

DASHAPUB01006
21/06/2018

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pp 01006-01044

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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 21 JUNE, 2018

AT 9.30AM

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

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Commissioner, before recalling Mr Faker, can I take the Commission back to Exhibit 74 which was admitted yesterday. It is call charge records for contact between Assad Faker, George Vasil, Jim Montague, Michael Hawatt and Spiro Stavis. Commissioner, you'll recall that questions were raised about particular entries. Work has been done to address those questions overnight and I can provide, and indeed will tender, preferably as a separate exhibit, a corrected version of the same schedule. If I could pass up a copy to you, Commissioner, and one to Mr Stanton. Can copies be distributed? This is a document I propose to speak to but it would be easier for people to understand what I'm saying about it if they had a copy in front of them. If satisfactory, for it to be either admitted now or copies to be distributed before I speak to it.

THE COMMISSIONER: Distributed now? Look, what I'll do is, I'll admit it into evidence and mark it Exhibit 75. If there's some issue after Mr Buchanan speaks to it, I can revisit that. So, a revised call charge record for contact between Mr Faker, Mr Vasil, Mr Montague, Mr Hawatt and Mr Stavis will be Exhibit 75.

#EXH-075 – REVISED CCR RECORDS FOR CONTACT BETWEEN ASSAD FAKER & GEORGE VASIL, JIM MONTAGUE, MICHAEL HAWATT & SPIRO STAVIS FROM 11 OCTOBER 2013 TO 16 JUNE 2016

MR BUCHANAN: Thank you, Commissioner. The changes that have been made from Exhibit 74 are as follows and I might just itemise them. If people could have their copy of Exhibit 74 in front of them at the same time, it might assist in understanding that changes that have been made. Firstly, Mr Drewett yesterday drew attention to what appeared to be a duplicate record which was for the second entry for 18 October, 2013. I am instructed that that is in fact a duplicate record and accordingly it has been removed from Exhibit 75.

THE COMMISSIONER: So, that was the fourth entry on Exhibit 74, where the start time was 11.19.01?

MR BUCHANAN: Correct. The next change that has been made is that, a bit over halfway down the first page, against the date 5 May, 2014, there is an entry for a call from Mr Faker to Mr Montague at the number 0-2-9-7-8-9-9-3-0-0. I'm instructed that is indeed the main switchboard number for Canterbury City Council at the time and that has been removed. And the subsequent changes are all the same as that, that is to say, and I'll identify them as we go through, they are the removal of entries attributing a phone call from Mr Faker to Mr Montague where the telephone number in the

column Phone Service To is 0-2-9-7-8-9-9-3-0-0. So the first one removed is against the date 5 May, 2014, the second one removed, still on page 1 of the schedule, is the first entry for 11 June, 2014. Turning over the page, page 2 of Exhibit 74, the next entry removed is the second entry for 5 September, 2014, the next one removed is the entry for 26 September, 2014, the next three entries removed are at the bottom of page 2 for 20 November and 27 November, 2014. That's three entries. They've been removed. Turning over the page to page 3 of Exhibit 74, the third, fourth and fifth entries on that page for the dates 2 December, 15 December and 23 January, 2015 have been removed, and then three entries below that there's a series of entries for calls where the phone user number 2 is Jim Montague, commencing against the date 10 February, 2015 and concluding against the date 5 May, 2015, all of those have been removed. The next entry removed is against the date 13 July, 2015, the first entry against that date where Mr Montague is listed as the phone user number 2, that has been removed, and then next entry removed is against the date 15 July, 2015 for Mr Montague where it is the switchboard number of Canterbury City Council.

10
20 THE COMMISSIONER: Sorry, can I just stop you?

MR BUCHANAN: Yes.

THE COMMISSIONER: It's hard often to tell which row we're looking at.

MR BUCHANAN: Yes.

THE COMMISSIONER: But was there 11 June, two thousand and - - -

30 MR BUCHANAN: 11 June was the last one of that bracket.

THE COMMISSIONER: Right. Sorry. I didn't pick that up. Okay. Thank you. And then we go to 13 - - -

MR BUCHANAN: There's 11 of them in that bracket that have to be removed and that have been removed.

THE COMMISSIONER: Yes. And then we've just done 13 July.

40 MR BUCHANAN: Correct.

THE COMMISSIONER: Yes.

MR BUCHANAN: The second entry for 13 July.

THE COMMISSIONER: Yes.

MR BUCHANAN: And then the last entry removed on this page, page 3 of Exhibit 74, is against the date 15 July. It's the only entry against that date.

Turning to page 4 the following entries have been removed. The last entry for the date 14 August, 2015, so it's the fourth row from the top of the page. The next one removed is for 21 September, 2015. The next one removed is for 28 September, 2015, against the date 28 October, 2015 and 29 October, 2015, both those rows have been removed. The next row removed is against the date 13 November, 2015 and that is the last row of data that has been removed from Exhibit 74 and Exhibit 75 comprises the same data that remains in Exhibit 74 after those rows have been removed. Sorry, just on the same subject, Commissioner, if I could just address a question raised by Mr Drewett. Transcript page 976 commencing at line 44, which was to this effect, if a call was made to the switch of the council, the switchboard of the council and then transferred to an extension, was the extension number the number which appeared under the heading Phone User 2 on the call charge record of Exhibit 74. The answer is no. The call charge record shows as phone user 2 the number actually called by the caller. And finally, if I could through you, Commissioner, extend my thanks to my colleagues, particularly Mr Drewett and to Mr Stanton for assisting us with ensuring that this information is correct.

20 THE COMMISSIONER: And I think also Mr Neil.

MR STANTON: And Mr Neil.

MR BUCHANAN: Thank you very much.

MR STANTON: Primarily Mr Neil.

MALE SPEAKER: Round of applause.

30 MR BUCHANAN: Thank you.

MR DREWETT: And, Commissioner, I was just going to thank Counsel Assisting because one can anticipate and appreciate that the investigators were probably burning the midnight oil trying to amend a complicated document to make it a more accurate document and I thank them for addressing that concern.

THE COMMISSIONER: Thank you, Mr Drewett.

40 MR ANDRONOS: Just one very brief matter arising, Commissioner. The Commission website already has Exhibit 74 on it and properly in accordance with your direction, Commissioner, the phone numbers have been redacted, but Exhibit 74 with the redacted phone numbers would indicate that all the communications, the telephone communications which have been removed from Exhibit 75 in fact took place when I understand that is no longer going to be the import of let's say 74/75 compendiously. Perhaps the way to approach it, Your Honour, obviously it won't affect the Commission's determination but it will affect the public perception of what

the evidence is. Perhaps the way to address it would be to vacate the order admitting 74, treat 74 as an MFI so that it won't interrupt the transcript and there will be a reference that can be made back to that document for the cross-examination that's taking place and that way it can be removed, properly removed from the website. Obviously you don't have to make that determination now but that might be an approach to correcting public perception.

10 THE COMMISSIONER: Mr Andronos, I understand your submission. It raises an issue about the Commission's internal kind of documentation system which I'm not across. I'm going to have to take that on notice to see how we can facilitate that.

MR ANDRONOS: Yes, Commissioner. Well, there's no urgency about determining it, Commissioner.

THE COMMISSIONER: Yes. But I take your point. It's just how I achieve that. So I will take that on notice.

20 MR ANDRONOS: If it please the Commission.

MR BUCHANAN: The suggestion has been made to me, Commissioner, and I advance it for your consideration that as an interim measure perhaps we could take down the copy of Exhibit 74 from the website now or as soon as it can be done and then take whatever measure seen as appropriate to you later this morning to address the issues that have been raised.

THE COMMISSIONER: I think that is a sensible approach.

30 MR ANDRONOS: With respect, it's a good idea, Commissioner.

THE COMMISSIONER: All right. Thank you very much for that. So if Exhibit 74 could be taken down from the website and we'll work out internally how we deal with it. Thank you.

MR BUCHANAN: But we will inform the parties as to what's being done.

40 THE COMMISSIONER: Now, are we up to calling Mr Faker to resume his evidence or is there any other issues anybody wants to raise? There's one matter I should raise. We have some dates free on 2, 5 and 6 July and I would like to use those for the continuation of the hearing.

MALE SPEAKER: Commissioner, I don't think that affects what I've discussed with my learned friend.

THE COMMISSIONER: No. I think you've raised an issue with I think Counsel Assisting or maybe with the Commission team and I think we can accommodate.

MALE SPEAKER: I'm obliged, Commissioner. Thank you.

THE COMMISSIONER: Yes.

