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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

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OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 20 JUNE, 2018

AT 2.00PM

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

Sensitive

THE COMMISSIONER: Mr Faker.

MR BUCHANAN: Commissioner. Mr Faker we looked earlier at the Gateway conditions that is to say, the conditions the department imposed upon delegating the authority to council to approve the rezoning, volume 9, page 107. If we can just have a look at that to remind ourselves. And the one we've been focusing on is the height limit conditions, so in this case it's condition 1 and the third dot point, "Further justification to support a maximum building height of 17 metres on the site." Now, you saw that condition?---I did, yes.

And did you then do anything to see what could be done to satisfy the condition or - - -?---Well, sometime after that then we had a meeting at council and, yes, we were asked to provide some more justification.

Well, how long after this, when you say "after that" was it the time when you accessed the determination?---After I would have received this - - -

Yes - - -?---So we would have had a meeting then with council staff and we would have asked to provide some more information or justification or a report and that's how we came about by getting JBA on board.

Well, I want to suggest to you that there's actually quite a large gap of a number of months between the time when this Gateway Determination was published and when you decided to try and get the JBA firm on board. Wasn't there anything else that you did, like perhaps talking to Councillor Hawatt about what could be done about it or George Vasil?---No, we were just waiting then for the process. Not that I recall.

Sorry.---Sorry.

You knew that that condition had to be satisfied.---Yes.

Did you know what council was doing to satisfy it?---Well, I imagine they were getting, they had to satisfy it, whatever they do, whatever the process is to satisfy that, they'd have to get somebody on board, I don't know, I'm not privy to inside the council.

You didn't talk to Councillor Hawatt or anyone else about what council would be doing in response to that particular gateway determination condition?---Not that I recall.

But you had an interest, didn't you, in ensuring that that condition was met?---Of course. Oh, well, again - - -

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And you did nothing?---It's not in my control. It's something that was asked of council and then when they asked me for information, I provided what I could provide.

But a vote of councillors on the submission that you made for the rezoning application was not within your control either but you went to Councillor Hawatt to try to get that decision made in your favour, didn't you?---Yes, I did.

10 So, did you go to Councillor Hawatt or George Vasil to get this condition satisfied in your favour?---I'm sorry, I, it's, again, I am not privy to the process, like, at council and what has to be done. I, I can't, no, I, it's not up to me.

THE COMMISSIONER: No, no. I think he's talking about beforehand. Mr Buchanan gave an example of when you were first putting forward the proposal, you met with Mr Hawatt, spoke to him, presented him with the papers and said something like, "I hope you will support this." I think Mr Buchanan's asking you, you've now got another hiccup in getting your
20 development up and running. Did you speak to Mr Hawatt about what was the council proposing to do?---Again, it's, I think you're probably misunderstanding me. Like, it's, where I could talk to a councillor to make like, represent me, I can, but when it came to the Department of Planning and council staff and, like, the process, I don't feel like, that's not something for me to, I can, I respond only to when they ask me about, the acid sulfate report, I can respond, "Yes." I, I did what they asked of us. He had a meeting, "You need to provide this," we go away and work out to try and provide that. It's, but I can't tell them how to do their job and what needs to be approved or not approved or what resolution is done or not, it's, it's not
30 for me to, to do that.

MR BUCHANAN: But you have agreed, it was very much in your interest, haven't you?---Of course it's in my, I, I want, yes.

To find out what council was doing to satisfy that condition?---Yes. And we, I, I think I rung Lisa on a couple of occasions, "What's happening?" And, "This is what they need to do, they need to provide a report, they need threat, promise provide justification." And then we need acid sulfate, whatever, I was happy to work with them to see what, whatever they, I
40 could, where I could help, I would help.

Did you ever use Councillor Hawatt to provide you with information as to what council was doing or proposing to do in progressing your rezoning application?---No, not to, no. Like, I'd spoke to Lisa Ho on a couple of occasions. She was the contact person and I'd get the information I needed from her. But when it would take a couple of months, or three months, or whatever, whatever the timeframe was, I would then ask Michael, "What is

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going on? This is taking forever.” But never to go and do this and do, I can’t tell them what to do.

What did you understand was going forever?---The process.

And what did you expect Councillor Hawatt to do when you complained to him of that?---Well, where the proposal was at, what was happening.

10 To find out for you and then provide you with that information?---Well, no, because I was getting that information anyway from the council staff. It was, no, just if, yeah, we can get to a particular position, whatever it may be, from council.

Did Councillor Hawatt ever indicate to you that there was a person he knew who was the director of city planning called Spiro Stavis?---Yes.

When did you first hear the name Spiro Stavis?---Gee, well it was obviously after, after all this. So, I mean - - -

20 Sorry, what do you mean by that?---Well, after the, it went to the, to Gateway, so it would have been after that. So, I, I, I, I imagine, well it was probably - - -

No, I'm not after your imagination. What is your recollection as to when you first heard the name, Spiro Stavis?---Probably just before we had to go and meet with him, I guess.

And from whom?---Michael Hawatt.

30 And did Michael Hawatt indicate that he had a relationship with Mr Stavis, that might assist you?---Not really.

When you say, “Not really,” what did he say about his relationship with Spiro Stavis?---“Meet with him. See what’s required from council and see if he can provide it.”

40 Councillor Hawatt never indicated to you that he could obtain information about your planning proposal from Spiro Stavis?---Again it’s information that I can get from Lisa Ho. It’s not - - -

No, no, no, that’s not an answer to my question, sir. Did Councillor Hawatt ever indicate to you that he could get for you information about your planning proposal, how it was being progressed or not, as the case may be, from Spiro Stavis?---I, I’m still not really, like, following I guess.

Did Councillor Hawatt ever indicate he had a source of information in the planning department of council?---No.

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Did he ever indicate that Spiro Stavis was a source of information?---No, but he, no, no, no.

Do you think it would have been wrong if you had been obtaining information about how your planning proposal was being progressed inside council from Councillor Hawatt?---Not really, he's my representative.

10 Would it have been wrong if Councillor Hawatt had given you information that he had obtained from Spiro Stavis?---What sort of information?

About how your planning proposal was progressing or not, as the case may be.---No.

Nothing wrong with that. But you say it never happened. Is that right? ---Probably not in the way you're implying.

20 Well, I'm not implying anything, I'm simply asking did you ever have a conversation with Michael Hawatt in which he indicated to you that he was obtaining information or would or could obtain information from Spiro Stavis?---No, just to see where the application's at.

Do you mean yes, to see where the application's is at?

MR DREWETT: I object to that.

MR BUCHANAN: Is that what you mean?---I guess so, yes.

MR DREWETT: Commissioner, I object to that, that's - - -

30 THE COMMISSIONER: I'm sorry?

MR DREWETT: I'm sorry, an answer was given by this witness and in my respectful submission the follow-up question assumed a different answer had been given and was put forward as the proposition, you mean yes, as I recall the question being put.

40 MR BUCHANAN: Very well, I'll withdraw the question. When you said, "Just to find out where the application was at," what did you mean?---Well, where's the application at, like are we, what are you waiting on, reports, justification, information, I mean - - -

Now, that was something you said in response to my question, did Michael Hawatt ever indicate to you that Spiro Stavis was a source of information on that subject, wasn't it?---Possibly, possibly, yes.

And so is it possible that Michael Hawatt indicated to you that Spiro Stavis was a source of information for him on progress of your application? ---Possible, yes.

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Do you recall that he did?---Well, I - - -

Either you have a recollection of you don't, sir.---Yeah, yeah.

Yes, you do have a recollection. Is that right?---Okay, yes, possibly, yes.

Now, you said that very reluctantly, didn't you. Why did you say that very reluctantly?---No, I, yes.

10

Why did you say that very reluctantly, Mr Faker?---(No Audible Reply)

You're not able to answer the question?---Well, say what reluctantly?

Do you think that there was something improper about the relationship that you understood Michael Hawatt had with Spiro Stavis on the subject of the progressing of your planning proposal?---No, I don't think so, no.

20

If you did think it was improper, that would explain why you were reluctant to give your last answer, wouldn't it?---Yeah, okay, yes.

You became aware that council's planning department had commissioned a consultant to prepare a report assessing the planning proposal that council had submitted to the department. Is that right?---Yes.

And you became aware that the planning department of council had done that before you ever saw the report I take it?---I never saw the report till right at the end.

30

We're talking now about the report that council commissioned.---Yes, that's correct.

When you say right at the end, when was it that you first saw it?---Again I, it would have been at the end of the process.

Sorry, what do you mean by that, end of what process?---Well, I as such personally never really saw it but my consultants, that would have been right at the end whenever it was made available I guess.

40

I see. I apologise. Right. Are you indicating that you might not have seen it but you were told about it by your consultants?---Yeah, there was a report being prepared.

And were you told by your consultants we have seen this report that's come out now. It's been given to council?---Not, well, yeah, I guess so. That would have been during the exhibition period I guess, I don't know, but - - -

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Not before you commissioned the JBA report?---Oh, no. We commissioned that, I, to my recollection we commissioned that back in whenever it was, '14 or '15 I think. So yes, to be honest I wasn't aware of this report that council had commissioned till like, after the fact like, you know, months or whatever it was.

Until months after the report was in fact handed to council as you understand it?---I'm guessing, yes. Again I, like I said I was never privy to the report or - - -

10

Why was the JBA report commissioned as you understand it?---We had a meeting with Spiro Stavis.

Who was there at the meeting?---My consultants, Spiro and I think the first one Michael Hawatt was at the first meeting.

And you were there as well?---I was, yes.

20

And what was the purpose of Michael Hawatt being there?---He arranged I think for the meeting.

But why did he stay there once the meeting started?---I couldn't answer that. I mean I, I don't know.

Were any other councillors at the meeting?---No.

And when you say he arranged it, why did he arrange it?---Well, I probably asked him to I guess. I, I don't, I don't recall.

30

So what did you ask him to do in that regard?---Well, the planning proposal had come back, justification was required and we had a meeting to see where it was at, what's happening and what we could do to further the application.

And when was that meeting in terms of how long after you became aware of the Gateway Determination conditions?---It would have been after obviously but - - -

40

Yes. How long after?---A couple of months I guess, within that time frame.

You own this property at Homer Street. Is that right?---Yes, that's right.

The two properties combined?---Yes.

How had you purchased them?---The first one was purchased at auction and the second one as I stated before the owner decided - - -

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I apologise. It's my mistake. I'll ask a different question. I apologise for interrupting. What I'm asking is how did you finance the purchase of the property?---Through loans.

Right. Were you paying interest on the loans?---Yes, I am.

And were you paying interest on them in 2014/2016?---If I owned the properties, yes.

10 So each month that nothing was happening you were paying out dead money?---Yes, you could say that.

You didn't do anything earlier than a couple of months after receiving the Gateway Determination to try to work out what could be done to satisfy this condition providing further justification to support a maximum building height of 17 metres on the site?---Well, there is a process to follow and I mean I can't tell council how to act and how to do things. We wait for them to write and do what we can do. We got a meeting and we tried to address that from our perspective.

