

DASHAPUB01045
21/06/2018

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pp 01045-01089

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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 2.30PM

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

THE COMMISSIONER: Apologies. I still had a jury out. There was a three-question jury note so I apologise and I had hoped it would have been dealt with more quickly. So again I'm sorry. We're now up to our next witness.

MR BUCHANAN: We are, Commissioner. Giuliano Vaccari.

THE COMMISSIONER: Mr Vaccari. And is Mr Vaccari legally represented? No. Have a seat, Mr Vaccari. Again I apologise, you must
10 have been sitting around.

MR VACCARI: No problem.

THE COMMISSIONER: Do you take an oath or an affirmation?

MR VACCARI: An oath, thanks.

THE COMMISSIONER: Now, Mr Vaccari, has it been explained to you that I can make a direction that basically means any answers, subject to one important exception, that you give here can't be used against you in other proceedings?---It hasn't been explained but I am aware of what you're talking about, so - - -

10 And you would like me to make such a direction?---Please, that would be lovely, thank you.

Can I just emphasise the exception.---Ah hmm.

That is if you give false or misleading evidence to this inquiry, if you do that you can be prosecuted, it's like for a form of perjury under the ICAC Act. It's a very serious offence, it brings with it a term of imprisonment as the maximum penalty.---Thank you.

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

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

40 THE WITNESS: Thank you.

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Thank you, Commissioner.

Mr Vaccari, your name is Giuliano Vaccari?---It is.

And Giuliano is with a G, G-i-u-l?---That's it.

Mr Vaccari, what is your occupation?---I'm a pharmacist.

And are you involved in local government presently?---Yes, I am, I'm the Mayor of Strathfield.

And have you been mayor continuously, for a period of time?---No. I've had, this is my third term.

10 Right.---Yes.

When did you first hold office as mayor?---From September 2012 till September 2013.

And the second office, second term?---Then there was a year off, then there was another year on, so September of '15 to '16, and now I've come back after the recent elections at our council and this is, I'm on a two-year term at the moment which will conclude in September of next year.

20 Thank you. You have made a statement for the Commission in this inquiry?---I have.

And I'll show you this document, please. If you could flip through it, does that appear to be a copy of the statement you made dated 4 November, 2016?---It is, thank you.

Please refer to it if it will assist you in answering any questions.---Thank you.

30 In it you referred to a Mr Stavis, Mr Spiro Stavis. Can you tell us, when did you first come across Mr Stavis?---Okay. Mr Stavis was employed in the planning area of Strathfield Council, so I came across him from time to time in, in, in corridors and, you know, and at planning meetings, so because he wasn't a director at our council and because our general manager of the time had a fairly strict policy that councillors would only interact with the general manager or the directors, I didn't often come across Mr Stavis because he was down in the management structure.

And he was a planner, as you understood it?---Yes, yes, exactly, yes.

40

And over what period of time did you have dealings with him?---As I say, they were always informal, so it would have been while he was employed at the council, probably 12 to 18 months I suspect.

You tell us in paragraph 5 of your statement, that's on the second page, that after Mr Stavis left council you received a number of phone calls from various property developers concerning developments which had been in the hands of Mr Stavis when he left council and were about to be approved at

the time but were still not approved and that comments were generally favourable about Mr Stavis and how facilitative he had been. First of all, these various property developers, can you recall, I'm not asking you to name them but can you recall any of them in particular?---No, I can't.

Did you know a property developer by the name of Marwan Chanine?---I came to know of him with the development on Liverpool Road but that was the first and only time that I came across Mr Chanine.

10 Was he a person who expressed any opinion to you about Mr Stavis?---No. No. At the time when the dealings were going on with Liverpool Road it was more about, you know, how can we get this out of council, it's been in there too long. It was not about Mr Stavis at all.

In paragraph 5 you've used the word "facilitative" to describe the opinions expressed to you by the various property developers about Mr Stavis. Is that your word - - -?---Yes.

20 - - - or is it a word that you heard them use?---No, no, it's my word.

And what was it that was said about him that caused you to use that word? ---It wasn't so much about what was said about him, it was what was said about his colleagues once he was gone and that was that once Mr Stavis was gone the development approval process seemed to be elongated whereas when Mr Stavis was handling the applications it always seemed to be, it always seemed to go through nicely and more easily and more quickly to the point.

30 And when you say go through, do you mean to the point of being determined that the application should be approved or determined that the application should be refused?---No, more about timeliness, about how long it was in the council process.

Facilitative can also mean ensuring that an application is approved and in as much as there are any obstacles to approval posed by development controls that those development controls are in some way avoided or overcome or that the application is massaged to ensure that it meets the controls.---Sure.

40 Is that a sense in which you understood from anyone that Mr Stavis provided assistance?---Yes. I wouldn't go as far as saying avoid or overcome. I would just say, you know, favourable interpretation because council documents that are DCP documents are always open to interpretation by a planner.

And favourable to whom?---To the applicant.

You go on to say you were made aware from these conversations that Mr Stavis had a facilitative approach towards development, and is that

consonant with what you just said that essentially you're more likely to have your application approved if Mr Stavis had been the planning officer assigned to the file than if one of the other planners had been assigned to the file?---I think it's correct to say that, yes.

Now, you go on to say that you received a telephone call at the time that Mr Stavis was seeking employment at Canterbury Council from Councillor Michael Hawatt.---Yes.

- 10 I'll just break that up a bit, please. Who was Michael Hawatt in your circle or sphere at that time?---I knew him to be a Liberal councillor on Canterbury Council. I had met him maybe two or three times at Liberal-style functions, you know, fund raisers or meet and greet type - - -

Were you in the Liberal Party?---I am. I was and I am, yes.

Thank you. Yes.---So yeah, I wouldn't have by any means considered him a friend or a social acquaintance. He was someone that I came across.

- 20 Now, I'm not trying to be critical at all but I just want to pick up the words you used in paragraph 6 about, I'm sorry, paragraph 7 about the time when Mr Stavis was seeking employment at Canterbury Council for the position of director of planning. Do you know when that was?---No, I couldn't tell you specifically, no.

So how did you know that he was seeking employment at Canterbury Council for the position of director of planning?---Because I had the phone call from Councillor Hawatt.

- 30 And what was said in that conversation as best as you can recall?---I think I - - -

It's not a trap, not a memory trap.---No, no, it's okay. I don't feel trapped.

You've got a version in paragraph 8.---Yeah, sure. Yeah, look, I think it was, it was an informal request for a reference from one colleague councillor to another colleague councillor. That's the way, that's the way I approached it.

- 40 And what sort of reference was being sought by Councillor Hawatt? ---I, I, I think he was just wanting to make sure that he was competent at, at the time. I, yeah, I don't recall the conversation lasting more than, you know, a couple of minutes.

But it was a telephone conversation, was it?---Yes, it was a phone call, yes.

You can recall a telephone conversation?---Yes.

I just want to ask you that because if I could ask you to have a look at, if the witness could be shown volume 3 of Exhibit 52 at page 220. I need to explain to you the type of document that you're looking at.---Yes.

It has a front page, page 219, but what you're looking at in the table on page 220 is data extracted from Mr Hawatt's mobile telephone, a combination of metadata as to, to whom or from whom a message was received and the date and time and then the message itself. So these are three text messages - - -?
---Oh, okay.

10

- - - that appear there.---Okay.

Now, have you had a chance to read them?---Yeah.

They're all on 18 November, 2014, and within the space of 10 minutes.
---Yes. Look, it could be that I've got a faulty memory, could be that it was an SMS rather than a phone call.

20

Yes.---But there was certainly an interaction.

Okay.---And it went along the lines of as I've explained and I think this, this metadata reinforces that Michael was trying to, to work out what sort of guy that Spiro was and I, and I replied that he was, yeah, can-do and, and seemed to be well regarded amongst property developers.

Now, I'm not trying to force you into a position of saying that it was necessarily an SMS now that you see this in front of you, is it possible that there was a phone conversation - - -?---Yes.

30

- - - as well as - - -?---Yeah.

- - - an exchange of text messages?---My recollection was, yes, my recollection was that it was a phone call, but as I say, we're now talking four years ago so - - -

Of course.--- - - - it could be that it was a text message.

40

Okay. But you're certainly happy to acknowledge with volume 3, page 220 put in front of you that there appears to have been an exchange of SMSs on exactly the same subject with the same opinions being expressed?---Exactly, exactly.

Can I take you now in the same volume to page 216, and this is a table which sets out a series of SMSs extracted from Michael Hawatt's mobile telephone and they involve people who are not you, until we get down to, if you look in the left-hand column there's a number, the 10th SMS - - -?--- Yes, I've got that.

- - - to you on 17 November, so the day before the SMSs we just looked at
- - -?---Yes.

- - - but at 8.09pm. “Hi Gulian, what’s the progress on DA for 549-557
Liverpool Road, Strathfield. Thanks, regards, Michael Hawatt.” Is that the
number of the development site that you described as Liverpool Road a
moment ago?---Yes, it is.