MR DREWETT: Commissioner, those dates or at least two of those dates cause some challenges for my instructing solicitor and myself. Can we take that on advisement and see what can be done in relation to our diaries in relation to that and perhaps advise the Commission a bit closer?

10

THE COMMISSIONER: Could you advise the Commission's solicitor about that?

MR DREWETT: Yes, thank you.

THE COMMISSIONER: Thank you.

MR MOSES: Commissioner, I'm not available on those days and I think I'm told that both my juniors aren't available on those additions.

20

THE COMMISSIONER: Aren't.

MR MOSES: On 5 and 6 July. Ms Bulut's available on the 2nd and not the 5th and 6th, and neither is my other junior, Ms Alderson.

THE COMMISSIONER: All right. Well, we'll take it on notice.

MR MOSES: Please the Commission.

30 THE COMMISSIONER: All right. Mr Faker, we're up to Mr Faker. Thank you. We'll have you sworn again, Mr Faker.

<ASSAD MICHAEL FAKER, sworn

[9.51am]

MR BUCHANAN: Mr Faker, could I ask you please to listen to this recording and to read the transcript that will appear on the screen at the same time as the recording is being played. I ask that LII 07492 recorded on 27 April, 2016, be played.

10 **AUDIO RECORDING PLAYED**

[9.53am]

MR BUCHANAN: I've just asked that the playing of the recording be suspended so that the playing of the recording can commence from the beginning of the recording. It won't take very long.

AUDIO RECORDING PLAYED

[9.46am]

20

MR BUCHANAN: Mr Faker, was it your voice that said at the beginning, "G'day, mate. Hello"?---Yes.

And the other voice was Michael Hawatt?---That's correct.

Can I just ask you a few questions about that recording? Just looking at the transcript as it appears on the screen, which is the first page of it. There was a reference by Mr Hawatt – it's recorded in about the middle of the page on the screen – that he was just going to meet up with Spiro and that he'd told
30 him, Councillor Hawatt, the other day that he, Spiro, had met with you, Mr Faker, and that everything was good. It sounds as if, so far as your project was concerned, Mr Stavis was working with Councillor Hawatt, that Councillor Hawatt saw Spiro Stavis as part of his team, working to advance your project. Is that the understanding you had when you were dealing with Councillor Hawatt?---Well, he was probably trying to find what our position was. Like I said, we met with Spiro on numerous occasions, asked for lots of information. We provided it and we were getting very frustrated because this thing was taking a hell of a long time. I obviously couldn't say
40 anything to Spiro. The only, our only recourse was to go to the council to make representation on our behalf, "Why is this matter taking so long?"

But did it seem to you that these two men were working together as a team to advance your project?---Well, yeah, possibly. Yes.

Now, if we look at the second page of the transcript, if we could, please. There were two references by Councillor Hawatt in the conversation to, "Do you have any issues?" You recall hearing Councillor Hawatt say that?
---Yes.

It doesn't sound as if Councillor Hawatt is simply dealing with complaints but rather that he is, as it were, treating you as a client and trying to ascertain what he needs to do as your consultant, doesn't it?---Well, no, he wasn't my consultant but I was, I, like I said, I was getting very frustrated. We, we were asked to provide information, we'd go, we'd come back and then they'd ask us again for more information, different information. I, not only I was getting frustrated, so were my consultants. So, I'd go to Michael and say, "Michael, mate, what, what's going on? Why is it taking so long?"
10 I, they have to have a position one way or the other.

Just towards the bottom of that second page, can I just suggest to you that there's a transcript typographical error that needs to be noted by all of us who read it. The second last entry is for Hawatt and it says, "That's what they told me," but in fact what he said, you heard the recording, it was, "That's what he told me."---Yes.

Thank you. Now, on the third page towards the top of the page of the transcript, it records there what you heard yourself saying to Councillor
20 Hawatt, "Cause I gave it to him at council." Was that a reference to a copy of the JBA report?---Yes, that's correct.

Thank you. Yes, that's all in relation to that particular recording. Could I ask that another recording – excuse me – I'm sorry, could I tender please the transcript and the audio file for LII 07492, recorded on 27 April, 2016.

THE COMMISSIONER: Right. The audio file and transcript of LII 07492 recorded on 27 April, 2016 will be Exhibit 76.

30

#EXH-076 – TRANSCRIPT SESSION 7492

MR BUCHANAN: If the Commission please. And I won't be saying this every time, but I just remind the parties that the transcript will go onto the public website.

If we could play please LII 07600, recorded on 28 April, 2016.

40

AUDIO RECORDING PLAYED

[10.02am]

MR BUCHANAN: That's a short phone call. The next one will be too. Was that Councillor Hawatt's voice that we first heard asking, "Assad?"
---Yes, that's right.

And that was your voice talking to him?---Yes, that's right.

All right. And obviously that's a conversation about confirming that you'll be at a meeting place in about 10 minutes.---Ah hmm.

Is that right?---Yes.

And you indicated, "Just wait for you around the back of your office." This is Councillor Hawatt's office in Haldon Street, Lakemba?---Yes, that's correct.

10

Commissioner, I tender LII 07600, recorded on 28 April, 2016.

THE COMMISSIONER: The audio file and transcript of LII 07600, recorded on 28 April, 2016 will be Exhibit 77.

#EXH-077 – TRANSCRIPT SESSION 7600

20 MR BUCHANAN: Excuse me a moment.

I apologise. I'd like you to listen to another recording, but it's not as short as the last one was. Could we please play LII 07771, recorded on 2 May, 2016.

AUDIO RECORDING PLAYED

[10.04am]

30 MR BUCHANAN: Now, do you recognise Councillor Hawatt's voice as the first one in that telephone call - - -?---Yes.

- - - using your name, Assad?---Yes.

And the other voice is your voice. Is that right?---Yes, that's right.

Commissioner, I tender LII 0771, recorded on 2 May, 2016.

40 THE COMMISSIONER: All right. The audio file and transcript of LII 07771, recorded on 2 May, 2016, will be exhibit 78.

#EXH-078 – TRANSCRIPT SESSION 7771

MR BUCHANAN: Before we move to the next call, even though it's related to that one is, can I just ask you, this is 2 May, 2016, if you could just try and think of that period, and what you've been told in that

conversation is that it doesn't need to come back to council. Did you understand it to be the planning proposal?---I would assume that's what he would have meant. Yes, but, yeah - - -

Well, you didn't ask him, "What are you talking about?" So, it would be a reference, wouldn't it, to the fact that the planning proposal – once the period of public exhibition had finished, certainly on what Councillor Hawatt has indicated – could be referred, as it were, to the department for its consideration, that it didn't have to go back for a decision by council. Is that your understanding?---I would assume so, yes.

Yes. And that essentially would have been the end of the exercise, wouldn't it? As far as council was concerned, on what you've been told by Councillor Hawatt there?---Yes, probably, yes.

So, why did you need to talk to him at a meeting? You say, "Are you around?" He says he'll be around. You say, "Maybe I'll just pop in for a coffee or something, maybe around 12.30. Are you around 12.30, quarter to 1.00?" don't you?---Yes.

Why did you need to speak, to meet up, sorry, with Councillor Hawatt, having been given that information by Councillor Hawatt about the planning proposal not needing to come back to council?---Well, that was just his opinion. I don't know, to verify it, to, I, I don't know, just to see exactly what had happened.

But you were the one who proposed the meeting.---Yeah, well to find out exactly what's happened.

But you've been told that there's nothing more that needs to happen as far as a council is concerned.---I'd been told a lot of things by council through the whole process that wasn't the case.

Yes. Do you mean to say that you distrusted what you were being told by Councillor Hawatt?---Not that I distrusted or trusted, but just to like, to find out exactly what was happening.

You weren't taking an opportunity to give him a payment for his services? ---Not at all.

In having achieved the fact that it didn't have to come back to council, it had reached the stage where it would just go off to the department?---No. I'm sorry, no.

Could we play please, recording LII 07788, recorded on 2 May, 2016.

AUDIO RECORDING PLAYED

[10.08am]

MR BUCHANAN: I think we might need to replay that, we missed the first line,

AUDIO RECORDING PLAYED

[10.09am]

10 MR BUCHANAN: And Mr Faker, it was Councillor Hawatt who first spoke there, using your name?---Yes, that's right.

And you were the person who said that you were just out the back?---That's correct.

This confirms that that meeting did in fact take place?---Yes.

And you're saying that no payment occurred on that occasion?---Not at all, no.