20

You could call Councillor Hawatt and ask him to do that for you, couldn't you?---To be honest, actually, it could quite possibly have been my consultant that might have rung council direct, I don't know, I mean it's not to say I possibly did ask Michael to set up the meeting, yes.

Were you aware of the report that was received by council in its draft form?---No, I wasn't.

30 From their independent consultant?---No, I wasn't.

30

And does the name Russell Olsson ring a bell as being the author of that report?---Well, now it does, yes.

All right. We can call it the Olsson report, you understand what I mean? ---Yes, I do.

You didn't see a draft of it?---No, I didn't.

40 You did see it eventually, is that right, or you were told about it?---Yeah, probably like, towards, before I actually got the final proposal was presented, so I'm talking like right at the end. We actually, yes.

No one told you about what was in the Olsson report as soon after it was received by council?---Me? No.

No one made you aware of what was in the Olsson report soon after it was received by council?---Me? No.

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When you say me, are you saying that someone else was made aware to your knowledge?---To my knowledge possibly my consultants, I don't know, I mean, yeah.

When, you're saying to us that you weren't made aware of what was in the Olsson report until right at the end?---Mmm.

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

10 You know that the Olsson report was critical of the planning proposal so far as the building height limit of 17 metres was concerned and also other aspects like FSR?---That's correct ,yes.

And you were quite unaware of that until the very end of the process. Is that right?---That's correct, because that's when we had another consultant come on board and that's when I was aware of what was actually in it, that's way after JBA.

20 THE COMMISSIONER: Can I just ask, when you say, "end of the process" can you give me an indication of the month and the year?
---Probably 2017, may be early last year, say like it's, I knew there was a report but I because council was amalgamating and stuff, there was all the other interests in it, there was a lot of things that were going on so, it was, yeah.

30 MR BUCHANAN: So can I just establish we're all talking about the same things. I've asked you about your knowledge of the Olsson report or the timing anyway of your knowledge of it, and I've asked you about the JBA report.---Yes.

The Olsson report was commissioned by council.---Yes.

The JBA report was commissioned by you through your architects. Is that right?---Yes, that's right.

40 Were there any other consultants that were involved in reports being commissioned after this Gateway Determination was made by the department?---Yes, I commissioned somebody right up at the end, like just to have a brief look over it all before it actually got gazetted.

And who was that?---Think Planners I believe.

How do you spell – oh, Think, T-h-i-n-k. Thank you. So as far as you're concerned, is this your evidence, it quite wrong to say that the JBA report was commissioned in order to counter or meet the Olsson report?---Yes, that's right, it's fair to say that.

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And you didn't have any discussions with Michael Hawatt about the need for anything to counter the Olsson report?---No.

Can I just ask you a couple of questions about your contacts with Michael Hawatt. You telephoned him, you told us this morning, numerous times. Is that right?---Yes, that's correct, yes, that's right.

Did he telephone you sometimes?---Yes. Rarely, but yes.

10 And you met him sometimes, is that right?---Yes, that's right.

You told us about one meeting with council staff and was in council chambers?---Yes, that's correct.

Did you have other meetings with Councillor Hawatt?---Yes.

How many other meetings?---Six-seven times possibly.

20 And where were those meetings held?---At his office in, I think it's Belmore.

Haldon Street, Lakemba?---Oh, sorry, Lakemba, yes, that's correct.

And were they held anywhere else?---Once, I think once I might have called him, he was on Canterbury doing something and I met him at a coffee shop there on Burwood Road in, in Belmore.

30 Was that the only time you met with outside of council chambers or outside of his office?---And just let me think. I met him once in a, the first time, we met in a coffee shop in Earlwood.

When you say, "The first time" - - -?---Yeah. That's when I, when I rung him the first time, when all, like, before it went to council, the proposal. First day we met him, that was a coffee shop in Earlwood on Homer Street. Met him in his, predominantly in, in Lakemba. There as once at the coffee shop on, in Canterbury and once, I went past his place.

His house?---Yes.

40 And you met him at his residence, did you?---Yes.

Can I just ask you about that meeting, just while you've mentioned it? When was that? What stage in the events?---Again, it would have been, well it went to council in twenty, was it 2013? So, it would have been after that. Probably 2014, probably sometime. It would have been in that, that stage of that 18 month period from when it was, went to the department, so after it came back from the department. So, in that stage.

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So, after it came back from the department, after the Gateway Determination?---Yeah, yeah. It would have been after that, yes.

Do you remember if it was only once that you went to his place?---Just the once, yes.

What was it that you talked about on that occasion?---I would have just asked, "What's happened?" You know, "What's, what's going on, what's happened?"

10

Nothing specific?---Nothing specific, no.

Now, the two coffee shop meetings that you recall.

THE COMMISSIONER: It's three.

MR BUCHANAN: I'm sorry, your Honour?

20

THE COMMISSIONER: Isn't there one at Belmore, Earlwood, oh, the first one was at Earlwood and then Canterbury, sorry. It's Belmore and Canterbury.

30

MR BUCHANAN: Yes. So, leaving aside the one where you first met Councillor Hawatt, before the resolution was passed at council for the planning proposal, leaving aside that one. What was dealt with at these other meetings with Councillor Hawatt?---Again, just like, "What's happening?" Like, these meetings might have been months apart. So, just, "What's happening?" You know, "What's going on? Do you need," do they need more justification? What like, general state, or the, the, the stage that you know, what the process is at. Like, what's, what's exactly going on.

Can I ask you this?---Yes.

40

What, as you understood it, was in it for Councillor Hawatt? Why was he helping you, as you understood it?---Well, like, from, the very first meeting, when we put forward our case, if, if we felt he could support that, well then and he, he felt he could, we weren't asking for anything unreasonable and I guess he was doing his, his, he was helping us, you know helping is out, going his duty.

You hadn't retained him, you hadn't put him on a, a financial retainer? ---Not at all, no.

To help progress your application?---No.

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Can I just ask you a little bit about your contacts with Councillor Hawatt?
Excuse me. Volume 29, tab. 13. I apologise. Can I show you a document?
I'd like you to make some assumptions about these pages.---Ah hmm.

You can see that there's a table on each page?---Ah hmm.

It's in chronological order.---Ah hmm.

10 And at the top it says, "CCR Records for Contact Between Assad Faker and
George Vasil, Jim Montague, Michael Hawatt and Spiro Stavis."---Ah
hmm.

CCR stands for call charge records.---Ah hmm.

20 What this is, is what's sometimes called metadata that accompanies the
opening of a line, a notional line between telephone numbers and the closing
of the line. It indicates who the subscriber is in the person making the call,
who the subscriber is in the person receiving the call, the date on which the
call started, I'm reading from left to right.---Ah hmm.

The time the call started and the duration of, I use the word call, but a more
accurate word would be that the line was open. Do you understand me?
---Yes.

And there's also a column on the right-hand side, Caller Location, but
there's no need to pay any attention to that, I won't be asking you questions
about that.---Ah hmm.

30 Can I just ask you if you could look at the column in the middle, Phone
Service 2, for the first call that's itemised. That's on a date, the 11th of the
10th, 2013, 11 October, 2013.---Ah hmm.

Do you see under Phone Service 2 there's a phone number?---Ah hmm.

Is that your phone number?---Yes, it is.

40 Now, what this table indicates is that between 11 October, 2013 and 31
October, 2013, there were six occasions on which Michael Hawatt made a
telephone call to your mobile number and the line was opened. Do you
understand me?---Yes.

Now, if there's a particularly short period of say seconds, something
considerably less than a minute, then it might just be that a message is left.
Do you understand that?---Yes.

But anything longer than that would usually give rise to an inference that
it's an actual telephone conversation as against a message being left.---Ah
hmm.

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Do you understand that?---Yes.

Now, can I ask you, can you explain the six calls that Michael Hawatt is recorded as making to your phone number in October 2013, having regard to the evidence you've given us?---Well, I imagine we were going to meet up or like - - -

10 Yes. When did you first have contact with Michael Hawatt about this planning proposal of yours? I thought you indicated to us it was shortly before it was considered by the council?---That was my recollection.

All right. And it was considered by the council in October, in November 2014.---Yes, that's correct.

So looking at the next two rows, next three rows, you are making calls to Michael Hawatt in February 2014. Do you see that?---Yes.

20 What were you calling Michael Hawatt about?---Would have been to discuss what had happened, what we've already gone over.

Well, how could that be if your first meeting with Michael Hawatt to talk about your planning proposal was shortly before 12 November, 2014?
---(No Audible Reply)

Are you able to give us an answer?---Well, possibly to discuss the planning proposal that was being put forward. I mean, there was no other reason to talk to him.

30 Well, the submission was put forward in May 2014.---Yes, that's correct.

So what were you talking to Michael Hawatt about before the planning proposal was put forward?---We still had to get to that point, like, of what we were doing, like, what we were proposing.

40 Is it possible that, now that you see these telephone records, you had dealings with Michael Hawatt about something before the planning proposal was put forward and nothing to do with the planning proposal?---I've had no dealings with him other than this.

Why would Michael Hawatt have initiated those six calls in October 2013?
---I couldn't, I don't - - -

The first one is on 11 October 2013 and the duration of the line being opened is two minutes and 16 seconds. What did he talk to you about?---I don't know what he, you know, you're talking four/five years ago, I honestly can't recall, I mean, but my understanding would be, would have been what we were proposal what we were doing I guess.

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FAKER
(BUCHANAN)

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Can you see that underneath the three calls that you're recorded as making to making to Mr Hawatt in February, 2014, on 17 February, George Vasil is recorded as contacting your phone and the line being opened for 40 seconds. ---Ah hmm.

And that you are recorded as then ringing Michael Hawatt the same day, do you see that?---Ah hmm.

10 And do you see that you're then recorded four days later as ringing George Vasil?---Ah hmm.

This is 21 February, 2014. What were these telephone conversations with George Vasil about?---I honestly don't recall.

The calls continue. George Vasil then possibly returns your call. I'll just invite you to look at 21 February, 2014, your call to George Vasil. The line was open for 14 seconds. That would be consistent with a telephone message being left, wouldn't it?---Yes.

20

Then it's consistent with George Vasil returning your call the same day, almost a minute later, and you speak then together for two minutes and six seconds.---Ah hmm.

What was that about?---I can't recall. I'm just assuming with what we were doing, I guess, I don't, I can't recall that.

30 The only account that you've given to us about your dealings with George Vasil is that he put you onto Michael Hawatt in the first place in relation to the report that had been received from the council officers recommending a 14-metre building height limit.---That's correct.

But that, of course, was around October, 2014, October/November, 2014, wasn't it?---That's correct, yes.

40 So, what is happening between you and George Vasil back in February 2014 so far as these telephone records indicate that there was communication between you and him?---I couldn't, to be honest I didn't even recall these phone calls. I mean, they've, obviously they've been made and all that, but I don't recall. I don't recall every single phone call that - - -

Well, let's assume that that's right and you don't have a recollection. What could you have been speaking to George Vasil about even if you didn't have a recollection?

