors to support it.---If they felt they could support it, yes. Not all the councillors supported it.

So doesn't that mean that you always understood that your relationship with Councillor Hawatt was one whereby he would be trying to get your planning proposal over the line?---If it was reasonable, yes.

When you say it was reasonable, you mean your planning proposal or what Councillor Hawatt did to get it over the line?

MR STANTON: Correction, Commissioner. "If it was reasonable", not "it was reasonable". You said "if it was reasonable".

MR BUCHANAN: Well, I'll reframe the question.

THE COMMISSIONER: I'll allow the question.

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MR BUCHANAN: What do you mean by if it was reasonable?---Well, we'll put forward our proposal and if they feel that that's something that they can support, they'll support it. If they feel they can't support it, they won't.

If the witness could be shown volume 9, page 113. Now, this is an email that you, I think, were sent. I'll just check that. Excuse me a moment. Excuse me a moment. Page 111. It's an email at the top that's from you to Ms Ho but underneath is an email from her to you. Do you see that?---Yes.

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It's dated 1 April, 2015.---Yes.

And she says that she had discussed the matter with you on the phone and that there was a Gateway Determination for the planning proposal issued. ---Yes.

She told you that?---Yes.

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And one of the conditions was for the submission of a preliminary acid sulphate soils assessment?---Yes.

And then later on in the email, about three lines from the bottom she said, "I have attached a copy of the Gateway Determination." Do you see that? ---Yes, I do.

You got a copy of the Gateway Determination?---Yes, I did.

And you read that?---Yes.

40

You appreciated that the, page 107 of volume 9, that the department had essentially delegated the power to make the rezoning to council but imposed conditions and that those conditions are set out there on pages 107 to 108 of volume 9. You saw that?---Yes, I did.

And you understood that one of the conditions was that prior to public exhibition the planning proposal is to be amended to include, and then the three items that are listed against those dot points?---Yes.

Did you understand that if not earlier that by this stage part of the process of getting the planning proposal approved was that there would be a period of public exhibition where all the documents that were relied upon to support the proposal would be put online and people could make submissions in response to it and then after that period had finished council would consider it and then take into account any feedback it got?---Yes, that's correct.

You understood that?---Yes.

- 10 And the third dot point was further justification to support a maximum building height of 17 metres on the site as well as an additional study that accurately represented and addressed the impact of further development on the character of the local area to be made available with the planning proposal during the exhibition period. Now, can I just take you over the page as well. The fifth condition was the time frame for completing the local environmental plan, that is to say the rezoning, is to be 12 months from the week following the date of the Gateway Determination and you can see the date underneath is 19 March, 2015. So the determination as you understood it expired essentially at the end of 18 March, 2015. You
- 20 understood that?---Yes.

I notice the time, Commissioner.

THE COMMISSIONER: All right. We'll adjourn for lunch and resume at 2 o'clock.

LUNCHEON ADJOURNMENT

[1.03pm]

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