20

What did occur on that occasion?---I'd ask him what had happened and probably went over what had happened and what his understanding of the process was and why it didn't, because I'm not a planner, so I wanted to know exactly what was happening with our proposal. Like I said, we were, at this stage very, very frustrated, it's taken a, a long time and I would have, just to find what like, what the position was.

30 But what did he actually say?---I would imagine it would have been the same, same thing but probably it didn't have to go to council what had been, I'm only assuming now because I don't know exactly what was said but - - -

Well, in that case you're saying to us you have no memory of it. Is that right?---Well, not what exactly was said but it was, I would imagine that's what it would have been about that, that content - - -

Well - - -?--- - - - of him, yeah. Sorry.

40 No, no, I apologise. I interrupted you. You finish your answer.---Yeah, like I would assume that's what it would have been about like, it would be notified or it goes on exhibition. What's the next step. It comes back. Were they happy with the information that we've provided, like the additional information that's been provided, the further justification reports and exactly what was, like what was the position.

Were there any further meetings, any subsequent meetings that were held in Councillor Hawatt's office?---You mean after this point?

Yes.---I honestly don't recall.

How many times did you meet Councillor Hawatt in his office?---Like I previously stated probably seven or eight times.

Well, I just want to go back. I know you did say but I think you indicated you might, I'll stand corrected if I'm wrong, you indicated the number of meetings you had was about seven or eight and you had told us that there were meetings also in a coffee shop from time to time.---Yes.

10 Am I right?---Yes.

So I'll just, just to make sure I've got it right, how many times did you meet Councillor Hawatt in his office? I'm not asking you to stick to what you said before, I'm just asking.---Six or seven times I guess the best of my recollection.

How many times did you meet him somewhere else?---Probably three, three times. I don't know. In coffee shops three or four times.

20 And you also, he was present at a meeting at council.---Yes, that's correct.

Was it one meeting or more than one meeting?---To my recollection one meeting.

Now, you discovered didn't you that an updated version of the Olsson report was provided to Mr Stavis, to council. Is that right?---At some stage, yes.

30 Did you find out what was in that report?---Not exactly but I would have had a general gist of - - -

What's your memory of the general gist?---Again I don't know the exact timing but the fact that he didn't support, well, he was more of the view of the initial, so-called initial council position which really it wasn't.

THE COMMISSIONER: Sorry, really wasn't?---Well, I didn't think it was but that's the impression that people had, that it was of a similar nature of council's first position.

40 Which was the 14 metre?---Which was the 14 metre but he actually suggested eight and a half metres which I think they said it was a minor difference with council's position but to me eight and a half and 14 metres is not minor.

MR BUCHANAN: Well, I'm not going to take you into the details of that unless someone else asks you.---Yeah. Sorry.

But it was unfavourable to your planning proposal. Was that your memory of it?---Yes, to our position, yes.

And what's your memory of how you found out about it, as in where you were, who told you, whether you read it, whether someone told you about it?---Probably would have come through one of my consultants I'd imagine possibly or actually, actually it might have been at a meeting with Spiro Stavis possibly or through my consultant, one or the other.

10 Now, I was wrong earlier. There is one aspect of it that I do need to take you to if I can, please. Volume 10, page 82 in the first instance and you can see page 82 on the screen in front of you, sir. That's simply to show you how it got to Spiro Stavis and when.---Ah hmm.

You can see that's an email from Russell Olsson to Spiro Stavis dated 9 May, 2016 - - -?---Ah hmm.

- - - saying, "I have amended our report as discussed. The draft report is attached for your review."---Ah hmm.

20 Do you see that?---Yes.

And if we go then to page 83, that is the front page of the document that was sent underneath that email.---Ah hmm. Yes.

30 If we can go to page 109. Sorry, I just need to take you back to page 108. Can you see that at the top of the left-hand column Mr Olsson says, "Following the submission of this report without appendix Canterbury Council received a planning proposal planning justification report by JBA Urban Planning Consultants on behalf of Croycon Investments dated March 2016. Olsson Associates has reviewed that report and the building envelopes in the report and makes the following comments and recommendations." Do you see that?---Yes.

Then there are a series of comments. One of them can I just take you to, at the bottom of the right-hand column.---Yes.

40 It commences, "There is a," – this is talking about the JBA report. "There is a setback to the top floor. Counting floors from the western end of the site this top floor is effectively six storeys." And then it goes on to say that's excessive.---Yes.

Do you see that it would appear that a qualified architect had taken the position that what JBA was recommending was something that was indeed higher than had been proposed by John Pagan and Zanardo designers? ---That's, like I said, that's his view. Our – if you actually read the conclusion of our final report that was submitted by JBA it will say that it's substantially a four-storey building with a fifth storey setback and there was one line over the – that's if you read that conclusion of that report. So it, like I said, consultants have different views. I can't tell my consultant what

his views are or council's consultants what their views are. We try to work to get a resolution. But like I said, our consultant's report clearly shows what our application was. Now, I think there was a misunderstanding with regards to, like I said, it's a very steep topography of that site and had to do with the, the basement. Now, again, what we – they're all schematics, it's not a development application, so there's still a stringent process that you need to go through. We were trying to build a framework but again, that's his view. We actually at the end asked if we could meet with Mr Olsson to discuss things but we were never given that opportunity, but not at this
10 stage, this is a lot further on down the track, probably 2017 sometime.

And if we could turn to page 109, please, the next page, your memory of Mr Olsson talking about eight metres, could it be that you're thinking of his recommendation that's in the middle of the right-hand column on page 109 that the – in the second dot point, the fifth storey be set back eight metres from the riverfront building alignment, that is a further three metres back from the setback fourth storey?---No, it was eight and a half metres that was actually finally approved by council adjoining the, the property next door. That was my recollection of the eight and a half metres, not this.

20 Now, if implemented, you understood didn't you that the recommendations that were made by Mr Olsson would have significantly reduced the lot yield that could have been achieved on the development, on a development within that sort of proposed building control, that recommended building control, building height limit control on the site?---Reduced to what we had proposed, yes. I don't know significant, but yes, reduced, yes. It's - - -

Well, it proposed a height essentially of 14 metres - - -?---Yes.

30 - - - as the highest height - - -?---Yes.

- - - whereas you had proposed 18 in the first instance and then you were happy to go with council's 17 metres.---That's correct.

Yes. So obviously the recommendation of Mr Olsson if implemented would prevent you from building up to that height that you had proposed and that council had proposed.---Yes, that's correct.

40 And that would have reduced your lot yield.---Yes.

Now, can I just take you to volume 10, page – I'm sorry. I'm reminded I apparently did not tender the last telephone call.

THE COMMISSIONER: No.

MR BUCHANAN: I do apologise, Commissioner.

THE COMMISSIONER: I should have caught you up as well.

MR BUCHANAN: Yes. I tender the - - -

THE COMMISSIONER: I think it's 07788.

MR BUCHANAN: It is. 07788, recorded on 2 April, sorry, 2 May, 2016.

THE COMMISSIONER: The audio file and transcript of the LII 07788,
recorded on 2 May, 2016 will be Exhibit 79.

10

#EXH-079 – TRANSCRIPT SESSION 7788

MR BUCHANAN: Can I take you to page 110 of volume 10 of Exhibit 52.
You've got the hard copy there in front of you?---Yes.

20 You can see it's an email, sorry, a series of emails. The email I'd like to
draw your attention to is at the top of the page from Spiro Stavis to Mitchell
Noble. You understood that Mitchell Noble had taken over as the person
responsible in Spiro's staff - - -?---Yes.

- - - for your planning proposal?---Yes.

30 This is dated 9 May, 2016, and Mr Stavis says to Mitchell Noble, "I don't
particularly like his recommendation, not quite what we discussed, let's chat
tomorrow please about his wording." Does that response, now that you see
it, by Mr Stavis to the final report from Mr Olsson come to you as a
surprise?---Well, I, well, I've never seen this email, I don't - - -

No, I understand that. Now that you see it - - -?---Yes.

- - - he plainly is saying he doesn't like it, isn't he?---That's what he's
saying.

40 And indeed he says, "Not quite what we discussed." Indicating that Mr
Stavis thought he had talked with Mr Olsson and the outcome he expected
as a result of that discussion was something that wouldn't be quite as
unfavourable to your planning proposal.---I, well, I imagine that's what it is,
but like I said, I, I don't know what they were discussing and what they
were doing.

But you can see, can't you, that Spiro Stavis is saying that he is unhappy
with Mr Olsson's recommendation?---Yes, yes, I can see that, yes.

And that recommendation was adverse to you.---Well, I can see - - -

You know that.---Well, I can see that, yes.