MR STANTON: The utility of that question with respect, Commissioner, really bears little weight even in this Commission.

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(BUCHANAN)

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THE COMMISSIONER: No, I'll allow it.

MR STANTON: Well, no recollection so what do you think it could be? If that's not speculation under another guise, I don't know.

THE COMMISSIONER: I'm allowing it, Mr Stanton.

MR STANTON: I understand, Commissioner. I understand, ma'am.

10 MR DREWETT: Commissioner, I would like to raise an issue as well. It
may go towards the accuracy of these phone records and the metadata
obtained and I draw your attention to what have been described the six
phone calls that are alleged to have been made between 11 October, 2013
and 31 October, 2013. When you have a look at call 3 and call 4, call 3
being 11.18.58 and you see the column next to that a duration of 38 seconds,
and then you see call 4 made at 11.19.01, it may be I'm reading that
incorrectly but to me with respect that appears to be an inconsistency and I
don't know if Counsel Assisting intends to call someone in relation to this
particular document to give some evidence in terms of its accuracy and what
20 one makes of that and those inconsistencies. That's the only one I've
observed and noticed.

MR BUCHANAN: Commissioner, if I may say this to all parties, anyone
who wishes to view the material upon which this table is based is invited to
contact the Commission with a view to arrangements being made to allow
that to occur.

THE COMMISSIONER: Right.

30 MR BUCHANAN: In the meantime my question to you, Mr Faker, is you
can't think – I withdraw that. Is it possible that you were talking to George
Vasil about putting together this rezoning application a considerable amount
of time before you actually did?---No.

Did you have any other dealings with George Vasil?---No dealings with
George, no, just the office like, Peter not George.

40 But you can see that the phone number, the phone service in phone service 1
against the name George Vasil appears to be a mobile number.---That's
correct, yes.

Can we just continue on then going down the page. If we look at the date
column, start date column, 4 March is a call by you to Councillor Hawatt.
---Yes.

You see that?---Yes.

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And then a call back to you by Councillor Hawatt the same day and then a call back by you to Councillor Hawatt the same day, 4 March, 2014. You see that?---Yes.

Are you able to explain those communications?---He called me and I called him. I mean - - -

10 About what?---I don't know. Maybe arranging a meeting. I don't know. I honestly don't, like I said my first recollections were discussing the planning proposal. Now, what this is here I mean, you know, I - - -

Well, there's two possibilities. One is that it is about the planning proposal and that you're working together with George Vasil and Michael Hawatt to cobble together a strategy for putting together the planning proposal and advancing it.---No.

Did that happen?---No.

20 Well, the other possibility is that you had other business with George Vasil and Michael Hawatt.---I don't.

Or they had other business with you.---No.

It certainly appears that they had a pre-existing relationship with you that is different from the relationship that you've described to the Commission doesn't it?---Well, if you look at these, but like I said to the best of my recollection I've told you exactly what my recollections of the time were.

30 Now, there are more exchanges between you and Michael Hawatt going down 17 March, 21 March, 11 April, 2014. You see those?---Ah hmm.

They fall into the same category, you're not able to explain them?---No, no, just like I said, he would have called, I called, whatever, you know.

And - - -?---But this is all to do with – the only things I've had to do with Michael is talking about the planning proposal. Obviously I must have spoken to him before I, what I recalled.

40 Well, the most logical inference I'd suggest to you that could be drawn is that you haven't told us the whole truth about the nature of your relationship with Michael Hawatt, at least before you submitted the planning proposal. ---I've told you the truth to the best of my recollection.

Now, against the date 5 May, 2014 is a call that you made to Jim Montague's phone and the line is open for two minutes and 47 seconds. ---Yes. I - - -

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Does that bring back memories of talking to Mr Montague?---I honestly don't recall ever speaking to Jim Montague, but looking at this, it's to a landline, might have been his office to set up a meeting with staff so we can discuss what we were going to, how we were going to go forward with the planning proposal.

Can I suggest that it is likely to have been about the planning proposal because the application was lodged dated 13 May, so this is some, a few days earlier, 5 May.---Yes.

10

Is it likely that you were contacting Mr Montague to make arrangements to have your planning proposal received?---I honestly don't recall speaking to Jim. Like, like I said, I've called the landline or the office, it might have possibly been to provide, I don't know, but like I said, I don't recall personally speaking to Jim, but it would have been his office.

20

Why, why – I'm sorry.---Sorry, calling his office to, that we are lodging or not lodging or having, like I mean, there's a lot of information here and you're talking five or six years ago, so it's like, you know, I don't remember every single phone call, but like I said, it would have been in the gist of the planning proposal.

THE COMMISSIONER: Did you know Mr Montague's mobile number?
---No.

30

MR BUCHANAN: You are likely to have tried to contact him or a member of his staff in order to smooth the way for your proposal, aren't you? That's the most likely explanation for contacting him or his office - - -?---I didn't feel - - -

- - - and having a conversation for over two minutes?---Yeah. I didn't feel we needed to smooth the way. We'd had numerous meetings with staff, there didn't appear to be any issues.

This is before - - -?---Yes.

- - - the proposal was submitted?---Yes.

40

You had numerous meetings with staff?---Yes. I've, yes.

Who were the staff with whom you had meetings before the proposal was submitted?---With, with ah, Mr Orricchio [sic].

Occhiuzzi?---Occhiuzzi, sorry.

Yeah, that's all right.---And, and like I said before, I think it was George Gouvatsos, who's one of his senior planners, and I've already, we've met with them on a couple, at least a couple of occasions, and that's how we

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came about by going down the path of having a planning proposal. That was suggested by them.

But this is not a call to them.---No, no.

10 It's a call to Mr Montague, the general manager.---Yes. It could have been, it could have been, well, to his office. Like I said, I honestly don't recall speaking, ever speaking to Jim Montague. To call to his office, that's fine, it could have been to arrange a meeting, to want, I don't know, you know, like, something had to be done, maybe a piece of information was required, can we get – I, I, I don't recall, like, I, I don't recall every single phone call. Like I mean I can see here what you're saying, but like I said, I, I, you know.

Against the dates 12 May, 16 May, 26 May and 2 June, 2014, is a series of calls that you're recorded as making to Michael Hawatt.---Yes. Again - - -

20 They straddle the time, that is to say they're both before and after the time when the submissions by John Pagan and Mr Zanardo were sent in to council. What were you talking to Michael Hawatt about at the time that the submission was sent in to council?---Well, like I said, maybe what we were proposing. I don't, like I said, I honestly have no recollection but, like I said, it's possibly about what's been submitted, like, what's been submitted.

30 Is it the case that you were strategising with Councillor Hawatt about the submission of the planning proposal?---No. To the best of my recollection, that's what I, what I said before. We had gone through the process with the council staff and like, like I said, I, I felt that we were trying to come to a common, like, agreement and once the proposal went in, only once before it went to council that's when I probably started, but obviously here I'm saying that I spoke to Michael beforehand and it could quite possibly have been about that because the, sorry.

Against the date 11 June, 2014, is another call that you're recorded as making to Mr Montague's phone. Do you see that?---Ah hmm.

40 So that's some days, indeed, it's almost a month after your planning proposal was submitted. Do you recall calling Mr Montague to discuss you know, "What do you think of it? What are you going to do with it, what's happening?"---Like I said, it's here, so obviously the call was made but I honestly don't recall.

You don't have a recollection, you tell us - - -?---Of speaking to Mr Montague.

What do you think now that you can see that you were talking to Mr Montague?

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MR NEIL: Well, Commissioner, I know it's not directly of my concern, but could I just draw Counsel Assisting and yourself to a phone number at the top of volume 9, page 1?

THE COMMISSIONER: Hold on.

MR BUCHANAN: I take that point on board, Commissioner. We'll have enquiries made.

10 MR STANTON: I'm indebted to Mr Neil.

THE COMMISSIONER: Sorry?

MR STANTON: I'm indebted to Mr Neil, Commissioner.

THE COMMISSIONER: We'll take it as, excuse me, Mr Buchanan indicated this was a schedule prepared from the metadata prepared by the investigators. We'll make a further enquiry, but we note that you have indicated on the rezoning application that it would appear that number is the council's switchboard number.
20

MR NEIL: I just felt obliged to - - -

THE COMMISSIONER: No. Thank you, Mr Neil.

MR BUCHANAN: No, thank you.

MR STANTON: And I'm obliged to my learned friend, Your Honour. I was only relying on the data obviously.
30

THE COMMISSIONER: Yes.

MR STANTON: As we all are entitled to. Excuse me for not standing, ma'am, please.

THE COMMISSIONER: That's all right.

MR BUCHANAN: After the reference to the first date at 11 June, 2014, which is attributed to Mr Montague, can you have a look please, at the succeeding entries to the bottom of that page and then seem to be telephone contacts between you and Michael Hawatt on 11 June, 18 June, 20 June.
40 ---Yes.

Why were you calling him and, as you understand it, he calling you at that time?---To, to see what was happening with the planning proposal.

But there's numerous calls.---Yeah. On many occasions when I'd call him, he would, it would always just go to his answering service.

Sensitive

Thank you.---So that, I mean, as you can probably see, most of them are all very short and then when you get a, that's what it would have been.

10 Then if we go over the page, page 2 now. There's a series of entries in respect of you and Michael Hawatt on 20 June, 17 July, 7 August, 22 August, 23 August, 26 August, 27 August. Again, what were those communications about?---Again, the same thing, just, just what stage the planning proposal might have been at or he might have said call me in a couple of days or call me in a week or call me in a whatever it may be and that's what it was.

Excuse me a moment. Now, can I take you to the dates, the last date of the last brace of calls involving you and Councillor Hawatt I took you to is 27 August. The next entry for 27 August, can you see it, is a call that you made to, that's attributed to Jim Montague.---Yes.

Could you turn to volume 4, page 5 please.---Volume 4.

20 Yes. Have you still got the hard copies in front of you?---I only just got volume 9.

I apologise.---Sorry, which page?

Page 5. Can you see that that is a letter written by Mr Montague.---Ah
hmm.

At the top on the right hand side is a direct phone number.---Yes.

30 Can you see that that number is 9-7-8-9-9-4-4-7.---Yes.

That is the number that is the phone service for Jim Montague as recorded on this schedule for the first call on 27 August to him, isn't it?

MR ANDRONOS: I object, Commissioner. All this witness can really give evidence on is whether or not that his number associated with Mr Montague

- - -

40 MR BUCHANAN: That's not the question I asked.

MR ANDRONOS: It could be, I don't want to make any suggestion in the presence of the witness, but - - -

MR BUCHANAN: Well, I object to any suggestions being made in the presence of the witness. The question I asked is, do you see there is a correspondence between a number written on one piece of paper and a number written on another piece of paper, that's - - -

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THE COMMISSIONER: I think that question is fine, Mr Andronos. We'll see how it develops.

MR ANDRONOS: Yes.

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Do you understand what I'm asking you?---Yes, I do.

10 It's the same number isn't it?---It is, yes.

And so if the document at volume 4, page 5 is correct, then you were ringing his direct line - - -?---That's right.