10 And so that was one that you understood or you recall understanding was
where the developer was Marwan Chanine?---Correct.

20 What dealings did you have with Marwan Chanine in relation to that
property?---Yeah, okay, so I was a councillor on the council. I was the chair
of the Planning Committee and I was also the mayor at the time. So my
role, I felt, here was to, to acknowledge generically the, the ownership of the
land by, by the party but also to try and assist the residents with their needs,
understanding that this property was zoned B2 with a height level, I think,
of four levels, if I've got that right, and it came straight up against a zoning
of R2, which was normal residential, freestanding housing with a height
level of two levels. Families living in residential homes. A block of units
being built directly next door. So it was a, it was a conflicted time as far as
this development was concerned. So, again generically, I like to
acknowledge the fact that, that in this case the Chanines owned the bit of
land, that, that they had every right to develop within, within certain
parameters, but equally I was, I was keen to, to ensure that, that the
residents’ needs were addressed. So the negotiations that went backwards
and forwards were centred on these aspects.

30 But what were the dealings you had with Marwan Chanine in relation to this
DA?---Some phone calls and I think some meetings facilitated by our
council officers.

About how many meetings did you have with Marwan Chanine?---I couldn't
tell you exactly but it would have been two or three. It was protracted.

And did you ever have a meeting with him alone?---No. Not to the best of
my knowledge.

40 Did you ever have a meeting with him with another councillor or
councillors present?---No. No, I don't, I don't think, I don't know, I can't
remember other councillors being present. There were certainly council
staff, senior council staff present.

Planning staff?---Yes, exactly.

And do you know who organised those meetings?---It would have been
organised through the, through the council, I suspect. Through the officers.

Did you know a Bechara Khouri?---No, I've never, I've never, no, I don't know – until the day I saw him in this witness stand, I, I, I'd never seen the man, to the best of my knowledge.

And you've not received a request from a man you understand to be Bechara Khouri to meet with Marwan or Ziad Chanine?---Not to the best of my recollection, no.

10 THE COMMISSIONER: Can I just check, the meetings that you had and where you said senior planning staff attended, were they all held at council premises?---Yes, they were, yes.

MR BUCHANAN: Now, SMS number 13 is from you to Mr Hawatt at 7.36am on the 18th, and you respond, “Vocal residents and well-organised. Let’s see how it goes.” Do you see that?---Yes, I note that I had a message from, must have been Councillor Hawatt the night before, and I must have just been replying the next morning, I think.

20 Yes. Certainly.---That’s, that’s the way it seems to be.

That can be accepted.---Yeah.

But do you recall whether this was at the stage that a report had been provided to council by the council officers making a recommendation in respect of the DA?---Yes, this, this - - -

And what was the recommendation?---Recommendation was for that the item can be approved.

30 And so when you said, “Let’s see how it goes,” what were you trying to convey to Michael Hawatt?---I was, I've always been trained as a councillor - - -

No, no, no, no, no.---No, no, I, that’s - - -

40 What were you trying to convey to Michael Hawatt?---Yeah, I was trying to convey to him that I wasn’t going to tell him what he wanted to hear, right? And if you could just let me finish. I've always been trained as a councillor, whether dealing with an applicant or a resident, to be careful in providing information prior to meetings, to always keep the language, you know, non-conclusive. So that’s, that’s, that’s, that’s the answer there.

THE COMMISSIONER: And so what did he want to hear, in your mind? ---Oh, he wanted to hear that it was going to be approved. But ultimately, Commissioner, it wasn’t that evening.

Not on that evening?---No, it wasn’t, even though it was recommended for approval.

MR BUCHANAN: Had there been a prior communication – that is to say, before 17 November – between you and Michael Hawatt about that property?---Oh, look, I, I couldn't say definitively. I'd say no but I, I'd stand corrected if you showed me something.

Well, did it come to you as a surprise that Mr Hawatt was making an inquiry about this property?---Yes, it did.

10 He hadn't shown any interest in it previously, as you'd recall?---No, no. I'd had, I'd obviously had dealings with, with the, with the Chanines through the council dealings and through, through some phone calls but, yeah, Councillor Hawatt getting involved was a, was a surprise.

Did you have after 18 November any dealings with Michael Hawatt in relation to that property?---Depends on what the relevance of the 18th, is that, is that the night after - - -

20 Well, that's the day that these SMSs are exchanged that you provided the information about.---Okay. I couldn't, I couldn't tell you definitively. It is four years ago, I haven't got records.

Do you have a recollection of multiple communications with Michael Hawatt - - -?---No.

- - - about the property?---No, certainly not multiple.

More isolated if anything?---Exactly.

30 Thank you, sir.---Okay, thank you.

THE COMMISSIONER: Mr Moses?

MR MOSES: No questions, thank you, Commissioner.

THE COMMISSIONER: Mr Neil?

MR NEIL: No questions, thank you, Commissioner.

40 THE COMMISSIONER: Mr Andronos?

MR ANDRONOS: No questions, Commissioner.

THE COMMISSIONER: Mr, sorry, Drewett?

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

THE COMMISSIONER: I've forgotten Mr O'Gorman-Hughes, I apologise.

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

THE COMMISSIONER: Mr Pararajasingham.

MR PARARAJASINGHAM: No questions, Commissioner.

10 THE COMMISSIONER: Right. Thank you so much for coming. You are excused.

THE WITNESS: Thank you, Commissioner, thank you.

THE WITNESS EXCUSED

[3.16pm]

20 THE COMMISSIONER: I apologise for the delay, Mr Olsson. The first thing will do is, oath or affirmation?

MR OLSSON: Affirmation, please.

THE COMMISSIONER: Mr Olsson, have you had explained to you that I can make a direction that any answers that you give can't be used against you in other proceedings with one exception?---Yes.

Would you like to avail yourself of that direction?---Yes, please.

10 Can I just emphasise the exception is if you give false or misleading information to this inquiry you may be prosecuted for an offence under the ICAC Act. It's like a form of perjury. It's a very serious offence. The maximum penalty is a term of imprisonment.---Yes, I understand that.

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

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

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Commissioner.

40 Sir, your name is Russell Olsson?---Yes.

And Olsson is O-l-s-s-o-n?---Yes.

And are you an urban designer by occupation?---Yes.

And you made a statement to the Commission in relation to this inquiry?
---Yes.

Can I ask you to have a look at this folder, please, and keep it with you.---
Thank you.

Now, don't be alarmed at how much appears to be in it, but the first 12
pages are a copy of your statement?---Yes.

Thereafter there are copies of documents you refer to in your statement, but
for the most part I'm going to be taking you to other copies of the same
documents.---Right.

10

Please refer to your statement if at any stage it will assist you, and I'm going
to be asking you questions about that statement.---Yes.

You've set out in paragraph 3 your occupation and the fact that you own
and operate Olsson & Associates Architects Pty Limited.---Yes.

That hasn't changed?---No.

20

And then over on page 2 you have described your qualifications in
paragraphs 4 and 5.---Yes.

And described very briefly the nature of your client base in paragraph 6?
---Yes.

Paragraph 7 you talk about in May 2015 being contacted by a Lisa Ho from
Canterbury City Council to review a planning proposal.---Yes.

30

Is that right? And there was a phone call in the first instance - - -?---Yes,
there was.

- - - followed up by an email?---Yes.

If the witness could be shown, please, volume 9 of Exhibit 52 and if you
could turn to page 113 of this volume, please.---Yes.

Do you recognise there a print of an email that you received from Ms Ho
dated 6 May, 2015 about the site 15-23 Homer Street, Earlwood?---Yes.

40

Now, if I could just ask you to look closely at the attachments, description
of the attachments. It's first of all a determination and letter to council.
---Yes.

Would you have a look, please, at page 105 to 106.---105 to 106?

105 through to in fact - - -?---I'm not following, I'm not following I'm
afraid. 105 to 106, is that going backwards?

Yes, it is going backwards.---Oh, excuse me.

That's exactly what it's doing.---Okay.

Through to in fact page 109.---Yeah.

That is a Gateway Determination with a covering letter addressed to Mr Montague, the general manager of the council.---Yes.

10 Together with a written authorisation to exercise delegation on the last page.---Yes.

Page 109. Is that what you received, that Ms Ho sent you attached to that email of 6 May at page 113?---Yes, it is.

Then the next document that's described as being an attachment is council report. Can you go to pages 38 to 49 of the same volume.---Yes.

20 And just flipping through it through to page 49 that is essentially a planning officer's recommendation and report to council, to a City Development Committee at council dated 13 November, 2014.---Yes.

I'm not suggesting the report bears that date. It goes to a council meeting at that date.---Yes.

You understand how these things work. And is that a document that you've received?---It is.

30 And can I just draw your attention to page 50, I'm sorry, my mistake, page 48. Down the bottom of that page there's a recommendation that appears there.---Yes.