Does it come to you as a surprise that Spiro Stavis was unhappy about the fact that the recommendation that Mr Olsson came up with after seeing the JBA report was adverse to your planning proposal?---Well, it's, it's a surprise in a way, because like I said, when we met with Spiro we were taken to task, we were asked for, to keep providing information, so I was actually annoyed with him as well from my end. But look, yes, that's what, that's what it says there in that email, yes.

- 10 Well, is it possible that Mr Stavis had given you the impression that he was managing the progressing of your planning proposal with a view to your planning proposal being approved?---We hoped that it would be approved, that's why we were doing the work, yes.

But isn't that the impression - - -?---Yeah.

- - - that Mr Stavis gave you?---Yes, well, again, we're asked to provide information, we, we're trying to work with them, he's the person that we have to speak to at council, he was our, that we had to deal with and we
20 were providing information so we can get an approval because that's what we were there for, to get an approval for our application, yes.

But it's Mr Stavis' work, as far as you could see it, both from what you knew outside of meeting with him and from your meetings with him and your telephone conversations that, I suggest to you, might have given you the impression that he was doing his best to try to get your planning proposal across the line.---Well, that's the impression, yes.

- 30 Now, given that he said in that email of 9 May, 2016 that he didn't particularly like Mr Olsson's recommendation and was proposing to chat to Mr Noble about Mr Olsson's wording, did you expect Spiro Stavis to do something about this adverse recommendation in Mr Olsson's report?
---Well, I can't expect anything. I can only go on what they tell us what we need to do. We can only do what we can do. I was hoping to get a planning proposal approved, yes, and that's why we kept going back with more and more information, to try to get to that position. But it kept changing, their position kept changing. That's where the frustration was coming in from our point of view.

- 40 Now, can I take you to, I withdraw that. You knew that what was required was a period of time when the planning proposal and the supporting documentation was put on what was called public exhibition, was published on council's website and people could read it and review it and give feedback to council if they so desired?---Yes.

Before council took the next step.---Yeah, well that was part of the process.

You understood that?---Yes, yeah, yes.

So did you have any discussions with anyone as to whether the Olsson report, with its adverse recommendation so far as your planning proposal was concerned, should go on public exhibition to not?---That wasn't for me. That, that had nothing to do with us. I, yeah, no,

Did anyone say anything to you about what would be done with the Olsson report?---No. I, like I said, I didn't, I didn't know if I did the final technical details of that process, but that, we could only do what we could do too.

10

Did you think that the, I withdraw that. You remember the condition one, with a dot point, of the Gateway Determination that required additional information to be provided to justify the 17-metre height that was sought in the planning proposal? You remember that Gateway condition requirement?---Yes.

20

Was there anything said to you about using the JBA report to satisfy that requirement?---Like I said, we, we had a meeting and it was, we needed to get peer group review and that's how then JBA came on board, but I didn't know, for example, whether it was, the council had to commission the Olsson report or what we had to do. I, to me, I thought it was a council function but we have to justify our position, we provide information to justify our report and we had to get a third party or a third, third group of consultants to, to see if they could support that proposal and that's how we ended up with the JBA report. But as to who or what or what's on exhibition, to who's, I, I don't know. Like I said, I leave that in the hands of my consultants. They, to, to work out.

30

And you left that in the hand of Spiro Stavis and Michael Hawatt?---Well, no, not at all. No, my consultants, my planners and my architects.

But they aren't the people who decide what goes on public exhibition, are they?---No, they're not.

Spiro Stavis essentially was the person who decided what went on public exhibition, wasn't he?---Obviously council, yes, yes.

40

And he was part of the team that, at the council end of progressing your proposal, you had working on this project, wasn't he?---Well, I didn't have him working on the project. He was the person that we had to contact at council and, the person we had to deal with at council.

So far as public exhibition is concerned, you had two reports, there were two reports to your knowledge, in existence?---Yes.

One is the Olsson report, together with its response to the JBA report, and the other was the JBA report itself?---Yes.

Did you expect that either or both of those reports would accompany the documents that went onto public exhibition?---I honestly didn't know. I didn't know the position of, what, it's not, like I said it's not for me, I don't know what council is going to do there. Like it's not, that's a process within council.

10 Did you say anything to Spiro Stavis about the need for urgency in the progressing of your planning proposal?---I would have, definitely would have said that yes we needed to get this, like I said if you look at the process it had been going for a long time.

Now, we've spoken before about the fact that the Canterbury Council was amalgamated with the Bankstown Council and I asked you to accept that that date was 12 May.---Yes, and I did.

Which is shortly after some of these documents that we've looking at here during the earlier days in May, and you understood didn't you - - -?---Yes.

20 - - - that as a result of amalgamation Michael Hawatt was no longer a councillor?---That's correct.

And I think you told us that you had no further contact with him.---To my recollection. I mean - - -

And why was that, that you had no further contact with him?---Well, well, he was no longer a councillor and to be honest like I said I'd seen things and I guess there was no need.

30 Your planning proposal at that stage though was on public exhibition or there was, what was the stage you understood it was at?---Well, I'm not sure if it was on public exhibition but obviously it still hadn't been finalised but that's when then yes, Mitchell Noble came in and it was another process, yes.

You understood Mitchell Noble to be a manager underneath Spiro Stavis didn't you?---Yes.

That Spiro Stavis was Mitchell Noble's superior.---Ah hmm.

40 And Spiro Stavis was the person that you had been dealing with and that Mr Hawatt had told you that he was talking with about the progress of your planning proposal.---Yes.

So you understood that - - -?---That Mitchell was, yes.

Yes. Could we play, please, another telephone recording. This is LI 09559, recorded on 20 May, 2016. 20 May is some days after amalgamation, eight days after amalgamation.

AUDIO RECORDING PLAYED

[10.34am]

MR BUCHANAN: Mr Faker, do you recognise being the first voice in that telephone conversation?---Yes.

10 Saying, “G’day, mate. How are you?”---Ah hmm.

And the other voice is that of Councillor Hawatt?---Yes.

Except that at that stage he was no longer a councillor.---Yes.

And you knew that, didn't you?---Well, well, I would have known, I guess I would have known or, in, well, was it a couple of days after? Yes.

This is eight days after.---Eight days after. Okay, in that period.

20 Now, Commissioner, before I forget, can I please tender LII 09559, recorded on 20 May, 2016.

THE COMMISSIONER: The audio file and the transcript of LII 09559, recorded on 20 May, 2016, will be Exhibit 80.

#EXH-080 – TRANSCRIPT SESSION 9559

30 MR BUCHANAN: Sorry for that interruption, Mr Faker, it would seem that the evidence that you gave us that you didn't have any communication with Michael Hawatt after amalgamation is not correct.---Well, obviously I spoke to him after that event. That would have been the best of my recollection at the time. But like I said it's, yes.

And it's Michael Hawatt who rang you.---Well, yes.

40 And it would appear that he is talking about fairly recent events in terms of his ringing Spiro and talking to Spiro and finding out where things are at with your planning proposal.---That's what he was doing.

And did that come to you as a surprise, that even though he was no longer a councillor he was in communication with Spiro Stavis in relation to your planning proposal?---Well, I guess so. I mean, I don't know what his chain of thought was but, yeah.

Sorry, go on.---I don't know what his chain of thought was but - - -

Is it possible that you didn't think it was a surprise because of the relationship that you had with him?---That's a possibility as well. Maybe he wanted to see what, you know, if it, what happened, if it got approved or didn't get approved or whatever. I, I, I can't answer for him.

10 You certainly aren't recorded as saying to Mr Hawatt, "What are you doing ringing me? You're not a councillor anymore," are you?---Well, yeah, with all due respect, I've spoken to him, you know, pestering probably for the last couple of years and, I mean, I, there's no need to be, I didn't feel I needed to be rude or "Why are you calling me?" or "Why are you doing that?" I just took the call and left it at that.

He says to you, and if we could just look at the second page of the transcript, please, "But after that it's finished." Sorry. "But after that's finished, no more, no more. Finished." You see that?---Yes, I do, sir.

You heard the voice say that?---Yes. Yes. Yes.

20 So you were told that at this stage on 20 May, 2016? There was no more that needed to be done in relation to the planning proposal, correct?---Yes. That's what he said, yes.

So why did you say to Mr Hawatt, "Okay, we'll catch up next week and have a chat?"---Well, I didn't want to appear to be rude. I just, I just said that. I mean, something to say, I guess. I mean - - -

Did you catch him up the next week?---I don't think so but I, I don't know. I don't think so. It could be possible. I don't know.