- - - on that occasion. That's to say that 27 August, 2015 commencing at 10.52.---That's what it shows, yes.

20 You had his direct line?---Well, that's what it shows here. Like I said, I honestly don't recall ever speaking to Jim Montague.

But did you have his direct line number?---Well, I thought not, well, no, I, this is saying that I have called it but, I don't know.

How can you explain you calling his direct line number and the line being open for one minute and 17 seconds on 27 August, 2014, in light of all the evidence you've given about never contacting Jim Montague?---Oh, that was my belief.

30 Excuse me.

THE COMMISSIONER: Because your original evidence was, you know, never come across Mr Montague, didn't deal with him, no telephone conversations, not a person I thought I could get information from, not a person who would help me progress Homer Street, and indeed up until the council staff's recommendation you said, "I had a good relationship with them, felt it was going well," and I think you said you were shocked when their recommendation came out, so - - -?---And that's, and that, that's my belief.

40 But why were you having – then you gave evidence that you were having lots of meetings with the staff before their recommendation came out, which it just seems rather inconsistent.---No, no, I always said that we had meetings with staff to get to the point that we got to. That's, I can't just go and make an application on what I think is right, we have to talk to staff to work out what our parameters are. I mean this was driven initially from staff, because they didn't want a land-locking issue, so how do we best move forward and, and, and that's how the process started. And they suggested we have, make a planning proposal to accommodate for all these

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issues and we didn't want to go down that path but then that's why we went down that path.

But if I can go back, and I'm sorry - - -?---No, no, you're fine, no.

- - - I put two propositions to you there.---No.

10 The first one was your original evidence about Mr Montague, it seems just so inconsistent with those records.---I honestly, even till now, like I said, I've never spoken to – I mean maybe I have, that's what it shows here, I just don't recollect. I, because there was no need to, like, it, it, like I said, there's, we spoke with staff, got to a position, we were surprised, we went to the councillors to see if they could help and, and we, and this is where we ended up now unfortunately.

I'm sorry, Mr Drewett?

10 MR DREWETT: Commissioner, I have something which I would wish to put, but it might be better if the witness was out of the room and in a way that he can't hear the question or the proposition I'm going to put forward to the Commission.

THE COMMISSIONER: Mr Faker, could you just leave?---Sure.

It will be relatively short and we'll bring you back in.

MR DREWETT: I think it will only be a minute, Your Honour, Commissioner.

30 THE COMMISSIONER: Mr Drewett, could you speak into a microphone? We're just having a bit of difficulty hearing you.

MR DREWETT: Yes, thank you, Commissioner. I don't know if he's just outside if he can still hear the proceedings. I'll just wait.

MALE SPEAKER: He can.

THE COMMISSIONER: He can?

40 MALE SPEAKER: He can, Commissioner.

THE COMMISSIONER: I think Mr Berry might deal with it. Okay.

MR DREWETT: Commissioner, it occurs to me, and I put this to the Commission simply because of duty for the Commission to not, well, to assist the Commission in not being misled. Is it not possible that when a person calls a switchboard of the council and their call is transferred that the number that would appear on these records will be the number that is

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ultimately the number of the final – that was a very badly articulated question. If for example this witness called the switchboard of council, they transfer him to Mr Montague’s private line, his private phone, is that not a possibility in terms of why this phone number may appear on these records, which is a completely different slant on the proposition being put forward that he must have had Mr Montague’s private number? Now, I don’t know if that is right or not, but perhaps Counsel Assisting can explain whether or not that is a possibility, and if it is, whether or not it’s fair to be putting these assumptions to Mr, this witness that he has the direct number of Mr
10 Montague and he’s been calling Mr Montague.

MR STANTON: And if I may too, Commissioner, please, it’s my witness and I’m indebted to my learned friend. I’ve looked at the rest of the document and aided by I must say the perspicacity of my learned friend, Mr Neil, the rest of the numbers are the council switch, are the council number for Montague. There are many references to Montague and it’s the 300 number, if I could call it that, please, Commissioner. So there is some degree of, some degree of implausibility in him contacting Montague in the repetitive fashion that may well be put to him in terms of him having said I
20 never contacted Montague, I don’t have his mobile number. He told you that, Commissioner. I mean, Commissioner, and quite frankly one would think in this day and age that if he had a mobile number for Montague he’d ring his mobile number.

THE COMMISSIONER: I agree with that.

MR STANTON: I mean, Commissioner, I’ve just looked at the rest of the document, and it’s no criticism of my learned friend, but the other numbers are the 300 numbers for Montague when you go through the rest of it.
30

THE COMMISSIONER: Mr Buchanan?

MR BUCHANAN: We can cut this short if the witness could return.

THE COMMISSIONER: All right. I’ve taken on board – sorry, Mr Berry, just for a sec – I’ve taken on board what you’ve said. What I propose to do is allow Mr Buchanan to ask, in his expression, deal with it quite quickly or shortly.

40 MR STANTON: Yes, thank you.

THE COMMISSIONER: Depending on how that goes, what I propose is we’ll, I’m sorry, I’ll withdraw that. I’ll ask for some inquiries to be made of the investigators about the schedule and the metadata that was referred to so that we would be able to hopefully answer your questions tomorrow, but let’s see if that’s going to be necessary.

MR STANTON: Thank you, ma’am.

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MR BUCHANAN: Whatever happens, we'll make those inquiries
Commissioner - - -

THE COMMISSIONER: Yes.

MR BUCHANAN: - - - and get back to the parties as soon as we know but
it might be I can cut it a little bit short by just asking the witness one or two
more questions.

10

Thank you, Mr Faker. Have you still got volume 4 of the hard copy
documents in front of you?---Yes, I do.

Could I ask you to go to page 17, please.---Yes.

20

And it's more tables, so I better explain to you what it is that you're looking
at. You're looking at an extraction from Mr Hawatt's mobile telephone of
data inside that phone, right. It's been assembled in these tables which
indicate the party from whom a calls made or to whom it's made, the date
and the time and in this case, the message the SMS messages. Now on page
17 you can see that on 17 December, 2014 a call, I'm sorry, a message is
recorded as being sent to Jim Montague at a particular number.---Ah hmm.

Now that name Jim Montague is data taken from Mr Hawatt's phone, it's
data that the overwhelming inference is Mr Hawatt entered for that
particular number.---Okay.

30

He says that that is the mobile number for Jim Montague. Do you see that?
---Yes.

And do you see that the message commences, "Hi Jim."?---Yes.

So the number is [REDACTED]---Ah hmm.

Do you see that?---Yes.

40

Go over the page, page 18, and there's a series of messages to and from Mr
Montague that are recorded as having been extracted from Mr Hawatt's
phone and each time it's to Jim, into a mobile number or from a mobile
number that Mr Hawatt has entered as being Jim Montague's.---Ah hmm.

And that number is [REDACTED]---Ah hmm.

Now can you go to this schedule on the second page of the call charge
record schedule that I've shown you. Can you look at the date 5 September,
2014 and can you see that there's four entries for that date.---Ah hmm.

And that the third one is [REDACTED]---Yes.

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And it's described as being Jim Montague.---Yes.

So you can see the evidence that the Commission has that that is Jim Montague's mobile phone that you were calling on 5 September, 2014.

---Ah hmm.

Excuse me. I apologise. My attention has been drawn to the contents of the duration column and I misspoke when I described it as a call. More
10 accurately it was a text that you sent to Jim Montague's phone. So the column I'm looking at, Mr Faker, is the second from the right under the heading Duration and if you have a look at the third one that is for the date 5 September, 2014 you will see it's described as instead of a time duration SMS.---Yes.

And do you see then that there is recorded an SMS message return to you the same day shortly afterwards from the number which apparently as far as Mr Hawatt is concerned and the SMS extracted from his phone is Jim
20 Montague's mobile phone?---Yes, I can see that.

So you were in communication with Mr Montague weren't you?---I honestly don't recall but like I said, obviously it's there so, yes.

How did you get his mobile number?---I don't even recall calling him like I said but it's there, you know.

This indicates that you texted him.---Yes.

30 What message did you send to him?---I honestly don't recall.

What was the subject of the message, the subject matter?---I don't even remember doing it let alone what it was about.

Do you remember getting a text from Jim Montague?---No, I don't. I mean it's there but like, I know how this looks. I don't recall.

See this is about a month, a bit over a month before the meeting of council when it resolved that there should be a building height limit on the site of 17 metres. Three months. So it's in the period after your rezoning application
40 has been submitted and before council considers it.---Yes.

You don't think that you were in communication with Mr Montague about your rezoning application in that period?---This says I was but I don't recall.

After that entry, those two entries on 25 September – I withdraw that. Can I just point out – excuse me a moment – that in each case your mobile text or your call when it comes to 25 September and Mr Montague's call back to

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you as it's recorded here is again straddled by communications with Michael Hawatt.---Mmm.

Did Michael Hawatt indicate that you should talk to Jim Montague?---It might be a possibility but like, I honestly don't, like I said I've spoken to Michael numerous occasions and I recall and all that sort of thing but I actually don't recall speaking to Jim but - - -

10 He never suggested – sorry.---I mean it could be possible. It's possible. I mean that's all I can say.

Well, do you recall trying to lobby - - -?---Jim Montague?

Yes.---No. Like I said I didn't feel there was a need.

20 Well, if the only subject on which you had communications with Michael Hawatt was progressing this rezoning application then you must have thought that there was a need because there's so many calls over such a long period of time between you and Michael Hawatt aren't there?---There is, yes.

That indicates - - -?---But a lot of those calls, there was a lot, like I said, he wasn't there or you'd leave a message, if you can go through, you can probably appreciate that probably more than half of them were just like, you know, not there, leaving a message and come back. I, same thing with me but yes, Michael Hawatt I did call numerous occasions.

30 But calling him on numerous occasions before you find out about the report recommending a 14-metre building height limit isn't consistent with you being quite cool about the prospects of your rezoning application, is it? It suggests you had a concern that you needed to progress to have people accept your building application, your rezoning application?---I was always concerned. Of course, and I wanted to get this finalised, but like I said, it, it took a long time. There was, it was a very, very long process and that's why I wanted to avoid it in the beginning.

40 But this is even before you find out that the report that was being submitted to council recommended against a building height limit of 17 metres and in favour of a building height limit of 14 metres, isn't it?---If this is before, yes.

So, it does suggest that your evidence that you, that that came out of left field and you were surprised by it isn't correct, doesn't it?---Well, no. To the best of my recollection, that's, I told you as best as I could remember of the, of what happened back then.

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20/06/2018
E15/0078

FAKER
(BUCHANAN)

980T

It suggests that you were working very hard with Michael Hawatt to try to lobby for your rezoning application to be approved, doesn't it?---Well, that's why we were making an application, we, seeking an approval, yes.

Excuse me a moment. Now, can I take you to page 3 of the, I'm sorry, yes, take you to page 3 of this call charge record schedule, and can I ask you to go down the start date column. Can you see that against the date, 23 January, 2015, there is a call that you're recorded as making to George Vasil, his mobile number?---Ah hmm.

