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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 FRIDAY 22 JUNE, 2018

AT 9.30AM

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

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

THE COMMISSIONER: Now, first thing I believe we've got Mr Woods, is it?

MR WOODS: That's right, Commissioner.

THE COMMISSIONER: You're replacing Mr Drewett for today?

MR WOODS: I am, I am. I seek leave to appear for Mr Hawatt.

10 THE COMMISSIONER: Yes, you're authorised to appear for Mr Hawatt.

MR WOODS: Thank you, Commissioner.

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Yes. Just a short application, Commissioner. You'll recall the call charge records that I took Mr Faker to at Exhibit 74.

THE COMMISSIONER: Yes.

20

MR BUCHANAN: Questions were raised about the reliability of the whole of the data in that document and we yesterday replaced, well, we didn't replace it, we added to the evidence with Exhibit 75, a corrected version of Exhibit 74. The question was raised I think by you, Commissioner, as to what we should do with Exhibit 74. My application is that you make a non-publication order in respect of Exhibit 74. That means it will still be available to be referred to by the parties and ourselves in evidence, particularly of course when dealing with Mr Faker's evidence, but its contents will be effectively suppressed so that it will be Exhibit 75 that
30 people can go to, to see what the, as far as we are concerned, accurate record is.

THE COMMISSIONER: So on the public website Exhibit 74 won't appear.

MR BUCHANAN: That's my instructions, yes.

THE COMMISSIONER: Right. Mr Andronos, does that satisfy?

40 MR ANDRONOS: With respect it's a good solution. I'm indebted to my friend and the Commission staff.

THE COMMISSIONER: And that should be a non-publication order under section 112?

MR BUCHANAN: Yes, please.

THE COMMISSIONER: Thank you. All right. I direct that the evidence contained in Exhibit 74 in these proceedings not be published on the

Commission website and be restricted to the parties having access to it for the purposes of this inquiry.

SUPPRESSION ORDER: I DIRECT THAT THE EVIDENCE CONTAINED IN EXHIBIT 74 IN THESE PROCEEDINGS NOT BE PUBLISHED ON THE COMMISSION WEBSITE AND BE RESTRICTED TO THE PARTIES HAVING ACCESS TO IT FOR THE PURPOSES OF THIS INQUIRY.

10

MR BUCHANAN: Thank you, Commissioner.

THE COMMISSIONER: Now, the other matter I should raise with you, I raised with everybody yesterday some possible additional hearing dates. It would appear that the only date possible is 2 July, correct, so we'll be sitting on 2 July.

MR WOODS: Thank you, Commissioner.

20

MR BUCHANAN: Commissioner, today there are four witnesses scheduled to give evidence. They are each of them officers of the amalgamated council and are members of the planning team staff and Ms Mitchelmore is taking each of them.

THE COMMISSIONER: Right. Ms Mitchelmore.

MS MITCHELMORE: Yes. Commissioner, the first witness I call today is Mr Mitchell Noble.

30

THE COMMISSIONER: Mr Noble, are you here? Please come down. Now, Mr Noble, do you take an oath or an affirmation?

MR NOBLE: Affirmation, please.

THE COMMISSIONER: Now, Mr Moses.

MR MOSES: Yes, Commissioner.

THE COMMISSIONER: You've had a discussion with - - -

10 MR MOSES: About a section 38?

THE COMMISSIONER: Yes.

MR MOSES: Yes.

THE COMMISSIONER: I understand your legal representatives have discussed with you a direction under section 38 which I will make. I just want to emphasise to you as they I assume have told you the exception to the direction is if you give false or misleading information in this inquiry that's not covered by the protection given by the direction. If you give false or misleading evidence to the Commission it is possible you would be prosecuted for an offence under the Act. It's a very serious offence. It's in the nature of perjury and carries with it a maximum penalty of a term of imprisonment.

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.

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.

THE COMMISSIONER: Ms Mitchelmore?

MS MITCHELMORE: Yes. Thank you, Commissioner. Your name is Mitchell Noble. Is that right?---Yes.

And are you able to tell me, Mr Mitchell, what your current – sorry, Mr Noble, what your current position is?---Manager (spatial planning) at Canterbury Bankstown Council.

10 And before that you were the manager of land use planning at the Canterbury City Council. Is that right?---Land use and environmental planning, yes.

And that was from 9 May, 2016?---Yes.

Prior to your employment at Canterbury City Council you were employed by Auburn City Council from 2012. Is that right?---That's right.

First as a senior strategic planner and then from 2013 in the position of team leader (urban planning). Is that right?---Yes.

20 And before your employment with Auburn City Council you worked in various positions with the Department of Planning. Is that right?---Yes.

Commencing in 2006. Is that correct?---Yes.

Now, Mr Noble, you've made a statement to investigators in this matter. Is that right?---Yes.

30 It's dated 25 January, 2018. Can I provide you with a copy of that statement which is part of Exhibit 53. Mr Noble, if I can just get you to confirm that's the statement that you made to Commission investigators. Is that right? ---Yes, it is.

Thank you. As a manager of land use and environmental planning, is it the case that you reported to the director of city planning? I'm asking about your time at Canterbury City Council before the amalgamation.---Yes.

At the time that you started at the council Mr Spiro Stavis held the position of director of city planning. Is that right?---Yes.

40 And did you know Mr Stavis before you started at Canterbury City Council?---No.

Did you know of him?---No.

Is it the case that you participated in an interview for your position at the council?---Yes.

Did Mr Stavis conduct that interview?---Yes.

So that was the first occasion on which you met Mr Stavis. Is that right?
---Yes, that's right.

All right. You're aware of a site within the local government area of what was formerly Canterbury City Council located at 15-23 Home Street, Earlwood?---Yes.

10 And it was the case that the site was the subject of a Gateway Determination by the Department of Planning which had been made by a delegate of the Minister in March, 2015. Are you aware of that?---Yes.

Perhaps if I can just put the Gateway Determination up on the screen. It's volume 9, page 107. We're just bringing that up on the screen in front of you, Mr Noble, so you can see it. And it's the case, Mr Noble, that one of the requirements, I'm looking at the first of the conditions of the Gateway Determination, was that an additional study be prepared that represented and addressed the impact of future development on the character of the local area in relation to justifying a maximum building height of 17 metres on the site. Is that right?---Yes.

20 Now, can you recall when you first reviewed the Gateway Determination?
---Not the exact day but I suspect it will be the first or second day, the 9th or the 10th of May.

Yes, all right. Could Mr Noble be provided with volume 10 of Exhibit 52. We'll bring it up on the screen as well but can I take you to page 110 of volume 10. There's a hard copy for you as well if that would be easier, Mr Noble. This is an email exchange between, forwarded to you, you and Mr Stavis on the afternoon of 9 May, 2016. Now, I understand the 9th was your first day on the job at the council. Is that right?---That's correct.

Now, in the first of the emails that were sent to you at 4.55pm which is about point 5 on the page, Mr Stavis has sent you an email that says, "Mitchell, FYI," forwarding an email to Mr Stavis from a Mr Olsson of Russell Associates at 4.10pm on the 9th, saying, "I have amended our report as discussed. The draft report is attached for your review." Did the email that Mr Stavis forwarded to you at 4.55 include an attachment, being the report from Mr Olsson, do you recall?---I can't recall but it probably did.

40 All right. Now, by the time you received that email at 4.55pm, had you had any discussion with Mr Stavis in relation to the Homer Street site?---Yes, he raised it on the afternoon of my first day.

All right. And can you recall what Mr Stavis said to you in the initial discussion about where things were up to with the site?---Yeah. He said to me that he had a problem, that there was a Gateway Determination from the Department of Planning and Environment for this site that required an

additional piece of work to justify the 17 metres proposed height control and that the council had resolved 17 metres and an additional study had been acquired but that it only supported a maximum of 14 metres.

So that was what Mr Stavis told you in your first discussion about the site. Is that right?---Yes.

And had he told you of Mr Olsson in that discussion?---Yeah, I believe he mentioned the report being prepared by Mr Olsson.

10

All right. Now, can I take you to paragraphs 8 to 10 of your statement. So what you've just given evidence about having had a conversation with Mr Stavis on the 9th, that conversation occurred in advance of you receiving the report from Mr Olsson. Is that right?---Yes.

Forwarded from Mr Stavis.---Ah hmm.

20

Thank you. Aside from saying that he had a problem with the Olsson report, did Mr Stavis comment at all on the content of the report in terms of its merit?---Of Mr Olsson's report?

Yes.---No, I don't believe it was a merit discussion.

Now, did you review Mr Olsson's report at or around the time you received it from Mr Stavis on 9 May?---Yes, I did have a quick look through it.

30

All right. Did you have cause to look at it more closely in the subsequent days?---Yes, later I did, but, but on that particular time because it was late in the afternoon, I think it was just quick flick through.

So it may be that you looked at it more closely the next day. Would that be fair?---Yes.

40

Can I take you to that report, it's at page 85 of volume 10 is where it starts. Sorry, 83 of volume 10 it starts, but I wanted to take you to page 85, and you'll see, Mr Noble, in the second paragraph there's reference, this is in the introductory section, that Mr Olsson's company had in fact prepared an initial study in June 2015 which is reproduced in this report on pages 1 to 23, but that Canterbury Council had received a planning justification report from JBA Planning dated March 2016 and that Olsson Associates had reviewed the report and made final recommendations in appendix 1 of the report that starts at page 83 of volume 10. Do you understand that?---Yes.

When did you come to know of the JBA report?---Sometime in the first one or two days, probably the first day actually. I think he, it might have been mentioned by either the staff or Spiro that the JBA report existed on the first day, which is 9 May.

When you refer to staff having potentially mentioned it, what staff do you have in mind there?---Warren Farleigh, the team leader, was my primary contact for the strategic planning matters.

Thank you. Now, if I can take you to page 98, and this was the proposed, the development that was proposed by Olsson & Associates architects which indicated that there would be a stepping down in the height starting with the yellow shaded material down to the blue and then to the green. Is that how you understood the proposal?---Yes.

10

And then can I take you to page 104. The recommended envelope was put forward by Olsson & Associates being that the portion of the site that's adjacent to the development of 25-33 Homer Street would have a maximum height of 14 metres. Do you see that about halfway down the paragraph titled Heights?---Sorry, can you repeat that?

20

Yes, of course. I'm looking at the paragraph under the heading Heights and you'll see that there's a, I think it's the second sentence, "The document recommends the portion of the site that's adjacent to the development of 25-33 Homer Street to have a maximum height of 14 metres." Do you see that? ---Yes.

And then the rest of the site should retain its existing height maximum of 10 metres. And their proposed envelope was consistent with that except for a portion which they would recommend took a further stepdown of two storeys. Is that right?---Yes.

30

So the tallest component of the Olsson envelope was 13.2 to 14.5 with an average of 13.9 metres. Is that right?---Yes.

And that the floor space ratio, just looking at the second column on the page of text, was 1.29:1, which was consistent with the recommendation that the FSR value not be more than 1.49:1. Is that right?---Yes.

Now, when you reviewed this more closely perhaps on the morning of 10 May, did you form a view about the merit, the strategic merit of this plan? ---I did, of this, the planning proposal as a whole do you mean?

40

I'm sorry - - -?---Or Olsson's work in particular?

Olsson's work in particular I'm sorry, yes. Mr Olsson's report.---Yeah, I, yeah, I thought it was a pretty good, it was quite a good report. I can go into more detail if you want to.

What about the recommendations that Mr Olsson made in terms of the appropriateness of the building envelope that he was proposing in his report?---I thought it was quite reasonable.

Now, if I can take you to page 108 to 109, you'll see this is the appendix to which Mr Olsson refers in the introduction that addresses the JBA report. Do you recall reading this at or around 10 May?---I don't remember specifically.

10 You'll see in the second column that Mr Olsson in his report expressed the view, and looking at the second paragraph, that the JBA report focussed on additional three metres to the exclusion of important planning and urban design principles of stepping down heights towards the river, which was evidence in the adjoining development of 25-33 Homer Street. Was that a view with which you agreed at the time?---The principle that it needed to step down?

Yes.---Yes.

And that was a fairly standard urban design principle. Is that right?
---I suppose you could say that, yes.

20 And there is also a statement made in relation to a DA that had been approved at 2-10 Homer Street, do you see that, and that was three storeys in total and in contrast the proposal in JBA was four and a half storeys on the corner of Homer Street with a setback to the top floor, but counting floors from the western end the top floor was effectively six storeys. Do you recall reading the JBA report and agreeing with the conclusion that Mr Olsson put in his report as to the effect of what was proposed in that report?
---Yeah, yeah, I agreed with, with Olsson's recommendations more so than what was proposed in the JBA report, if that's what you're asking.

30 So you had reviewed the JBA report and the Olsson report and, having done both, your view was that the Olsson report recommended a more appropriate building envelope in terms of height and FSR, is that right?---
Yes, that's right. And when you say I reviewed them both, it was a very quick review. This all happened within the first, you know, 24 hours of me starting.

Yes, that's right.---But I thought it was clear that Olsson's work was more responsive to the surrounding context and I preferred it for that reason.

40 Thank you. All right. And that is a view that you had at the time when you reviewed it? So 10 May, is that right?---Yes.

Now, can I take you to paragraph 21 of your statement. You say there that the Olsson report and its recommendation represented a better outcome for the site than the JBA report. By "better outcome" do you mean a better planning outcome or strategic planning outcome?---Both I would say, yes.