And I can just take you to the first one, "A planning proposal be prepared to amend the maximum building height to be set at 14 metres on part of the land along Homer Street and a current maximum height of 10 metres be retained for the remaining part of the land at 15-23 Home Street, Earlwood."---Yes.

You recall that?---I do.

40 Now, then you also received a document according to this list of attachments background info to consultant and if I could ask you to go to page 114 of this volume.---Yes.

Single sheet. Is that a copy of the background info to consultant's attachment?---Yes, it is.

So that provided you with the basic documents that you needed to undertake the project that you were being asked to consider?---That's correct.

And you were asked by Ms Ho in that email whether you would be prepared to provide an expression of interest and essentially you agreed to do so. Is that right?---I did.

Can I just ask you to, I should have taken you to this at the time. If you can go to page probably 106.---Yes.

No. Sorry, page 107, the actual Gateway Determination.---Yeah.

10

And you can see that condition 1 required the planning proposal to be amended to include three different things.---Yes.

And the third thing, that is to say dot point 3 read, "Further justification to support a maximum building height of 17 metres on the site and additional study that accurately represents and addresses the impact of future development on the character of the local area is to be made available with the planning proposal during the exhibition period."---Yes.

20 Did you understand you were being asked to provide a report that canvassed both those aspects of dot point 3?---I did.

Were you at some stage provided with a copy of the council planning proposal? If you could go to page 58 of volume 9. The proposal that had been submitted for Gateway Determination. It goes through to about page 97-98. I'm sorry, 88.---Yes, yes. But I didn't receive it first up.

30 The likelihood is that you would have been provided with this given that it's pretty central to the task you were being asked to perform.---Yeah, yeah. Yeah. Yes, yes, I did.

If you could turn to page 141 of volume 9.---Yeah.

A fee proposal.---Yes.

And that is on pages 142 and 143 and following.---Yes.

In your statement, if I could take you back to that, paragraph 11.---Yes.

40 You said, "It was clear the council was seeking independent advice as per the instructions of the department." And then you go on to summarise the condition in the Gateway Determination.---Mmm.

Why did you say in this statement that it was clear that council was seeking independent advice, emphasising the word independent?---I said that because council was asking for an external consultant to do the work. Council didn't have the resources or the, maybe the skills within the, within the council to do the work, and my understanding was that there was being

the, that I was being asked as an independent consultant to provide advice as to whether the 17-metre height limit over the whole of the site would, would be within the character of the area, and as an urban designer, as a professional urban designer, and to give my opinion about that.

Whether it could be, to use the words of the department, justified.
---Justified, that's right.

10 Now, you were notified that council accepted the scope and fee proposal that you provided them.---Yes.

And then you received, statement page 15, some plans prepared by Zanardo design and BTP, Burrell - - -?---Threlfo.

Threlfo, I think, Pagan.---Yes.

Can I ask you to go to pages 4 to 32 of volume 9. The Studio Zanardo document starts at page 21.---21, yes.

20 Are they the two documents of which you were given copies?---They are.

And you would have read those, obviously.---Yes.

And you formed an opinion simply from reading them and having regard obviously to the existing planning control of relevantly a building height limit of 10 metres?---That's right.

30 You formed an opinion just from reading them that you had a problem, you have concern.---Yes. Well, I'll add that I visited the site and I, I looked at what was being proposed in this proposal and I didn't agree with the scale of the development that was being proposed, particularly on the corner of the riverbank and the, and Homer Street. And that was the main, well, that was the initial sort of main issue that I had with it.

And in particular the developer's consultant's plans you told us in paragraph 12 of your statement - - -?---Yes.

- - - sought a building height limit of 18 metres.---That's right.

40 Now, in paragraph 16, and I'll ask you to take into account also paragraph 17, you say, "We applied various principles in coming to our conclusion as to why this proposal was not within guiding principles." Was this, when you use the word "we," do you mean you in conjunction with your team?
---Yes, that's right.

And paragraph 17 you summarised why you thought the proposal, sorry, the development consultant's proposal was inappropriate in that context.---Yes, that's right. Do you want me to describe that or - - -

No. Well, is there anything inaccurate or missing from - - -?---No, it's, it's, no.

- - - what you say there in paragraph 17?---No. As I just said, I thought it was the, there wasn't, didn't step down enough down toward the river, it was too tall, being 15 metres which was equivalent of four storeys on that corner of the riverbank and, and Homer Street, and, and so I thought the visual impact would have been far too great, because that corner is a very visible corner. I could go on, but on a, on a, on a riverbank there are 180 degree views that one can have towards a site like that, you can look at it from both sides of the river, you can look at it from along the river, you can look at it coming across the bridge, and so it is a particularly visually sensitive part of the site and, and so I thought that was an important point and I pointed those things out in my report.

And can I take you then to page 149 of volume 9, and through to page 173. ---Yes.

20 That is the draft report that you submitted?---It is, it is.

And it was submitted on 18 June, 2015. If I can just ask you to have a look at page 174 of the same volume.---Yes.

Halfway down that page - - -?---Yeah.

- - - there's an email from you. "We prepared a draft report for your team to read."---Yeah.

30 And amongst other things you say, "We've also recommended an FSR of 1.3:1" - - -?---Yeah.

- - - which is a result of the built form considerations that you identify earlier in that email.---That's correct.

Now, you then received, looking at the email at the same page, an email from Lisa Ho responding a few weeks later, on 8 July. "We've reviewed your report and have made a few comments which I've tabled in the attachment. If you could make the changes, that would be great." If you have a look over the page at page 175 to 176 - - -?---Yes.

- - - is that attachment. Do you recognise it?---Yes, I do.

What did you think about those changes that Lisa Ho was asking you to make?---Well, I think that she was mainly wanting to make my report more legible as a report. It was more of a technical description of, of, of what she would like to see, the format of the report and the sorts of things that it would address. It didn't go to the content of my findings.

When you say legible, do you mean easier to read or do you mean technically legible?---Easier to read.

Can I just draw your attention to in the table there on page 175, the third dot point in the first row under the heading - - -?---Yes.

- - - "Need to have strong reasons why the 17-metre height cannot be supported."---Yes.

10

How did you read that request?---Well, I, I obviously needed to express it, my report did have urban design principles and they were quite clearly stated about, you know, the principles of stepping down the hill, the principles of, you know, symmetry when one crosses the bridge and my desire to have the two sides of the street to read of a similar height, the same height of three storeys. There was - - -

Can I just ask you to, can I interrupt.---I don't want to go in, okay, I'm going too far.

20

No, no. Well, in terms of detail, yes, for the moment.---Yes. But, so I suppose I was, I did, I did look at the report and I did strengthen some of those comments but they were already, most of them were already in the original report.

Well, that might be an answer or it might not to my next question. Did you see anything in this table that Ms Ho sent you of changes that she wanted you to make as asking you or requiring you to change an opinion - - -?---Not at all.

30

- - - expressed in your report?---Not at all.

In your draft report.---Not at all.

Now, if I can just ask you to have a look, just for brief summary purposes, at page 168 of the volume. You went a little bit further than your commission of proposing an alternative envelope. Is that right?---Yes, yes. Because in order to assess whether a 17 metre height limit over the whole of the site has got an impact on the context, on the character of the area I, my training is to design building envelopes that will address that question and seeing in particular as the Studio Zanardo design already had done building envelopes I thought that this was an appropriate thing to do, was to look at it, you know, with fresh eyes and come to my own conclusions.

40

Taking you then to page 170 in volume 9. In the left-hand column at the end of the column it reads, "The height of the tallest component of our envelope ranges from 13.2 metres to 14.5 with an average of 13.9."---Yeah.

Right. And then your recommendation so far as FSR was concerned on page 171 at the end of the column of text of 1.3:1.---Yes.

And then finally there was two pages of a comparison of models of the two models and if you could just assist us as to how to read this. When you say the 2014 proposed 15-23 Homer Street envelope, what was the source for that?---That is the Zanardo envelope.

10 Thank you. And then on the left-hand, I apologise, the right-hand side of images is the envelope in visual form that you've recommended.---Exactly.

And going over the page the two sets of images perform the same function there.---Exactly.

If I could ask you to have a look at page 174. Sorry, I've taken you to that page already. What I just wanted to draw your attention to, it's the same volume, page 55, just so that we can get an understanding of what the outcomes are of the two models.---Mmm.

20 This document is information that was provided by email by a council planner to the mayor on request, and in it the planner – a Ms Gillian Dawson – addressed a number of items, but in particular FSR. Can you see the table?---Yes.

The second row. The right-hand column. She identified the FSR, calculated it at 3.75:1.---Right.

That's a pretty big difference from yours.---It is.

30 Does that figure come to you as a surprise for the applicant's model?---No. No, it doesn't. Do you want me to go further about that?

No. Thank you. If someone wants to know, they can ask you.---Certainly.

