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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 WEDNESDAY 27 JUNE, 2018

AT 9.30AM

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

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Commissioner. Yesterday, an issue arose about the scope of a section 112 order in respect of part of the evidence given by Mr George Vasil, and an interim order was made last night pending discussion between my instructing solicitor and Mr Vasil's representatives. An agreement has been reached as to the appropriate scope that I need to persuade you, Commissioner, that this scope would be appropriate.

10 THE COMMISSIONER: Yes.

MR BUCHANAN: And it's a bit bits-and-pieces. Can I pass you a document which has been marked up by Ms Ellis, and take you through it, Commissioner. It's in respect of pages 1344 to 1347 of the transcript of Mr Vasil's evidence yesterday, and I appreciate there are different colours on the first page, but whatever the colour, it is the marked up passages which the parties agree, I'm sorry, and also page 1355, I'm reminded, of the transcript. Not just pages 1344 to 1347.

20 THE COMMISSIONER: Yes.

MR BUCHANAN: But also 1355, but they have been extracted and set out on the pages that I've passed up to you, Commissioner. The material concerned all deals with the subject matter of the application that was made yesterday. So far as the second page is concerned of this extract from the transcript, the passage, as marked up at the top of that page, is the subject of the application and agreed. The passage about a third of the way down the page which is marked up, my application is to vary that marking, if you understand me.

30

THE COMMISSIONER: Yes.

MR BUCHANAN: So as to remove the marking from the words commencing "would be more likely" and concluding at the word "condition".

THE COMMISSIONER: The second condition?

40 MR BUCHANAN: Correct. And in fact, if I could just here note that that should be "conditions", condition or conditions.

THE COMMISSIONER: It should be conditions.

MR BUCHANAN: Plural, yes. And then for the direction to extend to the words such as those you've described, and the next word would remain available, publicly available and then where the answer commences [REDACTED] we would respectfully agree that it would be appropriate that the direction extend to those words. I then interrupted the witness and used

the words, the two words “alleviate them”. We respectfully submit that those two words should remain available to, on the public transcript but that the entirety of the answer should be the subject of a direction under section 112.

THE COMMISSIONER: So that’s commencing [REDACTED] and finishing [REDACTED]

MR BUCHANAN: Correct.

10 THE COMMISSIONER: Mmm hmm.

MR BUCHANAN: I think my learned friend has heard what I’ve had to say. I hope it was understandable.

MR DOYON: It was, Commissioner, and yes that is agreed.

THE COMMISSIONER: And you agree with the proposal that the non-publication order, the interim one I made yesterday be varied now to exclude the material that Mr Buchanan has identified?

20

MR DOYON: Yes, Commissioner.

THE COMMISSIONER: Right. What’s the mechanics of it?

MR BUCHANAN: It will be attended to by Ms Ellis, my instructing solicitor. I know that’s not an answer to your question, Commissioner, but there is a process that she undertakes to ensure that the order is implemented.

30 THE COMMISSIONER: That’s all right. The order should be that the non-publication order - - -

MR BUCHANAN: Perhaps this document could be marked for identification for the purposes of the direction. Would that assist?

THE COMMISSIONER: May I inquire through you, can I mark something for identification?

40 MR BUCHANAN: I’ve seen something in the list which is already an MFI.

THE COMMISSIONER: Okay.

MR BUCHANAN: Just precedent work.

THE COMMISSIONER: Excuse me for a minute. And so the order is that the non-publication order extends to the highlighted passages with the exclusions that you have put on the record.

MR BUCHANAN: Yes. And I don't know whether, Commissioner, you've marked the copy that I passed up because maybe the order could take in the, and the markings that you have applied to the MFI.

THE COMMISSIONER: All right.

MR BUCHANAN: Could the order extend to the non-publication of MFI 2?

10 THE COMMISSIONER: Thank you. All right. I revoke the interim non-publication order I made under section 112 yesterday in respect of some evidence given by Mr Vasil. I now make a non-publication order under section 112 of the Act to exclude from publication the passages highlighted in a document which I have marked MFI 2, and which extends to some handwritten deletions that I have made on page 2 of that document, but does not extend to some sections which I have applied a tick over, and also the non-publication order also extends to MFI 2.

20 **#MFI-002 – EMAIL FROM CRAIG MURRAY TO CATHERINE ELLIS RE REDACTIONS AS DISCUSSED DATED 27 JUNE 2018 WITH VARIATIONS MARKED BY COMMISSIONER MCDONALD**

COMMISSIONER MAKES VARIATION ORDER – REVOKE INTERIM SUPPRESSION ORDER OVER ALL REFERENCES TO CON VASILIADES' HEALTH ISSUES

30 **COMMISSIONER MAKES SUPPRESSION ORDER – SUPPRESS REFERENCES TO CON VASILIADES' HEALTH ISSUES IN ACCORDANCE WITH MFI 2 & SUPPRESS MFI 2**

THE COMMISSIONER: Does that cover it?

MR BUCHANAN: Thank you.

THE COMMISSIONER: All right.

40

MR BUCHANAN: Commissioner, that is the only administrative matter that I have this morning. The next witness is Ms Laila El Badar.

THE COMMISSIONER: Ms El Badar. Now, do you take an oath or an affirmation?

MS EL BADAR: Just an oath. Or, whatever, what's, like, an oath, what do you - - -

THE COMMISSIONER: Do you require the Koran?

MS EL BADAR: Yeah, if possible. Yeah.

THE COMMISSIONER: Have we got that? Good.

THE COMMISSIONER: Now, Ms El Badar, you're not legally represented today?---No, no.

Has anybody discussed with you a direction I can issue under section 38 of the Act?---No.

10 All right. When you come to give evidence - - - ?---Mmm hmm.

- - - the usual rule is that any evidence that you give - - - ?---Yeah.

- - - could be used, in a sense, against you in other proceedings.---Okay.

That's not to say that there will be other proceedings.---Mmm hmm.

But for example, criminal proceedings or civil proceedings or something like that.---Sure. Yeah.

20

I can make an order under section 38 of the Act.---Mmm hmm.

Which, in a sense, provides you with a protection that requires you to answer all the questions asked of you - - - ?---Yeah.

- - - and produce any documents.---Yeah.

But it provides the protection that those answers and any documents you produced can't be used against you in other proceedings.---Okay.

30

There is a very important exception to that protection. That is, because you've taken an oath - - - ?---Yeah.

- - - you are basically undertaking that you're going to tell the truth.---Mmm hmm.

If you didn't tell the truth, or gave false or misleading evidence to this public inquiry - - - ?---Yeah.

40

- - - it is possible that you can be prosecuted for giving false or misleading evidence to this inquiry and the protection I would give you under section 38 doesn't apply to those proceedings.---Yeah, okay.

Now, would you like me to make a direction?---Yeah, yeah. If possible.

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: Thank you, Mr Buchanan.

20 MR BUCHANAN: Commissioner. Ms El Badar.---Yep.

Your name is Laila El Badar.---Yeah.

And what is your occupation?---I'm just a housewife, mother.

Home duties.---Yeah.

And are you a daughter of Michael Hawatt?---Yeah.

30 And are you married to Talal El Badar?---Yes.

In 2014/16, actually, I withdraw that. In 2015, just thinking back to that time.---Yeah.

Did you have any work or were you looking after kids at home?---Most likely looking after kids at home.

Thank you. If you could just move forward towards the microphone a little bit.---Sorry, yeah.

40

That will assist.---Sorry. Sorry. This one, or just - - -

Hopefully both of them will pick up what you say.---Okay, sure.

Now, did you and or Mr El Badar, were you involved in the development of property in 2015?---My husband is involved in development, I don't, I just, I don't have anything to do with the actual developments.

Right. And did you or your husband talk about the progress of the development that your husband looked after?---I, I probably spoke about the Peshurst Road, because I was living in it, and - - -

Is that Peshurst Road?---Roselands, yeah.

51 Peshurst Road?---Yeah.

10 And you would've talked about that with your husband. Is that right?
---Yeah.

Was he involved in developments other than Peshurst Road?---Yes, he was.

And how many developments was he involved in, or development projects was he involved in in 2015?---I don't recall exactly but I know, I, I read and I know that there was one in Lakemba and I know he was doing something in Strathfield also.

20 And was the one in Lakemba at Willaroo Street?---Yes.

And the one in Strathfield, can you recall the address or the street?---It's the main road, what's it called? I know where it is but I don't know what the road is called, it's just the main road.

Not Liverpool Road?---Liverpool Road.

All right. Any others that you can recall?---No, that I can think of.

30 And was your husband, in 2015, a full time development, or did he have a job and developing was something he did on the side?---That's right. Correct.

The latter.---He has a job and he does development on the side.

Thank you. Did you know of your husband having an involvement in a potential development project in 2015 at Santley Crescent, Kingswood?
---Yeah. I do know bits and pieces about that.

40 Right. Were you involved in a potential development project at Santley Crescent, Kingswood?---No. I don't do any development, I'm not involved in the development, but I was, like, I was interested in Peshurst Road because I was living in it at the time, so that's why I did take, speak about it or whatever or what not. I don't really get involved in any of my husband's work or business affairs, I've got too much going on myself, so - - -

I'd like to show you a document, please, in Exhibit 52, volume 7, and if we could turn to page 1 of that. Can you see that that's a development application in respect of 51 Penshurst Road?---Correct.

And your husband's signature is at the bottom?---Yeah.

And you can see that it bears a council stamp with the date 13 February, 2015 on it.---Yep.

10 Just to assist you in fixing a time when the development application commenced and it was being progressed.---Yeah, sure.

Now, the development application was for the demolition and construction of 12 townhouses with basement car parking. Do you recall that?---I recall it was for townhouses but I don't know exactly - - -

And were you living in premises on that, at that address at that time?---Yes, I was. Yes. Correct.

20 Was it a townhouse?---It was just a house.

Just a house.---Yeah.

Thank you. Can I ask you to go to page 153 in those pages in front of you? And it might assist Ms El Badar, if you look at the screen. There is a copy of the document that I've asked you to look at but we can blow it up to make it easier to read.---Yeah.

30 But just looking at the whole of the document at the moment, I just want to explain to you what sort of document it is. It's what's called an extraction of data from a mobile telephone and sometimes it's called metadata, and what it is, is in this case data about text messages that are sent to and from the telephone. The telephone belonged to your father, Michael Hawatt. ---Yeah.