30 Were you indicating to Mr Hawatt that you would make him a payment as a result of his efforts?---Not at all, no.

Excuse me. Now, I can inform you and indeed I can show you a document, volume 10, page 130. Now, in the hard copy it's very small print.---Yes.

And you might have difficulty read it and we can blow it up a bit on the screen.---Thank you.

40 Can we just scroll down the page a bit. Can you see that this is a copy of a notice that was published about the proposal being on public exhibition? ---Yes, it's a notice, yes.

And what it does is it lists the material that has been placed on public exhibition. If we could just scroll down the page, please. "Details of planning proposal. Planning proposal." And then it itemises documents, including "(iii) Attachments". Can you see that?---Oh, yes. Yes, yes. Attachments, yes.

And there's a series of attachments there, and attachment 7 is described as JBA Height Study Report.---Yes.

And that's the end of the list of attachments. We can go back to the beginning of the list again, if you'd like, to help you answer this question. You can't see there, can you, a reference to Olsson, a Russell Olsson Architects report?---No.

10 So it would seem that the Olsson report was not placed on public exhibition but the JBA Height Study Report, which had been commissioned by you, was put on public exhibition.---Well, that's what it seems, yes.

When did you find out that that was the case?---I didn't know at the time. Like, I, to be honest probably when all the investigation started and things like that.

20 That was put on exhibition on 2 June, 2016. If we can just go to the call charge records, Exhibit 75, and go to the last page. Have you got a copy of that? Sorry. Have you got a copy of the - - -?---No. I'm sorry, no.

We'll give you a copy. Sorry, I was just checking something that I think is explained by different printers being used to print the same file. Can you see in the last entry, last two entries on this document, there are two calls recorded between your phone number and Spiro Stavis's direct line on 19 May, 2016 and then 16 June, 2016?---Yes.

30 And the phone call on 16 June, 2016 has the telephone line open for five minutes and 52 seconds. What was it that you were discussing at this stage, knowing as you do that the proposal, your planning proposal, had been placed on exhibition on 2 June? 16 June would be coming up very close to the end of the period of public exhibition.---Probably would have been asking, like, what's the process? How long will it take? What's, you know, like, what happens now? It comes back. Does it – I would have been asking the technical questions on, like, you know, how can we get to our, to the end line, I guess, to the finish line. I imagine that's what I would have been talking to him about.

40 You have no memory? Is that what you tell us?---Well, no exact memory of exactly what was said, no. But I would assume - - -

Or what the subject matter was? You don't have a memory of the subject matter or your purpose in ringing at that stage?---Probably to see that if, the, the exhibition is nearly finished, like, how long would it take? What's, you know, what's the next step and all that sort of stuff, I imagine.

I wonder if I could show you a document, please.---Sure.

What I'm showing you here is a couple of tables and then a series of copies of financial, as in banking, records.---Yes.

And what I propose to do, Commissioner, is take the witness through it but I think the parties should have a copy of it before I commence that.

THE COMMISSIONER: Yes.

10 MR BUCHANAN: So it might be convenient, if I can, that I tender the document. As I say, it comprises two tables and a series of banking records and I think comprises 14 pages.

THE COMMISSIONER: Right. The bundle of documents consisting of two tables and some banking records, 14 pages in total, will be Exhibit 81.

**#EXH-081 – FINANCIAL DOCUMENTS SHOWING
TRANSACTIONS ON 17 FEBRUARY 2016 FOR ASSAD FAKER &
MICHAEL HAWATT**

20

MR BUCHANAN: And I'll take you through the pages in order, but the first page is a table that's been prepared by Commission staff and it summarises cash deposits in accounts used by Michael Hawatt for 17 February, 2016 at, we'll see later, 2.17pm. Yes, sorry, it's in that table. 1417 hours. Can you see the table?---Yes.

30 And I'll just ask you to note that there are two entries, one for a deposit of \$2,500, comprising twenty-five \$100 notes, and one for a deposit of \$4,800 comprising forty-eight \$100 notes. And that, according to my often poor maths, and I'll stand corrected if I'm wrong, is a total of \$7,300 in \$100 notes.---Yes.

You follow that?---Yes.

Can I take you to the next page, please. That's an extract of a bank statement from Michael Hawatt's home loan account and it has highlighted the deposit into that account on 17 February, 2016 of \$2,500. You see that?---Yes.

40

And I'll ask you to turn the page. This is a deposit slip in respect of that deposit. It's for \$2,500. You can see the date, 17 February, 2016. I know it's upside down but the reverse, the obverse, sorry, of that slip is printed on the bottom of that page and if you turn it around, you can see that the person dealing with the deposit had identified that the 2,500, comprises \$100 notes. The next page is what is called a trace record. Apparently it's also sometimes called a voucher and it is held by the bank, showing that the time and location of the \$2,500 deposit on 17 February, 2016, the time is in the

bottom left hand side of what's been printed there and you can see 1417 hours.---Yes.

If you turn the page, the next page is an extract from a bank statement of Michael Hawatt's business cheque account and it has a cash deposit on 17 February, 2016, recorded for \$4,800. Do you see that?---Yes.

10 We turn the page and we have another trace record. This time for that latter account in the top right hand side, you can see that it's 17 February, 2016. And you can see the figure \$4,800 in the sort of second bunch of rows of data and against the time of it, is again recorded in the bottom left-hand corner of the computerised printing and it's 1417 hours. The next document, this is on page 7 of the bundle of documents, is a deposit slip and it's got a date of 17 February, 2016 and it's to the same account and it's for the sum of \$4,800. And on the next page is the obverse of that slip, and again it identifies that the deposit of \$4,800 was made in entirety in \$100 notes. Can you see that?---Yes.

20 Now, turn the page to another table that has been prepared by Commission staff. This is in respect of you and what it does is summarise a series of withdrawals that, as I'll be showing you in a moment, are cash withdrawals made before 17 February, 2016. It starts on 25 January, 2016. This is still looking at the table, and on that day there are two ATM withdrawals that have been noted in this summary and then there are entries for 29 January, 5 February and 11 February, and you'll just notice that the table indicates that the bank vouchers for the last two – the fourth and the fifth transactions – record that there were nine \$100 notes and two \$50 notes and ten \$100 notes for those two transactions respectively. Do you see that?---Yes.

30 And I ask you to turn the page, please, to page 10 of the bundle. This is an extract from the account for Bay Street Constructions Pty Ltd, and I think you've told us that Bay Street Constructions is one of your companies? ---Yes, that's correct.

You were a signatory for this account, weren't you?---Yes.

In this extract, you can see highlighted, firstly, two ATM withdrawals, one for \$800 and one for \$200 on 25 January.---Yes.

40 And then on 29 January, it records a cash withdrawal of \$400. If you can turn the page please, page 11 of the bundle. This is an extract from the business cheque account of F&H Developments Pty Ltd. F&H Developments Pty Ltd was one of your companies?---Yes, that's correct.

You're a signatory of that companies bank account?---Yes.

This has highlighted in this extract, a cash withdrawal on 5 February at Burwood Road in the sum of \$1,000. Do you see that?---Yes.

And if we go over the page, you can see that the second page of this extract, it's a continuation of the same extract, is for a withdrawal, in cash, on 11 February for the sum of \$1000, again made at Burwood Road. Do you see that?---Yes.

10 Can I ask you to then go over the page to page 13 of the bundle. The first one is a voucher for withdrawals made on 5 February, 2016. It indicates the amount of cash withdrawn in the top right-hand column of \$1,000 and then it indicates the breakup, how it was provided, against the entry on the left-hand side a bit over halfway down "cash disbursed:" and it says, "9/100 and 2/50". Do you see that?---Yes.

So it indicates that you obtained nine \$100 notes on that occasion and two \$50 notes on that occasion. Do you see that?---Yes.

20 And then if we go over the page to the last page in this bundle it's another voucher for a withdrawal, this time on 11 February, 2016. It's for a withdrawal again of \$1,000 in cash. Do you see that?---Yes.

And again if you look a bit over halfway down against the words "cash disbursed" it indicates that it was provided to you in 10 \$100 notes.---That's correct.

30 So you have an indication that Michael Hawatt on 17 February, 2016 made those deposits into his bank accounts at 2.17pm on 17 February and over the preceding four weeks you had withdrawn \$3,400 in cash of which at least, of which 1,900 comprised \$100 notes, at least. Do you understand that? ---Yes.

Now, early in the afternoon of 17 February at your request you met with Michael Hawatt at Jobel's Café in Belmore.---Ah hmm.

You made the call organising it. We've seen the documents already at 1.16pm.---Yes.