Now, on the 16th of July, page 178, looking halfway down that page.---Yes.

A person called Bronwyn Horn at your office - - -?---That's right.

40 - - - sent the revised report, with the revisions as requested, to Lisa Ho. ---Yes.

And Lisa had one little issue that she wanted to take up, but otherwise that indicates that you did provide a final report at that stage.---Yes. Yes.

Paragraph 20 of your statement, you say you remember meeting with Spiro Stavits about 8 September, 2015, in the company of council planners – I assume you understood them to be council planners – Warren Farleigh, Gillian Dawson and Lisa Ho.---Yes.

And you tell us that Stavis said words to the effect, "The report is quite good but I'm thinking of a little more height near the existing building." You disagreed with him at that meeting?---Yes, yes, I did.

And he said, "I think I'm still considering the height," or words to that effect.---Yes. Yes, that's right.

10 Then on the next page of your statement you tell us in paragraph 21 that you were asked by Mr Stavis personally to come and meet him, and that was a meeting held at council chambers on 20 April, 2016.---Yes.

And there was no-one else present?---No.

And he said to you, "I have the JBA report."---Yes.

20 And, "The councillors are very pro-development and it is very difficult dealing with them." And then you go on to tell the Commission in your statement, "The JBA report was a report completed by the applicant's planners." If the witness could be shown volume 10, please. This is another volume of documents, and if you could go to page 37, please, through to pages 73. Is that a copy of what you've referred to as the JBA report? ---Flick through it. Yes, it is.

And was it at that meeting that you were supplied with a copy of it?---Yes.

You didn't have a chance, of course, to read the report at the meeting.---No. No.

30 But you tell us what Mr Olsson said in paragraph 22 of your statement. I want you to review it. "I think it's better than the previous proposal." ---Yes.

Now, you say, "I believe he wanted me to agree with him that the JBA report was," and you say now, "better." First of all, I just want to check, at this meeting on 20 April, is this the first time that you'd seen any report by JBA on this site?---Yes. Yes, it is.

40 So what was it that made you think that Mr Stavis, in the way he talked to you, that you've reproduced in your statement there, wanted you to agree with him?---Well, he, he was saying that this was a very, in his opinion, this was a very good report and it was better than others or better anything else that he had seen for, for the site.

And when you attribute to him the words "the previous proposal", are you referring to the developer's consultant reports?---I think it, I think it means the Zanardo report.

Right. Now, you indicate that he said something to you about the councillors being very pro-development.---Yes.

What can you recall about what he said on that subject?---He said, he said, I'm, I'm, he said, "The councillors are very keen on development and I feel under a lot of pressure regarding, regarding that matter."

Now, you go on to say that you understood or believe that he was recommending that you change your report.---Yes.

10

Is there anything else that, apart from what you've told us, that contributed to that conclusion on your part?---Well, he, he said, he said that he, he asked me to see if I could change my report and I was surprised by that. But I, I listened to it and then, and then he said, "And any changes that you, that you make to the report, you can charge us what you would like for that," or words to that effect.

20

Yes.---And he, he also said that there's a register of, council is getting a register of urban designers for, to refer to, you know, projects to, for consultancies, and that "You should put your name onto that register," or "You should, you know, register for that." And so I felt like he was wanting me to change my report and giving me these, I could dare, I, I think I could use the word enticements to do so.

30

And at one stage you say it's the first time you've ever been asked to change a report, and another point in relation to the same subject you say, "In all of my years I have never experienced this. This is unusual." When you say, "This is unusual," is that a euphemism?---Well, what I mean is often you'll get comments from a senior person asking for, making a comment about a report which is a general comment or, you know, it's, but this was being very specific and he was being very sort of directive. And, and so I think to have the director of planning telling me directly that this was something that he wanted to see, my report to be changed, like, my own professional opinion, without really giving me a critique on my own terms but by putting up someone else's work, I found that to be very unusual. Like, I, I've heard of people asking, you know, on my terms why, why would, how did you arrive at this conclusion? And we'd have the conversation about the principles behind it or something like that, and I'd accept that that is a genuine, professional interaction. But, but when I'm just being given another person's report, or consultant's report, and said, you know, "Just do something like this," that is not, in my estimation, the right way to do it.

40

You said in your statement that he, Mr Stavis, asked you to review the JBA report. So he's asking you to produce a new body of work, as you understood it.---Yes, yes, he is.

And which would refer to the JBA report. And he was indicating to you what he wants to see as the tenor of your review.---Yes. Review it, but to

change my report. And so not just review it but to, for me to change what was the substance of my report, to changing it to the, to something like the substance of the JBA report.

In your statement, paragraph 25, you say you didn't raise this with anyone. You left the meeting, tried to process the comments. You were taken aback. Went back to your office, read the JBA report in detail, and you say, "I still came to the same conclusion as I had before, that the proposal recommending the height of 17 metres was too high and didn't comply with the controls for that area."---Yeah.

When you say the same conclusion, is that the conclusion you had in relation to the Burrell Threlfo Pagan - - -?---Yes.

- - - report together with the Zanardo design report?---Yes, that's right.

Now, you, on 9 May, if you could go to page 82 of volume 10, page 82. ---Is this my statement?

20 No, I'm sorry, this is the volume of documents.---Oh, this is the volume. 82 did you say?

Yes, if you don't mind.---Yep.

And this is an email from you to Mr Stavis on 9 May, 2016. "I have amended our report as discussed, the draft report is attached for your review.---Yeah.

30 Next page, that's the front page of the document that you attached. ---Yes.

And it goes through to page 109.---Yes.

Just very quickly to ascertain the structure, first of all after the contents page, page 85 of the volume has in it the introduction?---Yes.

40 And the second paragraph explains, gives a little history, "Our initial study was prepared in June 2015, that is reproduced in this report on pages 1 to 23."---Yeah.

"Council received a planning justification report from JBA Planning dated March 2016. Olsson Associates have reviewed the JBA report and we make our final recommendations in appendix 1 of this Olsson Associates report." ---That's right.

Now, if you can just put a finger on page 85, because I'd like you to now go, if you wouldn't mind, to first of all page 106, page 107.---Yes.

That's the same comparison modelling - - -?---Yes, it is.

- - - that we saw in the earlier version of your report?---It is.

And then page 108 to page 109 is an appendix headed Final Recommendations.---That's right.

10 From what you have said in that second paragraph of the introduction, is it right then that the new material, apart from that second paragraph in the introduction, the only new material really - - -?---Yes.

- - - was the contents of pages 108 and 109?---That's correct.

And so if we want to see what the report was that you sent to Lisa Ho after she had said, "Could you make these changes, please," - - -?---Yes.

- - - all we need do is look at pages 85 through to 107?---That's correct.

20 And the only thing that will be different is in that regard is the second paragraph of the introduction?---That's exactly right.

Thank you. And then very briefly the recommendations appear there, you refer on the top of the right-hand column to council's recommendation for a 14 metre height. Was that the officer's report to council?---Yes, that was the officer's report.

And there's then a reference to the JBA report.---Yes.

30 You have provided a short analysis of it.---Yes.

Can I just clarify one aspect.---Ah hmm.

Six lines from the bottom of the right-hand column there is a setback to the top floor, counting floors from the western end of the site this top floor is effectively six storeys.---Yes.

And then you reference a page or a particular figure in the JBA report.---Yes.

40 And so that was your opinion from, that was your professional opinion reading the JBA report?---It was. Well, I go on to say that this is an excessive height in the context of the riverfront.

Yes, I'm not overlooking that.---No, but anyway, that is, that is my opinion, well, that's why - - -

And your reading of the JBA report that it was proposing - - -?---Yeah, my reading of the - - -

- - - a six-storey - - -?---Exactly, that's right.

An envelope which would accommodate six storeys.---It would.

Then over the page, page 109, the reference at the top of the left-hand column to the original planning proposal again is the Burrell Threlfo Pagan report and Zanardo design reports. Is that right?---Yes, yes.

- 10 Then in about the middle of that paragraph you refer to pages 1 to 11 of this OAA urban design envelope study. That's this report.---Yes, it is.

And OAA is simply Olsson & Associates Architects.---Olsson & Associates Architects, yes.

And then when you refer in the second-last line of that paragraph to the original planning proposal you're referring again to the Burrell Threlfo Pagan together with Zanardo design reports?---That's correct.

- 20 And then you made some recommendations under the heading Recommendations in the right-hand column and those can be read.---Yes, they can.

Can I ask you this, was the, you might have implicitly answered this already but I'll just put it in another way. Was the envelope model the subject of your JBA report recommendations any different from the envelope model that you had proposed in your original report?---You mean in the, when you say the JBA report recommendations you mean in the last, that last page?

- 30 Yes.---The last page. Look, it was, it was - - -

When you, you had these recommendations – I'm sorry.---It is slightly different and so I criticised the JBA report for it being too close to the river, too high and I recommended that it be set back, the fourth storey and the fifth storey both be set back much further from the river than what they currently had. It's not exactly the same as my original and so there is a discrepancy there.