You understand?---Yeah.

40 And as you can see it's set up in columns, on the left-hand column there's numbers to give the sequence of the messages, then in the third column from the right the party is identified as to whether it's a received or a sent text message, then there's a time and date in the fourth column from the right. If you can skip over the next three columns and then you have under the heading "message" the content - - - ?---Mmm hmm.

- - - of any text message that was sent or received from your father's mobile telephone. Could you have a look, please, at message number 1?---Yeah.

In the first row of data there, can you see that it's recorded on your father's telephone as being from you?---Yeah.

And it was received on 29 April, 2015 at 2.34pm, and the message was, "Don't forget us, 51 Penshurst Road, Roselands."---Yeah.

Do you see that?---Yeah.

10 You sent that text to your father?---Yeah. From, from looking at this, yes.

Okay.---I don't recall it though but I can see it from there.

Okay. You, in fact, communicated with your father a number of times about the Penshurst Road DA, didn't you?---I, yeah, most likely because I do speak with my father about my situation.

Right. Did you speak to him when you saw him about the DA?
---Sometimes.

20 And what I want to suggest to you is that there are a number of times when you also sent him messages to his telephone to, as it were, give him a reminder to do something in respect of the message.---Yeah.

In respect of the DA.---When I did speak to my father about, if I thought council was taking long or anything like that, he'd ask me just send me the address and he'd see, like, if he heard anything or what not. He'd, yeah, so I just would send him my address. Not to, yeah, just because that's how I dealt with him. I didn't have anything to hide. So I sent him, he asked me send me your address, so I did.

30 And what are the sort of things you asked him to do? You've given us an indication - - - ?---I just asked.

- - - but if you can just give us a few more details.---If I, if I did see him and I felt things were taking long, I just said, "Have you heard anything that's going on? Why does council take so long?" And just, just pretty general comments.

40 Thinking about, if you can just think back to April 2015, towards the end of April 2015, were there pressures on you - - - ?---I, I don't - - -

- - - in respect of the development application?---To be honest, I only recall speaking to him further on, I don't recall speaking to him in April about my actual DA. I don't, I don't recall speaking, I recall speaking to him about it further down the track, that's why I was surprised when I saw the date.

Rightio.---And I don't know, "don't forget us", I don't know what that means. Did it, was it referring to our DA or was it referring to something else? I don't know.

Well, we can have a little look at that.---Sure.

10 What was it that, generally speaking, when you talked to him, whether it was face to face or in a text message about the Penshurst Road DA, that you expected him to do with that information?---I didn't, I didn't actually expect him to do anything but I was generally complaining about the council. I used to see my husband ring the council and a lot of the time we never used to get answers, the staff continuously changing, staff on holidays and I just felt it was dragging. And me being pregnant, either with my fifth or sixth, I just felt unsettled and I spoke to him about myself feeling unsettled and stuff like that, but I didn't actually expect him to do anything.

20 So, were there any other pressures on you that resulted from delays in progressing the application?---Just, just my personal, it was just about me being organised, or stuff like that, you know, being pregnant or just wanting to set up your nursery or stuff, you know, things like that, that's how I thought, what I thought about. No other pressures.

Can I ask you this, what were your plans once the development had been finalised, that is to say the demolition and the construction had finished? ---My plans obviously, well it's either gonna sell or they're gonna build and then I have to move. That's, that's what I know the plans are.

You weren't going to move into one of them?---No, no.

30 THE COMMISSIONER: You were in the house at the premises.---Yes.

So once the DA was approved and demolition commenced, you would have to move to - - - ?---Yeah, yeah, yeah.

- - - new premises.---Yeah, that's why I felt unorganised, unsettled. Just as a female thing, like, you know, having a nursery for your child or something like that, that's just something that, that was my personal struggle, nothing to do, yeah.

40 MR BUCHANAN: Is it, was it the case that whilst your husband looked after the other developments we've spoken about, Willaroo Street, for example, the one in Liverpool Road, Strathfield, you looked after progressing the DA that related to the house that you were living in at Penshurst Road?---Not really. No, I didn't look after progressing it. No.

Okay. Did you complain to your husband from time to time about how long - - - ?---I did complain to my husband because I was frustrated with not being settled, that's just personal between me and him.

And did you have a conversation about what should be done as a result of that?---Not that I recall, no, just, just personal like just being upset that I'm in that situation.

Yes. But what I'm trying to find out is why did you send the text message rather than your husband?---I, I took it upon myself to ask my father why is council taking so long. My, my husband didn't, had nothing to do with that.

10 Well, when your husband heard your complaints about the delays, did you agree that there was unwarranted delays?---He used to ring, he used to ring council himself and he, he sort of tried to explain that they're not there, or, like, explained a few reasons but it was just, I felt like I wasn't getting an answer from him.

Yes. I understand your motivation. What I'm trying to find out is what agreement, if anything, did you and your husband arrive at generally when you thought there were unwarranted delays in processing the Penshurst Road DA?---We didn't have - - -

20

Was he going to do something about it, were you going to do something, were you both going to do something?---No, from what I know he was going through legal and stuff so I didn't expect him to, we didn't come up with an agreement. We were just pretty much being patient and waiting.

And you, I, you had good relations with your father at this time?---Yes.

I'm not suggesting you didn't at any other time, I'm just asking you about 2015.---Yeah.

30

You saw him on a reasonably regular basis, did you?---Not really, my dad - - -

Socially.---My dad's a pretty busy person.

Yes.---So, I, I, I don't see him, like, regularly but when we see him, we see him.

40 And, so, you know, were there occasions where there were meals where your father was there and you were there, and - - - ?---Yeah.

- - - Talal was there?---I think so, I know his wife was overseas, she's been overseas a few times so I'd try to get him if he's, if he's hungry to come by but a lot of the times he declines because he's busy, so yeah.

And generally speaking, again, you were from time to time when you saw him raising your concern about how long it seemed to take to process this DA.---Not always but sometimes.

Right. Now, why did you raise these complaints with your father rather than somebody else?---Because he's in front of me. Like if, if he would come over and just how are you going, I'm not, you know, I'll just speak about how I felt, and I, I have complained about Canterbury Council and I felt that it was taking forever, that was just my personal opinion.

So, it's one thing to make a complaint to somebody you know about a problem that you have.---Mmm hmm.

10

It's another thing to ask that person to do something about it for you.---I, I didn't ask him to do anything, he just said, "send me your address".

Mmm.---I wouldn't expect anyone to do anything for me, he asked me, he just said "send me your address".

Can I just ask you, though, about those words that start the text, "Don't forget us".---Yeah.

20

That seems to indicate that you had an expectation that he would do something for you.---I, I, to be honest I don't recall why I wrote "don't forget us" but just thinking about it, it could mean anything.

Well, it doesn't mean just anything because the next words are "51 Penshurst Road, Roselands".---Yeah.

30

So, it's plainly in respect of the DA, isn't it?---Well, it could be because I've asked him before, do you have a gardener that can cut my grass. I could've asked him, he could've said "Send me your address", I could've said "Don't forget us because our grass is long". I, I, I don't recall exactly why I sent that. "Don't forget us", it could mean anything and I don't recall, as I said, asking about, at that period, anything about my DA or anything about council in particular, why it was taking so long. So, to be honest, "don't forget us", I don't know why I wrote that. As you can see from the other messages, I can see I've just sent him an address, so I don't, I don't know what "don't forget us" meant.

40

Well, can I ask you to go back earlier in this volume to page 15? And it will come up on the screen as well in a moment. It's up on the screen now, Ms El Badar, if it's any assistance, and you've seen email conversations before, haven't you, where the earlier conversation is at the end of the conversation as it appears on the screen or is printed out.---Okay.

And the most recent of the conversation appears at the top, so what I direct your attention to is the email at the bottom from Michael and then an email address is given. Do you recognise that as your father's email address? ---Yeah.

You see the date is 11 May 2015?---Mmm hmm.

And it says “Hi Spiro, the owners of the above property have been waiting for over one month for the engineer’s stormwater response and the DA with council for 12 weeks. Can you have a look and find out why the delays? Thanks, Councillor. Michael Hawatt.”---Sure.

Does it come to you as a surprise to see that your father sent an email like that?---It doesn't come to me as a surprise, no.

10

Why not?---I don't know, because it's there, it's not a surprise to me. I don't, I don't, I don't even know, what was the date of the messages? I don't - - -

Well, this is 11 May 2015. How did your father know that you'd been waiting for over a month for the engineer stormwater response and that the DA had been with council for 12 weeks?---I don't, I don't recall how he, unless he spoke to me or spoke to, I, I don't recall.

20

Well, the likelihood is that it would have been, the source of that information would've been yourself and or your husband, isn't it?---I, to be honest I don't recall, that's why - - -

No, I'm asking you about the likelihood. I understand your evidence is you don't recall, but thinking about it now, who else is he likely to have got that from?---It could, that's, okay, it could be.

And given him the sense he needed to do something about it, if it wasn't you or your husband? Who else?---Okay.

30

Well, not “okay”. Who else?---Okay, it could be. That's what I just said.

Okay. Well, you can't suggest anyone else who would've provided both the information and the sense in your father that he needed to do something about it?---No.

Than you or your husband, can you?---No.

40

No. Now, who was Spiro?---I know he worked for council.

Yes. Did you know what position he held?---To be honest, I don't know all that stuff.

All right.---I don't get involved.

Did you know what sort of work he did?---No.

Did you hear your father speak about a person called Spiro, or - - - ?---I have heard the name.

- - - Spiro Stavis?---I've heard the name Spiro before, I don't know whether it's from my husband or from, I, I haven't heard my father mention Spiro but I have heard my husband mention Spiro.

10 Did you understand that Spiro – I withdraw that. Did you understand in 2015 that Spiro was a person who had some influence over the processing of your Penshurst Road development application?---I, I heard the name but I, I don't know exactly what his influence was or anything like that.

Did you think he had some influence?---To be honest I, I don't recall. Like, I just recall hearing his name, that's all.

20 You can see here, though, that Councillor Hawatt, your father, seemed to think that Spiro had something to contribute to the question of why it was taking so long for the engineer stormwater response and the processing of the DA. You can see that, can't you?---Yeah, I can.