And why do you say that?---I mentioned earlier I thought it was more responsive to the surrounding context. I could see and was advised by

Warren Farleigh that the JBA work and, and the work that was used to support the 17 metres planning proposal was largely based on 17 metres being the very, very top of the skillion roof on the development next door, and essentially a lot of the justification was hinging from that. The principle of stepping down and be respectful to the three-storey approval next door I thought was treated better in the Olsson work as well, and Olsson went into detail about the ADG and the proposal to, I suppose, keep heights low next to the site. It made a lot of sense to me, given that there were windows in the approved development next door that would have been looking out
10 directly onto this new development.

Yes. I think you mentioned before the acronym ADG. Is that Apartment Design Guidelines?---Yes, it is, sorry.

Yes. No, of course. Now, paragraph 11 of your statement you indicate that you spoke to Mr Farleigh about the planning proposal. As team leader of Urban Planning, he reported directly to you, is that right?---Correct.

And did you speak to Mr Farleigh about the proposal on your first day or
20 subsequently? Can you recall?---I can't recall.

Might have been the second day?---It might have.

Yes.

THE COMMISSIONER: Sorry, can I just check. You reported to Mr Farleigh?---He reports to me.

I'm sorry.---Or reported to me. Yeah, yeah, so he - - -
30

I'm getting it all confused. I apologise.---I was the manager and he was the team leader underneath in the structure.

MS MITCHELMORE: And so Mr Farleigh is the team leader?---Yes.

He reports to you as the manager?---Ah hmm.

And you then report to Mr Stavis as the director of city planning, is that
40 right?---Correct, yeah.

And underneath Mr Farleigh sit other members of the team that are responsible for assessing, for example, planning proposals that then feed up to Mr Farleigh, to you and Mr Stavis.---Yes. Ah hmm.

Now, can you recall what Mr Farleigh said to you about the planning proposal?---Not specifically, although the, what he communicated to me was that he thought 14 metres and the Olsson work was, was a better

outcome on this site than 17 metres, and that the 17 metres proposal and the justification for it was flawed.

Can I take you back to page 110 of volume 10, which is the emails from Mr Stavis, first of all forwarding you the report of Mr Olsson. You'll see at the top of the page, so shortly after he forwarded you the report at 4.55, Mr Stavis sent you a further email at 4.58pm saying, "Mitchell, I don't particular like his recommendation. Not quite what we discussed. Let's chat tomorrow, please, about his wording." Can I ask you what your understanding at the time was of the reference to the "we" in that sentence? Did you understand Mr Stavis to be referring to a discussion he had with you or a discussion he had with Mr Olsson?---I read that to be a discussion with Mr Olsson.

And did Mr Stavis indicate to you anything of the content of the discussion that he had with Mr Olsson?---No.

Do you recall having a discussion with Mr Stavis the next day as he suggested let's chat tomorrow please about his wording. Do you recall having a discussion with Mr Stavis the next day 10 May about Homer Street and this report?---I do although we didn't, this wasn't discussed, this wording that he mentions here.

Is the discussion that you had on 10 May the one that you record in paragraph 13 of your statement?---Yes.

So Mr Stavis according to paragraph 13 reiterated to you that the planning proposal has to get out to exhibition. Did he give you any explanation as to why it had to get out to exhibition?---He said that it was a decision of council and that I suppose we had been charged with moving that forward. We have clear directions and that's the way we needed to go.

Did Mr Stavis say anything to you about the circumstances in which the council had made that decision?---No.

So at the time Mr Stavis said this is the decision of council, 17 metres, did you know of the following circumstances in which the council had made that decision, first, that council had made that decision contrary to the recommendation of the council officers in their report?---No.

Did you know that secondly, at the time the council made that decision there was no material before it justifying the height of 17 metres?---No.

Thirdly, that the Gateway Determination had asked for an urban design study as a condition of the determination?---I knew that bit, yes.

All right. But you didn't know the other circumstances to which I've referred?---No.

If you had known that, is that something you would have raised with Mr Stavis insofar as he was saying this is the decision of council, 17 metres?---I may have.

You also record in paragraph 13 that Mr Stavis said to you he had asked Mr Olsson if he was flexible and he had said no. That's the last sentence of paragraph 13, "I spoke with Olsson to see if he was flexible and he told me no." At the time Mr Stavis said that to you did you understand that
10 Mr Olsson had been retained as an independent consultant?---Yes.

To address a condition of the Gateway Determination?---Yes.

Can you recall what your response was to Mr Stavis's statement that he'd asked Mr Olsson if he was flexible and he said no?---No, I can't recall that. I think it was a kind of close-ended statement.

Were you surprised by Mr Stavis's statement that he spoke with Olsson to see if he was flexible and he told me no?---I don't remember being
20 surprised.

Would you expect a council officer to question or ask a question of that nature of an independent consultant?---Sometimes there is questioning of consultant work and that's normal. That particular phrasing, whether he was flexible, is unusual.

Can you think of any occasions in the course of your employment with local councils where a similar question was asked of an independent consultant preparing a report for council?---There have been plenty of times where
30 we've asked questions of our consultants to interrogate things that they've said or to ask for more information, more details, more justification. Not particularly those words though, whether they're flexible.

Have you asked them about the outcome of their report, flexibility as to the outcome of their report?---No.

MR PARARAJASINGHAM: I object, Commissioner. Paragraph 13 says
- - -

40 THE COMMISSIONER: Could you speak into the mic. Sorry.

MR PARARAJASINGHAM: Yes. Sorry. What appears in paragraph 13 is, "I spoke with Olsson to see if he was flexible and he told me no." There is no mention there of outcome. It was put to the witness as though that is in fact what Mr Stavis said to him. I'd just ask that it be accurately put.

MS MITCHELMORE: I'm sorry, I was just asking an open question as to outcome.

THE COMMISSIONER: I thought Ms Mitchelmore had moved on and was asking in a sense some general questions about this witness's experience. I didn't understand that it was linking back to the comment at the end of paragraph 13.

MS MITCHELMORE: Yes, that - - -

10 MR PARARAJASINGHAM: If that was the intention then I withdraw the objection.

MS MITCHELMORE: Yes, that certainly wasn't my intention to link it to paragraph 13, Commissioner.

THE COMMISSIONER: Yes, that's fine. Go on.

20 MS MITCHELMORE: Yes. So, Mr Noble, my question was, in your experience had you ever been aware of councillors or council officers asking consultants if they were flexible as to the outcome of their report?
---No.

All right. Did Mr Stavis discuss with you the possibility that given Mr Olsson's report the proposal might need to go back to council?---No.

All right. Now, you say in paragraph 13 that you raised the Olsson report with Mr Stavis. Can you recall what it was that you raised with him in the course of that conversation?---Where is that, sorry?

30 I'm sorry. Looking at the second, third sentence of paragraph 13, "I raised the Olsson report with Stavis," and it was in response to that he said, "This is the decision of council." I'm just wondering if you can recall what it was that you raised about the Olsson report with Mr Stavis.---No, I can't remember that context.

All right.---Perhaps if you'd rephrase for me.

40 No, I'm just asking if you had a recollection of the conversation and what you said to Mr Stavis about the Olsson report in the context of that conversation.---I can remember that conversation in general and it was more about the Olsson report being a blockage, being something that he was asking me to find a pathway around effectively.

All right. Now, in paragraph 14 of your statement you – and is this part of the same conversation, so is the conversation continuing in paragraph 14?---So I think 13 was likely to be on the 9th, my first day, with Stavis outlining the problem to me.

Yes.---And then paragraph 14 being when I came back to him with a possible way to proceed.

So that was on 10 May. Is that right?---On 10 May, yes.

Was it the morning of 10 May?---I don't recall a time.

All right. And your suggestion was that an option could be to use the JBA report to satisfy the Gateway Determination.---Yes.

10

What prompted you to make that suggestion?---Well, the Gateway Determination wasn't specific about who needed to prepare that report, so given that Spiro had asked me, or he'd told me we needed to proceed with 17 metres for this site and that he needed a way to do that, I'd gone away and thought about that overnight and come back to him on the Monday and said, well, a possible way to proceed is to use the JBA report and take the Olsson report as advice and note it but effectively move forward with the JBA report instead.

20

And when you say take the Olsson report as advice and note it, would that be to just the council officers noting that, were you intending that that also be put on public exhibition or I'm just trying to understand what you meant by advice and noting the advice.---Well, yeah, I suppose I'm saying Spiro clearly didn't agree with the advice so I was saying to him an option would be for you to note that, if you don't agree you can essentially take no further action. I didn't, the option that I put forward to him was that he would need to effectively not exhibit the Olsson report and only the JBA report because if he did exhibit both together that would be a bit of a contradiction.

30

You've indicated that you agreed with the Olsson report.---Yes.

Is that right?---Ah hmm.

Did you have any discussions with Mr Stavis about the respective merits of the two proposals?---He never asked me about the merits, it wasn't a merit discussion, it was a, it was a pathway discussion he was wanting from me.

40

Notwithstanding that he was after a pathway discussion, did you consider it part of your role to say, as a matter of merit, in fact the Olsson report seems to me to be a better outcome?---I, I didn't raise that with him.

Why not?---I'm not sure. I should have.

You say in paragraph 15 that you felt obliged to impress Stavis in your first few days and that was a significant influence in your suggestion about how to progress, is that right?---Mmm, yeah, that's right.

Looking back on it now, is that why you did not raise the merits issues with Mr Stavis?---Yes, yes, that's probably why, I think, that, that if I had my time again I would have raised the merits and suggested a better, more transparent way of resolving that conflict.

Yes. Because of course you were the manager of this team, weren't you?
---Ah hmm.

10 That's quite a senior position within the council.---Yes.

And one of your responsibilities is to consider the merits of proposals, isn't that right?---That's right.

And yet this is not something that you raised with Mr Stavis in the context of him trying to make a decision as to what was the most appropriate report to put forward to public exhibition.---Yeah, that's right. I should have pushed harder on the merits.

20 All right. Now, can I take you to paragraph 16 of your statement. You say that it's unusual to use the applicant's planning report when there is an independent study available and council had commissioned it.---Mmm.

In your time with councils had that ever occurred, where council had commissioned an independent report and instead of using that report an applicant's planning report was used instead?---No, I've never seen that before.

30 You say that you raised your concern about that with Mr Stavis, is that right?---Correct.

And what was his response?---He didn't seem concerned with that.

Did he say anything by way of justification for that response, for not being concerned?---No, there was no justification provided.

And you considered that sufficient to address the concern you had raised?---What, what was that, sorry?

40 Sorry, his reaction was no concern and you didn't push any further on that, is that right?---I didn't push any further.

Yes. Did you consider raising this issue or your concerns with the general manager?---No, I didn't.

All right. Can I take you to page 111. Sorry, by this time had you met the general manager? This is like day two.---Yeah, no, he, I met him on day one. Spiro introduced me to him on day one.

THE COMMISSIONER: And was that a pretty quick introduction or was there some discussion about your role or anything like that?---Yeah, it was a bit of a quick meet and greet with him. Maybe 15 or 20 minutes, something like that.

MS MITCHELMORE: Did Mr Montague indicate anything about how he saw your role with the council and the role that you would play?---I think there was some general discussion about that. I can't remember it.

10 So just taking you, then, to page 111 of volume 10. So this is an email chain. You'll see that some of the emails that we've already addressed are in the document. The top email is new. It's sent to you at 8.37pm on 10 May. It's from Mr Stavis to you and asking you to "Proceed to submit a response to the department's Gateway approval using the JBA report, and provide me with a timeline on when this will be submitted." What did you understand by "submit a response to the department's Gateway approval"?
20 ---I took that to mean he wanted me to package that information up, the planning proposal up, with the JBA report, place that on exhibition and notify the department that that's what we were doing, consistent with a Gateway Determination.

And he said, "This is a priority. Let me know if you need additional resources to assist." Did Mr Stavis explain why it was a priority?---No, he didn't.

Did you ask him why it was a priority?---No.

30 Can I take you to page 113. This is an email from you to Mr Farleigh on the next day, 11 May, at 2 minutes past 11.00 in the morning and it appears to have attached the email between you and Mr Stavis. You will see that there is an attachment re 15-23 Home Street and you've said in the first line, "See instructions from Spiro attached regarding the PP planning proposal for 15-23 Home Street." Now, paragraph 2, really it's paragraph 3 you refer to your understanding. You understand, "I understand that the draft Olsson report does not support the proposed 17 metre height and we will note that advice." Does that statement there refer back to what you indicated before that you would note the advice, so you've received it, council would note it but it wouldn't go any further?---Yes.

40 Is that right, in terms of being exhibited as part of the planning proposal?
---Yes.

And then you say, "However, given that council has already been provided with advice to that effect previously and resolved to proceed with 17 metre height, the council's direction is clear in this matter." Did you know at the time whether the council, and there I'm talking about the councillors, had been told anything about the content of the Olsson report?---No.

You didn't know whether they had or they hadn't?---I wasn't sure, no, and I would add I assumed they probably hadn't been informed about the Olsson report given it was very fresh and there's usually a bit of a process to inform the councillors.

Sorry, there's a process - - -?---It can take some time.

10 There's a process to inform the councillors?---There typically is. It would be unusual just to be forwarding studies and investigations to them without, you know, memos being prepared or a briefing being organised, et cetera.

And in terms of what you've said that given council has already been provided with advice to that effect previously and resolved to proceed, I think your evidence to me is that you were not aware at this time of the circumstances in which council had resolved to approve the 17 metre height. Is that right?---So it looks like here I was aware that, of the previous recommendation from the planning staff to proceed with 14 metres on the site rather than 17 metres and that's what I'm referring to there.

20 So by 11 May you were aware of that?---Yes.

And then you've said, "Therefore we'll proceed using the JBA report to address the relevant condition of the Gateway Determination." In relation to whether the councillors were aware of the Olsson report, did you make any inquiries as to whether they had been told or whether they were aware? ---No.