- 40 What is the discrepancy?---Oh, it's a matter of a few metres where the, my, my envelope is three storeys then it becomes four storeys further back up the hill.

Towards the street?---Towards, yeah, towards the roundabout let's say and I'm recommending that the fourth and the fifth storey be set back approximately to that position.

So is it the setback that is the difference?---It is the setback that I've recommended here.

Thank you.---I understand there is a slight discrepancy there but, you know, given, that's, that's what it is.

Not asking you to justify it simply identify it.---Sure, sure.

10 If you assume that the proprietor had calculated a lot yield based upon the design set out in the Zanardo design report what impact on that lot yield would it have been if your recommendation had been adopted?---Sorry, could you repeat that.

Would it have affected the lot yield as originally calculated on the building envelope set out in the Zanardo design report to implement your recommendations?---Yes. My yield would have been slightly less because the Zanardo design takes the fourth storey, four storeys all the way to the riverfront and my design has three storeys at the riverfront and then a setback of something like 15 metres or something to the place where I take it up to four storeys.

20 Can I ask you now to turn to volume 10, page 110 and you can see at the bottom is your email forwarding the report then there is a person called Mitchell Noble who is talking to Spiro Stavis and then on the top of the page is an email from Spiro Stavis to Mitchell Noble. You can assume that Mitchell Noble was a manager of a essentially planning section.---Yes.

30 This is dated 9 May, 2016 and Spiro Stavis says to Mitchell, "I don't particularly like his recommendation, not quite what we discussed. Let's chat tomorrow please about his wording." Did it come to you as a surprise, sorry, does it come to you as a surprise to see that that opinion was expressed about your recommendation by Mr Stavis?---No.

40 When you see now him saying, "Not quite what we discussed"?---Well, I, he told me in the meeting with him, he told me, "Look, I really like this report and I'd like you to make changes," and I, I, I didn't, I didn't say strongly one thing or the other. I said, "Well, mmm, maybe," because I was sort of taken aback. And so I, I didn't, I didn't make any commitments but neither did I fully endorse what he was saying, and it was only when I came back to the office that I really formulated my own opinion. So I think he may have come away from that meeting thinking that, that I was going to do something much more closely aligned to the JBA report than, than what I did eventually.

Page 114 of volume 10. In the middle of that page is an email to you from Spiro Stavis of 10 May, 2016, and he expresses an opinion, "I must admit it is a bit on the negative side with additional recommendations that I don't believe we discuss," as printed.---Yeah.

And then you responded a couple of days later, 12 May, 2016, in the email that's reproduced at the top of that page.---Yeah. Yes, I can see that.

Was there a reason why you waited for two days? Were you snowed under with work or were you thinking about how to respond?---Well, well, no, I, I think these are difficult issues. I mean, I, I - - -

10 What's the difficulty?---Well, I, I, you know, I didn't feel like I was – I was being put in a difficult situation of having to change my, asked, being asked to change my professional opinion and I, and I, and I was, I was trying to find a way of both expressing my own professional opinion whilst, you know, trying to, you know, talk or come to an agreement somehow with the director of planning of the, of the council that had engaged me to do the work.

20 Looking at the email, the main paragraph there, in the last sentence you say, "My recommendation brings it back to something like the original planning proposal." Are you saying you mean the proprietor's proposal?---Yeah, yes, I, I think I did say, I think that does mean that and I, I sort of, those words are not, I think it's actually come back closer to something like my, as my proposal was. But it, I think that what that means there in that email is that it's something like the Zanardo design.

If you had your time over, would you rephrase that sentence?---I would.

30 How would you rephrase it?---I'd say that it's, that it's more closely aligned to what, to my, to my proposal or at least I, I wouldn't want to say that I in any way I would be endorsing anything like the Zanardo design. And the purpose of me keeping my own report in, in the final report was to make everyone aware that that is what I actually thought was the right approach.

Coming back to your statement now, have you got that still in front of you? ---Yeah.

On page 10, the bottom of page 10 you have paragraph 20.---Yes.

You're aware that a public exhibition occurred.---Yes.

40 And you talk about that also in page 30. You would have expected your report to be on the public record and exhibition as required by the determination.---Yes.

Obviously you did believe that the determination required that the public exhibition include the justification report obtained by council.---Yes.

That was your believe, was it?---Yes, it was.

Was there any other reason why, in your opinion, your report should have been put on public exhibition or included in the materials placed on public exhibition?---Well, certainly included because it was a report that did address the matters that were raised by the Department of Planning in their directive. I had been commissioned by council to, to look at that and give my professional opinion. And, and so I certainly thought that my report should have gone on public exhibition. Now, whether another report would be put on public exhibition is, you know, wouldn't be ideal but at least if my report was put on public exhibition as well as the JBA report, at least the information would be there for the public to make up their own mind about, about the matter, or at least, so I, I, I think that it was very, I was really surprised that my report didn't go on public exhibition because I think it should have in a matter of public interest.

Having regard to the purposes of public exhibition in the Environmental Planning and Assessment Act?---Yes. That's right.

Paragraph 32 of your statement, you say to put the JBA study on public exhibition didn't meet the requirement of the department. Do you say that for any reason different from what you've just told us?---Well, my understanding was that, when I was given the commission my understanding was that my report was the one that was being sought and that was going to go, go on public exhibition. And, and so I was surprised that, that the JBA report would have been considered by council to, to put on public exhibition. So I, I, I felt like the JBA report was, was being put up by the proponent and not being put up by, you know, by council, so I didn't think it should, should have gone on public exhibition and I didn't think it met the requirements of the Department of Planning.

As expressed in the Gateway Determination condition.---As expressed in the Gateway Determination. I, I understand the word "independent" isn't in that, that, that determination, in that wording.

The word "independent"?---The word "independent" is not in, in that - - -

Condition.--- - - - condition. But the understanding, what in my opinion would be that it would be done by an independent person or consultant.

Can I just test that?---Mmm.

What would your opinion have been had the justification report been drafted in-house at Canterbury Council planning department?---Well, I, I think that that would have been the whole planning department, in my view, would, would have had to have had carriage of it.

What do you mean by that?---Well, what I mean is that someone – let's say there was an architect or an urban designer who was in-house, as some councils have. They would have had to have done the work, done models

like that, and have, would have had to have come up with, you know, a reasonable, principled, urban design approach to the site.

You're saying it would have had to have been a multi-disciplinary approach?---Yes, yes. I, you know, they probably would have had the traffic people in, you know, seeing if - - -

10 That's what you mean by the whole of the department?---Yeah, whole of the department. You know, they would have had to, you know, does the traffic, does, can the cars come in here? That sort of thing. They would have had planners and, and an in-house architect or urban designer skilled in three-dimensional design, architectural design.

Can I take you to paragraph 35 of your statement in which you say, in the second sentence, "I have never heard or seen planners writing notes to assist the developer's applications." Now, can I show you a document, please.
---Yes.

20 Volume 9, if you could go back to that, page 197 through to 218.---197, did you say?

Correct.---Yes.

And if you just flip through you can see it's a draft of the JBA report.---Yes.

With handwritten annotations in red ink.---Yes.

Have you seen that before?---Yes.

30 Were you shown it when you were making your statement?---That's right.

Had you seen it before then?---No, I hadn't.

And so is this what you're referring to when you say, "I have never heard or seen planners writing notes to assist developers' applications" - - -?---That's right.

- - - in paragraph 35 of your statement?---Yes.

40 Can I ask you this, you had characterised the effect of the notes on that document commencing at page 197 as "to assist developer's application". Is that the view that you took about those notes, on other words, did you actually read their content?---Yeah. Look, I have, I have read their content. I suppose it's a subtle distinction that I make that normally a director of planning would make a, stand back a little bit and make some general comments. They may be in terms of written comments, you know, typed, talking about principles that underpin a piece of work. I haven't seen a director of planning actually get out a pen and draw on the applicant's report

to sort of mark it up and say well, this is the way it should be, although I do understand that there are, sometimes it's just about needing more detailed analysis and so - - -

That is what Mr Stavis has said in some of the comments.---Mmm.

If you have a look at page 216 for example, "More detailed analysis required as advised in earlier comments."---Yeah.

10 But can I ask you about this comment at 214. If you could turn to that.
---Yes.

After asking whether this is the dominant character, et cetera, he concludes that comment by saying, "More detailed analysis and justification required."---Yes.