40 At 1.42pm Michael Hawatt sent you a text – I'm sorry. Yes, Michael Hawatt sent a text to Spiro Stavis indicating that he had been speaking with you and that he was trying to convey a particular message to Spiro Stavis about the extension of the period of time of the currency of the Gateway Determination. Do you recall that?---Yes.

And then at 2.17pm the same date Michael Hawatt deposited a total of \$7,300 in \$100 notes. Now, what I want to ask you is at that meeting at Jobel's Café or at any time immediately before or as you were leaving did you pay Michael Hawatt any cash money?---Absolutely not.

Do you have anything you want to say about these documents that I've shown you which indicates that Michael Hawatt deposited large amounts of cash shortly after, when I say shortly, over a period of days you had withdrawn large amounts of cash from your accounts or from accounts you controlled?---I can only comment about my accounts.

Yes.---I don't know what Michael done. But as you see my withdrawals are actually at Star City Casino so that money was actually lost on that day I would imagine because I'm not really a good gambler but, and - - -

10

THE COMMISSIONER: Well, they were the first two.---They were the first two, correct, and that's where they were withdrawn so, and the, the other couple of thousand bucks were what is it, a period of three weeks. I mean that's just my, for my personal use.

MR BUCHANAN: They certainly weren't for your business use were they?---No. Well, it depends if, what was going on. If, for example, no, no, it's personal use.

20 Yes.---Yes.

You didn't use cash for your business did you?---Well, I, I try not to because I get in trouble from my accountant. No, I don't.

And so you're not accounting for those particular transactions on 11 February and 5 February as being withdrawals for business purposes, are you?---Well, I don't know how they would, like I said, everything that I take out has to be accounted for, but that would have been then obviously for, for, for me, like, for my personal use, but yes, it's not for business. I
30 imagine not anyway.

So you deny, do you, that any of the money which Michael Hawatt deposited shortly after the meeting with you at Jobel Café had been obtained by him from you at that café?---I've, yes, I've never given him any money.

And you say, do you, that you never paid Michael Hawatt money to progress your planning proposal through the system and get it approved?
---That's right.

40 There were a number of other meetings which you had with Michael Hawatt, weren't there, apart from the one at the Jobel Café?---Yes, the ones we've discussed before, yes.

And do you say you never paid Michael Hawatt money at any of those other meetings either?---I never paid him any money.

Including when you said to him that you would, "meet him to have a chat?"
---Including that time.

That wasn't a phrase that you used to indicate to him that you wanted to meet him to pass him cash money?---I've never paid him anything.

Unless I've forgotten to tender something, that is my - - -

THE COMMISSIONER: I'll look at those and instruct you.

10 MR BUCHANAN: That is the questions I have at this stage for the witness, thank you.

THE COMMISSIONER: Thank you, Mr Buchanan. Mr Moses?

MR MOSES: Yes, thank you.

Mr Faker, just in relation to the property which is the Homer Street property, that's presently on the market, is it?---No, it's not.

20 It's not? It's not listed for sale?---No.

No.

THE COMMISSIONER: Can I just stop. Mr Moses represents the council and some council employees.---Okay.

MR MOSES: Sorry, sir, you said it's not on the market?---No, it's not on the market.

30 No. Okay. What were you proposing to do with that property?---Just going to see what happens I guess.

Right.---Just sitting on the property.

Okay. Is that, and you haven't decided to go ahead with the development of that property based on the approval that has been granted in respect of the use of that land?---Not at this stage, no.

40 Okay. And can I just go back if I can to some of the questions that Mr Buchanan asked you in relation to your dealings with Councillor Hawatt. Apart from Councillor Hawatt, did you meet with any other councillor in order to discuss your concerns in relation to the Homer Street property? ---No.

To the best of your recollection.---To the best of my recollection, no.

Okay. And did you meet with Mr Stavis outside of the council in order to discuss your concerns about the Homer Street property?---No, only at council.

Okay. And in relation to the discussions that you had with Councillor Hawatt, I think Mr Buchanan has put to you squarely whether or not you ever made payments of money to Councillor Hawatt and I think you've said no. Correct?---That's correct.

10 Okay. In relation to Councillor Hawatt, you're aware of course that he has a number of businesses that he operates by way of providing financial services. Correct?---Yeah, I sort of gathered that when I, at his office, yes.

Okay. And have you ever used his company for financial services?---No.

Okay. And in terms of the financing of your business, that is obtained I assume from banks in relation to the way in which you finance your property development?---Well, that's correct.

20 Okay. And in relation to your knowledge of local government and how it operates, you've got some understanding of how local government operates?---Yes.

And these meetings that you were having with Councillor Hawatt, what was the purpose of them, in your mind why were you having these meetings with him?---So hopefully we could get to a resolution with our planning proposal and finally get it resolved one way or the other.

30 Right. And why were you going to him to do that rather than speaking to council staff, such as the director of planning, in relation how your matter was progressing?---We did speak to staff. We, we had numerous meetings with staff, like, right through the whole process but we felt that, I mean, get told something, they were busy, they were understaffed, they were undermanned and I guess our only recourse was to go to an elected official, oh well, somebody that represents us to maybe push forward our case.

Is that what you were hoping he would do to push forward your case?
---Well, if he felt that he could support our position, then yes.

40 And in relation to these discussions, because we of course have heard the telephone recordings but we haven't heard the discussions at the coffee shop, can you recall what you were discussing with him, for instance, on 17 February, 2016 at the coffee shop? Were you talking about anything to do with what was going on at the council? I'm just trying to understand what was the purpose of these meetings?---Again, like I said, we'd had meetings with staff, we had to provide information, there was the issue of the Gateway Determination period coming, so it would have been to do with whatever was happening at the time and what stage the application was at in the process, I guess.

So you know on 24 February, 2016, there was a Gateway Determination extension granted by the Department of Planning and Environment? You were aware of that, weren't you?---Yes.

And the reason why that occurred was that there was still, of course, the need to have a report obtained or sourced which supported the council resolution in relation to the 17-metre height for the property, correct?---Yes, that's correct.

10 And that was, to be blunt, that was taking some time to put together, correct?---Well, yes, I mean, yeah.

And the final version of the JBA report was submitted on your behalf, less than a month later, of the extension being granted by the Department of Planning on 18 March, correct?---That, that would be correct, yes.

And in relation to that final version of the JBA report, did Councillor Hawatt inform you that a report had been received from the council's, if I can call them this, expert, Olsson Associates, that did not back your, I'll
20 withdraw that, the council resolution of 17-metre height? Were you aware of that?---Well, like I said - - -

Was anybody keeping you informed of what was going on?---Well, no, that would have probably come up in a meeting with Spiro. I, yeah.

This was the meeting that you had with Mr Stavis in relation to these matters, and I assume discussions you were having with him in late 2015?
---Yeah, it would have been towards the end of getting the final report in, yes, with the consultants, yes.
30

And did you ask for the department extension? You were the one who asked for it, didn't you, it was on your behalf?---Yeah. We, we asked for it. I thought council really needed to ask for it but we asked for it.

And it was granted?---It was granted, yes.

And this property at Homer Street, you really needed the height to be extended, didn't you, in order to make it profitable for you to redevelop, correct?---Not that I needed it to be a certain height but that's, that's the
40 initial proposal that when we went in we, we only kept fighting for what he had initially discussed with council staff at the very beginning of the process.

And were you aware that the council staff, prior to the council resolution, had actually disapproved of what it was that you were seeking to build, correct?---Yes. Shortly before.

Yes. And then council resolved to vote in favour of what you were proposing?---On that particular point, yes.

Yes. And in the lead up to the council meeting that approved the, if I can call it, the proposal that was being put forward on your behalf, and this occurred in 13 November, 2014, it's fair to say, isn't it, that there was quite a lot of communications going on between you and Councillor Hawatt in the lead up to the meeting, correct?---Yes, yes.

10 And it's fair to say is it that in those discussions you were impressing upon Councillor Hawatt that you wanted the council to approve the application that had been put in on your behalf. Correct?---Well, I expressed our position and hoped that he could support it, yes.

Okay. And you were aware during the course of those discussions that council staff had in effect taken the position that you should not get, as it were, the height for the property that you were seeking? You were aware of that in the discussions you were having with Councillor Hawatt?---Yeah, yes, yes.

20

And with Councillor Hawatt, I think you said earlier that as your elected official you were hoping that he would be able to move the matter forward on your behalf and were talking earlier about the Gateway Determination. Was that also what was happening here in your discussions with him, you were hoping that as your elected official he could progress this matter. Correct?---Well, at the first instance, support the matter at the, yes, yes.