So, it doesn't come to you as a surprise? I just want to check on this. It doesn't come to you as a surprise that - - - ?---No, it's not a surprise.

- - - your father was sending an email to someone he thought had some influence with the processing of these issues?---No, it's not a surprise.

30 No. That's the sort of thing you would have hoped he would have done?---I didn't expect him to do anything or hope for anything. I was complaining in general about the council. So, what process he take, he took or what any other person takes, I don't know what they do. I was just complaining in general about Canterbury Council taking forever.

Did that remain the position for the rest of the year 2015?---For me, yes.

You never thought that you were trying to get him to help you with the issues you were having with the DA for Penshurst Road?---No, that was just a, just myself talking to him. That's the kind of relationship I had with him. I was complaining. That's, that's, that's how - - -

40 And I just want to make it quite clear.---Yeah.

You never thought at any stage in 2015 that your father was trying to help you in relation to the processing of the DA and the subsequent modification application for Penshurst Road?---I, I just thought he, he was asking general questions about what was happening.

So you did think he was doing something?---Well, not so much as just, just asking generally if, if anything was heard or if he knew anything that was

going on. Whether it's going to council meetings or anything like that, I'm not sure exactly.

So you were expecting him to, as a result of your complaints, come back to you – sorry, you were expecting him to make inquiries as a result of your complaints and come back to you with information?---Only if he heard anything or, yeah, I didn't expect him to do anything for me, as I said. I was just making a general complaint about Canterbury Council.

- 10 You didn't expect him to assist you in progressing the application?---I didn't expect him to do anything.

Thank you for that. Now, I just want to take you to a document to assist you in the time line of when things occurred. Page 23 of volume 7. This is a copy of part of the minutes of the meeting of Canterbury Council's City Development Committee held on the 11th of June, 2015. I apologise. No need for me to take you to that particular page. Can I take you to another page instead, page 43. And I'll start again. This is an extract from the minutes of the meeting of the City Development Committee of the 11th of June, 2015, and it records a resolution against the number 13, towards the bottom of the page, in respect of 51 Penshurst Road, Roselands. Can you see that?---Yeah.

- 30 And that there's a resolution there that the development application be approved as a deferred commencement consent, and then there's a stack of conditions that follow it. I'm just simply drawing that to your attention so that you can place when things occurred. Do you recall that the DA was approved but with a deferred commencement with some conditions?---I don't, I don't recall it was approved but I, I generally don't understand all the terminology, deferred commencement and all this stuff. I don't, I don't get involved with all that side of it. But I did know there was some, something that they, something to do with the stormwater or something like that, along the lines of that.

I'll see if I can assist you on that. One condition of the consent that I've shown you here, it starts at actually the very bottom of page 43, is that the site drainage shall be designed to drain under gravity. Can you see that? ---Yeah.

- 40 And then it required – that page and then going over the page – that you and your husband obtain the consent of your neighbours downstream and obtain what are called easements for the drainage of stormwater that fell or that accumulated on your property. Do you recall an issue about that, the word “easements”?---I recall the word “easements” but I don't recall exactly what, like, to me this is like another language for me.

Well, simply legal permission for the water to pass from your property over the land of your neighbours and be discharged downstream. Did you have

an understanding that something like that was required of you by council?---
I just, I just heard something to do with easement and stormwater or
something like that. I, I don't recall anything else, to be honest. I don't - - -

And do you recall that efforts were made to obtain this legal permission
from your neighbours?---I did hear that from my husband that - - -

And those efforts were unsuccessful?---That's right.

10 You recall that?---I do, I think, yeah, I do recall that.

And so you had a problem because this was a condition of your
development consent commencing and so you couldn't commence the
development because you couldn't satisfy this condition to obtain the
easements from your neighbours. That was the problem. Do you recall
that?---Look, I just, I recall my husband going to solicitors and stuff like
that to, something to do with the neighbours. But I don't know exactly what
was going on, to be honest. I, I heard stormwater. I heard easement. I
don't, to me they're just, I, I have no idea. I, I wasn't, like - - -

20

But you did understand there was a problem, didn't you?---I knew there was
something, yes.

Something wrong. You couldn't start the development.---I knew there was
something to do with the neighbours. That's all I, that's, something to - - -

Yes. But the reason, sorry, the outcome of that was you couldn't start the
development. That was the outcome, wasn't it?---I, I don't, like, I just recall
that that was blocking the DA to be approved.

30

Thank you. Now, did someone come up with the idea of, well, if what we
have to do is ensure that the stormwater on our property is safely
discharged, that what could be done instead is get an engineering solution
like a stormwater pump-out system being installed.---Like I said, I had
nothing to do with the actual development or anything like that. I know my
husband went to solicitors and stuff to take care of that and that, that's what
I know. So I don't know any, I don't, I can't answer that because I have no
idea.

40 Did you know that an attempt was made to get the permission of council to
get rid of this condition, that you have the permission of your neighbours for
the easements?---No, I don't recall that.

You did know that the development wasn't going ahead, though, didn't
you?---All I, all I heard was something about the neighbours.

Yes.---I think my husband approached the neighbours or something like
that. That's, that's all I knew.

But I just want to come back to it. You did know that the development was not going ahead because of this problem.---I just knew something was stopping the DA from being approved.

Right. You didn't know anything about a modification, a change to the development consent?---To be, I don't get involved with all that stuff. To me it's - - -

10 But that's the answer to the question - - -?---I don't, no, I didn't know.

- - - why didn't you know?---I, I don't - - -

I'm asking you, you did or didn't know - - -?---I didn't know, no.

You didn't know. Thank you. Thank you for that.---That's okay.

Can I take you to page 66 of volume 7. And can you, it's on the screen as well, Ms El Badar, if that assists.---Sure.

20

Can you see that there's a copy of your husband writing a letter to council on, bearing the date of 28 July, 2015?---Yeah.

You can see it's headed Deferred Commencement for Proposed Development.---Yeah.

From the first paragraph of the letter you can see it's about 51 Penshurst Road, Roselands.---Yeah.

30 Go down two paragraphs, in other words the third paragraph of the letter. You see your husband said, "Unfortunately our efforts to negotiate the easement with our neighbours has to date not been successful."---Ah hmm.

And then he talks about "See correspondence". And then he says in the next paragraph, "Accordingly, we request that in lieu", meaning instead of, "in lieu of the easement, council allows us to incorporate a combination, a pump out and charged system for the entire site." And then it gives some descriptions of the engineering that would be involved.---Sure.

40 So, that's 28 July.---Mmm hmm.

Does that bring back any memories of what was happening and what was being done to try and solve this problem?---No, I don't, I don't recall that at all.

You don't recall this at all.---At all.

Can I ask you to have a look then at page 153, again, of volume 7, and if you, it's item 3, I'm sorry, item 2.---Yeah.

It's another text from you to your, to your father, this time on 3 August - - - ?---Yeah.

- - - 2015.---Mmm hmm.

10 So, a few days, five or six days after your husband had sent that letter to council.---Mmm hmm.

And you're texting your father and you say to him, "51 Penshurst Road, Roselands."---Correct.

20 Now, why did you send him that text?---It would've been the same thing, I would've complained about why council was taking so long and whenever I've spoke about it, he's just said "text me your address", like, I didn't have anything to hide, I was just sending him my address because he doesn't know my address.

I'm not suggesting you have anything to hide.---Yeah.

I'm asking him though why did he ask you to send him your address - - - ? ---Because I would've - - -

- - - if it wasn't because you had asked him to do something for you.---I would've been complaining about how long it's taking for the DA. That's all I remember.

30 Did you ask him to do something for you?---I have never asked my father to do anything for me.

You weren't seeking help from your father - - - ?---I, I, as I - - -

40 - - - in relation to this?---As I said, any message that I have sent with my address, I've probably asked him in general, like, why is it taking so long or just, like, if he heard anything, whether he's going to a council meeting or in relation to the property, that's all I, I didn't expect anything, him to do anything for me.

Another possibility is that you sent him this text message as a reminder after having had a conversation - - - ?---I don't.

- - - in which there was discussion about whether he could help you.---He would've asked me to send him his address, not a reminder. He would've just said to me, "Send me your address", and yeah. I've never asked him to do anything for me and I don't need to remind him.

So, if you have a look at the time at which you sent that text, it's 11.17am on 3 August.---Yeah.

Do you see that?---Sure.

If you have a look then at the next entry, the next row of data it's number three, and it's at 11.22am.---Yeah.

So, three minutes later.---Mmm hmm.

10

And your father is sending a text to a person he identifies on his phone as "Council Spiro Stavis". Do you see that?---Yeah, I do.

And the message is, "Hi Spiro, 51 Penshurst Road, Roselands. Re: stormwater pump out connection. Can you see how to help? Thanks, Michael Hawatt."---Yeah.

20

Now, where would your father have got the idea from that there was help required in respect of storm water pump out connection?---Well, I, I didn't discuss anything with him so I don't know. I have, I haven't spoken to him about it so I have no idea.

Did your husband speak to your father about it?---I, I don't know what my husband does. Like, my husband and my father, I'm not with my husband all the time so I don't know.

Yes.---That's something you have to ask him.

30

Are you saying that you weren't ever present when your husband raised this with Michael Hawatt?---I, I wasn't, I don't recall being present.

Are you saying to us that it's just a coincidence that three minutes later, after your text was received, your father sent this text to Spiro seeking help?---I didn't say, I don't think it's just a coincidence. I, I, all I did is send him my address. I, I don't recall exactly what I spoke to him about but I have never spoke to him about storm water and all this stuff, I haven't. I've, all I've done is complain about council and that's with every message that I've sent or what I've spoken to him in general. I've just spoke about why council was taking so long.

40

And you never - - - ?---And that was my own selfish reasons that had nothing to do with anything else or anyone.

You didn't expect him to help you? Your father, that is, you didn't expect him to help you?---I don't know how, I don't know how council works, I just thought maybe he knows about it, like, I assumed that they hear things about things when they're doing council work. I didn't, I don't, I didn't expect him to do anything.

You deny expecting him to help you?---I thought if he heard anything about it or if he asked someone about it, he'd get it. Like, but I didn't expect him to do anything.