20 Did you feel that that fell into the same category or a different category from a council planner's annotations as to whether more detailed analysis was required?---Well, I think, I think that the subject matter which is the vertical character of the neighbourhood is really talking about, it's making a statement that, you know, the neighbourhood has already got a vertical character and then to say that justification is required to demonstrate that there is a, there is an existing vertical character and there's a, this new one will fit in with that vertical character, I think that that is sort of pushing towards, you know, recommending height or at least, you know, a certain, you know, quite a lot of verticality or building height. And so I think that that is slightly different, you know, because it's taking the side of saying well, you know, let's, let's demonstrate how there are very, you know, already high buildings and that this is quite okay to be a high building as well.
30

Can I move sideways on a similar topic. Have you ever come across a director of planning at a council performing drafting work on plans which form part of a proponent's DA which then improve the prospects of the DA being given consent?---No. Again to have a director of planning actually hands on to that degree is unusual.

40 Well, when you say unusual are you using a euphemism again?---Well, I've never seen it. I've never seen a director of planning actually do a drawing on a, on a DA. From what I can remember, I can't remember any previous example of it.

And if it's done for the purpose of improving the chances of the DA being approved, have you got any comments on the propriety of that?---Well, well, yes, I, a planner's role is to assess what is put to them by an applicant and they assess that in, in relation to the planning controls of the, that were in force at the time and so the, a planner has to receive work from the private sector and then assess it and then make comments on it in using the

planning controls at their disposal or, you know, that rule the development of the area. It's not the role of the planner to get involved in actually shaping DAs to help them to get through. I think that once you, once, it's okay to criticise something or to even suggest that, you know, make a suggestion in a written response, and this happens all the time where you'll get a written letter from council saying that, you know, we've assessed this and against the planning controls and we've found this, this, this, this is standard practice to, to have, for someone to actually start drawing on drawings and to, to assist a DA to be approved I think crosses the boundary
10 between being, one being sort of an assessor to one being a proponent.

Thank you, Mr Olsson.

THE COMMISSIONER: Right.

FEMALE SPEAKER: No questions, Commissioner.

THE COMMISSIONER: Thank you. Mr Neil?

20 MR NEIL: No questions, thank you, Commissioner.

THE COMMISSIONER: Mr Andronos?

MR ANDRONOS: No questions, Commissioner.

THE COMMISSIONER: Mr O'Gorman-Hughes?

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

30 THE COMMISSIONER: Mr Drewett?

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

THE COMMISSIONER: Mr Pararajasingham.

MR PARARAJASINGHAM: Yes, Commissioner.

Mr Olsson, can you hear me?---Yes, I can, thank you.

40 I appear for Mr Stavis.---Yes.

I just have a couple of questions for you.---Yes.

Do you know why you in particular were chosen to, to do the study by the council?---No, I don't.

Do you have any inkling as to why?---Well, as I, as I said in my statement, I, I, I don't know why I was chosen. I, I have, I had previously done work for Canterbury Council as an urban designer and so I was known by the planners.

Do you know whether you were on a list of some sort?---No, I don't think I was. I don't know if I was.

10 You said you'd done some work previously - - -?---Yes.

- - - for Canterbury Council. Can you just tell me about that briefly?

---Yes. The project that comes to mind, the one that was most recent was in 2014, I was part of a team to prepare a rezoning proposal for council-owned land on the bowling club site at Canterbury, Canterbury Council, or at Canterbury in, in 15 Close Street, Canterbury. So I did that work for council, at least as part of a team, and the council planner who was my direct connection or my direct project manager was Michael Conway.

20 You've described one project, were there others that you had worked on with council?---Look, no, I can't remember. That's one. I, I, I, I, I, I, like because I've also done work in Canterbury as an architect and so I probably, you know, met a range of different people in the planning department, but, but so that's how I would be known.

Sure. And did you have a working relationship with Warren Farleigh?

---Not at all. I had never done any work for – as far as I can recall I never had done any work directly with Warren Farleigh being a project manager.

30 Let me ask you this. Before you got this assignment, who did you know in the Urban Planning Team?---Well, like I said, Michael Conway, who's a strategic planner, and I knew of Michael, sorry, Warren Farleigh, but probably through being, putting in a development application myself, not as a consultant to the council.

Sure. What about Gillian Dawson?---I, I, I wasn't aware of her. I, I, I didn't know that she, I don't recall, I wasn't aware that she was a planner at council, no.

40 And no other name comes to mind?---No, because Spiro Stavis wasn't employed there.

Well, let me ask you about him. I understand that the first time you meet Mr Stavis is at a meeting on 8 September, 2015.---Yes.

What did you know about Mr Stavis professionally prior to that meeting?---I didn't know him. I, I had never come across him professionally.

What did you know about him professionally?---About him?

Mmm.---I didn't know anything about him, I've got to say. I, you know, I, I had never worked with him or for him or, or against him and I hadn't, I wasn't really aware of him as a, as a, as a person.

10 Were you told anything about the circumstances in which he came to be appointed as the director of planning?---Oh, no, I didn't discuss that at all. I, I, I wasn't aware, I wasn't aware of it. I mean, subsequently I, I, I've read in, during, look - - -

No, I understand. Yes.---Yeah, I, I had heard that there was subsequently during this, courses of this, course of this hearing that there was, you know, something in the media about Mr Stavis.

Sure.---But, but I didn't read that.

Sure. No, I - - -?---I wasn't aware of it at the time.

20 Yes. And you didn't know anything about his competency as a director of planning?---No, I had no, I had no reason to question his competency as a director of planning. He could have been a perfectly fine director of planning, as far as I knew.

I just want to ask you about this meeting on 20 April, 2016.---Yeah.

It's the case that as at that date you were and indeed are an experienced architect.---Yes.

30 You also considered yourself an ethical practitioner, didn't you?---Yes.

You are and you were familiar with the New South Wales Architects' Code of Professional Conduct?---Yes.

And indeed that is something that you were familiar with back in 2016? ---Yes.

40 And certainly it's the case that you have always taken the obligations in that code very seriously?---Yes.

You've always considered that code binding on you in your capacity as an architect?---As a registered architect I need to adhere by the ethical code, yes.

And certainly you have at all times done your best to adhere to the obligations in that code?---Yes.

The statement that you prepared, it's dated 12 October, 2016.---Can I just look at that?

Yes, of course, of course.

THE COMMISSIONER: Which paragraph?

MR PARARAJASINGHAM: If you just look at page 1 you'll see the date. ---Are you talking about my statement?

10

Yes, your statement.---Page?

Page 1. You'll see in the header.---Yes.

It says "date" and then "12 October, 2016".---Yes.

See that?---Yes.

So that's the date that you signed your statement, correct?---Yes.

20

And in this statement you give an account of a conversation that you had with Mr Stavis on 20 April, 2016.---Yes.

So now I'm talking about page 8 of your statement. You see it's headed Meeting 20 April?---Yes, I can see that.

You see that?---Yes, I can see that.

30

So approximately six months after the conversation this statement is prepared. Correct?---Right.

And it's the case that when you came to prepare this statement you relied on your memory of the conversation that you had with Mr Stavis on 20 April, 2016?---I did.

I take it you had no file note or contemporaneous note that you referred to when you prepared your written statement?---No, I didn't.

40

Now, is it the case that you are approached by an ICAC officer in about October of 2016 to prepare this statement?---Yes.

And I take it you were told something to the effect that ICAC were investigating some practices at Canterbury Council?---Yes.

And you understood that one of the matters of interest to ICAC was the circumstances surrounding this planning proposal at 15-23 Homer Street? ---That's right.

And certainly you were aware that this project had, and I'm using a neutral term here, a complicated history?---Well, going on the briefing that I received from Lisa Ho there was a number of different documents that I needed to take into account and so that's what I would say was, my work was based on that documentation and nothing other than that.

Sure. No, perhaps we're at cross-purposes. My question is this. You understood that this particular planning proposal, 15-23 Homer Street - - -? ---Yeah.

10

- - - had a complicated kind of back story, didn't it?---To the extent - - -

THE COMMISSIONER: What, at the time he was making his statement?

MR PARARAJASINGHAM: Yes, yes, yes.---Sorry, can you say that - - -

20

THE COMMISSIONER: Sorry, Mr Olsson. I was just a little bit confused about whether the proposition was that you knew it had complicated history when you were doing your report or when you were making your statement, and Mr Pararajasingham confirmed that it was at the time you were making your statement, did you know it had complicated history.---Well, obviously everything that had led up to that time of the statement was in my mind.

MR PARARAJASINGHAM: Yes.---And so as well as the briefing prior to me doing the work, but then as well, so subsequent meetings with Mr Stavis let's say which did make the, the work more complex, yes, I would agree to that extent.

30

Yes. And you understood that ICAC had some concerns about the course that this particular development took. Correct?---Well - - -

I'm asking you - sorry - - -?---Well, yes, I think, you know, by being, by being asked to have an interview with ICAC obviously they've got concerns.

Yes. And reality is that you had been involved in part of that history, and I'm not putting an allegation to you.---No, no.

40

You accept that?---Yes, I accept that.

Now, as at October 2016 when you made the statement, you didn't know what if anything would come from the ICAC investigation. Correct? ---No, I didn't.