10

And George Vasil calling you back. And then on 11, I'm sorry, I apologise, on 13 July, 2015, a call from George Vasil to you. And then you call him back on the same day, two rows of data below that. Can you see that? ---Yes.

What were these, I do apologise, what were these communications with George Vasil about in early 2015?---I really don't recall. Like I said, I mean, like I just said, I, I, I don't recall. I'm sorry.

20

Well, 23 January, the call you're recorded as making there to George Vasil, that's shortly after the submission was sent by council to the department, seeking a Gateway Determination on the planning proposal. Were you discussing with George Vasil the progressing of the application insofar as it was going to the department?---It wasn't for George to progress. It's - - -

No, but George knew the council, didn't he?---Yes, as far as I know.

And he knew a lot about planning, didn't he?---Yeah. That's the impression that I had, yes.

30

You weren't seeking information from George about what would happen with the Gateway Determination?---I didn't feel that was the, no, not with George, no.

You didn't seek his advice or his opinion?---Oh, possibly. Possibly. I might have, you know, I, I, it's quite possible. But he wasn't my consultant. He wasn't the man that I was paying to look, you know, to look out for our interests and to go and, you know, work for us and talk to the relevant people and see what was required of us so we can, so we can, like, do whatever we needed to do and get the information across to council.

40

Who was that person that you were paying?---My consultants.

There's a call from George Vasil to you that's recorded on the 13th of July that's quite short, but two rows of data below that I think I indicated to you earlier he appears to call you back.---Ah hmm.

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20/06/2018
E15/0078

FAKER
(BUCHANAN)

981T

This is after Russell Olsson, the consultant retained by council, has been asked to prepare a report. Was there any discussion between you and Mr Vasil about Mr Olsson?---No.

You're quite sure about that?---Yes.

10 What were you talking to him about or what were you trying to talk to him about?---Look, I know, I wouldn't, you ask me about Michael I can answer because I know what we discussed and stuffed. But, like, one-off calls, I, I honestly don't recall. Like, I mean, something might have been mentioned. I, I don't know. I don't recall.

Now, there's numerous calls after the 14th – I'm sorry, after the 13th of July between you and Michael Hawatt.---Yes.

Right down to 14 August, 2015 on page 3, and continuing over on page 4 in the months of July and August 2015.---Ah hmm.

20 Why were you talking to Michael Hawatt in July and August 2015?---It would have been to do with the planning proposal, where it was at and what's happening and can we, what else can we do or – that would have been in the time frame of the JBA reports, I guess. I don't know.

Going over to page 4 of the schedule, the calls to and from you and Mr Hawatt proceeding in August of 2015. Now, some of these are recorded as being under a minute but, of course, it doesn't take very long to make an arrangement to have a meeting, does it?---No.

30 You can make an arrangement to have a meeting in 15 seconds, can't you? ---Well, I don't know if, yeah, you can, it doesn't take long, yes.

Is it possible that any of these calls were to arrange to have a meeting? ---Yes, I would say so. But like I said, most of them were all very short. I probably missed him. He probably missed me. A bit of phone tag and we finally speak and arrange a meeting and I went and saw him.

40 Now, why was it necessary to see him as against talking to him on the phone?---Well, I guess to see what, what the position is. They can tell anything they want on the phone, but see him, I guess, be there in front of his face and see exactly what's going on.

Can I take you to – do you have hard copy volume 9 there?---I do.

And if I could take you to page 180, please. And is that a table?---It is.

And can you see it's in the same format as the table I took you to earlier of calls and SMSs to and from Michael Hawatt and Jim Montague?---Ah hmm.

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This time it's SMSs between you and Mr Hawatt. Do you agree?---Yes.

Do you understand that that's what it is?---Yes.

Again, I'll just ask you to just to make sure that you can read it the way I suggest it needs to be read.---Okay.

10 There in chronological order. The first one is a text to you by Michael Hawatt on 9 August, 2015. You can see the time there, 3.53pm.---Ah hmm.

And then you can see a message, "Hi, Assad."---Yes.

Just asking you about that message, "Can you submit a DA for Homer Street with your planning proposal. It's best to meet with Spiro with a preliminary plan of your proposal." It's written here as "than" but it might have been intended as "then".---Ah hmm.

20 "Submit a final DA that has support of council." Signed "Michael".---Ah hmm.

Do you remember receiving that?---No, I don't but obviously it's been sent.

Do you remember a suggestion that it would be in your best interest to submit a development application?---Well, that's what he's saying but we never did.

30 Yes, but what I'm asking you is, thinking back now in your discussions with Michael Hawatt, whether it was face to face or whether it was on the telephone or SMS, do you remember an issue coming up about whether you should lodge a development application for Homer Street?---I actually don't remember that.

40 Excuse me for a moment. Did you understand from that particular message that through Michael Hawatt and Spiro Stavis you could get the support of Canterbury Council for a DA for the site?---Not that I would get the support of council but I mean it's, it's, it's, like I said, I don't actually recall but obviously it was sent, and the reason why I don't is because we never lodged a DA. But, I mean, it's good to know that it could probably, yes, just because they support you doesn't mean it's going to get approved or anything. There's a lot of requirements you've got to go through.

Well, doesn't it mean something very close to that because the message that you were reading from Michael Hawatt was one that said that a DA that has support of council?---No, if, actually looking at it now, can you submit a DA, he possibly could have been asking a technical question whether I'm allowed to submit at DA with the planning proposal. It could mean that. I don't know, but it doesn't necessarily mean can you submit at DA. He's

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probably asking me, maybe he could potentially be asking me the question, "Can you actually lodge a DA with the planning proposal?"

It's a clear message to you, isn't it, Mr Faker?---That is a message to me, yes.

Yes, if you just pause for a moment.---Sure.

10 It's a clear message to you from Michael Hawatt that he was strategising, attempting to strategise with you to enable you to construct a development on that site that would have the approval of council.---He can't give me an approval just like that. I mean, like I said, there's a bit process they've got to go through.

But he's indicating what you can do that would have the support of council, isn't he?---Can you submit a DA for Homer Street with your planning proposal.

20 You see, Mr Faker, did you ever, didn't you ever get the impression from Michael Hawatt that he controlled the numbers on council?---Well, he had some influence, yes.

And what was the influence you understood he had?---Just that, that he could probably have certain numbers on council.

30 And what he's suggesting here is if you work together with Spiro Stavis and put in place a particular strategy, you could achieve your, that he could make sure that council approves your goal of being able to construct a development on that site?---I don't see that from this but, again, like I said, we never went down that path.

Seems like he's going down that path though doesn't it?---Well, I can't speak for him, all I can say is we never lodged a DA.

Why does he think that you would be amenable to a proposal that he would ensure that there was the support of council for you to have approval for a DA of that site?---That's a question you'd have to ask him because we never lodged a DA. We've never done - - -

40 That's not the point. The point is didn't you gather from dealing with Michael that he could get, he was saying essentially he can get you up, he can get your development approved by council?---He never said that in such, in such terms. I mean I, I sought his help. I tried to, like to lobby for our proposal and, but we never, we never went down this path.

Now, if I can ask you to have a look at the, actually it's in the call chart records but if you go to the table of SMS extractions in volume 9, page 180. 13 August, 2015. Can you see that you contacted his phone but there was a

Sensitive

hang-up message and you didn't leave a message and that that happened twice and then there's a message to you on the same day 1.24pm which reads, "Can you call Eva (Spiro secretary) to arrange a meeting with Spiro, yourself and your architect." Do you remember getting that message?
---Yes. Well, I would have. Well, as I said before that I had him to arrange a meeting. Obviously I arranged the meeting like to be - - -

Well, he is suggesting that you should arrange it.---Yes.

- 10 Is this pursuant to an arrangement you had with Mr Hawatt that he would organise things in council for you to meet with people and do whatever needed to be done to progress your planning proposal?---I needed to meet with the director of planning so we can discuss our proposal, yes.

THE COMMISSIONER: I think Mr Buchanan is asking you something different because there the message suggests that Mr Hawatt is suggesting or telling you to call Mr Stavis's secretary to arrange the meeting.---Yes.

- 20 Which is a little bit different from saying oh look, you know, yes, I did arrange a meeting. As Mr Buchanan has been putting to you it's suggesting that Mr Hawatt is making inquiries or doing work internally within the council for you. Now, was that your understanding of what he was doing?
---Not necessarily doing, we were doing the work but he was obviously seeing where it was up to, what was happening. I mean we had a meeting and - - -

- 30 MR BUCHANAN: But if you read this message what Mr Hawatt is clearly indicating to you is he has organised with Spiro and maybe Spiro has organised with him, I don't know which way, but there's been some sort of arrangement between him and Spiro that you are to have a meeting with your architect and Spiro Stavis.---That's correct.

That's what this indicates doesn't it?---That's right, yes.

That's what Mr Hawatt was doing in this respect, he was liaising with Spiro Stavis to progress your application.---You can say that if we were having a meeting, yes.

- 40 And that's what you understood about what Mr Hawatt was doing so far as he did it through Mr Stavis or with Mr Stavis wasn't it?---With whoever, yes.

Your architect was a person Aleksander, A-l-e-k-s-a-n-d-e-r, Jelacic?
---Jelacic, yeah.

I'm sure I mispronounce it. It's J-e-l-a-c-i-c?---I always mispronounce it.

Have I got the spelling right or is it v-i-c?---Oh, I'm not sure.

Sensitive

MR STANTON: No, it's v-i-c.

MR BUCHANAN: V-i-c. Thank you very much. Then can I ask you to have a look at the same table in volume 9, page 180. Can you see there's numbers down the left-hand side?---Yes.

10 Number 5 is a text at 10.41am on 14 August and it's from Michael Hawatt to you, "Running one hour late." And then there's a series of texts in which it appears that Mr Hawatt was delayed for a meeting. Is that your understanding?---I'll assume that was for that meeting that I said that we had, that first meeting we had with him, yes. I would assume that would be the case.

Well, this in in August 2015. Would it have been the first meeting?---With Spiro.

20 With Spiro?---Mmm. Because I'd had, like I said, numerous meetings with Mr Orrizzio [sic] or, yeah.

And this is for the meeting with Spiro, is it?---I would assume so.

Not a meeting with you?---Oh, well, I'm not sure.

Now, who was at the meeting - - -?---Oh, it's - - -

- - - at 12.30, looking at SMS number 6, who attended that meeting?

---Was that the meeting at council?

30 Well, I'm asking you because you're the person who received the messages and agreed to that time.---Yeah, well, I don't know. If it was the meeting at council it would have been with Spiro, Michael, Aleks and myself, if it was that meeting.

THE COMMISSIONER: And was there only that – is that the only meeting you had which was attended by Michael - - -?---That's correct.

- - - Aleks, sorry, Mr Stavis and yourself?---That's correct.

40 MR BUCHANAN: If you look at - - -?---Sorry.

- - - item number 9 - - -?---Sorry. We actually had other meetings.