So you were hoping that he could assist you by at least listening to what he might have heard and then conveying that information to you?---I just, I - - -

10 Is that right?---Maybe hoping that something would happen, but I didn't expect him to do anything. It was just maybe he'd hear something or us, you know, maybe he'd ask a question about it. I, I, I didn't expect him to do anything and I didn't ask him to do anything and I - - -

But your father was a councillor.---Yeah.

You knew that.---Yeah, I do know that.

20 And the staff that were processing the application were controlled by council, weren't they?---Well, my husband was constantly ringing council also and we weren't getting any answers. The staff were on holidays, staff away, stuff like that, changing staff. That's what I, what I could observe from, from, from, obviously if he's at home and he rings council that's what I observed. And I was getting annoyed as well because of my living circumstances. So I, I did ask why council was taking so long. I just felt like they were very slow. So, yeah, I was just questioning about council in general and why our application was taking so long.

30 But my question, Ms El Badar, is you understood that your father was a councillor and that the council of which he was a member controlled the staff of the council, didn't you?---I didn't, I don't, I didn't think about it, to be honest.

You knew your - - -?---I know my father's a councillor, obviously.

Yes.---But I didn't think about it in that way.

Who did you think was processing your development application?---To be honest I don't know how all that works and I - - -

40 No, no, no. That's not an answer to my question. My question is, who did you think was processing your development application?---Just the people there that, that, that's their job. I don't, I don't know how it works.

Which people?---The people that work at council.

All right. The employees?---Yeah.

Yes. So your father was basically on top and the employees were underneath your father and the other councillors.---I didn't look at it that way at all.

How could you have understood council operated other than that way?
---Well, I didn't think about it in that way. I wasn't looking into it that deeply.

10 Well, why bother mentioning it to your father at all in that case?---Because that's the kind of relationship we have. Like, if he sees me upset - - -

No, no, no, no. Why bother mentioning it to somebody where you had no idea, you tell us, as to whether he could be of any assistance to you?---But I'm, I'm trying to answer the question. You're cutting me off. That's the relationship I have with my father. If he sees me upset and asks me what's wrong and I tell him I feel upset because council's taking so long and I feel unorganised, that's, that's why it come up. That's what I'm trying to explain to you. That's why I mentioned it to you.

20 Ms El Badar, can I ask you to have a look at another document, page 70. It's on the screen again. And from the top half down you can see it's an email from Spiro Stavis to your father. Sorry, that's the very top.---Yeah.

And the date on the email is 4 August, 2015 at 6.22pm.---Ah hmm.

Can you see that? And Spiro Stavis has provided information, which is set out in that email, about where things are at with the development application and stormwater plans for the DA. Do you see that?---Ah hmm.

30 He says also that he's asked the development engineer to prioritise this assessment. Do you see that?---Yeah.

Does that email come to you as a surprise?---Well, a surprise that, like, looking at it now? It's just - - -

Yes.---I'm just looking at it. Like, it's not a surprise. I'm just reading it. It's - - -

40 Right. Are you surprised, though, that this person called Spiro Stavis – who, by the way, you can see in his signature of the email signs off as director (city planning) – is providing this information to your father?---It's not a surprise because I'm assuming that's how it works. I don't know how, what the, the procedures are. I'd have, I don't know how it works.

Isn't it what you hoped your father would achieve, that he would firstly find out information and secondly get things moving?---All I hoped was for the DA to be approved from day one. So I don't know how, what, what - - -

And the sooner, the better?---Well, I, I felt like it was taking long. So, no, I wasn't being pushy. I felt like I was being patient, but I just felt like it was taking forever.

And you see that this Spiro Stavis has said to your father, "I have asked the development engineer to prioritise the assessment." Does it surprise you that the director of city planning would say that to your father?---Once again, I, I don't know how they communicate and I don't know how they speak, so - - -

10

You know what prioritise means, don't you?---Yes, I do know what prioritise means.

Yes. And now that you see that, are you pleased that it appears that the director of city planning got the message from somebody that processing this application, or at least part of it, needed to be prioritised?---Well, maybe he thought it was taking long also, so maybe that's why he asked for that.

20

You don't think it's possible that he was asked by your father to push it up to the top of the list?---I mean, my father thought it was taking long also, so he asked for it to be prioritised.

Did you ask your father to assist you in getting this prioritised?---Once again, I said every single time I've spoke to my father I complained about council and asked why it was taking so long. I didn't expect him to do anything and I didn't ask him to do anything. I didn't ask him to prioritise anything. He chose his own emails and wording and whatnot, and that's, that's how, I don't know his choice of words and things like that. That's nothing to do with me.

30

Could you have a look, please, at volume 7, page 77. It will come up on the screen in a moment. Can you see that this is an email from your father to you, dated 6 August, 2015, at 5.14pm?---Yeah.

And what he has said is "FYI" and then he has reproduced that email to him from Spiro Stavis that we were just looking at. Do you recall receiving this email?---I don't recall receiving it but I can see that it was sent to me now by looking at the screen.

40

Yes. Was that the only time that you received copies of correspondence that your father forwarded to you that had been sent to him in relation to Peshurst Road?---I don't recall.

Well, thinking back on it now - - -?---I can see that that's been sent to me.

Yes. Was it usual or unusual for that to happen?---I don't recall him sending any other things, so unusual.

You do recall him sending this to you?---Well, I don't recall that. I can see it.

And - - -?---And that's, I don't, I don't, he probably just sent it to me to show me it's in progress. I, I don't know why he sent it to me.

Were you happy to receive that email from him?---I don't recall. It's a very long time ago. I can't even recall receiving the email, to be honest.

10 THE COMMISSIONER: Can I just ask with that email, it's copied in to EFP Wholesales.---EFP is my husband's - - -

That's your husband's email address.---Yes, it's his, his, his, what he does during the day. He's got a wholesaler.

MR BUCHANAN: Thank you. Now, can I ask the witness be shown page 153 again, please. And it's text, SMS number 4. If you have a look at the fourth row in this extraction of texts sent to and from your father's mobile phone, you can see that number 4 is a text to Spiro Stavis. And I'll read out
20 the text. It reads, "Hi, Spiro. Re 51 Penshurst Road, Roselands. Sections 96 were submitted last Thursday re stormwater access using pump-out system. The applicant have tried on a number of occasions to get access through his neighbour's properties but to no avail. Even with good offers no-one is willing to accept. The applicant is avoiding going to court. How can we help him re this proposal? Thanks, Michael Hawatt." Does it come to you as a surprise to see that your father sent a text like that to director of city planning about the issues that he's discussed there, the section 96, the pump-out system, the access through your neighbour's properties, what the
30 outcome of that was to be, the fact that you were trying to avoid going to court? Does it come to you as a surprise?---It doesn't come to me as a surprise, no, because it's just obviously he knows what's going on with our DA and he's probably just questioning. Like, it's, I don't - - -

Well, he signs off, before he says thanks, with the words "How can we help him re his proposal?" That must have been a reference to your husband.---Okay.

You'd accept that?---I'm assuming so.

40 Can you assist us? What is your understanding as to why your father would have told the director of city planning "How can we help him re his proposal?"---I thought, I, I, to me I thought that was normal. I thought they, that's just, I don't know, that just seems normal to me.

Well - - -?---If someone has problems.

It wasn't normal to have a father - - -?---If someone has problems with council, I'm, I just assume that it's normal to ask for help. Like, isn't that what the councillors are there for?

But you were in a special position because you had access to your father that other people didn't have.---But - - -

10 Because you were his daughter.---But I believe that my husband went through all the, the, through the council like a normal person. I, I believe that he went through legal and everything else, just like a normal person. But we just questioned why it was taking so long.

20 And from this email, together with what – I'm sorry, from this text message together with the ones we've seen earlier, it does seem that your father was putting your case, at the very least, on your behalf to the director of city planning and trying to move things along.---I just, I, to me it's, it's not, it's, it's just asking what's going on and if anything could be fixed. It, it just, it, it doesn't seem to me like he's pushing things along, because it's only a, a few messages. I don't, I don't see that it's a lot.

And it looks, doesn't it, as if your father is trying to put pressure on the director of city planning.---I don't, I don't at all think there's pressure there. It just seems like a normal question.

He was trying to influence the director of city planning on your behalf.---I don't, I don't think, I don't see that he's trying to influence either.

Excuse me a moment.---Sure.

30 Volume 7, page 153 again, but this time number 8. I'm sorry, number 7. And if you could just go down the page a bit. Number 7 is a text message from you to your father on 28 September, 2015, at 3.53pm. Do you see that?---Yeah.

And your message is "51 Penshurst Road, Roselands".---Yeah.

40 That's plainly reminding him, isn't it?---Once again, I would have asked him if he heard anything, a general "Why is council taking so long?" And he would have said, "Send me your address." So that's, that's why I would have, I'm not reminding him. He would have asked me to send me my address.

Are you trying to tell us your father didn't know where you lived?---He does not know my address. He doesn't know my birth date.

But you would have sent that pursuant to a conversation that you would have had with him - - -?---Most likely.

- - - about trying to move things along. Is that fair?---No, most likely I would have been – once again I'll stick to my words. Once again, most likely I would have been complaining about how long it's taken to get the DA approved, and he would have asked me to send me his address.

Could you have a look at item number 8 on this page.---Sure.

Where you can see that six minutes after getting your text, your father sent a text to Mr Stavis again.---Ah hmm.

10

And it was, "Any news re stormwater for 51 Penshurst Road, Roselands."
---Yeah.

Does it come to you as a surprise that he sent that?---He's just asking him any news. It's just after I - - -

Yes, but are you saying that it doesn't come to you as a surprise?---Well, obviously I've discussed something with him and he's, I've sent him my address and he's asking me, he's asking him, "Any news?"

20

Yes, but I'm asking you - - -?---It's not a surprise to me.

- - - does it come to you as a surprise?---No, it's not a surprise to me.

Does it come to you as a surprise that he sent that six minutes after you sent your text to him?---No, because he's asked me to send me his, the, the address.

30

And you expected him to chase it up with the director of city planning?
---Once again, I don't expect my dad to do anything.

Well, you were expecting him to help you, weren't you?---I just, I, I was just, like, obviously, I don't know, once again, I don't know how council works. I don't know what he hears and doesn't hear. I just, if he heard anything that's all.

You were expecting him to help you in relation to the stormwater for your property, weren't you?---I was, I was just seeing if he knew anything. I don't expect anything different to any other person in the public.