You say in paragraph 20 - - -

30 THE COMMISSIONER: Can I just stop you. Still on that email. When you stated "we will note that advice", is that something technical that with a public exhibition it would be noted somewhere that another independent study had been obtained or what did that actually entail noting the advice in the context of a public exhibition?---I think this is implying that we would as council staff note the advice but not proceed further with it and not exhibit that because that's clear in Spiro's instructions that it's not to be exhibited.

40 So noting is what, in a sense just noting on the file we received this but we're now proceeding with JBA?---Yes.

MS MITCHELMORE: And insofar as material went on public exhibition there wouldn't be any reference to the Olsson report in that material. Is that right?---That's right.

Can I take you to paragraph 20 of your statement. You said there that in hindsight a better option would have been to prepare a report to council outlining the conflicting recommendations of the two urban design studies

in order to highlight the issue and seek a decision about how to proceed. That didn't occur to you at the time?---No, it didn't. It's something that I've done since then with other planning matters where there have been conflicts and it's been a very effective way of getting the debate out in the public realm and having that discussion and it being decided on by the council or an IHAP or a local planning panel.

10 Yes, okay. Might another option have been to put both reports on public exhibition?---I suppose that is an option, however it would have been very confusing to do that I believe.

And why do you say that?---Well, the advice is contradictory.

20 Now, paragraph 17 of your statement you say that the Olsson report put council in a difficult position as it didn't satisfy the requirements of the Gateway Determination. What difficulty did the absence of a study justifying the height control create for the planning proposal and the Gateway Determination?---It meant that it couldn't be moved forward, couldn't be progressed to exhibition.

And would that have an impact upon whether or not that determination could ultimately be made by the council as the delegate of the Minister? ---Yes, it probably would have.

All right. Just returning to page 113 of volume 10, did what you write there reflect your views at the time as to exhibiting the JBA report in place of the Olsson report?---Which sentence, sorry?

30 I'm sorry, the paragraph starting, "I understand."---And what are you asking, I'm sorry?

Did that reflect your views at the time as to the appropriateness of exhibiting the JBA report in place of the Olsson report?---Yeah, that, that reflected what I was asked to do.

So it's the case that it reflected your discussion with Mr Stavis. Is that right?---Yes, that's right. He directed me to do that so I was passing that message on to the team so they could implement.

40 Now, did Mr Farleigh, after you sent this email did Mr Farleigh raise any further concerns with you?---Yes, he did.

What did Mr Farleigh say, can you recall?---He expressed disappointment that I'd been asked to do that.

And what was your response to those concerns, to Mr Farleigh? ---To, to Warren I said, "I know you're disappointed but there's a decision of council and the director here and it's, and we need to follow that."

Can I take you to page 116 of volume 10. You'll see this is another email exchange between you and Mr Stavis. At the bottom of the page it says 13 May at 7.27pm, you're being asked for an update by Mr Stavis about, "When this will be referred to the department as we discussed. FYI, I review everything before it leaves the office." And you've replied that, "We're aiming to exhibit from 2 June," this is in your response at 2.20pm on 18 May, "Planning proposal to be exhibited 2 June to 1 July and we're required to notify the department which the proposal is placed on
10 exhibition." You then say, "We will be able to use the JBA study to satisfy the requirement for additional urban design work to justify the 17, the proposed 17-metre height control." Was there some aspect of the use of the JBA report that you needed to clarify or confirm with him? I'm just wondering why, given the direction you'd received, you were saying we will be able to use it.---Yeah. I'm not sure why I wrote that, there was a clear direction from Spiro to use the JBA report.

Can I take you to page 126. This is an email chain which starts actually on page 127 I think in relation to a different matter, but you'll see at the top of
20 page 127 some text saying it's an email from Mr Stavis to you of 26 May at 6.49pm discussing Brighton Avenue, Homer Street and Croydon Avenue. Were they three different planning proposals or development applications?--
-Three different planning proposals, yeah.

And so you were asked for an update the next day, and just going then to page 126, your response at 7.10pm – which is actually the same day, rather than waiting till the next day – you've indicated that both are on track and Mr Stavis clarified that there were three to be done in that next email, and your response was, at 10.12pm, that you thought agreement had been made
30 about Brighton Avenue and Homer Street by the end of the week but you would try to get Croydon Street out tomorrow as well, and Mr Stavis said, "Please, Mitchell. Needs to happen." Did Mr Stavis discuss with you the reasoning behind the urgency of getting Homer Street and other planning proposals out at this time?---No, not that I can recall.

It's the case that when the planning proposal was put on public exhibition the Olsson report wasn't included in the material, is that right?---The first exhibition? Yes.

40 Yes, the first exhibition. Yes. And that was following your raising that suggestion with Mr Stavis and his directing you to take that course, is that right?---Yes.

You describe that course in your statement, at paragraph 19, as being "on reflection not the right option and perhaps not appropriate". Do you see that in your statement?---Yes.

Can you explain what was "perhaps not appropriate" about that course?

---For me I think it wasn't appropriate to be effectively hiding the Olsson report. That was the wrong thing to do.

10 Just excuse me a moment. I asked you a question about Mr Montague, Mr Noble, and whether he had had any discussions with you about your role and what he envisaged you might do. Did you have any discussions of that nature with Mr Stavis when you started?---Can't recall them but, yes, we certainly would have about the nature of the role, and I think a lot of those discussions may have been simply in the interview process about the, how the role was envisaged.

And did Mr Stavis indicate anything to you about how you were to respond to requests from councillors?---No, he didn't.

Were you aware of any particular councillor involvement in the Homer Street proposal?---No.

20 Did Mr Stavis indicate that there was any part of your role to facilitate the passage of planning proposals and to get them made?---I think there was some discussion about progressing planning proposals and that was the expectation. Not in an unusual way. I don't want to make it sound like he said, "You progress all of them under any circumstance," but there was some indication of there being a lot of planning proposals on the books and those needing to be moved on, some 30-odd, for instance.

I see.---Yeah.

30 There was 30 at the time that you started, is that your recollection?---I, I believe so, yes. We did a tally, Warren and I, of all the planning proposals on the books and, yeah, I believe there was over 30.

Pardon me a moment. Mr Noble, I think it was your email, might have been the previous email to Mr Stavis, you've indicated that the department was required to be notified before it went on public exhibition. Do you recall something to that effect?---Yes.

40 Are you able just to explain what the role is of the department having made the Gateway Determination and delegated the decision-making function to the council what role, if any, did they continue to have in the planning proposal process?---So even though some planning proposals are delegated the department still has oversight on all of them and will check up on them periodically to see how they're progressing. Sometimes Gateway Determinations will be issued by the department with conditions and sometimes those conditions will require check ins or, you know, more than that, department to review and okay a planning proposal going to exhibition. In this case it was simply a please advise us before it does was my understanding.

So you understood that before putting it on exhibition you needed to provide it to the department in effect to get them to give it a once over before it went on exhibition. Is that right?---No. In this case it was the softer approach of we need to be informed, the department needs to be informed about this planning proposal going on exhibition.

So there was no expectation that they would comment on it before it went out to exhibition?---No.

10 It was just indicating that it was to be put on exhibition?---Yes, that's my understanding.

That was something you would do in advance?---Yes, I think so.

And nothing was received from the department in response before it went on exhibition?---I can't recall.

Thank you, Commissioner. They're my questions.

20 THE COMMISSIONER: Can I just ask you while it's fresh in my memory, your initial discussions with Mr Stavis, you made a comment that there was a more transparent way of resolving the issues, that is, the conflict between the Olsson report and the JBA.---Yes.

When you said a more transparent way of resolving the issues what were you referring to?---Having a report go to council, putting the two pieces of advice, so from JBA and from Olsson in the public arena so they can be viewed and then potentially inviting those two consultants to express their views in a council meeting or perhaps a IHAP or local planning panel
30 meeting.

And then just out of interest, you said that the absence of a study justifying the 17 metre height would mean that the planning proposal couldn't be progressed. That's correct?---Yeah. I could probably add to that. It couldn't be progressed at 17 metres so potentially - - -

That's what I wanted to ask you.---Yeah.

40 From the developer's perspective what, sorry, from whose perspective, like who has to make the next step, is it the council or the developer or - - -?
---Council. It's council's planning proposal once it has a Gateway Determination. So what could happen there is, you know, the council could have gone okay, we'll follow Olsson's advice and we'll amend, we'll seek an amended Gateway Determination for the Department of Planning. So it could have still proceeded technically, just in a different form. It just couldn't have proceeded at 17 metres without that justification.

All right. Thank you. Mr Neil?

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

THE COMMISSIONER: Mr Andronos?

MR ANDRONOS: No questions, Commissioner.

THE COMMISSIONER: Mr O’Gorman-Hughes?

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

THE COMMISSIONER: Mr Wood?

MR WOOD: No questions, Commissioner.

THE COMMISSIONER: Mr Pararajasingham?

MR PARARAJASINGHAM: Just very quickly, Commissioner. Sir, can
20 you hear me all right?---Yes, I can.

I appear for Mr Stavis. Just very briefly, you gave some evidence that –
sorry, bear with me. Is it the case that in 2006 you began your career within
the Department of Planning?---Yes.

And that was up until 2012?---Yes.

Can you just briefly just give me some idea of the roles that you performed
at the department?---I worked in the Sydney West regional team and
30 variations of that team which was largely responsible for considering
planning proposals from councils. I worked in the Greater, sorry, the
growth centres area for a short period. I worked in the policy team for a
short period and I also worked in the Office of the Director General.

And is it fair to say that over the course of your experience with the
department you became quite familiar with the Gateway Determination
process?---Yes.

I have nothing further.

40 THE COMMISSIONER: Mr Moses?

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

MS MITCHELMORE: I have nothing further. Could Mr Noble be
excused.

THE COMMISSIONER: Yes. Thank you very much, Mr Noble. You're
excused.---Thank you.

THE WITNESS EXCUSED

[10.34am]

MS MITCHELMORE: Commissioner, we next have Mr Foster.

THE COMMISSIONER: Mr Foster, if you'd like to come forward.

10 Now, oath or an affirmation?

MR FOSTER: Affirmation.

MR MOSES: Yes, Commissioner, section 38 has been explained to this witness.

THE COMMISSIONER: Right. Mr Foster, I understand section 38 has been explained?---Yes, it has.

10 I'll just emphasise, as I'm doing with every witness, the exception to the protection given by the direction is if you gave false or misleading information to this inquiry. That is an offence under the ICAC Act, you could be prosecuted for it. It's a form of perjury, it's a very serious offence.
---Yes.

Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced
20 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.

**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
30 GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Ms Mitchelmore.

MS MITCHELMORE: Yes. Thank you, Commissioner. Your name is Tom Foster. Is that right?---Yes, it is, yes.
40

And you are presently employed by Canterbury-Bankstown Council. Is that right?---No longer, as of April this year I'm now working for a private consulting firm.

So up until April you were a senior urban planner with Canterbury-Bankstown Council. Is that right?---That's correct, yes.

And before 12 May, 2016 you were employed by the council's predecessor, Canterbury City Council. Is that right?---That is correct, yes.

In the same position, senior urban planner?---Yes, yes.

And it's the case that you qualified in town planning in 1995. Is that right?
---Yes. The actual award of the degree was in 1996 but I completed the course in '95, yeah.

10 And you have over 23 years of experience in planning?---Yes.

You made a statement to investigators in this matter, Mr Foster. Is that right?---That is correct.

Can I provide you with a copy of your statement which is part of Exhibit 53. And, Mr Foster, can you confirm that's the statement that you made to investigators.---That is the statement, yes.

20 And the date said to be fixed and in brackets is 3 November, 2017. Is 3 November when you made the statement?---Yes, it was.

Thank you. Just going back to when you started at Canterbury City Council, which you've said in paragraph 4 of your statement started 26 August, 2014 - - -?---Yes.

- - - you were employed the urban planning team. Is that right?---That's correct, yes.

30 And your team leader was Mr Warren Farleigh. Is that right?---Yes.

And the manager of that and other teams was Ms Dawson. Is that right, Gillian Dawson?---Yes, correct.

You reported to Mr Farleigh. Is that right?---Yes, I did.

How much interaction did you have with Ms Dawson?---I had a fair amount of interaction. It was a small team and we worked quite closely with our manager.

40 All right. And in terms of just you say it's a small team, are you able to describe the working relationships within the team?---Yes. With Mr Farleigh being the team leader there was one other senior planner apart from myself, Mr Shooter, and one urban planner, Ms Ho.

Yes.---And given the small number of members of this team we worked quite collaboratively together and, and we had quite open and informal communication channels up to Ms Dawson as well.

Now, when you started in August of 2014 the director of city planning was Mr Marcelo Occhiuzzi. Is that right?---That's correct, yes.

And he sat over the top of Ms Dawson and a number of other managers, is that correct?---That is correct, yes.

And so it's the case that you worked with him for a couple of months, is that right, before he resigned?---Yes. It was only a short period of time.

10 Yes. What was your general level of interaction with Mr Occhiuzzi in those couple of months?---I didn't have a great deal of interaction, just on a few occasions, as most of the attention at the time was given towards a major planning proposal report that Mr Shooter was working on, which was for the Residential Development Strategy planning proposal post-exhibition report. So that was perhaps occupying more of his time rather than the matters that I was addressing, so - - -

In the small number of interactions that you had with him, were you able to form a view of his level of knowledge of strategic planning concepts and issues?---Yes.

And what was your view of his level of knowledge?---I believe he had a high degree of strategic planning knowledge. I was aware that he had held previous manager of strategic planning positions in other councils, and in those few interactions that I did have with him I could see that the technical discussion was at a reasonably high level.