- - - on – I'm sorry, I apologise.---Sorry, we actually had other meetings with Spiro and other consultants later but not with Michael, there was no

- - -

THE COMMISSIONER: So this was the only one Michael attended.

Sensitive

---Yes, yes.

Okay.---Yes.

MR BUCHANAN: Well, that's probably an explanation, that's probably the answer to the next question. Item number 9 is a text from Spiro Stavis to Mr Hawatt on 30 September, 2015 at 6.20pm.---Ah hmm.

10 And it reads, "Hi, Mike. Don't forget 3.30pm at council for meeting with Assad Faker."---Ah hmm.

And the same day there's a text, an item 10 from Spiro Stavis and there's first of all a reference to another property and then, "Also, Mike, if you can't make the 3.30 meeting with Assad Faker tomorrow re Homer Street, I'd rather reschedule as I'd like you there, please. Cheers." Do you see that?---Yes.

20 What is your understanding of why Spiro Stavis would have wanted Michael Hawatt to be at a meeting with you?---I don't, I don't know. I mean I couldn't, I don't know, you'd have - - -

How many meetings did you have with Spiro Stavis and Michael Hawatt, irrespective of whether there was someone else in the room?---One.

Only one?---Yes.

Well, if the meeting on 14 August was with Spiro Stavis, then there must have been two.---With Spiro?

30 Yes.---We had more than, I probably had three meetings with Spiro.

Yes, but Michael Hawatt and Spiro?---Oh, only the one that I recall. I might have given you the wrong date or something but only the one that I recall.

Then at – excuse me a moment. Now, Mr Jelcic - - -?---Ah hmm.

- - - was a longstanding architect on your - - -

40 MR STANTON: I was waiting for my learned friend – sorry to interrupt you – J-e-l-c-i-c. I'm sorry.

MR BUCHANAN: Jelcic.

MR STANTON: Yes. I'm sorry. My copy's - - -

MR BUCHANAN: Did you refer to him as Aleks?---Yes.

And did Spiro refer to him as Aleks?---I would assume so.

Sensitive

Right. Okay. We can call him Aleks?---Aleks, yes.

Thank you. And it's A-l-e-k-s?---That's correct.

He was a long-standing architect that you had used for various projects?
---I'd used him in one project before but on this job he started from, yes,
from day 1 he was there.

10 And if we have a look at page 182, this is an email from Mr Stavis to Aleks
and it's addressed to him, Aleks.---Ah hmm.

And he says, and sorry, the date of the email is 6 October, 2015. "I refer to
our meeting last Friday with the owner." And last Friday, you can take it
from me, was 2 October, 2015, and the owner would be you.---That's
correct.

And it attaches the determination, the Gateway Determination. If you see
the attachments described, DoPE letter, 15-23 Homer Street, Earlwood.
20 ---Yes.

And if you have a look at the pages underneath, they are a copy of the, I'm
sorry, I do apologise, that's my mistake. What is attached there is a letter
from the department in respect of the property, but what it is, is extending
the time of the currency of the Gateway Determination. Do you remember
that being an issue?---Yes, I do.

And was that something that you dealt with Michael Hawatt about?---No. I
don't, I don't recall. It was more with my consultants. I might have
30 mentioned it to Michael actually.

Might he have mentioned it to you?---No.

Well, if you just go to, go back to page 180, item 11 in the table of SMSs
extracted from Mr Hawatt's phone. Item 11 is 25 November, 2015 and it's
an SMS to you and it reads, "I am told you have 'til March. You need to
complete your proposal quickly." Do you see that?---Yes.

Do you remember getting that from Mr Hawatt?---I don't, but I mean,
40 obviously I received it, yes.

Right. You remember that the Gateway Determination was in March 2015
and it was, one of the conditions, the last one, was that it was current for
twelve months.---That's correct.

So it would have expired in March 2016?---That's correct.

Sensitive

So, looking then at SMS number 12, Mr Hawatt texts you on 26 November at 6.46pm, "You got 'til March, try to complete ASAP." Do you see that?
---Yes.

So it would appear that Michael Hawatt was trying to make sure that your Gateway Determination didn't expire and that an extension was obtained so that the conditions of the Gateway Determination could be satisfied before it expired. Is that fair to say?---Yes, it is.

10 Does that ring a bell with you now?---I, I was aware of that but, yes, it does ring a bell.

Do you have an understanding as to why Michael Hawatt was trying to help you in that regard?---Well, I mean, we're asking where our proposal's at, there's obviously, there was delays in getting the information be, where it came from and we needed to get an extension. Now, that came from council staff. They, they actually brought it up, so then I, when I, on one of the occasions took it to Michael, "What's going on? You guys need to get an extension because we don't we can't control." We, as applicants, can't
20 control the process at department and council

But this suggests that, those texts suggest that Michael Hawatt was being more than a source of information to you.---Oh, we, we knew that anyway. I mean, we, we'd known that through council staff and our consultants. But I mean, there's, that was known anyway.

It suggests that Michael Hawatt was acting as a consultant to your project, acting as a consultant to you.---Well, I mean that's how you see it but no.

30 That's not a reasonable characterisation?---Oh, well, no. Not for, for me. I mean like, because I had my consultants that did the work for us and - - -

Now, you're not sure that Michael Hawatt contacted you and spoke to you in the phone about the need for you to make sure that you got an extension?
---No. We - - -

Of your Gateway Determination?---We received an email from council staff saying that we're running out of like, we're running out of time and an extension needs to be sought and we thought that the council should do that,
40 not us, but we ended up doing it and we got an extension. Now, how it came about, I don't know whether it was through our consultants or through council or whatever, but - now, after, sometime after that Michael has, has probably sent these messages, but we were already aware of that and, and doing what was required to get the extension.

Well, Mr Faker, what I'd like you to do, if you wouldn't mind, please, is listen to this recording, and a transcript that's been prepared of it will come up on the screen. The lawfully intercepted information number,

Sensitive

Commissioner, is 00237. And the telephone conversation occurred on the 14th of December, 2015, starting at 3 minutes past 6.00 at night.

AUDIO RECORDING PLAYED

[3.46pm]

10 MR BUCHANAN: Commissioner, I tender the audio file and the transcript of LII number 00237, the 14th of December, 2015. I don't know whether you wish to make them the same exhibit, the one exhibit. My instructing solicitor is telling me that would be the easiest way of keeping track of it.

THE COMMISSIONER: I think that's a sensible approach. So the audio file and transcript of the conversation, which was from LII 00237 will be Exhibit 71.

#EXH-071 – TRANSCRIPT SESSION 237

20

MR BUCHANAN: Now, if I may, Commissioner, inform the parties through the Commission that having been admitted into evidence, then once the technical things that have been done that are necessary to achieve it, both of these, the audio file and the transcript – sorry, just the transcript, not the audio file, I apologise. The transcript will be available on the Commission's website.

THE COMMISSIONER: Thank you.

30 MR BUCHANAN: Mr Faker, did you recognise your voice when you listened to that file being played?---Yes, I did.

And was the person who was speaking to you Michael Hawatt?---Yes.

And the person who said, "Spiro is saying he's still waiting for you guys. You're running out of time," that was Michael Hawatt?---Yes, that's correct.

And the person who said, "He may just go and do a whole new plan," that was you?---That's correct.

40

Thank you. Now, what was it that Spiro Stavis said to you about getting a new planner?

MR STANTON: Planner or plan, Commissioner? I thought the word was "plan" not "planner".

THE COMMISSIONER: I haven't got the transcript in front of me.

Sensitive

MR BUCHANAN: The words that you used were, "I have to go and spend, go get another planner."---Yeah, that's - - -

And that's what you were complaining about, wasn't it?---That's correct, yes.

And you had to do that because Spiro Stavis was telling you you had to. ---We had to provide more justification, yes.

10 Well, he was telling you you had to get a new planner on the words you used.---Well, well, yes.

Now, what did he say to you in that regard?---Well, we need to, more justification for our planning proposal. It'd be an idea to get an independent, another independent view, somebody who's reputable. Although we thought who we had were reputable and good people anyway.

20 Now, when you say "another", what was the report that was the first one as against the new one that you needed to get that would be another?---Well, an, an, an, like, an independent study. Something different or somebody else, like, say, a second set of eyes to go over what we were proposing.

You had been told, hadn't you, or you've been made aware that a report had been received by council from the consultant it had retained?---Well, I honestly don't recall at that stage. It's quite possible but I don't recall.

Excuse me a moment.

30 THE COMMISSIONER: When there was a suggestion in the phone call of meeting the next day or on Wednesday at the office, was that a suggestion to meet at Mr Hawatt's - - -?---Office.

Not the council offices?---No.

His own office.---His, his, yes.

MR BUCHANAN: Could you have a look, please, at volume 9, page 182. We looked at this earlier.---Yes.

40 It's an email from Spiro Stavis to Aleks on 6 October, 2015, which is over two months before that telephone conversation that was just played between you and Mr Hawatt.---Ah hmm.

And in it Spiro Stavis says, "I note that council's urban designer has concerns with your proposal, particularly in terms of overshadowing the adjoining RFB and to the bulk and scale of the potential built form when viewed from the public domain." Do you see that?---Yes.

Sensitive

So your architect knew back in October that council's urban planner, urban designer had communicated concerns with your proposal.---Yes.

And your architect wouldn't have concealed that from you, would he?
---Like, like I said, I've answered to the best of my recollection. I mean, yeah, I - - -

10 And what Spiro Stavis says to Aleks is, "I note that we agreed that you will be given some time to have the proposal peer-reviewed by a reputable urban design firm."---Exactly. Yes.

It's a response to the information that council had received from its consultant.---I don't know if that's what it was but, yes.

Well, remember how we agreed that the first line is a reference to a meeting that you had had with Spiro Stavis and Aleks on Friday, the 2nd of October, 2015?---Yes.

20 So all of that was communicated in your presence.---That we need to get a peer review, yes.

And that it was a response to information as to what council's consultant thought about your proposal.---Well, like I said - - -

Which was that he didn't think of it very highly.---Well, that's the case, then.

30 And so that means that the JBA report was commissioned on your instructions to counter the Olsson report, wasn't it?---I don't know if it was to counter but we needed to get a peer review and that's what we did.

You got it in order to try and deal with the problem that had arisen that the consultant retained by council had essentially given your proposal the thumbs down?---(No Audible Reply)

You knew that didn't you?---I honestly don't recall, I got, we've had many, many, many, many meetings.

40 But you had to pay for the JBA report didn't you?---Of course I did, yes.

Do you mean to tell us that you can't recall the circumstances in which you had to pay for the JBA report?---No, of course, of course I, yes, no, of course.

When you say "of course", you don't, you're trying to tell us you can't recall the circumstances in which you had to pay out money - - -?---No, you're asking me about many meetings, many different consultants and to put everything in chronological order. All I'm saying is, yes, we

Sensitive

commissioned these people, yes this is what happened but I was aware of the Olsson report but I don't recall exactly when it was.

But how can you get forget the reason why you had to retain JBA?

---Because we were asked to by council staff, because we were asked to get a peer review. We didn't do this off our own bat. This was suggested that we go and do this and that's what we went and did.