40

Can I take you to page 155 of volume 7.---Sure.

And this is a conversation that starts with the lower of the two emails. "Hi Spiro. Re 51 Penshurst Road, Roselands. All info requested was sent eight weeks ago and waiting. Any news? Michael." That is likely to have been sent pursuant to a request from you to chase it up?---I have - - -

Or was your father acting off his own bat because he knew that he needed to chase these things up on your behalf?---I don't recall this at all.

I appreciate you weren't party to these emails, but I'm just trying to understand your thinking about, now that you see this, whether it fits in with what you understood should have been happening as a result of your interactions with your father.---I don't know what should have been happening. I don't know how it works. I just, I don't, I don't really like, I haven't read all this stuff. And to me I just, I don't know how it works. I don't know the process or anything like that.

But it looks as if he's trying to help you, doesn't it?---It looks like he's chasing it up. I, I, that's, I, that's all I can see.

Why aren't you happy with the characterisation of what appears from this evidence to be your father's conduct as him trying to help you? What's wrong with that?---Because I, I, I truly believe that we, we, we went through this like everyone else. So I don't, I feel like you're trying to say that he, we're special or something. No, I, I feel like that we went through the whole process like anyone else and it took forever.

But not everyone else - - -?---And I just spoke to him, I spoke to him in general about why council was taking so long.

Not everyone else had a father who was councillor on Canterbury City Council, did they?---Well, I, I discussed with him my own personal problems and it didn't really, it wasn't about the actual DA. I had my own personal issues. I had depression at the time because I had - - -

I'm not interested in your problems at the time.---But that's, I'm trying to - - -

I'm interested in why you were talking to your father and what you expected him to do as a result of talking to your father.---Because my problems were stemming from where I was living.

I'm not – right, that's fine and well and good.---That's, that's, you're, you're cutting me off. I don't - - -

But why were you talking to your father – I apologise, Commissioner.

THE COMMISSIONER: Could I – just stop.---Sure.

We're transcribing this.---Okay.

And when people speak on top of each other it creates problems for the transcription.---Yeah. I just feel like he doesn't let me finish my answer.

That's okay. If we both take a deep breath and Mr Buchanan will ask you a question. Answer the question.---Yeah.

But when he asks you another question, if you could just wait for him to finish the question and then answer it.---Okay. Okay.

And if you feel that you're being cut off, speak up and we'll deal with that. ---Yeah. Ah hmm. Okay.

10 MR BUCHANAN: So my question, Ms El Badar, is from this email to Spiro and the other texts and emails you've seen so far, it's clear, isn't it, that he was trying to help you.---It just, yeah, he was trying to see what was going on with the property.

And you expected that, as councillor, he would use whatever power he had to help you, didn't you?---No. No, I didn't.

20 You hoped that he would use whatever power he had to help you, didn't you?---No, I, I didn't hope that either. I just thought if it comes up and he hears anything, he'd, he'd let me know. That's all. I didn't expect him to do anything out of the ordinary.

Now, excuse me a moment. Can I just interrupt these questions that I've been asking you about 51 Penshurst Road and ask you a bit about this property of Santley Crescent, Kingswood?---Yeah.

30 What was your understanding, in 2015, about what Santley Crescent was? ---Yeah. Okay. I, I, all I understood from that was that my husband and his partners were looking, obviously they look at developments and look for things to develop. Santley Crescent came up. My husband spoke to his partners about it and they wanted to purchase it, but after doing all their research or they hired, I don't know, people to look into whatever they wanted to do, they didn't achieve the outcome and they pulled out.

And did you know who the owner of Santley Crescent was?---Yes.

Who?---My father.

40 When was it that you first heard mention by your husband of interest in developing Santley Crescent?---I don't recall exactly when. I, I know, I, I know it come up but I, I don't exactly know when.

Were you present when there was conversation between your husband and your father about the possibility of developing or purchasing Santley Crescent?---I, I have heard it once but I don't recall exactly when it was or anything like that. I just remember, I recall a conversation about it but I don't remember exactly when.

Was it around this time in 2015 that we've been looking at?---I, I'm, I don't recall. It's a long time ago.

Can I ask you about another property?---Sure.

A residential unit on the Gold Coast.---Yeah.

In a suburb called Hope Island.---Yeah.

10 Have you any knowledge about that?---I know that my father used the deposit they paid to pay for the apartment he bought in Hope Island.

And who's "they"?---Who's they? What do you mean?

You said "deposit they paid". Break it up.---My husband and his - - -

Who is "they"?---My husband and his partners.

Business partners?---Yeah.

20

All right. What deposit?---They paid a deposit of 300,000.

On what property?---For the, deposit was the Kingswood, Santley Crescent, whatever - - -

Santley Crescent.---Yeah.

Right. So can I just clarify for a moment. They paid a deposit to secure the rights to purchase Santley Crescent.---Yeah.

30

Is that your understanding?---That's from what I, from what I know.

And who did you understand that from?---From, I just, from hearing things in front of me. Like, obviously just picking up on things.

Right. And what relationship did that deposit have, as you understood it, to Hope Island, the Hope Island residential unit?---I think he used the deposit to purchase the unit.

40 Your father did?---Yeah.

And do you have a recollection as to when the purchase of the Hope Island unit finalised, crystallised?---No, I, I don't recall all that. I just see bits and pieces, as I said earlier.

I'm sorry?---I just see bits and pieces. I'm just telling you what I know.

Did your husband discuss with you or in front of you the payment of the deposit being used by your father to purchase the unit in Queensland?---He didn't discuss it with me but I, I heard it. I don't know how I heard it but I, I, I heard it that he was using the, the deposit to purchase something, but I don't exactly recall anything else.

10 And can I ask you this, can I just jump ahead a little bit in time. What is your understanding of what happened in relation to the proposal to purchase the Santley Crescent property?---What, what happened is I think they, what, whatever they wanted to do there, it wasn't achievable. So they wanted to pull out and my dad agreed, and he agreed to pay them back the deposit, but he couldn't pay it back because he had to sell the property.

Now, when did you become aware that your father was going to use the deposit on the Santley Crescent property to buy the Queensland unit?---I, I honestly don't recall. I, I, that's, I just, it's just, I, like I said, I just know bits and pieces. I don't, I don't recall exactly.

20 Excuse me a moment.---Sure.

At some stage, going back to 51 Penshurst Road, did you understand that the – well, let's call it a development application was close to finalisation? Thinking at that time.---I have no idea. I can't, I don't recall at all.

Did you get approval to have this stormwater system replacing the requirement for an easement?---I don't recall all this stuff, it's, it's just, all I know is that I was waiting for a DA to be approved. How it was to be done I don't, I don't, I don't know anything to do with that.

30 Well, in thinking of 2015, did you get – I withdraw that. I'll start that question again. Did you get approval for the development that had been proposed on 51 Penshurst Road?---I can't recall exactly when we got the approval.

Well, the answer is yes, you did. Is that right?---Sorry, can you repeat the question?

Yes. Did you get approval - - -?---In 2015?

40 Well, I'm not sticking to 2015 now, I'm giving you the opportunity - - -? ---I don't recall when it was approved, that's, that's - - -

You don't recall when it was approved?---No, no.

But you do recall it was approved, do you?---Yes, I do.

Okay. I'll ask now a specific question. Do you recall learning in 2015 that it was approved or was going to be approved, was close to approval?

---I don't recall when, when it was going to be, I don't recall which year it was, to be honest.

Were you as it were hanging out for this approval by say December 2015?
---I'm just trying, I don't recall when it was being approved or I don't recall dates, I just, I just remember it getting approved, I don't know exactly when.

10 Do you recall needing the approval for a specific reason?---No. We just, I recall just waiting for it for a long time and that's it, there was no specific reason, we were just, obviously I just wanted to move for example and move on and feel settled and I have no idea exactly, no, just waiting for an approval in general.

Were you aware of any plans to sell 51 Penshurst Road?---There was either plans to sell or build, I wasn't sure which step he was taking.

What ultimately happened?---Ultimately we sold and moved.

20 And just so I can get it in the timeline, when was it that you sold?
---I, I honestly don't remember but it's, there's probably records of it but I don't remember.

Do you remember the time you've told us about that your father used the money paid as a deposit on Santley Crescent to purchase the Queensland unit?---Correct.

Was the sale of 51 Penshurst Road before that or after that?---I don't recall at all. No idea.

30 Do you have, were you involved in the sale of Penshurst Road?---No, I wasn't.

Were you involved in putting it on the market?---For 51? No.

Who did all of that, are you saying your husband did?---My husband does everything.

40 You weren't aware of what was going on in relation to the sale of Penshurst Road?---No, I just knew that people were looking at it or interested in it but that's about it. I have, I have no idea about everything else.

When did people start looking at it - - -?---I can't - - -

- - - for the purpose of you selling it?---I can't remember. I can't remember dates.

When was it – yes, I understand you can't remember dates, but you can recall the event or the transactions that you were aware of.---When it was on the market.

Yes. But when was that in relation to your father's purchase of the unit in Queensland using the deposit on the Santley Crescent property?---I don't understand how they relate to each other.

10 Well, I'm asking you was one before the other - - -?---I don't recall.

- - - and if so which one?---I just said I don't recall the dates.

I'm not asking, yes, I'm not interested in the dates. I understand - - -?
---I don't recall how - - -

- - - wouldn't expect you to remember the dates.--- - - - they relate to each other.

20 Which came first?---I don't recall.

MR DREWETT: Commissioner, I object.

THE WITNESS: I don't recall. I don't understand. Like, do you want me to give you a wrong answer?

THE COMMISSIONER: Can you just hold on for a sec. Mr Drewett?

MR DREWETT: Yes. Whilst this lady is not my client - - -

30 THE COMMISSIONER: Mr Drewett, I can't hear you.

MR DREWETT: I'm sorry. Whilst this lady is not my client, Commissioner, it does appear that the question has been asked, it's been answered, it's been asked on numerous occasions and the tone and manner of the questions is becoming more, more argumentative - - -

THE WITNESS: That's right.

40 MR DREWETT: - - - and in my respectful submission aggressive. And the answer is still the same, and I would perhaps ask you, Commissioner, to instruct Counsel Assisting to move on with a different question, the answer having been given.