And what was your assessment in the few occasions you had dealings with him of his general approach to the assessment of planning proposals?---I thought it was reasonable, so it was the type of approach I would have expected from a director of planning in such a position.

It's the case that Mr Occhiuzzi resigned towards the end of 2014, is that right?---That's correct, yes.

And he was replaced as director initially by Ms Dawson on a temporary basis. Do you recall that?---Yes.

And then on a permanent basis by Mr Spiro Stavis.---Yes.

40 What was your general level of interaction with Mr Stavis?---It was more so than with Mr Occhiuzzi because he was director for a greater period of time and also he was taking a greater interest in a number of matters that I was working on that were individual planning proposals, and he had a habit of bypassing the intervening levels of middle management and, and coming straight to particular officers on matters in one-on-one situations from time to time.

So you would deal with him directly?---Yes.

And what was your assessment of his level of knowledge of strategic planning concepts and issues?---I would say it was significantly less than Mr Occhiuzzi's and, and I would find myself on occasions having to explain particular strategic planning concepts to him.

10 And what was your assessment of his general approach to the assessment of planning proposals?---I, I felt that his approach was one more of trying to facilitate an outcome and keep, keep processes moving, particularly on a favourable basis towards the landowners whose properties were the subject of the planning proposal.

How would you describe his interaction with landowners or proponents of planning proposals? Were you able to observe his interaction with any proponents?---Rarely, because I, I would not usually be present in, in those discussions.

20 Does that include discussions with respect to planning proposals for which you were the responsible officer?---Yes, yes.

Where you were the responsible officer, would you ordinarily expect to be in those discussions?---In most circumstances, yes, but not all.

30 In what circumstances would you not expect to be present?---Where there were higher-level briefings perhaps with the general manager, where you would normally expect, say, someone at director or manager level to be, to be representing the, the department. Or alternatively in, in some, some circumstances of briefings with councillors where, where officers at my level weren't authorised to deal with them directly.

40 Can I take you to paragraph 22 of your statement. You describe Mr Stavis as "being very much pro-development and having an overly facilitative approach towards developers". Are you able to explain what you mean by "overly facilitative approach"?---In, in that context I would say that he, he was always looking for something that would progress the planning proposal to the next stage in, in a manner that would be of assistance to, to the landowner or, or developer gaining the outcome for the site that they were seeking through the planning proposal process. It was "How can we make this happen?" was sort of the overriding approach.

Yes. How did his approach differ, for example, to that of Mr Occhiuzzi? ---I, I believe Mr Occhiuzzi took a more balanced approach in terms of the merits of particular matters – and this is only based on, I must add, very limited observation – and that there was more of an awareness of the overall policy position of the council on particular matters and that, how the position taken on, on a particular planning proposal would inform and affect

that overall policy position with respect to development across the local government area.

From your perspective as a senior planner within this team, did Mr Stavis's approach have any impact on the way that a person such as yourself in this team performed their role?---It, it did in that we really felt that we had to, or I personally felt that I, I had to take the position of defending council's current policy position against a near-constant level of attack and, and questioning as, as to "Why can't we do this? Why can't we do that?" And of course no land-use decision occurs in a vacuum and it was, it was necessary, or I found it necessary, to constantly be in close liaison with my colleagues – and, and particularly Mr Farleigh – as to individual requests and how that sat with how we understood our, our roles as planning officers for the City of Canterbury and our responsibilities under the various pieces of legislation that we were charged with implementing.

I wanted to ask you some questions now, Mr Foster, about a site 998 Punchbowl Road. It's the case that shortly after you started at the council – this is when Mr Occhiuzzi was still the director of city planning – you were allocated to work on a planning proposal for a site at 998 Punchbowl Road, is that right?---That is correct, yes.

And that site is also known as 1499 Canterbury Road, Punchbowl, is that right?---That is correct, yes.

It's a corner site.---It is a corner site.

Yes. And perhaps I might just bring up an aerial view of the site. Volume 12, page 1. So that's the site there, Mr Foster. That's right?---That is correct, yes.

And there's a T-intersection of Punchbowl Road perpendicular to Canterbury Road, is that right?---That is correct. There is, there is another street to the south that makes, makes it a four-way intersection.

Oh, I see, yes.---But it's limited, but it is limited, so - - -

I see. There's an avenue there.---Yes.

Yes, I'm sorry I missed that.---But it's partly closed.

Oh, I see. Right. The proponent for the site was a Mr Charbel Demian, is that right?---Yes. He was, he was the, the landowner.

The landowner. And did you also know him as Charlie Demian?---I had heard that name, yes.

Did you have any direct dealings with Mr Demian in relation to this planning proposal?---No, not personally.

Now, paragraphs 11 to 21 of your statement you deal with the process which I think you referred to before. It commenced before you started at the council, involving a series of amendments to the Canterbury Local Environment Plan, LEP.---Yes.

10 And 998 Punchbowl Road was one of the sites with respect to which amendments to applicable planning controls were proposed, is that right?
---That is correct, yes.

And that site had been included in the Residential Development Strategy which was endorsed with amendments at a council meeting on 31 October, 2013. Do you recall - - -?---Yes.

20 That's before your time with the council?---It was before, before I, before I started but in the course of researching the planning proposal after it had been allocated to me I, I went through that history so - - -

So if I can take you to volume 11 at Exhibit 52, I might ask if you could be given that volume, volume 11. I wanted to take you to page 136, and this is, Mr Foster, part of the minutes of the council meeting on 31 October, 2013 in relation to - - -?---Yes.

- - - the Residential Development Strategy. Do you see that?---I do, yes.

30 And if I can take you to page 137, and at 3.13 about point 5 on the page, one of the resolutions was to rezone land at 1499 Canterbury Road which was also known as 998 Punchbowl Road to R4, FSR, floor space ratio to 1.8:1 and height to 15 metres.---Yes.

So as a result of that resolution a planning proposal was prepared to implement amendments to the LEP. Is that right?---That is correct.

Including those in relation to 998 Punchbowl Road?---Yes.

40 And there was a meeting of council after you started on 2 October, it's almost, well, almost a year later to resolve matters concerning the Residential Development Strategy. Is that right?---That's correct, yes.

Including in relation to 998 Punchbowl Road?---Yes.

Now, were you involved in assessing the proposal and preparing the report to council in relation to that site?---No, I was not. Mr Shooter prepared that report in liaison with, with Mr Farleigh and Ms Dawson.

So he prepared the whole report?---Yes.

And the planning proposal came to you, did it, after the council resolutions?
---Yes, because the way the council resolutions were structured was that each individual site that was awarded an uplift by the council was in, in opposition to the recommendations of the report, was worded in a manner that a separate planning proposal be created for that site specifically and I believe that was done to ensure that if one site encountered some particular difficulties then other sites would not be held up, and of course that immediately produced some 18 additional planning proposals for our small
10 team to assess, and so at that point they were divvied up among the team members according, according to workload and this is one of the ones which I was allocated to deal with.

All right. So just to unpack that answer a little bit, Mr Foster, it's the case that in the context of the exhibition of the planning proposal that had been resolved by council including with respect to 998 Punchbowl Road, a submission was received in relation to 998 Punchbowl Road. Do you recall that?---I recall reading the submission.

20 Yes. If I can take you to page 139 of volume 11.---Okay, yes.

And you'll see there it's an email from Statewide - - -?---Ah hmm.

- - - Mr Matthew Daniel to the council, which was a submission for 1499. Are you familiar with that document, have you seen that before?---I have seen that before, yes.

Yes. And just over the page is the covering letter which was a
30 representation to council in respect of the planning proposal currently on exhibition and you'll see in the second paragraph that two changes were desired in order to facilitate a feasible and appropriate residential building. The first was a minor increase in the allowable height and the second was an increase in the FSR for the site. And over the page at page 141 there's a reference to preparations to develop the site and initial plans had indicated that an FSR of 2.2:1 may well be possible on the site and there was attached plans and elevations showing the resultant building form. Do you recall seeing that at the time?---Yes, after I was allocated the planning proposal I obtained a copy of the material that pertained to the site to date.

40 And then at page 142 you will see that the last paragraph before the diagram or the figure there was a request that council increase the maximum FSR to enable 2.2:1 and an increase in the height of building to 16 metres and I think the resolution had been 15 metres of council in October of 2013. The request was an extra metre in height. Is that right?---That's correct, yes.

And then when it went to council the officer's report did not support those recommendations, or that request. Is that right?---That is correct.

But it was the case was it not that council approved those amendments that were sought by Statewide in respect of the site. Is that right?---That is correct, yes.

And from what you, what your evidence was earlier is it the case that in respect of sites like that where an amendment had been made from the officer's recommendation that they were in effect carved out of the Residential Development Strategy and dealt with separately rather than risk holding up all of the other amendments that had gone through as recommended. Is that right?---That's correct, yes.

And that then led to you being allocated the planning proposal just for this site as a separate planning proposal?---Correct, yes.

All right. Now, you've said in your statement, if I can take you to paragraph 21, in reference to the resolution of council in October of 2014, "The change of the FSR to 2.2:1 and changing the maximum permissible height to 15 this was a significant increase in raising the FSR and building height well above recommendations and outside of what was expected. Are you able to explain what you mean by "outside of what was expected"? ---Sorry, if you just give me a moment. I just need to read some of the preceding points there to see what may have led to that.

Of course.---Yes, this could potentially be worded better but in the, in the process that had led up to this point firstly in the preparation of the Residential Development Strategy, council had engaged outside independent consultants, so GLN Planning to provide a, provide a citywide look at housing needs for the city over, over the forecast period that the strategy was intended to address and as part of that process they were tasked with identifying particular land throughout the city which may form a source of potential new housing to meet the city's needs and, and to construct a policy framework in conjunction with that which already existed both from the council and the state level to enable housing demand to be met. And throughout that assessment sites such as this one 998 Punchbowl Road were not considered to be worthy of uplift and this, this document went to council and then was placed on public exhibition and a number of submissions were received including by the, by the, the owners and their representatives seeking, seeking an outcome. The consultants and council staff then subsequently assessed those submissions and they recommended against this site as it didn't meet the various tests that were outlined within the policy position developed as part of the strategy. However, that was overturned by the councillors, and when the planning proposal was prepared it was put out with the, with the recommended change of zoning and increase in the height and FSR to 15 metres and 1.8:1 respectively. And when that statutory exhibition for the planning proposal occurred, another submission seeking additional FSR at that site height was made, and again through a process of assessment it was seen by the professional staff that there wasn't merit to warrant further increase over what council had already

granted, and, and so a professional expectation could have been built up around that case – and also considering the context of the surrounding development – that a development of the size and scale as sought by this, this amendment would be greater than what would be reasonably expected in the area and, and the, the current circumstances.

10 Can I take you, Mr Foster, now to volume 12. If you could perhaps be given volume 12 and I think you can return volume 11. I just want to take you to page 1. Mr Foster, this is a planning proposal to amend Canterbury Local Environment Plan for 998 Punchbowl Road. Did you write this document?---I did.

Can I take you to page 10.---Yes.

And page 10 sets out the objectives or the intended outcomes. Of course, planning proposals that are submitted for Gateway, is it the case they have to follow a particular form?---Yes, there is, there is a template.

20 Yes, sorry, a template is a better word. Thank you.---Yes. Yeah.

And the first part requires the council or proponent to identify what the objective is in relation to the site, is that right?---That's correct, yes.

And you've indicated that there are three intended outcomes. The first is to rezone the site from R3 (medium density) to R4 (high density), is that right?---That's correct, yes.

30 The second is to increase permissible FSR from 0.5:1 to 2.2:1, is that right? ---That's correct.

And the third is to amend the height-of-buildings map, so that for this site a height limit of 15 metres applies, is that right?---That's right, yes.

Can I take you to page 33. This is a memorandum to the general manager from Ms Dawson which attached the planning proposal for Mr Montague's signature. Did you draft this memorandum for Ms Dawson to sign?---I did, yes.

40 Speaking generally, what level of interaction did you have with the general manager, Mr Montague?---Absolutely minimal.

Would you see him once a week?---No.

Did you ever have cause to meet with him from time to time?---Apart from a very brief introduction when I first commenced with the council in conjunction with the other starter that week. We had a very short discussion and I had no further direct involvement with him through the course of my employ.

Can I take you to page 35. Following the submission of the planning proposal, a letter came back from the Department of Planning and Environment on 16 February. It's addressed to you. Do you recall seeing this letter?---Yes.

10 And you'll see in the second paragraph that there was a preliminary review of the proposal which suggested that it didn't contain adequate information to proceed with assessment at this time, and there was a request that council submit additional information to demonstrate adequate justification for the 2.2:1 FSR sought, to clearly demonstrate that it has strategic merit. So is it the case that the department had options which might have included, for example, making a Gateway Determination immediately and conditioning that Gateway Determination with additional studies to be prepared? Or it could say, as it appears to have done in this case, we're not even going to assess it at this stage. We require further information. Is that right?---That is correct, yes.

20 And in the present case in the next paragraph there was a request to submit an adequate urban design assessment that included consideration of issues including those required by SEPP 65 and the residential flat design code. And there was of course a reminder to adhere to the principles and procedures outlined in the guide to preparing planning proposals. Did you have any discussions with I think it was Ms Sarkies at or around the time of your receipt of this letter?---No, but I did with, have some telephone discussions with Ms Wilkins - - -

30 Oh, yes.--- - - - who was the officer who was tasked and was identified as the contact in this letter.

And can you recall what you discussed with Ms Wilkins at this time, around February of 2015?---It was, from, from memory it was mostly about the circumstances which led to the, to the, this particular planning proposal arising and the history of the site and the context of the previous work that occurred with the Residential Development Strategy and its planning proposal.