And that was Spiro Stavis who suggested it?---Yes.

10

So it seemed as if Spiro Stavis was trying to assist your project get over the line as well?---If that's the way you want to look at it.

No, no, no. You're the person who was there, you saw him and heard him speak you interacted with him.---Yes.

You saw the outcome of the meeting.---Ah hmm.

20

Namely, a strategy to deal with this unfavourable report from council's consultant. Isn't it clear to you, wasn't it clear to you at the time that Spiro Stavis was providing you with a strategy to overcome the obstacle of this unfavourable consultant's report?---We had to do numerous reports every time we went to a meeting, new requirements were asked of us. To be honest, we were actually frustrated with council, frustrated with council - - -

And Michael Hawatt was present at that meeting too, wasn't he?---No, not to my recollection. He was present at one meeting, but which one it was, I'm not sure.

30

Well, from their SMSs it seems like he was present at least two with Spiro Stavis?---Well, my recollection, one.

Your, you can see the email has blind carbon copies in the fourth field down from the top?---Sorry, what page.

I'm sorry. Volume 9 page 182.---Yes.

BCC, blind carbon copy.---Ah hmm.

40

The first address is Jillian Dawson.---Yes.

The second address is Michael@ a particular email address, and you can take it from me, that the evidence before the Commission is that that is Michael Hawatt's email address.---Yes.

Do you have an understanding about why this email would have been blind carbon copied to Michael Hawatt?---No.

Sensitive

You don't think it might have been because he was present at the meeting on 2 October?---I couldn't answer that, I don't know.

Well, it's because he was party to strategising as to how to deal with this unfavourable consultant's report that had been received by council, isn't that a reason?---It could be, but I, I couldn't answer that.

10 It's consistent, isn't it, him being sent a copy of that email is consistent with him having been at the meeting and him being party to the strategising by Spiro Stavis to overcome the obstacle posed by council's consultant report?
---I guess it's possible, I don't know.

Now, you've had a number of meetings with Michael Hawatt, you've told us?---That's correct.

That right?---Yes.

20 Could we play please LII 00456 and we might have the, if possible, the transcript on the screen. This is, was recorded on Thursday 17 December, 2015 at starting at 2.00pm.

AUDIO RECORDING PLAYED

[4.00pm]

30 MR BUCHANAN: Your Honour, I'm going to make application to cease playing the audio file at this point. I can assure the Commission and the witness that it is just a number of pages of Mr Hawatt trying to give directions to Mr Faker and has nothing else in it. I tender the, sorry. I tender the audio file and the transcript, that's of LII 00456 on 17 December, 2015, up to the point that we played it.

THE COMMISSIONER: The audio file and transcript up until the point where the recording was stopped of a conversation on 17 December, 2015 LII 00456 will be Exhibit 72.

#EXH-072 – PORTION OF TRANSCRIPT SESSION 456

40

MR BUCHANAN: And the transcript will go up on the Commission website, Commissioner. Now, shortly afterwards, if you could go, please, to the SMSs, the table of SMSs extracted from Michael Hawatt's phone on page 180 of volume 9, number 14. This is at 2.15.---Yes.

That call started at 2.00pm and is an SMS sent from Michael Hawatt's phone to you and it gives an address corner North Parade and London Street waiting outside.---Yes.

Sensitive

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Do you remember that meeting?---Not really but I must, yeah, no, not really.

You don't remember that address?---No, I remember, I actually know where the place is so we obviously met there.

Opposite the railway station.---Yes, it's, yes.

10 And thinking about that now what was it that you were wanting to talk to Michael Hawatt about?---Again that would have been how the planning proposal was going, the information that's been asked of us, the additional reports, the, just that sort of stuff.

Do you know how long you were there with Michael Hawatt on that occasion?---I honestly don't recall. It wouldn't have been long. I don't know, 20 minutes, half an hour.

20 Was that the average length of meeting with Councillor Hawatt that you've had in relation to this matter?---Yeah. Probably just have a coffee, yeah.

Now, as far as the, are we sitting till 4.30, Commissioner?

THE COMMISSIONER: Yes, thank you.

MR BUCHANAN: I would ask you some questions now about the JBA report itself.---Sure.

30 There was a draft report that was prepared, volume 9, pages 197 to 218 that surfaced on 21 December, 2015. And have you got page 197 in front of you? There's a copy of the front page of it on the screen.---Yes.

Did you see as version of it that had red writing on it like that?---No.

Did you see a draft of the report before it was finalised?---Yes. But this isn't a draft. This was actually a report because there's a follow up in, in March.

40 Yes. You don't think that if the report came out in March that this might have been a draft?---No. Because we actually - - -

The earlier version?---This is why I was getting frustrated because we actually put forward the first report and then more information was required. So much so that my consultants were annoyed with, the amount of information is reserved for a development application, not a planning proposal.

Sensitive

Well, I just want to suggest this as a possibility to you, that a draft of the JBA report was prepared.---Yes.

And it was reviewed by Spiro Stavis. Do you know anything about that?
---No.

And that it was then essentially finalised, but that in the meantime Mr Olsson, council's consultant, reviewed the JBA report and prepared an opinion about it, and when that was received a further version of the JBA report had to be received. Do you understand?---Yes.

Do you think something like that might have happened?---Yes, yes.

Did you give instructions as to the basic trust of the report prepared by JBA?---In what sense?

Well, did you discuss with them how big the building envelope would be that would be discussed in the JBA report, or how many storeys there would be of the structure?---No. That was, would have done, would have been done through my consultants when they would have sent over the brief of what's happened and they would have looked at it and said, "Yes, we can support this," and then come back with what they came back with after some meetings and some tinkering and whatever, what, whatever might have happened with the consultants, and that's what they prepared.

Just excuse me a moment, please. I just want to ask you about the JBA planning justification report as it was called. Volume 10, if the witness could be provided with that, please. And could you go please, to page 36 and then 37 to 73.---36, yes.

Page 36 on volume 10, of Exhibit 52 indicates that amended or additional plans or a planning proposal have been submitted. That's simply a council document.---That's correct, yes.

And then the document that's the subject of that sheet is underneath, pages 37 and following, and I appreciate it's not in colour but you saw this document at some stage?---Yes.

And did you give instructions to that it should be submitted?---Well, yes, once it was finalised, yes.

Did you have a discussion with your consultants as to what should be in the reports so far as concerned how big the building envelope should be and how many storeys it should comprise?---With JBA?

With your consultants.---Oh, with my consultants, no, no. We had a, we had a framework to work with.

Sensitive

And what was that framework? Are you talking about the original?---It was pretty much the, yes, the stepping in the building, yes.

But what I am asking about is, anything more than simply the feature that its building height stepped?---Well, no.

10 No discussion with your architect or with your planners about what should appear in the JBA report about the size of the building or how many storeys it should be?---It was more driven, no, it was more driven from council, the meetings they had with council and what they were looking for and not looking for and how to best justify what was there. We have to justify our position and, and they, that's what they were commissioning to do.

Now, I'll just draw your attention to the fact that the council stamp on page 37 is 18 March, 2016.---Yep.

That accords with the date of March that you were talking about earlier. ---Yes, yes.

20 Can I just ask you to have a look at just one or two features of it.---Sure.

Reasonably quickly. Page 51, or better still, page 54 and I'll take you back to page 51.---54.

Do you see there there's some diagrams here?---Ah hmm.

And if you just have a look at an of them really - - -?---Yes.

30 - - - it's talking about a six-storey building.---Yes, which is incorrect in my view.

What is incorrect?---This is just a schematic, these are schematics, they're envelopes and, and, and so we actually work in height limits, but that level there, I actually brought that up with the consultants but it was already submitted, that first level there is actually part of the basement because of the way the land falls away from Homer Street down to the river.

40 THE COMMISSIONER: You were just pointing to something and we couldn't see what you were pointing to.---Oh, sorry, on the, on the, that diagram, so yes.

So the lowest level?---Yes, the lowest level, if you can actually, well, you can't tell, and like I said, these are just purely schematics and, and this is not what you get approved, it's just purely an envelope that they need to visualise, so there's obviously a lot more instruments that you need to go through when you're actually doing the proposal.

All right. You can take it - - -

Sensitive

MR STANTON: Commissioner, what figure number was that, excuse me, just for the record, please, Commissioner?

MR BUCHANAN: 16.

MR STANTON: 16.

10 MR BUCHANAN: The one in the middle of page 54.

MR STANTON: Oh, the one in the middle, okay. Is that the one?---Any of them, any of them, they're all much of a, yeah, muchness.

There's 15, 16 and 17, Commissioner.

MR BUCHANAN: So page 51 of volume 10 - - -?---Ah hmm.

20 - - - the proposed scheme's relative levels in table 1 that appear there - - -?
---Ah hmm.

Do you see that table?---Yes.

It appears to indicate six storeys, doesn't it?---(No Audible Reply)

It starts at relative level 7.0 and goes through to relative level 22.0.
---Okay, yes, that's - - -

30 And in between there are four storeys, so that makes six altogether.---Again that's the topography of the land and you have to look at, understand how
- - -

No, no, no. Relative level.---Yes.

Relative means relative to ground.---Well, again I - - -

Lower level ground first storey, RL 7, level 1, second storey, RL 10.
---Ah hmm.

40 And so on. Get to level 4, fifth storey, RL 19, and then you go up to a roof at RL 22.---Yes.

That's six storeys, isn't it?---No, that's, well, that's the roof, it's - - -

Yes. What's it doing above the roof for the fifth level?---Well, my understanding was five levels. We never had six storeys. That's my understanding.

Sensitive

Can I take you then to the next paragraph, the paragraph underneath the table.---Yes.

You have a look at the second sentence.---Ah hmm.

“As the topography slopes downward towards the Cooks River the scheme becomes part six-storeys.” Do you see that?---Yes. The sentence - - -

10 This was a report promoting a development that would be six storeys high, wasn't it?---Again it's ah, it's not what it, it's not what it seems.

MR STANTON: Well, Commissioner, in fairness, the rest of it says, “Accordingly the proposal is predominantly five storeys.” Not predominantly six or effectively six, or for that matter, actually six.

20 THE WITNESS: Well, it actually presents as a four-storey building with a fifth storey component stepped back. So as you step down, down the site, and again I can, that's the way I read it anyway. I understand, I understand what you're saying and I guess how you can look at it, but it's - - -

THE COMMISSIONER: Sorry, your evidence is you read that in a different way?---Well, only going back to what our proposal was I guess, yes, and knowing what we actually put forward.

MR BUCHANAN: Could I ask you now to go to volume 9.---Yes.

Page 31. This is the Studio Zanardo component or contribution to the original submission.---Yes, that's correct.

30 And on page 31 it indicates in the diagram potential five-storey height. ---Correct.

And then it steps down to lower levels.---That's right.

And if we turn over the page, on page 32, again in the diagram in the middle, it's very hard to read, I appreciate that, but it says, “18 metres, five storeys.”---Yes, that's correct.