THE COMMISSIONER: Well, it took a lot of time because Mr Buchanan was asking a specific question, as he prefaced, he wasn't interested in dates but he was interested in whether the witness could remember whether it was before or after a particular event and the witness wasn't answering that question and it took some time for her finally to say that she couldn't recall

whether it was before or after. Now, Mr Buchanan on that particular issue, have you - - -

MR BUCHANAN: The witness has now answered the questions and I can move on.

THE COMMISSIONER: Yes.

MR DREWETT: Thank you, Commissioner.

10

THE COMMISSIONER: And, Ms El Badar, if I can just emphasise, please listen to the question, let the question be asked in total, have a think about what you're being asked and then answer that question.---Okay.

All right. Mr Buchanan.

MR BUCHANAN: Commissioner. What I have for you now is not a question but a request.---Okay.

20

And the request is, we're going to play a recording. The recording is of a telephone conversation. I'm going to ask you to listen to the recording as it's played and on the screen at the same time as the recording is played you will see a transcript appear. I'd ask you to try and read the transcript at the same time as you're listening to the recording of the telephone conversation so that you can assist us afterwards by reference to what appears in the transcript.---Okay.

Okay. Commissioner, I ask that LII 00165 recorded on 14 December, 2015, be played, please.

30

AUDIO RECORDING PLAYED

[10.56am]

MR BUCHANAN: Commissioner, I tender the audio file and transcript.

THE COMMISSIONER: The audio file and transcript of LII 00165 recorded on 14 December, 2015 will be Exhibit 98.

40

#EXH-098 – TRANSCRIPT SESSION 165

MR BUCHANAN: Ms El Badar, the female voice was your voice?---Yep.

And the male voice was that of your father?---Yeah.

Something I should have mentioned to you before is that you heard a little bit of Arabic being spoken.---Yeah, a little bit, yeah.

And so I just want to check so that you understand. The material that is in square brackets - - -?---Yeah.

- - - is either a reference to Arabic spoken or is a translation - - -?---Sure.

- - - of the Arabic spoken into the English language.---Ah hmm.

10

Do you follow that?---Yeah.

Now, the transcript, the first page of the transcript that you can see in front of you, after halfway down records you asking, “When roughly we’ll get this letter for the thing?” Do you see that part?---Yeah.

Now, I can make a suggestion to you, but I’ll just ask you - - -?---Ah hmm.

20

- - - what was the letter?---I don’t recall what the letter was. I don’t recall this conversation. I have no idea. I don’t, I don’t recall what it was for.

Well, “the thing” is a reference to the Peshurst Road application, isn’t it? ---I don’t recall.

Rightio. Do you recall having a problem that you wanted to bid on an auction perhaps of another property that you might be able to move to - - -?---I don’t - - -

30

- - - but that you needed some record from council of approval of your application in respect of 51 Peshurst Road?---I don’t recall it being a problem, I recall obviously we had to look for somewhere to live and I’d assume that having a sale would be the, the thing that would push me, not, not a letter, so if the property was sold maybe but I don’t, I don’t recall this at all.

You can see, and you heard - - - ?---Yeah, I did hear.

40

- - - you say that, “Talal said we can’t buy it until we get the letter”.---Yeah, I, I can see that but I don’t recall what that was about.

And you can’t, thinking back now, assist us as to what it is likely to have been about or could have been about?---It could’ve had something to do with the property being approved but I don’t recall that, I, I don’t know what it was about, to be honest.

Thank you.---Thanks.

Excuse me a moment. Now, can I take you to page 293 of – would you just excuse me a moment. Volume 5, page 293, and we might be able to just bring it up on the screen in a moment, Ms El Badar, for you to look at without having to get the paper copy out. Thank you. This is a part of a record, another record, of text messages, different from the one I showed you earlier.---Okay.

10 And what I'd ask you to have a look at, is the row of data against the number 479. No, I apologise, 478, 478. Do you see that?---Yeah.

Now, the telephone call that you made to your father was at 1.44pm on 14 December 2015.---Okay.

This is a text message at 1.54pm.---Okay.

If I have the time right, on the same day, by your father to Spiro Stavis. ---Okay.

20 And can you see that he says words to the effect, "Hi Spiro, is the approval letter ready yet for Penshurst re storm water? Thanks, Michael."---Yeah.

Do you know how your father knew that it would be an approval letter? ---No. I don't know how he knew it would be an approval letter.

All right. And you don't know where your father got the idea from that there was a letter that was in the works, as it were, at council for the approval of the stormwater for 51 Penshurst Road?---I don't recall all this, no, but I'm reading it now.

30 But having heard the recording of your telephone call - - - ?---Mmm hmm.

- - - which was only a little while before this text message was sent - - - ? ---Okay.

- - - obviously, he sent that text message because of your telephone call to him.---Okay.

A little bit earlier, about 10 - - - ?---Okay.

40 - - - or nine minutes earlier.---Yeah.

You'd accept that?---Yeah.

And again, it doesn't come to you as a surprise that he sent a text like that, does it, in response to your request?---Yeah, well he's just following up what I asked.

Just for the record, I'm sorry, could we get page 293 again? Could I ask you to have a look at this, on the same page, Volume 5, page 293, item 480? The cursor is against it in the left hand margin there, and this is a text by your father to Mr Stavis on 14 December at 2.09pm, just a little while later, responding to what Mr Stavis might have said.---Mmm hmm.

And your father says to Mr Stavis, "If you can have it done by tomorrow, it will be greatly appreciated."---Yeah.

- 10 Excuse me. Thank you. My attention's been drawn, I should've taken you first of all to 479. Can you see 479, where the cursor is in the left hand margin?---Yeah. Yeah.

And that's a text at 1.57 from Mr Stavis to your father on the same day which reads, "I know they were busy writing the report last week, I'll chase up tomorrow when he's in." Then your father sent a response to Stavis that reads, "If you could have it done by tomorrow, it will be greatly appreciated."---Mmm hmm.

- 20 Does it come to you as a surprise to read that exchange between your father and Mr Stavis after your call?---I'm just assuming that's how they discuss things, like, I asked a question and he obviously chased it up.

Doesn't it make you glad that, to see that that's what your father was doing? ---I was just glad that the DA was being approved, I didn't - - -

- 30 But doesn't it now make you glad to see that your father was helping you in this way?---I just, I'm assuming that's the normal, the norm, that he chases things up when people ring him and ask him for, for things, I assume that he just chases them up. I don't - - -

Now, on 16 December 2015, there was a text I'd like to take you to, Volume 6, page 154. It will come up on the screen in a moment. So, if you could look at number 14, the cursor is on the left hand margin against it.---Yeah.

- 40 And you can see it's a text from your father to Mr Stavis on 16 December at 9.45am that reads, "Hi Spiro, what's the progress on section" – I've got the wrong one. I see. After he talks about section 96 Alha, then there's a new line that reads, "Penshurst Road? Thanks, I will catch up later. Thanks, Michael."---Mmm hmm.

It looks there as if your father is trying to establish what progress is in relation to Penshurst Road.---That's what it looks like.

And at number 15 is from Mr Stavis apparently replying at 10.12am and he says, "Thursday/Friday for Penshurst". Do you see that?---Yeah.

Do you recall your father indicating to you when it was expected you would get a piece of paper indicating that the application that had been made in respect of Penshurst Road was approved?---I don't recall.

You don't have a recollection of there being an issue?---No, I don't.

At any time about waiting for this letter - - - ?---I don't, I don't.

- - - or document to come?---I don't recall it at all.

10

I'd like to play another recording if I may, please. LII00410. And there is a little bit of Arabic, again it's represented in the transcript between square brackets, but translated into English.---Sure.

This is, excuse me a moment. I withdraw the application. Excuse me a moment, Ms El Badar. I had the wrong recording there.---That's all right.

I just need to make, get the right one. LII 01036, recorded on the 23rd of December, 2015.

20

AUDIO RECORDING PLAYED

[11.10am]

MR BUCHANAN: Subject to a matter that I need to explore with the witness in a moment, Commissioner, I tender the audio file and the transcript of that recording of that phone call.

30 THE COMMISSIONER: The audio file and transcript of LII 01036, recorded on the 23rd of December, 2015, will be Exhibit 99.

#EXH-099 – TRANSCRIPT SESSION 1036

40 MR BUCHANAN: Ms El Badar, can we go to the second page of the transcript, please. At the bottom of the second page there is a passage attributed to you. Can you see that? It's a two-line passage. And then at the end of it it says, "Sorry, my kids woke up." And then there's what might be a name.---A name?

Well, that's what I'm asking.---I don't recall.

Can you see the word that commences with a capital K there?---
That's my daughter's name.

Thank you. Commissioner, if I could make an application.

THE COMMISSIONER: Yes. Under section 112 of the act, I make a non-publication order in respect of the name appearing at page 2 of 4 of Exhibit 99, the name commencing with K.

SUPPRESSION ORDER: SUPPRESS THE NAME MENTIONED IN EXH-099 BEGINNING WITH “K” ON PAGE 2

10 MR BUCHANAN: Ms El Badar, you heard your voice introducing the conversation.---Yeah

And your father’s voice responding to you.---Yeah.

Now, when – and I invite you to look at page 1, if we could have that again, thank you. At the middle of the page your father said, “We settle on the unit today.” Was that a reference to the Queensland unit?---I assume so.

20 Is that what you understood when you were talking to him?---I, I don't recall but I'm assuming so.

Well, he said on the Gold Coast.---Oh, well, he says Gold Coast further on. So, yes.

Yes. And you appear to be happy for him that that had happened. This is, I'm looking at the words, “Oh, beautiful. That’s good. Aren’t you happy?” ---Yeah.

30 Is that right? You were happy for him?---If he purchased something and he settled on it, yeah, of course I'd be happy for him.

Now, when your father said to you, and looking at the fourth-last entry on that page, “Yeah, thanks Talal as well for that,” what did you understand him to be referring to?---I don't recall exactly but I'm assuming getting his partners to purchase the property at Kingswood.

You can see in the next line you said, “Oh, that’s all right.”---Ah hmm.

40 So you were acknowledging his expression of gratitude.---Yeah.

And it seems as if you understood what he was talking about at the time. ---Maybe at the time I, I've recalled exactly what was, he meant. But I don't recall looking at it exactly.