Okay. And again I'm focussing her on the period leading up to the 13 November council resolution. Did you live in the ward where Councillor
30 Hawatt was elected?---No.

No. And you told us earlier that you first met Councillor Hawatt through a charity function that you attended. Correct? And I think that was in 2014 you said, for the first time?---Well, it might have been earlier, I don't, I don't know when that - - -

I'm not being critical of you.---Yeah, yeah.

I just want to understand it.---I'm just trying to, yeah, yeah.
40

And your, I think the telephone records that Counsel Assisting has shown us, I'm happy to put them up if need be, but I think you'll probably accept this, that in October 2013 there's a record of about five calls you've made or Hawatt's made five calls to you in October '13. So if that, if that is an accurate telephone record, can we assume that you must have known him prior to those telephone calls from him?---Yeah, well, again it comes back to when that function was. It could have been in 2012.

Okay. No problem.---I don't, I don't know.

Okay. And I mean is this basically it, and you can explain this to me, your, your position was in respect of the Canterbury Council is that the property development in that area was being somehow thwarted or stymied by staff not moving on things quickly enough. Is that right? Is that, was that your view?---Not in the first instance, no, but - - -

10 No, but you came to have it?---Towards the end, yes.

Yeah.---Towards the end, yes.

And because time means money, correct?---Yes.

Because you're sitting on a property, you owe money to the bank, and you need to get going if you're going to make something profitable. Correct? ---Correct.

20 Okay. And with Councillor Hawatt when you were having these discussion with him in the lead-up to 13 November, 2014, did he discuss with you how he was going to go about getting the support of the other councillors to vote in favour of a resolution that your property be favoured in this way, despite the fact that council staff had said that it was a no go?---(No Audible Reply)

No?---No.

No. I'm not putting this allegation to you but I'm going to ask you the question.---Yeah.

30 Did he ask you to give him money so that he could pay it to other councillors in relation to getting this through?---No.

Are you sure about that answer?---Yes.

Okay. Okay. And he never asked you for money. Correct?---No.

No. And you never gave him money?---I never gave him money, no.

40 No. Okay. Did you give him any interests in any property that you own? ---No.

No. Did you give him any options in relation to any property that you own? ---No.

No. Did you give money to any other councillor of Canterbury Council in the lead-up to 13 November, 2014?---No.

Okay. Okay. Can I then just go back to, if I can, 13 November, 2014. When did you first learn that council had resolved in favour of 17 metre height throughout the site? So the meeting was on 13 November. When did you first learn that they had actually decided to vote in favour of your, of your proposal?---Well, I was at the meeting, the, with the resolution it was some days after. I don't know exactly but it was some time after.

So you were at the City Development Committee meeting?---Yes, I was.

10 And prior to that meeting on 13 November, apart from speaking to Councillor Hawatt did you speak to any other councillor about your proposal?---I think I had, like I said I had a phone call to Fadwa Kebbe but she never, I don't believe she actually ended up being at the meeting. I'm not sure if I spoke to, there was, I don't know if it was Nam or there was another councillor, I'm not sure, but yeah, but yeah, that's it.

And was the purpose of making contact with these other councillors the same as with Councillor Hawatt, to put your case forward?---Yes, to put our case forward and see if they could support us.

20

And can I just go back to Councillor Hawatt. Can you just maybe tell us what were the things you were saying to him in order to persuade him that he should vote in favour of the 17 metre height throughout the site as opposed to the recommendations which council staff had made? This is in the lead up to 13 November, 2014. I just want to understand what was the case you were putting forward to him so that he could exercise his functions on the City Development Committee?---We, well, I explained to him the history. The couple of meetings that we'd have with Mr Orrizzio [sic] and his staff, the situation that arose with the land locking and council had the preference to amalgamate the site and obviously you probably don't want me to go through the whole process again but - - -

30

No, but just so that I understand.---Yes.

So what were - - -?---So then I - - -

What were the main points you were trying to make to him - - -?---Well, I explained - - -

40

- - - to persuade him that he should - - -?---Yeah.

- - - he should back you in respect of this issue.---Okay. I explained - - -

I'm just trying to understand.---I explained the history to him, what had happened, the process that we'd gone through, the amount of work that we'd done, the meetings that we'd had with staff. Again obviously there was no guarantees but we were seeking to get a height similar, the same as next door, nothing more, nothing less, and we put forward that case.

Showed him, showed him the drawings and the plans and he was, he was happy to support that.

And with Councillor, is it Fadwa Kebbe, is that right?---Yes.

So you never actually got to speak to her prior to the vote on 13 November?---I, I think I spoke to her over the phone, I think.

10 You did. Okay. And can you recall what you said to her in that conversation?---That if, that our proposal was going forward, again a bit of the history and if she would be able to support it and see if we could meet, but we never did.

And do you know whether she – I'll ask you the question, after the meeting of 13 November, 2014 do you know whether there was any provision of cash to her in relation to that, the vote on the meeting of 13 November, 2014?---No, I never, I never saw it.

20 No, never saw it?---No.

No. Okay. And you never gave money to anybody to give to her. Correct?---Not at all.

No. Okay. So can I just go through if I can your company. The company that you operate is Croycon Investments?---That's correct.

And in relation to that company is that the property development company that you use, that's the vehicle?---Well, yes, been holding the property, yes.

30 And what about River Road Investments, what's that company?---Oh, that was a company that we had years ago. We done a project, yeah.

THE COMMISSIONER: A what, sorry? I missed that.---That was a company that we had like years ago. We done a project probably 10/12 years ago.

40 Is your practice that if you're developing a particular site you incorporate a new company?---Not all the time but just different properties and what have you but no, not all the time.

MR MOSES: And Bay Street Constructions Pty Ltd?---Yes.

What does that company do?---Again that's holding property.

Danji's Investments Pty Ltd?---Same thing.

F&H Developments Pty Ltd?---Same thing.

And Young Street Constructions Pty Ltd?---We've just acquired a property, yes.

So if I can just go back with Councillor Hawatt, I'm sorry. He wasn't your friend, you said, correct?---Well, I met him through this process.

No, I understand, but he wasn't somebody who, was he somebody you regarded to be a friend?---Well, we never met socially or went out and had dinner or, no, no. Just like, for, for work.

10

And with the meetings you'd had with him where you'd catch up to meet with him, is there a reason why you wouldn't speak to him on the phone about the matters that you wanted to discuss with him? Why, why did you have to meet at the coffee shop for? Just trying to understand that.---Just meeting face to face and see what was going on because they can tell you anything if they really wanted to over the phone, but just to get a feel.

What, to see him face to face?---See him face to face and what's happening.

20

To look into his eyes?---Well, no, not to look into his eyes but just to see what his demeanour was.

Yes, okay. And so the purpose of catching up with him on these occasions was not to give him any documents, correct?---No.

Not to give him any money?---No, not at all.

30

MR STANTON: Commissioner, this had been asked and answered several times. I know the rules don't apply, ma'am, but you are under time constraints too, I understand.

THE COMMISSIONER: Thank you, Mr Stanton.

MR MOSES: I thank my learned friend for reminding me of that, Commissioner.

MR STANTON: No, no, and the Commissioner.

40

MR MOSES: Commissioner, do you want - - -

THE COMMISSIONER: Please continue, Mr Moses.

MR MOSES: Yes, thank you. In relation to your dealings with Councillor Hawatt, I want to put some propositions to you and see whether you agree with them. First proposition I want to put to you is this, was the purpose of your discussions with him, prior to the meeting of the council on 13 November, 2014, in order to influence him to vote in favour of the proposal

for the Homer Street property?---Not to influence him to see if I can get his support, which we did.

And did you know you had his support prior to the meeting on 13 November, 2014?---Well, probably a day or two before, yes.

And did he tell you that he had the support of all the other councillors to vote in favour of the resolution?---Well, not in so many words but that he would speak to other councillors. That's, I imagine that's what he would do.

10

But prior to the meeting on 13 November, 2014, I just want to ask you this question, put this proposition to you, you were aware, were you, prior to that meeting that the deal had been done and the vote would go through in favour of the property, correct? You were aware of that, were you?---No.

You weren't?---No, no, but - - -

20

So when did you know that it was going to go through?---On the night of the meeting when the meeting happened. We actually had consultants to present our case to council as well on the night.

Did Councillor Hawatt tell you before the meeting that he thought that he had the votes to get it through?---Not that he, to get it through but possibly it should be okay but, like, nothing's even at council meetings.