40 If I can take you to paragraph 25 of your statement if you've got that still there.---Yes.

It's on page 6 of 17.---Yes.

And you say in that last sentence, "The response from DOPE was expected."---Yes.

Why do you say that?---Because from all the previous planning work that had been done in respect of this site and with the, with the Residential Development Strategy the department was well aware of this content. They

would have seen the Residential Development Strategy, they would have seen the supporting technical reports and they would have seen the previous planning proposal which included reference to the site and seen that the level of justification for the proposal as, as recommended in the council resolution was simply not there.

You also say in that same paragraph that this letter, so the letter that's at page 35 prompted Canterbury City Council to engage an independent urban design. Do you see that?---Yes.

10

And the urban design assessment for this site was prepared by Mr Peter Annand. Is that right?---That's correct, yes.

You had worked with him previously. Is that right?---I had had some involvements with him previously between 2002 to 2004 or thereabouts. I had worked at the Department of Planning in the managing Sydney's urban growth team and undertaking investigations into further development in southwest and northwest Sydney and as part of that process a number of urban design workshops were held and which required a number of urban,
20 urban designers from across Sydney and Australia to be, to assist the department in that work of which Mr Annand was one.

So that was 2002 to 2004 approximately?---Yes. And I encountered him a couple of years later in Queensland where I was working as a consultant planner where a mutual client was again holding an urban design workshop and, and Mr Annand was one of the urban designers which, which he had engaged to work on the project.

30

Had you ever worked with him in the capacity of him as a consultant rather than in a workshop capacity?---Not as such, no. So that was the first time I'd engaged him directly as a consultant on a project.

40

You referred in paragraph 26 of your statement to a belief that you had that he was on the list of preferred suppliers. What was the significance of him being on that list?---It meant that he had been prequalified by council through, through applying to a, through a selection process to be, to be considered as, as a preferred supplier. So for small jobs under, under a particular threshold of value, he could, he could be engaged directly without need to go to, to tender, and for, and we were obliged for jobs under a certain, certain value that, to go to, to these, these consultants in the first instance to see if they were willing to take a job on, and if there was a limited – above that, that threshold – there was a limited number of selections, that we should include them within one of the firms asked to, to comment, to provide a submission on to undertake those services on our behalf.

You say, and I'm just jumping ahead to paragraph 44 of your statement, where you say – this is at page 14 – you say that you were aware that a

significant portion of Mr Annand's current work was with Canterbury City Council. How did you come to be aware of that?---Because I, I was aware that he'd prepared previous studies for council and that even prior to engaging him on this work I'd seen him in the office a couple of times providing advice on other matters. There was a masterplan for the Canterbury road corridor, which was prepared as a strategic and urban design study some eight, 10 years previous, and, and Mr Annand was the primary author of that study. And I'd understood through talking to Mr Farleigh that, that there'd been a long-standing professional relationship
10 between council and, and Mr Annand, and that he'd done numerous pieces of work for the, for the team over that time frame.

And was it matters for the Urban Planning Team primarily or with the Development Assessment Team as well, to your knowledge?---I was aware of the work for the Urban Planning Team. I can't comment on what other work he was doing. I wasn't aware of it.

Certainly. Can I take you to page 36 of volume 12. You'll see that that is a brief and consultancy agreement for an urban design assessment.---Yes.
20

And at page 38 it's signed or entered for and on behalf of the council by Ms Dawson. Do you see that?---Yes.

And over the page it's signed by Mr Annand. You're the council contact at the top of page 39.---Yes.

Did you draft the retainer agreement for him to sign?---It was a standard form agreement but I did complete the particulars.

30 So it's a template but there are some things that you'd have to fill in, is that right?---Yes. That's right.

So looking at the objectives on page 36, for example, is that something that had to be inserted by you? Point 2 on page 36?---Yes, yes.

Yes. So "The purpose of the project is to provide an independent urban design assessment of the planning proposal." So that's something that you inserted in as being the objective of the agreement, is that right?---Correct.

40 And that's what you understood the objective of the agreement to be?---Yes.

And in stating that objective, what did you mean by independent?---I, I meant free of influence from the landowner or other beneficiaries of any recommended uplift that may occur as, as a result of the findings of the study.

Can I take you to page 38. There's a heading Point 6 – Timing of Study and Reports. Do you see that?---Yes.

And the works that were outlined in the agreement were to be completed by Friday, 17 April, 2015.---Yes.

10 The scope of work was identified on page 37 under point, under the heading For Scope of Work, which required analysis. A series of bullet points about assessment of the key issues of the proposed scheme, an assessment of the scheme's response to the requirements of council's planning controls, and the proposed height and FSR increase in terms of compliance with section 117, sub 2, direction 3.1 Residential Zones, which is the basis for strategic justification and the requirement that a site be of good design.---Yes.

So that was the analysis that was required and the outcome was to be preparation of an urban design report with a particular structure was suggested there. Did you suggest that structure or was that something that was ingrained in the template?---No, that was a thing that I put together based on my assessment of what would be required to meet the request of the department in their letter.

20 And just going back to page 38, there's a reference at point 7 to study supervision, so the team leader urban planning, so Mr Farleigh, will oversee the project but council's senior urban planner, which was yourself, will maintain day-to-day responsibility for reviewing, research and liaising with the consultants. So that was your role.---That's correct, yeah.

Throughout the period of progression of this planning proposal, did you continue to be the responsible council officer in relation to the proposal? ---Yes.

30 Did you liaise directly with Mr Annand following his being retained and the production of his draft report?---Yes, with both Mr Annand and his assistant, Ms Avval.

Did Mr Annand attend the council for any meetings in the course of preparing his first draft?---He did, yes.

Did he meet with you when he did so?---Yes, on most occasions but not necessarily all.

40 Can you recall how many meetings he attended in the preparation of his first draft?---I can't recall the exact number of meetings.

Were any other officers in those meetings that you attended with Mr Annand? And I'm asking only about the period up to provision of his first draft.---Yes, typically it would be both myself and ordinarily it would be Warren Farleigh as well, but I recall that he was on leave for at least part of that period, in which case Mr Shooter was acting in his, in his role for that

time and typically but not always Ms Dawson would also be in attendance, based on his, sorry, on, based, based on her availabilities, so - - -

All right. Did Mr Stavis attend any of those early meetings?---Not at that stage, no, not that I recall.

And what about the landowner or his consultants at that stage?---No. We were purposely keeping them separate from this process because we wanted Mr Annand's objective analysis of the material presented so - - -

10

All right. Now, you've indicated that Mr Stavis didn't attend any, to your recollection didn't attend the meetings at this early stage.---Yes.

Did his level of contact with Mr Annand change over the course of this proposal?---I believe it did and I think that only occurred once he became aware of the draft content of the, of the first report, the first draft which didn't necessarily support the outcomes of the council resolution.

20

Did your level of direct contact with Mr Annand, did that change over the course of the proposal?---I had less direct contact with him as the, as the proposal went on. This is going into the second half of 2015 and into, into 2016, and I became aware that there were meetings where Mr Annand was coming in to meet directly with Spiro and that myself and other members of the Urban Planning Team weren't necessarily involved in that.

We might come to that as we go through.---Yeah.

30

Now, can I take you to page 40 of volume 12. You'll see that this is a report prepared by Mr Annand, it's dated March/April of 2015.---Yeah.

And you'll see at page 42 there's an introduction - - -?---Yes.

- - - about what the report was for, that the council had engaged Annand Associates Urban Design to provide an independent urban design assessment.---Ah hmm.

40

If you, Mr Foster, have a look – or maybe just starting on page 42. You'll see there's some handwritten annotations there. Do you recognise that handwriting?---Yes.

Whose handwriting is it?---Most of it is mine.

Sorry, when you say "most of it", looking at page 42, is that your handwriting?---Page 42, that looks like my writing, yes.

All right.---Sorry, I was looking over the page already.

I'm sorry. So just looking at the rest of the document, is it all your handwriting?---Not all of it's my writing.

All right. Are you able to indicate where the writing might be of someone else?---Yes. So, for example, on page 43, for example, the, the lower-most comment there, that appears to be Mr Farleigh's writing.

Is that where it says, "Exhibited at 1.8:1"?---Yes.

10 That's what you're referring to there?---Yes.

Yes, that's Mr Farleigh. All right. Can I take you to page 45.---Yes.

You'll see there there's a reference, there's some handwritten annotations next to the bullet points. It seems to add a comment that "progressed FSR" - - -?---"Proposal".

Sorry, "proposal"?---"Proposed".

20 I see. Whose handwriting is that?---That's Mr Farleigh's.

That's Mr Farleigh's. All right. And is the rest of the material, the handwriting on that page, is that yours?---Mostly. There's a comment at the top which is struck out and that appears to be Ms Dawson's writing.

That's Ms Dawson's writing, is it? Right.---Yeah.

30 So it's the case that this draft was reviewed by yourself, Mr Farleigh and Ms Dawson, is that right?---That's correct. So I went through it. I, I made my comments and then I handed it on to, to Mr Farleigh and then he in turn gave it to Ms Dawson and then it came back to me to type up a response back to Mr Annand. That's like a consolidated set of comments.

40 And were the comments that you made on the document of a type you'd normally make in relation to a report of an independent consultant?---Yes. They're mostly about ensuring that the facts and circumstances of the case as we, we were aware of it – having the benefit of all council's records and, and the like – were properly conveyed. And, and sometimes, as you can see, there's, like, there's incomplete sentences and we presumed to, to finish the thought off as to, and, and they're also prepared in the, in the view that, that this was a document that was going to be reviewed by the Department of Planning and, and they would perhaps expect things to be expressed in a certain way so, for looking for strategic outcomes and, and then that would ultimately go on public exhibition. So we may seek to clarify things or, or express them in, in the planning jargon as need be.

Yes. In providing comments of this nature on an independent consultant's report, what is your understanding of the limits, if any, on the type of

comments that council officers can make?---I believe that it's seeking to perhaps enable better expression of, of what the report's seeking to do, making sure that the consultant has fully understood all, all the relevant facts and circumstances. So perhaps not everything that's conveyed to them through the initial briefing makes its way into the document, and checking it against the, the brief and requirements and making sure that it, that it actually meets those requirements but perhaps not so far as, as to seeking to shape the outcomes of the report or, or, or coach the recommendations.

10 Can I take you to page 45.---Yeah.

So this is the heading, there's a heading 2.0 – Urban Design Analysis.
---Yes.

And there's reference to a preliminary review of the proposal according to SEPP 65 criteria, that's appended, but the conclusion was first of all that in the first bullet point the proposal is generally not able to be supported.---
Yeah.

20 And the issue was the building heights were appropriate but the proposal failed to accommodate RMS road widening or council setbacks.---Yes.

And nor did it provide any notion of usable communal open space. What does that mean, usable communal open space, just briefly?---There's within the Residential Design Guide and as enabled by SEPP 65 there's a requirement that residential flat building has some portion of the site that's available as landscaped area that's accessible to the, to the residents of the building and which can be used for recreation or amenity purposes and, and the guidelines set out some relevant criteria as to how that should, how that should be achieved and what its minimum standards would be.

30

All right. There's a reference to the proposal requiring further detailed development to clearly articulate that it can comply with SEPP 65 - - -?
---Yes.

- - - and the guidelines. In the second bullet point Mr Annand expressed the view that the proposed building height seemed appropriate within the general framework, but there's a reference to a building height of five to six storeys as proposed in the master plan document would seem to be appropriate.---Yes. That's a reference back to the Canterbury Road master plan that he prepared some years earlier and had amended from time to time.

40

And then there's a reference to the FSR increase and the comment Mr Annand there made was that it does seem like an overdevelopment of the site and his investigations suggested a building height of five to six floors and a maximum FSR of 1.8:1 would be more appropriate.---Yep.

And 1.8:1 had been the product of council's first resolution. Is that right?
---That's correct, yes.

In October of 2013?---Yes.

And in 2014, October 2014 that has been taken up again to 2.2:1. Is that right?---Yes.

10 So Mr Annand was suggesting that the original take-up was in his view more appropriate than - - -?---Yes.

- - - what the current proposal was.---And in this case also that 2.2:1 didn't physically fit on the site under the proposed height limit, so because the two controls are actually independent of each other and have to be formulated in a way so that they work together and, and in, in assigning an FSR of 2.2:1 to the site the, the owners or their representatives have failed to account for land that was not available for development due to the fact that it was under reservation by the Road and Maritime Services.

20 Yes.---And once, once you actually took that into account and, and the necessary development setbacks to meet all the relevant controls you could not physically fit a floor plate of a size that would achieve an FSR of 2.2:1 on the site under the height limits proposed. And so that was kind of a gently-worded way of chiding them that their, that their proposed combination of controls was actually incompetent.

And you've referred to the RMS reservation.---Yes.

30 That was a reservation on the Canterbury Road side of the site. Is that right?---That's correct, yes.

And so there was a reservation in relation to the site held by RMS - - -?
---Yes.

- - - anticipating road widening at some future point.---Yes. And it was included within the SP2 infrastructure zone so, and it had, in council's LEP land acquisition maps it had a designation for, for, for acquisition on there, so the land was, was due to be taken at some point in the future.

40 And so obviously any development of the site had to account for that possibility.---Yes, and, and provide the land to the RMS at that time.

Yes. Can I take you to page 60 of this draft, and there's a series of recommendations that were made by Mr Annand, page 60.---Yes.

And you will see looking at the third recommendation, so he supported the rezoning at point 2.---Yeah.