40 And then step down one level and then step down two level.---Yes.

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

You see, what I want to suggest to you is that you decided, whether you were advised to or not, to take advantage of the mistake that had been made in the resolution of council back in November in the previous year, where it indicated 17 metres across the site, and you decided that you'd go for it. You'd try to justify a development that was even bigger than the development the subject of the original submission.---I disagree with that.

Sensitive

You can understand, though, can't you, why, for example, say a council planner might look at the JBA report and conclude it is contemplating a development which would be bigger than had been described in the proponent's original submission.---No, I don't. Can I say something?

Yes.---Going back to the page that you brought to my attention - - -

THE COMMISSIONER: Hold on. Can you identify it for me.

10

MR STANTON: Yes, thank you, Commissioner.

THE WITNESS: Sorry. Page 51, volume 10.

MR BUCHANAN: Yes.---RL roof is 22. RL ground floor is seven. Giving you a height, effectively, of – the way I read it – 15 or 16 metres. That's the way, I may be wrong but that's the way I read it because even in JBA's report we never went for six storeys. It always was five, stepping down to four, stepping down to three, even in their report.

20

Even though the report itself says in words that the scheme becomes part six storeys?---Well, that must be a mistake because that's not our intention. And like I said, these here are all schematics.

But you gave instructions for this report?---Yeah, yes, I did.

Mr Faker, I'd like you to listen to another audio file, please. This is LII number 03488. It's a telephone conversation recorded on the 17 February, 2016.

30

AUDIO RECORDING PLAYED

[4.19pm]

MR BUCHANAN: Your Honour, I tender the audio file and the transcription of LII 03488 on 17 February, 2016.

THE COMMISSIONER: All right. The audio file and transcript of telephone conversation LII 03488, conversation of 17 February, 2016, will be Exhibit 73.

40

#EXH-073 – TRANSCRIPT SESSION 3488

MR BUCHANAN: Now, Jobel's Café was in Burwood Road?---I, I think that's the one, yes.

Sensitive

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E15/0078

FAKER
(BUCHANAN)

1000T

And you met Mr Hawatt there?---Yes.

What was the purpose of that meeting?---Again, it would have been to talk about, again, with the dates, probably the planning proposal that been out in, what's happening, what's going on.

Well, it might have been perhaps to discuss where the JBA report was at?
---The actual - - -

10 This is February 2016, the JBA report took final form in March 2016.---It probably would have been the, the December one, getting the more information require, "Mate, what's going on?" Like, you know, "What does council want from us?" You know like, what's going on, sort of thing. Because that would have been then, obviously before we finished the March, the March one.

Now, at this stage, this is February 2016. You're running out of time for the Gateway Determination, to satisfy the conditions of the Gateway Determination, aren't you?---Yes.

20 Was anything said about that at this meeting?---Probably would have been, yes.

And thinking, can you remember being at the café with Councillor Hawatt on this occasion?---Yes.

30 But you can't recall anything that was specifically spoken about?---Just in general, that would have been about the, the running out of time, the additional information required from the council, the report, that sort of stuff.

How long did the meeting go for?---Again, it probably would have been 20 minutes, 25 minutes, half an hour.

And did you make any payment of cash to Michael Hawatt on the occasion of that meeting?---No. Not that meeting or, or ever.

40 After the meeting was over, what did you did and what did Michael Hawatt do?---We left.

Yes. Did you stay together or did you part company?---No, no. Would have parted company.

Do you know where Michael Hawatt went?---No.

Or what he did?---No.

Sensitive

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E15/0078

FAKER
(BUCHANAN)

1001T

Now, if I can ask you to just have a look at volume 5 of the hard copy documents, it's volume 5, page 298.---Sorry, I don't have that.

Oh, I'm sorry. Thank you.---Sorry, which page?

Page 298. And can you see, it's another table of SMSs extracted from Michael Hawatt's mobile phone.---Yes.

10 Item 549 at the top of the page is for a message sent to Spiro Stavis on that day, the day of your meeting at 1.42, fairly shortly after that meeting. Can you see that?---Yes.

And the message is to Spiro saying, "I spoke with Assad re Homer Street. They spoke to the Department of Planning for an extension. They say it's okay as long as council supports this. The changes are nearly completed. Can you ask for this proposal to be extended with the department. Michael." Can you see that?---Yes.

20 And I appreciate you didn't send it but does that raise, does that bring back a memory of what you and he discussed at the meeting?---Like I said, we would have discussed the extension of time.

It indicates that you and your consultants or you or your consultants spoke to the department about an extension - - -?---Yes, which, which I - - -

- - - and you then conveyed what you understood to Michael?---That's correct.

30 Excuse me a moment. Commissioner, I make an application at this stage to revoke a direction given under section 112 in respect of a transcript of a compulsory examination conducted with this witness on 24 November, 2016 to a limited extent and the extent comprises pages 258 to 259 commencing at the top of the page 258 and concluding in the first instance at line 30 and then on page 259 at line 11 and 12.

THE COMMISSIONER: It's only those two extracts?

40 MR BUCHANAN: I'm sorry. I misidentified the number. It should be lines 10 to 12 but I'm just reconsidering that part of the application. I would extend it to line 22 so the application so far as concerns page 259 is concerned is line 12 to line 22. And the basis of the application is that I would submit that the evidence the witness has given is inconsistent with what appears there.

THE COMMISSIONER: All right. Under section 112 I direct that the previous non-publication order over the examination of Mr Faker conducted on 24 November, 2016 will be varied to exclude page 258 lines 1 to 30 and page 259 lines 12 to 21.

Sensitive

VARIATION OF SUPPRESSION ORDER: UNDER SECTION 112 I DIRECT THAT THE PREVIOUS NON-PUBLICATION ORDER OVER THE EXAMINATION OF MR FAKER CONDUCTED ON 24 NOVEMBER, 2016 WILL BE VARIED TO EXCLUDE PAGE 258 LINES 1 TO 30 AND PAGE 259 LINES 12 TO 22.

10 MR STANTON: Is that 21 or 22?

MR BUCHANAN: 22, Commissioner.

THE COMMISSIONER: I'm sorry.

MR STANTON: 22, Commissioner.

THE COMMISSIONER: Yes, I'm sorry. I'll amend that direction to exclude page 259 lines 12 to 22.

20

MR BUCHANAN: Mr Faker, you took part in a compulsory examination in the Commission. Is that right?---Yes, that's right.

And that was on Thursday, the 24th of November, 2016?---That's right.

On that occasion, on the subject of whether you had communication with Mr Hawatt about the need for an extension of the Gateway Determination, this was asked of you and this is what you said. "Did you raise that issue with anybody at council?" Answer, "No, no." Question. "Did you speak to Mr Hawatt about the fact that you needed to get a Gateway Determination?" Answer. "No, I just assumed that they would have known that, like obviously that was the next step in the process." Question. "You didn't ask him to speak to anyone at council about getting a Gateway Determination for you?" "Oh, no, no." "Okay. No." Question, "Let me just rephrase that question. You didn't speak to anyone at council about asking for an extension to the Gateway Determination?" Answer. "Only with Spiro." Then after some other material which remains private you were asked this question. "And you didn't speak to Mr Hawatt about seeking an extension to the Gateway Determination?" Answer, "Not, not, I don't recall, no." 30
40 Question. "Okay. You don't recall speaking to them about it." Answer, "Because it's nothing, it's not his position to do that, that was like a council sort of, all I talked to him is about, look, you know, can you get him to, you know, do whatever they need, what more information do they need, like, you know, can we get this thing finally finished, you know, that sort of thing, but I couldn't tell him to, with regards to the Department of Planning, that's not for him, that's not his, he's more political as opposed to, you know, getting this sort of stuff done." You agree that that's evidence that you gave - - ?---Yes.

Sensitive

20/06/2018
E15/0078

FAKER
(BUCHANAN)

1003T

- - - on this subject on 24 November, 2016?---Yes.

You agree that it's different from the evidence you've given today on that same subject?---Well, very slightly, yes.

10 And what's your explanation for that?---Well, that was my recollection at the time. The extension from the department was driven from council staff and obviously I've had a bit of a whinge to Michael about it, but not for, there wasn't something for him to do, it was for us, and to be honest, I didn't even think it was something for us to do but we did it anyway because we were asked to do it.

Is it the case that when you were giving evidence on 24 November, 2016 you were trying to minimise the scope of your dealings with Mr Hawatt about your planning proposal?---No, not really, because like I said, when, that was two years ago, I didn't realise, like, exactly what had happened and what was going on, but that was my best recollection at the time.

20 If you could have a look, please – have you still got volume 10 in front of you?---Yes.

Volume 10, page 28. It's on the screen actually if that makes it easier for you to read.---Ah hmm.

The bottom of that page is an email to, it says, "Hi Spiro." It's dated 24 February, 2016, but I want to ask you about the email above that, that is from Spiro Stavis to Aleks.---Ah hmm.

30 Do you see that, dated 24 February, 2016- - -?---Ah hmm.

- - - at 1.33. It forwards, it would seem, the email that is copied below to Alex. That's to say Spiro Stavis forwarded it to Alex. Do you understand? ---Yes.

Now, can I take you again to the blind carbon copy field. It's blind carbon copied to Michael Hawatt.---Ah hmm.

40 Do you know why Spiro Stavis would have blind carbon copied to Michael Hawatt, I'm sorry, yes, to Michael Hawatt?---I don't know.

Could it be that it was thought that the full extent of Michael Hawatt's involvement in progressing this proposal needed to be minimised, could that be an explanation?---Could be, but like I said, I don't know why he, you know, like, he's probably rung and asked a number of occasions of what's going on, may be just giving him information, I don't know.

Sensitive

Did you think that, I'm sorry. Commissioner, I had my attention to the time.

THE COMMISSIONER: Is it an appropriate time?

MR BUCHANAN: It is an appropriate time, if I can say that. I can indicate I'll certainly conclude before, in fact before morning tea tomorrow if we start at 9.30.

10 THE COMMISSIONER: Yes. Can I just raise two matters. The first matter is the call charge records schedule.

MR BUCHANAN: Thank you, Commissioner. I've been reminded about that by my betters at the bar table. I do apologise for omitting to tender it. So it's call charge records for contact Assad Faker and George Vasil, Jim Montague, Michael Hawatt and Spiro Stavis. It's a four-page document.

20 THE COMMISSIONER: The four-page schedule of call charge records for contact between Mr Faker, Mr Vasil, Mr Montague, Mr Hawatt and Mr Stavis will be Exhibit 74.

#EXH-074 – CCR RECORDS FOR CONTACT BETWEEN ASSAD FAKER & GEORGE VASIL, JIM MONTAGUE, MICHAEL HAWATT & SPIRO STAVIS FROM 11 OCTOBER 2013 TO 16 JUNE 2016

30 THE COMMISSIONER: Then, if I can just say we will start 9.30 tomorrow morning. If you could back in this witness box at 9.30 and before I adjourn the hearing. Any other matters anybody needs to arise? All right. We are adjourned until 9.30 in the morning.

THE WITNESS STOOD DOWN [4.36pm]

AT 4.36PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.36pm]

Sensitive