No, but he told you that, did he, because he had spoken to other councillors, is that what he told you?---Well, I can't recall exactly what he said but - - -

30

THE COMMISSIONER: So, he said it was possibly okay?---We've been, like, you go to many council meetings and you think that you're going to get something approved, it doesn't. You think it's not going to get approved and it does. It's, it's, we came, we came there with our consultants, they presented our case and we were hoping that we'd be, be able to get it over the line.

No. I think what we're interested in is what Mr Hawatt said to you.---Oh, he, he would support it and he would yes, he would support it and would see if we can get it over the line.

40

MR MOSES: Did he tell you that he had Councillor Azzi's support for it?---No. I, I don't recall.

Did he tell you that he had Councillor Adler's support for it?---I honestly don't recall like the, the names of the individual councillors or you know - - -

Did he tell you that he had Councillor Vasiliades' support for it?---No. I don't recall. Like I said, I, I imagine, just going off memory, that that would

have been a possibility because they were in the same party but again, that's just something that I would have thought, that's all.

Did he tell you that he had Councillor Nam's support for it?---Again, I don't recall him telling me specifically any particular councillor.

And just if I can ask you this, George Vasiliades, you know who George Vasiliades is?---Yes, I do.

10 Yes. And do you place your properties for sale with his real estate agency from time to time?---No. Only, only the one property.

Which is?---We tried to sell.

Which is where?---In Homer Street. We never sold. That was through his brother, Peter.

And did you know him at all?---Who?

20 George Vasiliades?---Yes, I know him.

Is he somebody you've done business with?---No.

Never?---No.

Okay. Just give me a moment. Just with the Homer Street property that you've just referred to as being placed with George's brother, is that another Homer Street property?---No, that's the same property.

30 When did you put that for sale?---We ran it to auction I think maybe a year ago. I'm not sure, probably about a year ago, a year and a half ago possibly.

So you put it on the market, did you?---Yes, yes.

Is that after council had altered the position or the position had been altered in terms of the height restriction, correct?---It was, yeah, roughly when that planning proposal was coming through, in that time frame we knew what was going to happen.

40 Okay. Okay.

THE COMMISSIONER: Can I just ask, you had dealings with Peter before, didn't you?---I, I still do, yes.

No, no, no, no, but before putting forward the proposal to the council you had other dealings with other properties with Peter?---Yes, I bought a couple of properties through Peter and he looks after those properties for us. Like, they manage the properties as agents.

So, okay.---Yes.

And that's a relation - - -?---Peter's an estate agent, yeah.

10 That business relationship was going before you approached council with this proposal for Homer Street?---Well, the first time I actually met him was when I actually first built the property. That's when I first met them. I didn't know any of these people before that, so yeah. But um, we actually, yeah, sorry the question again?

Sorry. I was just trying to work out, you've had business dealings with Peter Vasil. Yes?---Not business dealings, he's just my managing agent, they look after our - - -

Well, they're business dealings.---Oh, okay, fair enough, okay, yeah, sorry.

20 And they started before you put the proposal to council for the Homer Street property?---Yes.

All right.---Yes.

MR MOSES: Just with Peter Vasiliades, he works in the same real estate - - -?---That's - - -

- - - company as his brother.---That's correct, yes.

30 It's all the one thing, isn't it?---Well, I've never spoken to George about any property or - - -

Okay.--- - - - or, or he doesn't manage, or I don't know who manages the properties, their office does but every time I have an issue or something, there's a problem, something needs to be fixed, it's Peter.

You speak to Peter. Did you ever have meeting at Peter Vasiliades' office with Mr Hawatt?---Not that I recall. Like I said, I'm, we, I think we, he might have come there and we went to the coffee shop for that first meeting.

40 I have no further questions, thank you, Mr Faker, thank you.---Thank you.

THE COMMISSIONER: Oh, sorry, Mr Neil. I was about to forget you.

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

THE COMMISSIONER: Thank you, Mr Neil.

MALE SPEAKER: Nothing, Commissioner.

THE COMMISSIONER: Mr O’Gorman-Hughes?

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

THE COMMISSIONER: Mr Drewett?

10 MR DREWETT: Commissioner, I don’t have any questions of the witness and I didn’t want to break the flow of questions because Exhibit 81 was tendered quite early in the piece, but I would like to make an application to redact certain parts of Exhibit 81 in relation to pages 2 and 5.

THE COMMISSIONER: Hold on.

20 MR DREWETT: Those being the bank statements that details other transactions, account numbers, BSB numbers. I don’t think Counsel Assisting is relying on most of the information on those pages. I think with respect Counsel Assisting is relying on the transactions of 17 February, 2016 only. I’m just wondering whether there was any utility to what could be viewed as sensitive private personal information being put on the public database.

THE COMMISSIONER: Now, Mr Buchanan, can you deal with that now?

MR BUCHANAN: There’s no, there’s no opposite to a non-publication order being made in respect of personal information that is contained in these documents but it might need to be, if I could talk to Mr Drewett and he could provide us with copies which identify the particular information in respect of which he would seek a non-publication order.

30 MR STANTON: And also, Commissioner, might I rise at this time to enjoin with Mr Drewett in respect of my client concerning his statement pages which appear, Commissioner, at pages 10, 11, 12 and the conclusion, please, Commissioner, if I may.

THE COMMISSIONER: All right. What I’m going to suggest, we’re coming up to morning tea time. Could I ask Mr Buchanan, can you have some discussions with Mr Drewett and Mr Stanton over morning tea on that issue and then Mr Pararajasingham, have you got any questions?

40 MR PARARAJASINGHAM: I have no questions, Commissioner.

THE COMMISSIONER: And I’m sorry, have I missed – Mr Stanton, I’m terribly sorry. Sorry. Before I get to you I haven’t missed anybody else out? Right. Mr Stanton.

MR STANTON: (not transcribable) cameo role, but anyway. Indeed. No, I have no questions. Thank you, Commissioner.

THE COMMISSIONER: Mr Buchanan, do you have any - - -

MR BUCHANAN: Just two matters arising from questions Mr Moses asked you, Mr Faker. He asked a question to the effect that you needed the 17-metre building height limit as part of the envelope that was being applied for in the planning proposal for your project to be viable. You must have calculated a lot yield from what could be built within the building envelope that was proposed in the John Pagan/Zanardo Studios reports. Correct?

10 ---Yes, correct.

And I take it from the fact that you put forward the planning proposal to council that you calculated that you would obtain a profit from carrying out a development within that envelope?---That's the purpose, yes.

And is it the case that if the building height limit was reduced to at its highest point 14 metres then the lot yields you had calculated would be significantly reduced?---Reduced, yes.

20 And it would significantly reduce your calculated profit?---It would reduce the profit, yes.

Did it make it unviable?---Well, I mean it's probably economically unviable to a degree, yes, probably but actually look, I didn't really go through all those numbers but we, like I said we had a position and we followed that to the end our position, yeah.

I won't be too long, Commissioner.

30 THE COMMISSIONER: No, no, no that's fine.

MR BUCHANAN: Have you lodged a DA pursuant to the resolution of the administrator approving the reduced building height limits for the planning proposal?---No.

On the subject of Ray White Real Estate Earlwood, you indicate that they manage your properties. Do you collect rents or do you get them to collect rents on your properties?---They collect the rent, yes.

40 When did that start?---Whenever we bought the particular property. Whenever the tenants moved in so probably, I don't know, four/five years ago.

And did that remain the case until very recently or is it continuing?---It's continuing.

Thank you. Thank you, Commissioner.

THE COMMISSIONER: Can I just ask you something.---Sure.

You gave some evidence that you met Mr Hawatt at the charity do and then when you were asked a series of questions about why did you approach him subsequently you said oh look, he was our elected official, something like that.---To that effect, yeah, and he seemed a pro-development councillor.

But in an answer to Mr Moses' question, you don't live in his area or his ward or whatever.---No, I don't live in the area at all.

10

The property, the Homer Street property, my understanding was it was actually in the ward of Councillor Con Vasiliades. Was that correct?---I'd, I'd assume so, yes.

Did you approach him?---No.

So again the reason why you approached Mr Hawatt?---Well, he seemed like I said a pro-development councillor.

20 And you'd met him at the charity do?---Yes.

So you had a personal introduction through that?---Yes.

And then your perception of him was pro-development?---Yes.

Anything arising from that? We'll have 15 minutes' morning tea break. We'll resume at 10 to 12.00.

30

MR BUCHANAN: Could Mr Faker be excused?

THE COMMISSIONER: I'm terribly sorry, Mr Faker. You may be excused.---Thank you. Thank you.

THE WITNESS EXCUSED

[11.34am]

LUNCHEON ADJOURNMENT

[11.34am]