At point 3 he considered that a permitted, it was permissible to modify height limits to a maximum of five storeys, 15 metres but perhaps with a six or seven storey on the corner. What did you understand by a six/seven storey on the corner?---There's a, a diagram over the page.

Oh, I see. Yes.---And through, through our ongoing discussions with – this is not the same report is it, or is it. Sorry, there's several versions of, of this report and I tend to get them confused from time to time.

- 10 I understand that.---Yes. As a, as a way of seeing how the site could be developed and, and given that he was approaching this site with the background of his previous work on the Canterbury Road corridor, he was suggesting that there was potential for amenity impacts on the adjoining landowner, particularly to the north who had objected in one of the previous exhibitions.

- 20 Yes.---And that was a way of, of mitigating potential impacts on that property and, and also matching an urban design principle that you generally try to reinforce corners and prominent intersections with some kind of landmark element, that we move a portion of the floor space away from the northern portion of the site and onto this corner to add a little bit of extra height there where it would throw any additional shadow over the intersection and not onto adjoining - - -

Not onto the adjoining property.--- - - - adjoining dwellings. So that was a suggested urban design improvement over the material that he'd been provided that the applicant, not the applicant, the landowner and their representative prepared.

- 30 And then just looking at this page. Point 4 was to balance the floor space increase with reduction in site cover to facilitate provision of communal open space. So that's what we were discussing your evidence before.---Yes.

And then point 5 was to provide additional three-metre setback for the improvements of Canterbury Road reservation and then there's a reference to something that's been crossed out and it's as identified in the CRMP, Canterbury Road Master Plan, and the DCP, Development Control Plan? ---Yes, yes.

- 40 Is that right?---Yes. So that's the source of the control for the three-metre setback. It's in the Canterbury DCP.

DCP. All right. In terms of the hierarchy of controls, you've got the LEP and the DCP.---Yes.

Where does the master plan, the Canterbury Road Master Plan, where does that sit within the framework?---The master plan is a non-statutory document which was prepared by council to inform amendments to its, it's

planning controls including the LEP and the DCP. So in the various discussions with, with Peter sometimes he didn't have a full understanding of that relationship because in previous times council going back to when the master plan was brought, brought in it was only partly adopted and so council took on some of the recommendations and decided to hold back others for, for consideration and potential adoption at a later time. And sometimes Peter wasn't so much aware of that and he would be writing on the assumption that the whole document had been - - -

10 Adopted.--- - - - had been adopted.

So in terms of decision making of council when it's deciding on development applications and considering matters under (not transcribable) section 79C of the Environmental Planning and Assessment Act, was the master plan a document to which the council was bound to have regard or is it - - -?---It wasn't bound to have regard. It would have regard to matters in the master plan as they were reflected in the controls of the time and; however, if let's say a circumstance arose where some element of the master plan was not yet reflected in the controls but say somebody was seeking a
20 variation through clause 4.6 that would then be something that council would, would have regard to in determining the merits of the variation, for example.

Thank you. Commissioner, is that a convenient time?

THE COMMISSIONER: Yes, it would be. We'll adjourn until 10 to 12.00.

30 **SHORT ADJOURNMENT**

[11.35am]

THE COMMISSIONER: Anybody else coming in? Legal rep from the council. Right. Okay.

MS MITCHELMORE: Yes. Mr Foster, I might just take you to a further version of the report of Mr Annand, which is at page 96 of volume 12, so in that same volume. And again this is March/April but it's a later version of the draft. If I can take you to page 101, and you'll see this is the section on urban design analysis and it's the similar references in the first three bullet
40 points, do you see that, to what we discussed on the previous version?---Ah
hmm.

But you'll see that additionally – and I think this is something that you'd given evidence about – at the fourth bullet point, “A proposed FSR of 2.2:1 and height of 15 do not appear to be achievable given site constraints and assessment against SEPP 65 and DCP controls.” So that's what you were referring to earlier.---Yes.

If you accommodate the road widening reservation and other setbacks, you can't physically achieve an FSR of 2.2:1 with the height limit that was proposed.---That's correct, yes.

10 Yes. And there was then a reference – and this bullet point appeared in the previous version – about the detailed landscape strategy. But you'll see at the bottom there is an additional bullet point that “This will enable a more appropriate scale of massing for this section of Canterbury Road between nodes, as envisaged in the Canterbury Road Corridor Master Plan.” So this is another reference by Mr Annand to the masterplan. Is that - - -?---Yes.

Did you consider that to be an appropriate observation or one that didn't really apply in the circumstances?---No, it was appropriate in, in that as the current policy framework for the area sat, that should a change be mooted for, for the area then the Canterbury Road Master Plan was the, the first port of call as such because it was council's – up to that point – most recent strategic study that, that applied to the area.

20 Can I take you to page 112. You'll see page 112 there's a reference to the compliance with Apartment Design Guide.---Yes.

And there's a reference there, Mr Annand refers to it being recently released. It's the case that previously there was the Residential Flat Design Code, is that right? Which was adopted under SEPP 65, is that right? ---Correct.

30 And the Apartment Design Guide, or the ADG as they're sometimes referred to, that was a new guideline which superseded the RFDC, is that right?---That's correct, and it was released during the course of the study being undertaken. So at the time that I prepared the brief for Mr Annand, the RFDG was still the applicable document but had been superseded as, as about the same time as we were preparing those first set of draft comments back to Mr Annand, so - - -

And in terms of the application of the ADG, was there any transitional provisions as to, to what development had to comply with?---No, so it was just - - -

40 No.---Some controls changed. Other things perhaps were expressed differently. The RFDG had been in place for probably about 10 years or thereabouts.

So it was essentially an update.---It was an update and, and with amendments based on the observations of what had happened in terms of real buildings that had been built in accordance with the previous code.

And there's a reference to, in the second sentence, that the design of an apartment building on this site generally complied with the guide, but there

was one clause which was a constraining factor which was a clause on page 37 requiring an additional, an additional three-metre side setback where the adjacent development is a lower density zone.---Yes.

10 And insofar as the additional side setback is being referred to here, is it the side setback which was on the boundary with the property where the person had actually objected to the planning proposal previously?---That one and on the eastern side of the property as well, because this, this planning proposal was effectively creating a spot zoning of a single R4 site, with R3 (medium density) zone sites on either side. So for each of those setbacks there would be a need to, to accommodate the additional, the transition back down to the, to the medium density zoned area, which had a much lower height limit of 8.5 metres and I think a 0.5:1 FSR, so significantly different scale of development.

And how many storeys, is that two storeys?---Two storeys.

Two storeys.

20 THE COMMISSIONER: And that was to the north and also to the east?
---Yes. In both directions.

30 MS MITCHELMORE: And there's a reference to contention that this clause need not apply because – I'm looking at Mr Annand's report – because first of all the adjacent properties are likely to be up-zoned at some stage and, secondly, the building can be designed so the balconies don't directly look down into adjacent properties, and so they propose the retention of the FSR at 1.8:1 as in council's planning proposal. Did you have a view about that statement when you reviewed this version of the report?---Yes. I did not agree with that statement and I suspect that it was, as a result, inserted as a result of some later interactions between Mr Stavis and Mr Annand about the content of the draft.

When you say later, how much later are you talking about there?---I'm talking in the period between when I would have provided that marked up version to Mr Annand and the issue of this report.

So, the issue of this drafted report?---Of this draft, yes.

40 Now, can I take you to page 118, and this is again the recommendations, and at point 3 there is a reference to permitting a modified height, but perhaps rather than it being a six to seven-storey tower, it's not perhaps a seven-storey tower. Do you see that?---Yes.

And then point 4 is, "Balance the floor space increase with reduction in site cover. To facilitate provision of open space, FSR should be retained at 1.8:1." And then the next point was, "Comply where possible with SEPP 65 setback, page 37," which is that additional three-metre setback, and then at

point 6, provide an additional 3 metre setback for the improvement of the Canterbury Road reservation. So, if we can just turn the page, Mr Foster, there's a diagram on page 119. Are you able just to talk the Commission through the setbacks, just so that we're all in the picture as to what the requirements were and whether this diagram's complying with them?

THE COMMISSIONER: Sorry, are we looking at figure 19?---Figure 19, yes.

10 MS MITCHELMORE: Yes, that's right. Figure 19, yes.---Yes. So, in this, in this diagram, the green area refers to areas that were expected to be private open space and the pink areas with the solid blue outline is the proposed building footprint, and I expect that the dashed line there would be representing area that was potentially under the basement but, but open to the ground level. So, in terms of the setbacks, the prevailing setback on, for most developments in the City of Canterbury at the time, was six metres from the, from the front. This being the corner site, that would apply on both frontages. However, in addition to the prevailing six-metre setback, the Canterbury DCP incorporated a further three-metre setback for
20 residential development at, at the ground floor, owing to the fact that Canterbury Road's a very busy road, and there it was also intended that the space be available for a future road widening, should, should the need be perhaps for a parking lane or, or for, or for traffic if, if needed, over and above the RMS requirements, because on the understanding that once you allow buildings into that space the opportunity's lost. So, it was a view for a longer term approach. And then on the northern boundary of the site there, you can see the additional three metres for the transition to adjoining zone and also on the eastern boundary there. So, this then leads to the, to the form of building that's shown in plan form and figure 20, where he's talking
30 about the potential to have a roof garden on part of the site to, to increase the amount of communal open space available to residents and the, and then a section showing that transition to the site on the east in figure 21.

Mr Foster, are you able to comment on whether or not – you'll see at the bottom of the diagram that the green colouring stops and there is then a grey, a grey area, it's sort of wedge shape.---Yeah.

Are you able to comment on whether that's the road reservation?---That is the area that is, those are the road reservations so - - -

40

Yes. So that's not coloured-in.---No, because it's excluded from all further calculations because it's, the assumption the site's developed, that land's immediately lost.

So it's in effect a wedge. It starts narrower at the left-hand side and it works its way into a thicker area on the right.---Yes. It would be for the purpose of a turning and acceleration lane for vehicles coming from Punchbowl Road

to then accelerate and join the stream of traffic, and that reservation continues for several properties before it tapers away.

All right. Thank you.

THE COMMISSIONER: And just for my benefit, the nine metres at the northern - - -?---Yes.

10 - - - end of the site, that would encompass the prevailing setback plus the additional three metres?---It's the, it's the setback from the Apartment Design Guide under SEPP 65, because, because of the height of the building, as the height of the building under SEPP 65 and the ADG applies to, increases the site setbacks, also increase in stepped amounts. So for the height of building shown there, which was in the four to five storey range, it would be anticipated normally that six metres from the side boundary would be acceptable, but given that the property immediately to the north was in a lower zone and contained a residential dwelling house there was an additional provision within the design guide that that should be increased to
20 nine metres to provide some additional separation.

MS MITCHELMORE: All right. Can I take you to page 156 of volume 12. Mr Foster, you'll see that that is a letter from the council to Mr Matthew Daniel of Statewide Planning.---Yes.

Is it the case that Mr Daniel was the consultant planner for the landowner on the site?---That was my understanding, yes.

30 Yes. And did you have any involvement in preparing this letter? It's signed by Ms Dawson.---I expect I would have drafted this letter.

Yes.---I don't recall it exactly.

All right. And there's reference to the submission of the planning proposal to the department, the fact that they've requested further justification. I'm in the second paragraph there.---Yes, I can remember this now.

40 And the requirement, or the letter said the justification to take the form of an urban design study, and in the next paragraph there's a reference to the fact that that was confirmed that it should be of an independent nature.---Yes.

And so council had engaged Annand Associates and that council would seek to recoup the costs of the work in accordance with an adopted cost recovery policy. So was it the case that when a planning proposal put forward by council, but in the interest of a particular landowner required additional work in the form of a study, council would recoup the cost of that from the landowner?---That's correct, yes. That was my understanding.

Is it the case that Mr Daniel then rang you shortly after you sent that letter or Ms Dawson sent that letter, do you have a recollection of that?---There, there was a telephone call, I'm not certain it was directly in relation to this however.

All right. So this letter's dated 8 April.---Yeah.

Can I take you to page 158.---Ah hmm.

10 Now, that's your handwriting, Mr Foster?---That's my handwriting, yes.

And this is a memorandum to Mr Stavis from yourself in relation to 998 Punchbowl Road. Is that right?---That's correct, yes.

And it records or summarises a discussion that you've had firstly with, is it Martin Cooper of, is he from the department?---Yes, he's from the department.

20 What was his role within the department?---I believe he had a middle management role in oversight of planning proposal matters within Sydney Region East.

And then latterly with Matt Daniel of Statewide Planning. Do you see that?---Yeah.

So are you able to say when you prepared this memorandum relative to the conversation you had with Mr Daniel?---It would have been immediately after the, the telephone call.

30 And can you recall when you provided it to Mr Stavis, this memorandum? ---Now, in terms of the date, this was either a Friday afternoon, late, or potentially it was the Thursday before Good Friday. It was close to Easter, I recall.

I can tell you, Mr Foster, it was a Friday.---It was a Friday.

40 10 April was a Friday.---Yes. So I would have, I would have made a digital copy of this and put it in DataWorks and then left the, left the handwritten original on Mr Stavis's desk, I expect. Because I, I recall it was late in the afternoon and he had already left for the day.

Now, can I take you just to the bottom-third of the page. I think about point 5 you say, "Points discussed with Martin." Do you see that?---Yes.

So the first part is a summary of your call with Mr Cooper, is that right? ---That's correct, yes.

And one of the things that, looking at the third bullet or the third dash point, was that “He advised that Statewide had told him is that they were preparing a planning proposal for the site and that he seemed surprised that council had already done so.” Is that, am I reading that correctly?---Yes.