Was there anything that your husband had done to assist your father obtain or settle on the Queensland unit?---No, but I know that he introduced his partners to look at the property and, and, and get info on that. That’s, that’s, that’s all I know.

Can I just interrupt here to ask – I'll go on to a couple more lines in a moment. Do you know anything about an option to purchase being taken out in respect of your father's property at Santley Crescent, Kingswood?
---No, I don't know anything about that.

You know what an option to purchase is?---Yeah, sort of. Like when, something about putting a deposit and something like that? I, to be honest I don't exactly know but I, bits and pieces.

10

Well, I'll ask, just to check that I understand what you're saying, did Talal – I withdraw that. Was Talal involved in obtaining or trying to obtain an option to purchase 31 Santley Crescent, Kingswood?---I don't recall at all.

Now, when your father said – and I'm now looking at the second-last entry on page one – “Without him we couldn't have done it,” what did you understand him to be saying?---Just him introducing his partners to purchase that property.

20

And as a result of that didn't you understand he had money to settle on the Queensland property, Queensland unit?---I, yeah, I assume so.

Now, you were then saying in the last entry, “No, no, it doesn't matter. That's good.” You then say, and I use the English here, “Praise to God. Everyone, it's good to know people and to help each other.” Do you see that?---Yeah, that's just, yeah.

30

And you are there referring to some sort of reciprocal arrangement, aren't you?---I'm just referring to everyone helping each other or knowing each other. Obviously my husband introduced these buyers to the property, so - - -

What was it that you meant, though, by helping each other in this context?
---I, I don't recall.

Well, a - - -?---I, I, I generally - - -

40

I'm sorry, go on.---I generally just speak like that. That's just how I speak. But I, I don't recall exactly.

It's an indication, isn't it, that you thought at the time you were using those words that after your father had spoken of gratitude for what Talal had done for him by way of providing finance that he could use to settle on the Queensland unit, he – your father – had done something for you, or you and Mr El Badar. That's a logical explanation, isn't it?---I, I can't answer that. I don't, I don't think it, I just, as I said, my husband introduced them to purchase the property and, and it just worked out well. That's, that's, that's what I understand from it.

But this is talking about helping each other. That's what I mean by reciprocal.---Helping each other, then, well, helping each other means introducing the buyers because they were looking for a property, and he introduced them to that property. That's what I mean by helping each other.

You do recall now, do you?---Well, that's what I said from the beginning.

10 I thought you indicated that you didn't know, you couldn't recall what this was about.---Well, I, after reading it, I do know what it's about.

All right. So could you tell us again, who introducing whom to what property?---My father was selling a property, he obviously spoke to my husband about it, my husband spoke to his partners about it and they looked at it to purchase to develop.

20 Well, you had received assistance from your father in relation to Penshurst Road, hadn't you?---He just chased things up when I asked him what was going on with council.

Well, that's your description of what he did but he had provided assistance to you in relation to the problems you had with the application in respect of Penshurst Road, hadn't he?---We were just asking general stuff about when I asked him general questions about the council, he chased it up with either an email or a message.

And that is - - -

30 THE COMMISSIONER: But that's assistance, isn't it?

MR BUCHANAN: I'm sorry.---Assistance, yeah. Just, yeah.

40 You see, I just want to suggest to you that your father understood you referring when you said "to know people and to help each other", he seems to have understood that it was a reference to the assistance he had provided in respect of Penshurst Road because look what he says in response on page 2. "Yeah, I know. Tell him you guys got the thing, it's been done, your letter, so we're going to have to just wait for it now." That's what you heard your father say in response to what you said about "it's good to know people and to help each other". Do you see that?---Yeah, I do see it.

You heard him say that.---I heard him.

And he did say it to you at the time, you understand? This is the reality of what occurred - - - ?---Okay.

- - - on this particular occasion. It's clear that Mr Hawatt thought that there was an exchange, a reciprocal helping each other out, your husband helped

him out with finance, he helped you out in respect of Penshurst Road.---I don't think it was because of one thing, one thing happened because of another thing, I think that's just the way it happened.

Well, that's not what you said in reply, you said, "Oh, all right."---Yeah. I said, "Oh, all right" a lot today, like, that's just how I answer questions.

Why didn't you - - - ?---But, but, but - - -

10 Why didn't you say to him - - - ?---From what, what I assume - - -

I'm sorry, yes?---Kingswood property and Penshurst property don't have any relation, that's why I'm getting confused.

Well, this is the question I'm asking.---Yeah, you're, I think - - -

Are you sure they have no relation to each other?---You're assuming that my husband introduced buyers because we got help with Penshurst Road and that's not true.

20

I'm asking you and trying to understand what it is that the words you used and words your father used in this conversation actually mean and what they were intended to convey and what understanding you had and what understanding your father had, that is disclosed by the words that you used. That's what I'm trying to understand.---My understanding is they're totally separate things, so I don't, I don't know how you're linking them, so - - -

But you didn't say that when your father appeared to link - - - ?---We're just talking.

30

- - - the money he received at the behest of your husband on the one hand, to the work he had done in relation to getting approval for Penshurst road. You didn't say that then, you just simply said, "Oh, all right."---Oh, all right. Like - - -

You're acknowledging the accuracy or the correctness of what your father was saying to you at the time after he had, in his response to you saying, "It's good to know people and to help each other".---I, I don't recall thinking like that at all so I don't agree.

40

In the middle of the page, you say, "Okay, no, no, but he, but he can't, like, the people won't obviously make the same offer." Do you see that in the transcript?---Yeah, I do see that.

And what's that a reference to?---I'm assuming the sale of our property.

Right. Do you remember people making an offer and it not being able to be accepted because of a lack of this letter - - - ?---I don't - - -

- - - in relation, from council?---I don't, I don't recall it but I'm reading over it but I don't recall it, no.

Did people buy your property?---Yes.

Was there an occasion when people made an offer to buy your property but the offer couldn't be accepted because you didn't have this letter from council?---I don't recall that.

10

Well, thinking about it now, your property at 51 Penshurst Road was more valuable with the approval than without the approval, wasn't it?---Yeah. Yeah.

And was that one of the reasons why the application was made in the first place, to make money? To make a profit?---That's something you have to, I didn't purchase the property, my husband purchased it.

20

Did you ask him what on earth are you doing that for?---No, I didn't.

You understood what he was doing and the reasons why, surely.---I understood he purchased the property, I didn't know what the plan was, I didn't know, because we, we liked the big block for the kids and we were planning to stay there, so I don't know what happened in the meantime but that was part of, that, like, I didn't, he didn't, we didn't buy it with a plan.

Some time earlier you told us that you had some expectation of having to move and that you were pregnant at the time.---Yeah.

30

And there was a degree of uncertainty as a result of not having the approval.---That's once, once the DA was lodged.

All right.---That's when I felt unsettled.

All right. You surely understood that people were more likely to pay you more money if the approval was in your hands and you could show it to potential purchasers, than if the approval wasn't in your hands.---That's what I - - -

40

And you couldn't show it to potential purchasers.---That's what I understand from any property.

Yes. So when you said, "Okay, no, no, but he, but he can't, like, the people won't obviously make the same offer", that's plainly a reference, isn't it, to the letter or, rather, the absence of it that was raised by your father. "It's been done, your letter, so we're going to have to just wait for it now." Meaning that you haven't got it but it's in the works.---I, I, I honestly don't

recall exactly what it was for. It could be talking about the sale. I, I, I don't recall but it probably was for the sale, I don't - - -

Even if you had no recollection you'd have to agree with me that the scenario I've just put to you - - - ?---Yeah.

- - - is the most likely explanation- - - .---Well, that's what I said.

10 - - - as to why you were saying what you - - - ?---Any, any - - -

- - - are recorded as saying there.---Any property for sale, any property for sale, if you have a DA, obviously, it's going to be more expensive, or sell.

Thank you.---Thanks.

THE COMMISSIONER: In the conversation you talk about your father dropping a bag off.---Oh, his - - -

20 Was that to Peshurst Street?---I'm, I'm assuming his wife was overseas and I used to get him to drop off his washing to my house but he, he used to do it himself but I used to try and get him to drop it off.

And that would be dropped off to the Peshurst address.---Yeah, most likely if I was living there. Yeah.

30 And how often did that occur?---He, he wouldn't, he wouldn't do it, I used to try and force him to drop his washing off to me because I felt sorry and it was hard for me to go there with all my kids, so I used to tell him to drop off his washing.

All right. And he obviously knew - - - ?---He probably did it once.

He knew the Peshurst Street address to be able to do that.---We used to drive through it to, to go anywhere, because it's a main sort of road.

He would drive past your house.---I didn't see him.

40 No, no, no.---Yeah, but assuming, I think he used to go through that way to get to his office in Lakemba.

MR BUCHANAN: Thank you, Commissioner. That's my examination of the witness.

THE COMMISSIONER: All right. Any questions?

MS BULUT: No questions, Commissioner.

MR ANDRONOS: No questions, Commissioner.

MR DREWETT: I'm sorry, Commissioner. Can you just give me one minute? I just want to confirm some instructions with my solicitor.

THE COMMISSIONER: Yes. Mr Pararajasingham?

MR PARARAJASINGHAM: No. No questions, Commissioner.

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

THE COMMISSIONER: No questions. All right, thank you very much for giving evidence.---Thank you.

You're excused.---Thank you very much. Thank you.

THE WITNESS EXCUSED

[11.28am]

20 MR BUCHANAN: Thank you, Commissioner. Yes. I note the time.

THE COMMISSIONER: Yes, you've timed it well. We might take the morning tea break and if we can be back by about just after a quarter to. Thank you.

SHORT ADJOURNMENT

[11.29am]

30 MR BUCHANAN: Commissioner, I call Talal El Badar.

THE COMMISSIONER: Mr El Badar. Now, Mr El Badar, do you take an oath or an affirmation?

MR EL BADAR: An oath on the Koran.

THE COMMISSIONER: Now, you're not legally represented today?---No.

I don't know if you were here when your wife gave evidence, but I explain to her that I can make a direction under section 38 of the ICAC Act which means that any answer that you give today, with one very important exception, can't be used against you in other proceedings, for example
10 criminal proceedings. Now, the very important exception is that you've just taken an oath to tell the truth. If you give false or misleading evidence to this public inquiry you could be prosecuted for an offence under the ICAC Act. It's very serious offence, it's like a form of perjury. The maximum penalty for such an offence is a term of imprisonment. So if you were prosecuted for such an offence the protection that I would give you under this direction wouldn't apply to those answers.