Who if anyone would be its targets for example?---That's exactly right.

Could you just turn to paragraph 22 of your statement, please.---Yes.

Now, paragraph 22 goes over to the next page, there are really three parts to it, so I'll just refer to each part of paragraph 22 if that makes sense.---Yes.

If you look at paragraph 22, part 2, here you are recounting things that Mr Stavis said to you.---Yes.

And you see the first two sentences you refer to things said by Mr Stavis. Correct?---Yes.

10 The next two sentences you set out your belief. See that?---Yes.

And the last sentence you say, "This is the first time I've ever been asked to change a report." Do you see that?---Yes.

Plainly on the content of that, of part 2 of that paragraph, you hadn't been asked to change your report, had you?---Well, I believed that he, by giving, showing me the report that I was being asked to change my report.

20 I understand the belief you had but that last sentence reads, "This is the first time I've ever been asked to change a report." That's what it says, correct, and what I'm - - -?---Yeah. Okay.

What I'm saying is certainly on our own account at that point in the discussion Mr Stavis had not asked you to change anything in your report? ---No, but - - -

30 THE COMMISSIONER: Did Mr Stavis ever say words to you change the report?---Well, I'd like to say that later in the conversation he said, "You can charge whatever you like for the changed report, Russell."

MR PARARAJASINGHAM: I will take you to that. I'm just trying to work through the conversation you had with Mr Stavis.---Yes.

And so do I take it you accept that it is not correct to say in that last sentence of part 2 at paragraph 22 that you had been asked to change your report, at that stage in the conversation?---Okay, let's say at that stage in the conversation but certainly I had, I was asked later.

40 I understand that and I'll ask you about that now but you accept what I put to you?---Okay.

Then if we go over the page to what I'll call paragraph 22, part 3, in the second line you attribute to Mr Stavis the following, "and assess the JBA report and change your report." See that?---Yes.

Can I suggest that Mr Stavis never said that to you, he never said "change your report"?---Well, I, I think he did.

So you think he did. Is it possible that he didn't?---No, he, he asked me to change my report and, and he said that, you know, the time that I spent to change the report I could charge what I wanted for that.

I'll come to that part of but you said a moment ago that you think he said "change your report", does that, do you have a little bit of doubt about that? ---No.

10 So your position now is that he definitely said that?---Sorry, say that again.

Your position is that he definitely said that?---He definitely said that.

Is it not possible that what I took you to in the previous page, is it not possible that in your recounting of this conversation some six months earlier you have allowed what appears at the end of part 2 in paragraph 22, that is at least a belief that you have been asked to change your report, is it possible that you've allowed that to colour your recollection of the conversation that then followed?---No, it's not possible because even though it's six months later I did change my report and I sent it to Mr Stavis and he, he expressed the opinion that it was a bit negative and he, he didn't tell me, when I sent him the report, the revised report, the changed report he didn't say oh, I didn't ask you to change your report, Russell. I just wanted you to review the JBA report. He didn't say that to me. He, you know, if he didn't intend me to change my report he would have said oh no, I didn't mean you to change your report. I just wanted you to write a review of the JBA report. And he didn't say that.

30 My question is a bit different to that. I'm just asking you to focus your mind on the way this conversation unfolded. You understand?---Okay. Sure.

And what I suggested is what appears at part 2 of paragraph 22, the line, "This is the first time I've ever been asked to change a report." You've accepted that at that stage in the conversation Mr Stavis did not tell you to change the report. You've accepted that.---I'll accept that.

40 Yes. My questions is, is it possible that if your recollection is such that at that stage in the conversation you had been told to change the report erroneously, is it not possible that then when we go over to the next page that has coloured your recollection of the conversation where you then say that Mr Stavis says change your report?---No.

No.---No.

Commissioner, I note the time. I will be a little bit longer.

THE COMMISSIONER: Define how much longer.

MR PARARAJASINGHAM: Well, perhaps half an hour.

THE COMMISSIONER: Mr Buchanan?

MR BUCHANAN: Well, Commissioner, obviously it would be desirable to finish today if we could but we're really in the hands of those who are required to stay with us and obviously the transcription staff and the associate would feature strongly here as well as the security staff. I'm in Your Honour's hands in terms of any recommendation I would make.
10 Obviously we'd prefer to be able to finish today but I can't insist.

THE COMMISSIONER: May I make an inquiry from you about the security people. Is there any problem with that?

MR BUCHANAN: We'll make that inquiry. You're okay.

THE COMMISSIONER: The most important people in the room, our associate and our transcriber are okay. I would like to finish Mr Olsson this afternoon. What about everybody else?
20

MR NEIL: I just ask if an inquiry can be made of Mr Olsson if he could come back tomorrow.

THE COMMISSIONER: It's just we've got about four witnesses that I'm very keen to finish tomorrow. I have to say if we come back and the security are okay I would like to bat on. You're okay with that, Mr Olsson?
---Yes.

MR PARARAJASINGHAM: Commissioner, I certainly can't guarantee
30 that I'll be half an hour and I just, due to circumstances outside of all of our control we've been delayed today.

THE COMMISSIONER: I know.

MR PARARAJASINGHAM: I just don't want to be held to anything really.

THE COMMISSIONER: They're okay. Start, Mr Pararajasingham, or continue, sorry.
40

MR PARARAJASINGHAM: You've still got your statement in front of you, Mr Olsson?---Yes, I do.

So I've suggested something to you about part 3 of paragraph 22. If you just go now to paragraph 23 where you attribute to Mr Stavis the words, "You can charge whatever you like for the changed report, Russell."---Yes.

Can I suggest to you that Mr Stavis said no such thing?---Well, he did say it and it was, it was an open-ended statement in other words. I'll just add that, you know, normally when, if there's work from council, the council will require a scope of work and a fixed lump sum fee for that piece of work to be done, like at the start of this project and I, I never have worked for a council where an open-ended statement has been made which would allow
- - -

10 Commissioner?--- - - - me to effectively charge - - -

I'll just stop you there, sir.---Yeah.

I suggested to you that he didn't say it. You disagree with me. Is that the position?---Yes. I think he, well, he said it. He said it.

20 And then if you just go to paragraph 24. You attribute to Mr Stavis the words, "There is this register for urban designers, Russell, and we are looking out for urban designers like yourself and you should register." Can I suggest that Mr Stavis said no such thing. Do you agree or disagree with that?---Yeah, my, I, I, he did as far as I can remember.

So I'll see if I can understand the position here. From what you set out in your statement in October of 2016 you say that Mr Stavis was effectively urging you to change your report for the benefit of the developer?---Well, yes, yes, because if I was to make it something like the JBA report it would benefit the developer.

30 And you say in your statement that in all your years you've never experienced anything like this?---Not such a direct request.

You say at paragraph 25 that you were taken aback.---Yes.

So you were effectively being asked to act in a manner that was unethical, weren't you?---Yes, I was being asked to change my professional opinion and also to take on the ideas of another consultant, another consultant's report which I didn't agree with.

And that was, in your mind, an unethical thing to do.---Yes.

40 And on your own account you don't raise the alarm with anyone in April of 2016 about this exchange, do you?---No. No, I didn't.

You don't inform someone here at ICAC, do you?---No, I didn't.

You don't make a confidential complaint to ICAC, do you?---No, I didn't.

And of course, I mean, that's something that you knew you could have done.---Well, hindsight's a wonderful thing. At the time - - -

But at the time you knew, you were aware that you could report things to ICAC surely.---Well, this, this seemed, I, I didn't do what Mr Stavis was asking me to do, so I guess I took on my own sort of ethical stance without - - -

So is your answer - - -?---But I didn't report - - -

THE COMMISSIONER: Let him finish.

10

THE WITNESS: I didn't report it to other people.

MR PARARAJASINGHAM: No. But you knew that you could have reported it to ICAC, correct?---Well, yes, I could have.

You don't notify anyone at council about this exchange?---Well, Mr Stavis is council.

20

Well, are you making light of things, Mr Olsson?---Well, no. He's the director of planning.

THE COMMISSIONER: No, I think that's unfair.

MR PARARAJASINGHAM: Well, okay. Did you notify anyone else or did you notify anyone other than Mr Stavis?---Mr, no, because Mr Stavis is the director of planning and I was, this was a planning matter. He, he has got the responsibility for, for that, for this piece of work.

30

But this would be - - -?---No point, there's no point in, in, in, in complaining to any other junior planner because he's much more senior and will override, has the potential to override those people.

But this had become an ethical matter, hadn't it?---Yes, and I took an ethical stance. I didn't do what Mr Stavis asked me to do.

You were aware that Mr Montague is the general manager of the council? ---Yeah, yes.

40

And he was effectively Mr Stavis's boss, wasn't he?---Yes.

Right. You don't tell him about what had occurred, do you?---No, I didn't. I took the action of making my own decision not to do what Mr Stavis asked me to do.