And you advised in response that “This was the first I had heard of a new submission from Statewide and that council had not required them to prepare a planning proposal on our behalf.”---That’s correct.

- 10 And it’s the case that once the resolution of council had been to prepare a planning proposal, that was a proposal of council, is that right?---That’s correct.

And that’s not a proposal in respect of which a landowner would have any role.---Not necessarily, no. And I, I expected that this was a case that Mr Daniel and his employers had misunderstood the nature of the recommendation of council and had assumed that that meant that they needed to then prepare a planning proposal.

- 20 Did Mr Cooper call you or did you call Mr Cooper?---No, Mr Cooper called me.

And did you call Mr Daniel or did he call you?---He called me but he may have actually been trying to call Spiro on his landline and kind of worked his way down the chain in terms of phone numbers until he got to someone who was in the office, which happened to be me.

Oh, I see. Right. On a Friday afternoon.---Yes.

- 30 And so over the page, at page 159, you have summarised what you’d describe as the main points of your conversation with him, and he was querying why council was undertaking a planning proposal and advised that he had been preparing a submission, including a, quote, “substantial urban design report” and was querying why an independent urban designer had been engaged as their consultant when they obviously knew the site better. And is your response to those queries summarised in two dash points down? “I drew his attention to the nature and wording of the council resolution”? ---Yes, that’s, so the first, one, two, three, three points are the summary of the conversation and then, and then, and then my, my recollection of what I
40 told him, so - - -

So the first three dash points are what Mr Daniel said to you.---Yes.

And what follows was you responding to what he’s indicated.---Responding to, yes.

And you’ve indicated, “I drew his attention to the nature and wording of the council resolution and how it required council to prepare planning proposals

individually for all the listed sites and that in respect of this site council has now done so.” Is that right?---Yes.

“And as it was council’s planning proposal and as the DPE had requested additional urban design work we had sought to clarify these requirements with DPE via conversations with”, what's the acronym there, Mr Foster?
---Manager (land use and environmental planning) which would be Gillian Dawson.

10 So she clarified that in conversations?---Yes. Because she, she has regular meetings with, with her departmental counterpart so - - -

Counterpart. “And from these discussions it was determined that a council-led process would better address the department’s concerns; however, we would be happy to look at any material provided also.” Why did you provide or prepare that file note for Mr Stavis?---Because it was late on a Friday afternoon and I was not certain that by Monday morning I would have a full and clear recollection of the fine detail of the accounts and I was aware through other sites and other processes, both within the planning
20 proposal space and, and within the development applications, that Matt Daniel was someone who regularly contacted the, the director and that he would want to know about the content of the, of the discussion at the earliest opportunity.

So when you say he would want to know, you mean Mr Stavis would want to know?---Mr Stavis would want to know, yes.

And did you know anything of Mr Daniel’s relationship with Mr Stavis?---
30 No, I never met Mr Daniel. That was my first and perhaps only interaction with him.

Was on that phone call. Is that right?---Yes.

Do you know if Mr Daniel was known to Mr Montague, the general manager?---I, I did know and that was in conjunction with the fact that he did work for Mr Demian and we would regularly get requests coming down the chain for updates on the status of, of projects that, that Mr Demian had an interest in and as with some other developers as well that, who seemed to have a direct contact line to Mr Montague and then requests would work
40 their way down the chain and then we would be expected to provide prompt responses and quite often it would be Mr Daniel making those requests on behalf of his clients.

So when you say down the chain, you mean from Mr Montague down to Mr Stavis and then further down the chain.---Yes.

Is that right?---Yes.

Do you know if any inquiries in relation to Mr Demian or through Mr Daniel came from councillors?---I would not know, no.

Now, can I take you to page 285 of volume 12. This is an email from you to Mr Annand but also with Mr Farleigh and Ms Ho. It's copied to Ms Dawson and Mr Stavis.---Ah hmm.

10 This relates to Punchbowl Road but also another property that presumably Mr Annand was reviewing. Is that right?---Yes, and I think Ms Ho is included because she was looking in relation to that other property.

So she was the responsible officer for Croydon Street?---Yes, at the time, yeah.

And you were the responsible officer for Punchbowl Road. Is that right? ---That's probably what the case was at the time, yes.

20 And is this the email in which Mr Annand's attention was drawn to the issue of setbacks under the new apartment design code?---I think that this may have been in response to review of another draft of the report and I may have noted that the setbacks issue hadn't fully been expressed so I was, in finalising this report I was drawing his attention to it again so I don't think it necessarily was the, the first. It may have been something that was overlooked in previous rounds of amendments.

30 So that might have been that there was a version between the first version I showed you and the one that starts at page 96?---Yeah. And because they, they were so informal, fairly informal meetings with, with Peter in the meantime and we did have phone conversations from time to time as well. So that may have just been confirming something that was from a phone discussion.

All right. Can I take you forward then to August of 2015 and to paragraph 34 of your statement. So, it's the case that there was a further report prepared by Mr Annand around August-September of 2015. Do you recall that?---Yes.

40 And you describe in paragraph 34 that the report changes direction due to the council seeking a height increase to 25 metres. How did you come to learn of that change in direction?---I think that's more a case that the next version of the report firms up around that tower element in the, in, in the, the corner of Punchbowl and Canterbury Roads, that it seemed to have crept up another storey. So, but we were originally talking about something that was in the order of six storeys which was around an 18-metre height limit and then it sort of became six to seven, which is taking it up to 21, and then in the next version of the report it had crept up again to, to 25, which allows eight. So, so, it's starting to talk about a significantly larger building than -

--

A significantly higher building, is that right?---Yes, yes.

And it's the case, of course, that the resolution of council was for a height of some 15 metres.---Yes. So, so were now, we're now 10 metres above.

10 You refer, in the second sentence of paragraph 34, to you being aware that there were meetings between Mr Demian and Mr Montague, and that Annand was engaged further for this reason. How did you know about those meetings?---As I was mentioning before about these requests that had come filtering down through the management lines, they typically preceded these meetings and they may have been along the line, say, that, that they were coming in on a, on a certain date and what was the status of certain matters that may have been discussed.

20 So, there's an element of deduction on your part, is there, in terms of when people were coming in and the requests that were being made.---I, I may have been verbally told but I, I don't have a recollection of specific dates.

Yes. Did you attend any meetings with Mr Demian over this time?---No. I've never met him.

And to your knowledge was Mr Stavis involved in meetings around this time of August, 2015?---I can't say specifically.

30 All right. Do you know if anybody, to your knowledge, from the Urban Planning Team attended, such as Ms Dawson or Mr Farleigh?---I'm not aware of, of them doing so, no.

All right. Can I take you to volume 13 of Exhibit 52. So, this is a new volume which I don't know you have in front of you.---No. Volume 12, yeah.

I think volume 12 could probably be returned. Hang on, volume 12 is falling apart. Yeah, that's come apart.

40 I want to take you to page 23 of volume 13. Now, you'll see this is not an email to which you're a party, but you'll see it's an email from Mr Farleigh to Mr Annand, copy to Ms Dawson on 18 August, 2015.---Yep.

Have you seen that email before?---I believe I have.

And you'll see that there was a further instruction or communicating an instruction to, "Model the implications of a 25-metres building on the site -- -?---Ah hmm.

- - - in terms of achieving an outcome that complies with SEPP 65 and the key controls in our DCP. Is this something you would be able to do for us?" Was the further briefing of Mr Annand a process in which you were involved?---No, that appears to have been directly from Warren to, to Mr Annand and it seems on instruction.

10 Yes. Did you continue, this is August/September, to have involvement in the planning proposal?---I did, but as time went on there were more and more activities relating to the planning proposal that I was not necessarily directly involved with.

And so the briefing in relation to this further exercise for Mr Annand perhaps being an example of that?---Yes. I understand that Warren would have advised me of the fact that it was happening.

Yes.---It may be just after the fact.

20 I see.---But so I was certainly kept informed through, via him but I was not necessarily tasked to do these matters myself.

You'll see that there's also, the next paragraph was a statement that, "We would appreciate your views on the desirability of such a building in this specific location, particularly in terms of context, relationship to surrounding development, amenity, precedent et cetera."---Ah hmm.

They are the type of matters that one would expect, would they not, in relation to a strategic planning matter, is that right?---Yes.

30 So matters such as context, relationship to surrounding environment, general amenity and also whether or not a building for example of 25 metres on this site would set a precedent.---That's correct, yes.

Now, can I take you to page 27. You'll see that there's two emails on this page, 26 August. The first is at 9.27 from Mr Farleigh to Mr Stavis providing a fee estimate to look at implications of possible 25-metre building, and, "We'll proceed to engage him on your okay." And you'll see the top email from Mr Stavis to Mr Farleigh which you're copied on.---Yes.

40 It says, "Warren, all good, please proceed." And there's a Post-it note on the side for you to put it on the, on the file.---Ah hmm.

Can I take you to page 30. You'll see that this is an email from Ms Avval - - -?---Yes.

- - - to Mr Stavis and Mr Farleigh, which attaches, it's 4 September, a final draft of urban design review. "Please inform us if there was any inquiries." You'll see over the next page, page 31, the attached review which is dated August of 2015. If I can just take you to page 32 you'll see that the report in

the introduction is described as a supplementary report to a previous urban design review carried out in April 2015.---Ah hmm.

Notes the recommendations that were made in that report and then in the text box, “Council has now asked us to review that document and to assess whether a building height of 25 metres and an FSR of 2.2:1 might be acceptable on this site.” And the report looks at some options to text height envelope and FSR controls.---Yeah.

10 Mr Foster, is it the case as a matter of perhaps common sense that if you’ve got a higher building you’re able to fit in the higher level of FSR?---That’s correct, because you can, because the FSR is a ratio of site area to potential floor space.

Yes.---So as you increase height you increase the capacity to accommodate additional floor space.

20 So it was the case that in relation to Mr Annand’s first report with the issue of setbacks, the floor space ratio had decreased - - -?---Yeah.

- - - on his recommendation to 1.8:1 because it had to accommodate the various setbacks, and one - - -?---Yes.

- - - solution to that was to increase the height of the building - - -?---Yes.

- - - as a mechanism of getting back some of the lost floor space. Would that be accurate?---That, that was pretty much the process that was going on so - - -

30 All right. Can I ask, did you recall seeing a draft of this report in or around early September of 2015? You weren't copied on the email, Mr Foster, but - - -?---I, I would have been provided with one once it was within the team, so Warren would have, would have given one to me for my information at least and asked me for my views on it.

40 And can I take you to page 36 of – perhaps, actually, if I could take you to page 34. And this is just in relation to context. There’s a reference at about point 5 on the page that there’s been an uncoordinated number of planning proposals along Canterbury Road. Do you see that sentence? And there’s a reference, “These have been,” referring to the planning proposals, “for varying heights and FSRs, but in the absence of a statutory strategic framework all proposals are using precedents as a major justification for height variation. Mr Annand expresses the view that it would generally, however, be acceptable to establish a building height of six storeys along Canterbury Road with occasional additional towers to eight storeys to emphasise corners and vistas, et cetera”. And in the next paragraph Mr Annand refers to the fact that “Further apartment development could be expected east along Canterbury Road,” so side setbacks of six metres for

four levels and nine metres for the next two levels were acceptable, “and that further apartment development may be considered north along Punchbowl Road but no council document suggests so at this stage.” So it concludes, “In this case, setbacks of six metres for four levels, nine metres for the upper, would only be appropriate if care is taken to minimise overlooking of properties to the north, for example, by using planters.” Are the views that Mr Annand expressed on page 34 views with which you agreed at the time?---No, they are not.

- 10 Why not?---Because it didn't reflect the current strategic planning for the area at the time. There, there was nothing in place in terms of amendments to zoning or proposed amendments to zoning or other development controls that would enable development of those outcomes suggested to occur. The first part of his statement he's referring again back to the Canterbury Road Corridor Master Plan and basically rolling out a version of what, what that, that document would have recommended if implemented in the area. But that part of the master plan's recommendations had never been adopted by the council so it wasn't council policy, so it was speculation to suggest that this would be necessarily a development outcome for the area. It may
- 20 ultimately turn out to be that way, and there's been subsequent work done in terms of a new Canterbury Road review, but at, at the time there, there wasn't a sufficient strategic basis to make those assertions, especially not in terms of trying to argue that, that existing development controls should not be applied in, in respect of the site.

- Can I take you to page 36, which is a section dealing with building height, and again there's a reference to the master plan having recommended four to six storeys. “Recent events have seen some six to eight-storey approvals and recommendations along Canterbury Road, and this seems acceptable with appropriate justification.” And then the statement, “This height is
- 30 acceptable on Punchbowl Road only because it marks a major intersection and entry into Canterbury LGA.” Did you agree with the statement or the characterisation of this intersection as a major intersection and entry into Canterbury LGA?---It is a, it's a major intersection in so much that it carries a very high volume of traffic, and it was on the border of Canterbury LGA and the adjoining Bankstown LGA. However, when you look at the surrounding context of predominantly single-storey bungalows and aging commercial developments along the front of, frontage of Canterbury Road in particular, it wasn't something that really lent itself to be considered as a
- 40 major gateway point and I, in this version of the report generally I noted that, that the arguments and reflections seem to very closely mirror what you've found in Mr Daniels' submissions, in terms of the arguments that they put forward for the site in, in their various submission letters. So, so it was starting to parrot back what the landowners' position was in relation to the site and - - -

When you refer to submissions, are you referring to the submissions that were made in the context of the Residential Development Strategy?---Yes. And the subsequent planning proposal.

Were there any others that, that you're considering in that context?---No. I may be thinking of the documents from Statewide.

10 There's a reference in that passage to recent events having seen some six to eight-storey approvals along Canterbury Road. Were you aware of any approvals for eight storeys along Canterbury Road?---Yes, but they were kilometres and kilometres to the east. They were nowhere in the vicinity of the site.

Of this particular site?---Yes. So, we're talking about Roselands, Belmore, further, some suburbs away.

20 And just as a comparison, in relation to this site, what were those sites like in terms of access to transport facilities, shops, et cetera?---They varied. A lot of them weren't particularly brilliant in that respect but they were probably closer to such facilities than, than the site was. I was assessing another one of these proposals at 530-580 Canterbury Road or thereabouts at, at the time and it was, again, on the fringes of areas that could be considered for intensification without some further land-use intervention. So, it was pretty much putting forward the argument that some bad decisions have been taken, so we should allow bad decisions to continue and multiply.

30 Can I take you now, Mr Foster, to page 41. You will recall that Mr Annand advances a series of options for the building area and how that would impact on FSR. Do you recall that? If you want to go back a page, you can see there's references to option A, B and C, and D is on page 41 that I've taken you to. And you'll see that option C is bolded, there's a sentence at the end, "This is preferred option." Do you see that?---Yes.

40 And the commentary is it only partially complies with SEPP 65 setbacks. The eastern setback's only six metres because it's technically noncompliant but acceptable, given likely future development to the east. At that stage was there any proposal on foot for future development to the east?---No, there was not.

Then there's a reference to the northern setback being 50 per cent compliant and 50 per cent noncompliant, "But this section will minimise overlooking to rooftops to the north. FSR achievable is about 2.1." What was your view at this time about option C?---I did not think that it was an acceptable option.

Why not?---Because of its noncompliance with the SEPP 65 setbacks, and if this version of the report had been then submitted to the department, I could not see that they would agree with the recommendation.

10 Can I take you to page 44 and these are the recommendations that were made in the conclusion. So, generally six storeys in terms of height but with a possible tower of about 260 metres square in the south-west corner, to a height of eight storeys with capacity for a roof element and then FSR was 2:1 based on the provision of a well-landscaped communal open space in the north-east corner of the site which should be well landscaped for communal use. Exploit possible deep-soil planting and be serviced by a small amenities (not transcribable). And so the reference to the FSR was qualified by reference to generous and useable communal open space, is that right?---That appears to be the argument made.

20 What's your view of that argument?---Well, these are not typically the sorts of arguments that you would rely on for, for an urban design study to, to justify a change of, of land use and development standards. These are incidental matters. We'll make the building look a bit nice so go on, give us what we, what we want.

30 What are the types of matters that you would rely on?---I would be looking at some significant change in the surrounding area that would act as a motivating force for intensification and redevelopment, say an uplift in the availability and quality of public transport services perhaps or some use strategic initiative, place some new source of employment close by and analysis and understanding of the, of the citywide housing supply that suggested that what was available was insufficient and that this was a superior option to other matters that could be considered as potential locations for intensification and, and that there was a coherent strategy for a, an end state not only for the site in question but for the surrounding area that, that had, had a focus on, on what, what the place-based outcomes would be, you know, it's not just a building sitting in isolation. There's going to be surrounding changes that happen in a coherent manner towards a desirable outcome.

40 In terms of public transport, was there public transport nearby?---No, not as the, some local bus services that, that could take you up to Bankstown or to, or to Punchbowl station.

Sorry, that was, did you mention a bus?---Yes. So they're not high-frequency, high-quality bus services that you would seek to shape land use around.

And what about retail services in that vicinity?---No, there was very minimal retail facilities. There was another service station which had a little shop attached to it and some, some other commercial activities like in Officeworks and things like that but not, there was no land within about a

kilometre of the site that was in say a local business zone that was aimed at providing for the needs of other resident population.

Did you discuss your views of that further report with any other members of your team?---I would have discussed it with both Warren Farleigh and, and Gill Dawson.

And can you recall what their view was of - - -?---They were generally in agreement - - -

10

With you?--- - - - with, with me and because there was, there was no new material in here that would really have changed any of the previous positions that we would have adopted in respect of the sites.

Are you aware that Ms Dawson raised concerns with Mr Stavis at around this time?---I believed that, that was the case, yes.

20

Can I take you to page 60. You will see that there's an email, Mr Foster, from Ms Dawson to Mr Stavis at 10.57am on 4 September. It's at about point 5 on the page. Do you see that?---Yes.

And is that an email that you saw at the time? You're not a party to the email, I should make that clear.---I may not have seen the email but it was certainly probably a product of a discussion between myself, Warren and Gill.

So that's reflective of the view that - - -?---Yes.

30

- - - you collectively held at around this time about the proposal - - -?
---Yeah.

- - - to increase the height to 25 metres.---Yes.

All right. Did you discuss your views about this report with Mr Stavis?
---I don't recall any specific discussions generally 'cause there was two layers of, of middle management between him and, and myself, so filtering up via Ms Dawson would have been my, my approach to the matter.

40

Did you discuss your views with Mr Annand?---I don't recall so at the time. I don't think I was having much direct involvement with Mr Annand by that stage of the process.

Right. The final version of this report was provided in mid-September. Can I take you to page 95 of this volume. Were you provided with a copy of this version of the report at or around mid-September, can you recall?---I don't recall exactly but if it had been provided to the Urban Planning Team I certainly would have seen it.

All right. And then can I take you to page 101. You'll see that there's been some additional material provided with relation to height. Do you see that there is a reference in the third paragraph to a "Six-storey building with additional two-storey can be acceptable for the following reasons," and it provides a series of reasons. And then after the three bullet points there's a reference to potential further development, but if not the height associated with Canterbury Road is still appropriate. And then the next paragraph, "It should be stressed that the height proposed is six storeys, an additional two-storey tower at the southwest corner can be justified as a landmark/focal point, and in no way should this document be interpreted as supporting a general eight-storey limit." Did you agree with the view that the two-storey tower could be justified as a landmark or focal point?---Not really, at that size and scale. I mean it's a focal point for what in particular, it's just the apartment building.

All right. And just over the page there's reference to density, so this is dealing with the FSR. And there's reference to the fact that again the proponent had sought 2.2:1 and that wasn't possible within the required setbacks and would require a significant common open spaces roof gardens. And then the penultimate paragraph, "Whilst acceptable in tight locations and particularly where mixed-use development is concerned, reliance on roof gardens would establish an undesirable precedent for Canterbury Road of a density that can only be achieved with roof garden communal open space." And, sorry, that's talking about the north side of Canterbury Road. ---Mmm.

Is that consistent with general council policy in that regard?---Generally roof gardens weren't supported within residential areas as a source of communal open space, we wanted that to be at, at the surface level where possible or close to it in a low podium, mainly because of the amount of noise amenity and overlooking concerns that would generate for additional residents.

Was there anything in – can I just take you to paragraph, sorry, page 108. You'll see there's been a slightly revised approach to option C in terms of putting in its strengths and its weaknesses, just separating those out, but otherwise the content is reasonably similar. Was there anything in this report, this version of the report, provided to you in mid-September that changed your views at all about the appropriateness of the proposal as it was evolving?---No.

No?---No.

Do you recall seeing – moving now to October, the end of October, on or around 26 October – do you recall seeing amendments to the planning proposal submitted by DDC Urban Planning in respect of this site?---Oh - -

Perhaps to refresh your memory, can I take you to page 155.---155.

This is a letter of 26 October, 2015 from Statewide to Canterbury City Council, marked to the attention of the general manager. And you'll see in the second paragraph that there's a request for a number of amendments to the planning proposal. Do you see that?---Yes.

10 In the second paragraph. Do you recall seeing a copy of this letter on or around 26 October, 2015?---I do recall seeing the letter at some point, but whether it was around those dates, I, I, I can't recall.

Can I take you to page 157. There's a reference at the top of the page to, "As a result of further numerous meetings with council officers and significant design development, the project architects have prepared a volume study which demonstrates how the site can accommodate an increased height limit and maximum floor space ratio, and on this basis we request that the proposal is amended to allow on the site a maximum building height of 25 metres and maximum permissible floor space ration of 2.8:1." Do you see that?---Yes.

20

Is that something that you recall being informed about at or around this time, that further increases were being proposed?---No. Not, not directly.

So when you say "not directly", what do you mean?---Mean that it may have sort of, something may have filtered down to me via Warren that, oh, there's a, there's a new letter and study in and they're asking for more.

30 So by this time is it the case that you were no longer involved in the day-to-day conduct of this proposal?---Pretty much. So the second half of 2015 I had very little day-to-day involvement and certainly wasn't involved in any of these numerous meetings with council officers.

Yes, I was going to ask you about that. So you, the reference to "as a result of further numerous meetings with council officers", as far as you were aware they were not, they were not meetings that involved you at least? ---Yes, and I would be surprised if they involved people at a level lower than Spiro.

40 Why? Why do you say that?---Because as I mentioned at the, at the start of my evidence, the Urban Planning Team was small and worked together very collaboratively. If such things were, were happening they would have been openly discussed.

So if it was the case that Ms Dawson or Mr Farleigh, and/or Mr Farleigh, had attended such meetings, you would have been informed by them of their occurrence, is that right?---Yes.

And what was discussed.---Yes.

Is that particularly the case in respect of a proposal for which you were at least nominally responsible?---Yes.

Were you aware that Mr Annand was asked to review this further amendment and provide a report?---I believe Mr Farleigh did mention that to me. I can't recall at what, at what point he did, though.

10 Is it the case that you reviewed that report of Mr Annand when it came in, can you recall, around December of 2015?---I do, do remember reading something at that stage, yes.

Pardon me a moment, Mr Foster. Can I take you to page 199 of volume 13. Is that a document that you've seen before?---I don't recall having seen this document before, no.

20 Are you able to identify whose handwriting appears on the document?---At least part of it in sort of the lower left-hand corner looks like Spiro's writing to me but I'm not certain.

You can't say with any certainty. Is that right?---No. It looks, it looks similar but I can't say for certain that it is.

30 Thank you. Now, can I take you to volume 14 of Exhibit 52. I'll ask you to hang onto volume 13 because I'm going to come back to it. I just wanted to take you to page 5 of volume 14. You will see that it's a memorandum or a letter from Mr Annand to Mr Stavis of 20 November and there's reference to having reviewed an annotated plan and he is giving some feedback in relation to that. Is this a document you've seen before, Mr Foster?---I don't recall though I may have.

Is it the case that Mr Annand subsequently prepared a report addressing the further proposal that had come in on behalf of the landowner, do you recall? This was the one I was referring to in December of 2015.---I can't recall specifically, no.

40 Perhaps if I can take you to the document. If I can go back to volume 13, page 213. Sorry, the report starts on page 203 just so you've got the start of the report. I wanted to take you to pages 213 to 214. You will see in relation to the urban design analysis that it was a preliminary review suggesting up-zoning would be appropriate and there's then a reference to a preliminary review of the proposal. The conclusion of that review was first, that the proposal as set out in the proponent's planning proposal report is generally able to be supported with building heights appropriate and accommodating RMS road widening and setbacks but doesn't provide sufficient usable communal open space and required further detailed development documentation. The second bullet point indicated that the proposed building height of 25 meters seemed appropriate. And the third

bullet point an FSR increase from .5:1 to 2.8:1 doesn't represent an over development of the site and the investigations confirm an FSR of around 2.8:1 can be achieved within a height of 25 metres. Is it the case, or perhaps I can ask you, Mr Foster, whether you did, you have a recollection of reviewing this report?---Yes, I have read this report previously.

Did you review it around December of 2015, can you recall?---I can't recall whether it was then or whether it was sometime later.

10 When you say sometime later, how much later?---So early 2016 so - - -

Perhaps January?---Perhaps later January. I do recall I took some leave around about that time and it may not have been provided to me immediately upon it being tendered to council so I may have eventually read it but I'd certainly seen it by the time I came to write my report on the matter but I can't recall when I first saw it.

20 All right. So, if I can take you to page 216, building height, the comment on building height is a reference to events having seen six to eight-storey approvals. So, that's consistent with other reports or versions of the reports that we've seen. So, that's just a further iteration of that comment. Is that right?---Yes.

30 And then in relation to density, there's reference to the proponent having sought 2.8:1, which is possible within the required setbacks and building height and particularly if a reasonable and usable open space is provided as a roof garden on top of the building. At the time that Mr Annand was preparing this report, so December 2015, was he aware of the council's attitude to rooftop gardens?---Yes. And you could see that the, through the versions of the reports, that there's attempts to, to put the qualifiers on a lot of statements rather than saying things particularly definitive, as which I interpreted to mean that he was being pushed towards saying these things by another party but perhaps was not entirely comfortable with it and was trying to catch the terms in a way that, that didn't show unqualified support.

40 Is that something, Mr Foster, that you're just deriving from your reading of the report?---Yes, and also from meetings that I had been in with Peter as the report was starting to change earlier on, where he was becoming increasingly uncomfortable.

And what are you basing your assessment that he was becoming increasingly uncomfortable?---Mainly on body language. He was, and also, he was less direct in his answers to particular questions, trying to talk around points because of unwilling to say something that he, he, that he didn't particularly agree with but couldn't be seen to not say.

What was it about his body language, your observation of his body language that gave rise to the impression that he looked uncomfortable?---He's, he's

become sort of more closed in and, and tense and, and was sort of more nervous movements than from how I'd recalled his posture from times I'd met him over preceding years.

Is that a convenient time, Commissioner?

THE COMMISSIONER: Yes, it is. All right, we'll adjourn until 2 o'clock.

10 **LUNCHEON ADJOURNMENT**

[1.03pm]