Was there not some sort of architects' body that you could have reported this to?---Well, there is, although this is a, this is an urban design matter. Architects normally deal in building buildings. But this is more of a sort of a planning matter.

Well, so you keep saying that but certainly as set out in your statement, your October 2016 statement, you understood that Mr Stavis had made a very serious suggestion to you. You understood that, didn't you?---Yes, I did.

10 Right. And there are, I take it, various bodies to whom you can make complaints about such matters within the architecture field.---Well, it's a, as you said, it's a complex matter and I, I, I, I did, I, I adhered to my own ethics and I didn't see it the, see it was necessary to take it to the Institute of Architects who, as I said, you know, they deal with mostly with buildings and building matters, rarely getting involved in urban design matters.

Mr Olsson are you now kind of backtracking a little bit as to what you took away from that conversation?---Not at all.

In fact, you don't tell a soul, is that right?---That's exactly right.

In fact, you don't even bother to make a file note of this conversation.
---Correct.

20

Be it hard copy, electronic.---Well, the report, the report that I did speaks for itself.

30 Sorry, are you suggesting the report references this conversation with Mr Stavis?---No, but it, the report was changed at the insistence of Mr Stavis and, but I, I only changed it in a very minor way, that is in the first two, second paragraph and then the final pages and I left the, the body of the report as, exactly as it was previously so that that is the record, that would be the record of what my thinking was regarding this matter and so that's the public record and file note wouldn't have really helped at all.

Well, sorry, a file note of the conversation you just had with Mr Stavis.
---Right.

That, sorry, to be clear, that is what I'm asking you about.---Right, yeah.

40 I'm not disputing that you changed your report later on, and I'll ask you about that, but right now I'm just asking you to fix your mind on this conversation that you had with Mr Stavis and the words that you attribute to him.---Yes.

And it's the case that you don't bother to make a file note of this conversation. Correct?---I didn't make a file note, no.

And so, so perturbed were you by what had just occurred that you don't even bother to make a contemporaneous note. Is that the case?---I didn't, didn't make a note, no.

You certainly don't withdraw your services from the council, do you?
---No, I didn't.

I was asking you earlier about the code. Remember those questions?
---(No Audible Reply)

Did you remember me asking you that maybe 10 minutes ago?---Yes.

Yes?---Yes, yes.

10

You are familiar I take it with – or firstly, you accept that the code provides architects and clients with a statement of the standards required of architects when engaged to provide architectural services. You accept that?---Right, yes.

Are you aware that part 2 of the code concerns general practice standards?
---Yes.

20

And you're aware that subpart 4(3) is as follows. "An architect should withdraw from the provision of any architectural service if the architect reasonably believes in the architect's professional judgement that the provision of the service would require the architect to act, A, in a manner that the architect considers unethical, or B, in contravention of the Act, the regulation or this code."---Mmm.

Now, firstly, you are familiar with that provision?---Yes.

And you were familiar with that provision back in April of 2016?---Yes.

30

THE COMMISSIONER: I'm going to interrupt. A lot was read out to you, Mr Olsson. As a matter of fairness do you need that provision in front of you?---Yes, I'd like to, yeah.

MR PARARAJASINGHAM: I can - - -

THE COMMISSIONER: And I note it hasn't been provided to Counsel Assisting.

40

MR PARARAJASINGHAM: No. Well, I asked him about it and he agreed, with respect, Commissioner.

THE COMMISSIONER: If you can provide a copy to Mr Olsson.

MR PARARAJASINGHAM: I, I can do that, yes.

THE WITNESS: Yes, I'd like a copy, thanks. Thank you.

MR PARARAJASINGHAM: So page 22 of the document. So just for the record, so what you've got before you, it's titled Architects Regulation 2012. Do you see that?---Yes.

And it's a case that this regulation was in force as at April of 2016. Just accept that from me.---Yes.

And if you go to schedule 2 of the regulation which starts on page 20 of the document - - -?---Yes, yes.

10

- - - it's titled New South Wales Architects Code of Professional Conduct. Do you see that?---Yes, I can see that.

And then if you go to page 22 and look at subpart 4(3), that is what I read out to you.---Yes.

Do you want to take a moment just to read that?---Yes. Do you want me to make a comment, comment about that?

20

No, no, I'm just following Commissioner's request, just drawing it to your attention and showing it to you.---Yes.

Now, you can turn that document down. It's the case that you certainly don't withdraw your services, do you?---No. But I want to say that, "If an architect reasonably believes in the architect's professional judgement that the provision of service would require," and, "In a manner that the architect considers unethical," I don't consider that what I did was unethical.

30

I need you to fix your mind to just after this conversation. On your account in your October, 2016 statement Mr Stavis had asked you to change a report for the benefit of the developer, correct, that's what you understood at the time?---Yes.

Yes. And you accepted earlier in my questioning that you were being asked to do something unethical.---Yes, but I didn't do what Mr Stavis asked me to do.

40

I understand that but at that point in time you did not withdraw from the matter did you?---No, I didn't.

Because at that point in time on your October, 2016 account you were being asked in your view to do something unethical.---Yes, but I didn't do it.

See, can I suggest this that there is a very simple reason, Mr Olsson, why you didn't withdraw from this project and can I suggest that it's the same reason as to why you didn't raise any alarm, because in fact nothing unethical - you hadn't been asked to do anything unethical. That's what I am putting to you.---Right.

Do you agree or disagree with that?---Well, I am being asked to go against my professional judgement about, you know, what I believe is the right, you know, thing to do on this site.

10 So is it really a matter of you being asked to reconsider your position, is that perhaps a more accurate way to reflect - - -?---Well, well, it is; however, if that was being done purely on the basis of my report as I said earlier if it was based on, you know, urban design principles, you know, Russell, have you considered this or that, you know, as a sort of a genuine professional discussion about the design matter at hand I would accept that more than being handed a report by another consultant and saying this is, this is a better report and can you change your report. That's a, for me that's a, that's a difference because he's wanting me to take on the, the professional judgement of someone else and to change my own professional judgement.

20 But you see if indeed Mr Stavis said the things that you allege him to have said, can I suggest that you would have told someone about the conversation that you'd just had.---Why is that?

Because on your own account you were being asked to do something unethical. I mean you were taken aback by this weren't you?---Well, Mr Stavis didn't say that it was for the benefit of the developer. He just said that this report is a good report, the JBA report. It just has a lot more building height and I think it has an impact on the area greater than what I think should happen. So, you know, the benefit to the developer is a consequence of that report. It's not a direct, it's not a direct connection. Let's put it that way.

30 Is this the position that all that Mr Stavis asked you to do was to consider the JBA report and reconsider your position, is that possible that that's - - - ?---That's right. Well, that's, that's another way of saying it but - - -

Right. And what - - -?--- - - - to change my report - - -

THE COMMISSIONER: Let him finish.---To, to consider the JBA report and to change my report.

40 MR PARARAJASINGHAM: Well, I mean let's look at what you did do. You took the JBA report home with you didn't you?---I took it home?

You took the JBA report - - -?---Yes.

- - - home with you didn't you?---Well, to the office.

THE COMMISSIONER: To the office.

MR PARARAJASINGHAM: Yes, to the office. You read the JBA report.

---Yes.

And on your own version of events you assessed the report, the JBA report.

---Yes, yes.

Right. And isn't that consistent with Mr Stavis saying to you something to the effect of have a look at this JBA report. I think it's good. See if it affects your conclusions?---Yes, that's true, but, but, yes, and that's what I did and it didn't, in substance it didn't affect my conclusion.

10

I understand that. Just one moment. Just one moment, Commissioner. And indeed what follows the following day, or shortly thereafter, you receive a call from Mr Stavis.---Yes.

And you're happy to field the call from him.---Yes.

And then on 9 May, 2016 you send him an email attaching an amended report.---Yes.

20 Can I just put this to you squarely before I sit down, that in some respects you have misremembered the conversation that you had with Mr Stavis on 20 April, 2016.---What I wrote there in italics is a very close, all the substance of those sentences were set. So I don't, I didn't misremember. Those things that I said actually were said in approximately those words.

Those are my questions.

THE COMMISSIONER: Thank you, Mr Pararajasingham.

30 MR BUCHANAN: No further examination of the witness. Could the witness be excused?

THE COMMISSIONER: One issue.

MR BUCHANAN: Yes, Commissioner.

THE COMMISSIONER: Do we have to do anything with the Architects Regulation or - - -

40 MR BUCHANAN: No. If it's a law then judicial notice can be taken of it. A short Commissioner's notice can be taken of it.

THE COMMISSIONER: All right. So we'll retrieve that from Mr Pararajasingham. And, Mr Olsson, thank you very much. You're excused. ---Thank you.

And everybody else will resume at 9.30 tomorrow morning.

THE WITNESS EXCUSED

[4.57pm]

AT 4.57PM THE MATTER WAS ADJOURNED ACCORDINGLY

[4.57pm]