Now, would you like me to make a direction under section 38?---Yes.

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

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

40 THE COMMISSIONER: Thank you, Mr Buchanan.

MR BUCHANAN: Commissioner. Mr El Badar, your name is Talal El Badar.---Correct.

And what is your occupation?---I'm a director of a fruit and vegetable company and also do some development.

And you also?---Do some developmental.

Thank you. You heard, did you, the evidence that your wife gave earlier this morning?---Yes.

You heard the questions, you heard her answers?---Yes.

10 Thank you. And can I ask you about the period 2015-2016. Thinking of that period, starting in 2015, how many properties were you involved with in terms of a development or a proposal to develop or something you were looking at developing, how many such properties were there?---Could be three or four.

Okay. Can you tell us about the ones you recall?---Penshurst Road, where I lived.

Yes.---Willaroo Street.

In Lakemba?---Yeah, in Lakemba.

20 Yes.---There could have been another one at that time in Lakemba in Croydon Street.

Croydon Street?---Yeah.

Thank you.---And there was plans to be an investor or, you know, loan some money to another development in Strathfield.

30 And you heard your wife speak about a property at 31 Santley Crescent, Kingswood?---Yes.

Was that something that you were looking at as well?---Yes.

Now, just to, I'd like to ask a few questions just in terms of setting the scene for the rest of your evidence. You had a development application lodged – if the witness could be shown volume 7, page 1. On the screen you can see a copy of the document.---Ah hmm.

40 And you can refer to the hard copy too, if you like, but you can see there the first page of a development application to Canterbury City Council, signed by you. Is that right?---Yep.

And it's in respect of 51 Penshurst Road.---Ah hmm.

Is that right?---Correct.

And you can see that the date that's I think in the stamp on it is 13 February, 2015.---Correct.

Now, can I ask that you also have a look at volume 6, page 1. There's a copy on the screen of this DA as well. It's again lodged with Canterbury City Council and is signed by you and the date of the stamp is 16 March, 2015. Do you see that?---Yes.

So there were those two that were commenced, the Willaroo Street application only about a month after the Penshurst Road application.
---Yes.

10 Can I just ask whether you agree as to what these involved. The Penshurst Road application was for demolition of a house that as I understand it your wife and you were living in at the time, and the construction on the site of 12 townhouses with basement car parking?---Correct.

And the Willaroo Street application was for the construction of five two-bedroom townhouses on the site.---Correct.

Was there already something on the site?---A house.

20 Right. And that had to be demolished as well?---Yes.

Thank you. Now, what I want to ask you is about issues that arose for you or problems that arose for you in respect of each development. In respect of Penshurst Road, do you recall that you obtained what the planners and the lawyers call a deferred commencement consent for your development application, but a condition of the consent, that is to say it didn't commence until this condition was satisfied, was that you obtained from your neighbours who were downstream of you, easements to allow passage of stormwater that was on your site out of that area. Do you recall that?

30 ---Correct. So it was a DA approval with a condition.

Yes. And is that a reasonable description of the condition?---Yes.

And if I can perhaps jump ahead a little bit. You had difficulty, or indeed an impossibility, as you found when you explored the question with your neighbours of actually getting their consent to those easements, and you had to find some other way - - ?---It wasn't impossible.

40 Right. But you didn't get it.---Since we had a deferred commencement I learnt that you couldn't go through Land and Environment Court because we proposed an easement, which we should have just proposed originally from day one, a pump-out system. Because you don't, I learnt that you don't propose an easement if you haven't got one. So we shouldn't have went with an easement from day one. So we should have proposed a pump-out system and then if some, and applied to the neighbours at the same time. Then if it was knocked back we could apply in the Land and Environment Court. But this way that we got a deferred commencement, I learned that we needed now to go through the Supreme Court. If they said no and what

not, otherwise put a section 96 in, and that's what I did. I went back, put a section 96 in – after I realised these guys wouldn't come to the party – for a pump-out system.

Thank you. In respect of Willeroo Street, you were proposing demolition and construction of these townhouses. Can I just ascertain from you whether this is a correct description as you understand it? The lot was about 650 square metres size.---Correct.

10 And it could be considered an isolated block.---Correct.

That is to say, there were residential units on one side and townhouses on the other side.---Correct.

And the frontage of 23 Willeroo Street was 15 metres.---Correct.

20 But you learned that a planning rule, an instrument called the Development Control Plan of council's, needed or required a 20-metre frontage for townhouses.---In general, yeah, you need 20 metres. But in this instance you know that it's isolated, so you can't buy five townhouses or buy eight units. So it'll be based on its own merit.

But that was the issue, was it, for Willeroo Street for you?---No. Frontage not an issue, no.

It couldn't just be given a rubber stamp, though.---It can be.

30 Well, it didn't satisfy the requirements of an environmental planning instrument that applied to that land, did it?---Well, those rules don't apply to that land, from my understanding. How could you, how could, how, if something needs 20 metres but you've only got 15 and you can't get any more, does it still apply in the code?

Was that your view, was it?---That's my view, my understanding. That's how we brought the property.

Did anyone express a different view, that it did apply to the land?---No. I don't know.

40 No-one suggested to you that it was a problem that the frontage was less than the frontage required in order to construct townhouses on the site? ---Council brought it up.

Yes. Thank you. Now, you heard as well me ask questions of your wife about a 31 Santley Crescent, Kingswood.---Ah hmm. Yes.

You were involved in looking at that property with a view to potentially developing it.---Correct.

You understood it was owned by your, I'm sorry, your father-in-law.
---Correct.

And were you part of a group, a consortium or a group, that was looking at purchasing the property?---Yes.

Who else was in that group?---Abdullah Osman, Mohammed El Badar,
Hossam Matar, Mohammed Matar, and Alae Osman obviously is
10 Abdullah's brother.

Right. Can I just get the spellings of some of those names. The last name,
A-l-a-e Osman?---A-l-a-e is his first name.

Right. Yes.---Osman.

Second name Osman?---Yes.

Hossam Matar.---Correct.
20

H-o-s-s-a-m?---S-a-m, yeah, maybe, yeah.

M-a-t-a-r?---M-a-t-a-r, yeah.

Thank you. Abdullah Osman.---Yes.

Anyone else?---Mohammed Matar, who's Hossam's brother.

And how do you spell the first name?---He would have been involved.
30 Mohammed. I don't know how he spells it.

Mohammed, okay, thank you.---Mohammed. And Mohammed El Badar.

THE COMMISSIONER: Sorry, what was the second name of the person
you just mentioned?---Mohammed Matar.

And how do you spell the last name?---M-a-t-a-r.

Okay.---So Mohammed Matar, Hossam Matar, Alae Osman, Abdullah
40 Osman and Mohammed El Badar.

MR BUCHANAN: And was Mohammed your brother?---Yes.

I'll come back to that grouping in a moment. Do you remember when it was
in 2015 that you started looking at Santley Crescent with a view to potential
development?---I don't have exact dates, no.

Was it 2015 as best you recall?---Could be. I remember maybe seeing something in 2015 before, maybe.

Now, just I'm afraid I have to apologise in advance for this, but I'm going to be, as it were, jumping between properties in my questions because what I'm going to try and do is go through things that occurred I'm going to suggest to you, or documents in relation to them, chronologically. So I am going to be jumping between developments. If at any stage you're not sure what I'm question relates to, please say.---Okay.

10

Penshurst Road. Was that a property in which your wife was involved in trying to progress the application?---She, she was just always complaining, always complaining. Obviously it's something where my parents lived upstairs. We lived downstairs. She was always complaining that, you know, what are we doing? Are we staying here? Are we moving upstairs? Are we going to, you know, sell the house? Are we staying in the house?

20

And you heard the evidence that I took her to of her sending text messages to her father, some of them with the address in it but nothing else, just the address. Does it come to you as a surprise that your wife was sending texts to your father-in-law about the property and about the DA?---No, well, I mean, now, I know that she sent him the address.

Right. Does it come to you as a surprise that she was in communication with your father-in-law about the DA?---No surprise, no.

30

And why are you not surprised?---Because she always used to complain to him that, you know, it's taking so long. She used to ask me what's going on with the DA and I used to say, okay, we're waiting for this, we're doing this, we're waiting for this, we're waiting for this. And she used to, you know, whenever she seen him or whatever, she'd complain to him.

And were you present when you saw your father-in-law and there was discussion about where things were at in relation to the development application for Penshurst Road?---There could have been. There could have been.

40

Could have been?---Yeah. He would have asked me what's going on. When she's complained to him he'll ask me, if I ever seen him, what's going on and I'd tell him this is what I've done.

Now, would it be fair to say that you - - -?---Or I could have told her and she's passed it to him. I'm not sure. I mean, I don't know which way it's gone.

Would it be fair to say that you understood your father-in-law was a member of Canterbury City Council?---Correct.

You understood the way councils worked, that the DAs were processed by the staff of the council?---Correct.

And that the staff of the council came underneath the council itself, comprising the various councillors.---Council, not councillors.

10 Council, not councillors.---From my understanding, councillors, councillors got involved, I think, from my, or what I understand when it came to, I think, IHAP or when it had to be referred to other stuff. But not as in a general assessment of the actual plans. So when I got my DA approval with a deferred commencement, it didn't have to go to council meetings or anything 'cause it fully complied.

Does it come to you as a surprise that Michael Hawatt appeared to be trying to move things along quickly with Spiro Stavis, the director of city planning?---Well, you know, if his daughter is complaining to him, then I think it's normal if he wants to, you know, listen to her and, you know, find out what's going on. That's between them. Nothing to do with me.

20 Were you hoping that your father-in-law could help you with the processing of either the Willeroo Street development application or the Penshurst Road development application?---It didn't bother me. Didn't bother me.

When you say it didn't bother you, surely you hoped that your father-in-law, being a councillor, could help you with processing either of those development applications.---It didn't bother me. I knew if I went to the Supreme Court that I'd get an approval there. I'd get an easement over the properties.

30 How much would that cost you?---I don't know, maybe 60,000, 80,000. How much does a Supreme Court cost?

Whereas if your father-in-law put pressure on the staff who were responsible for processing either application, that would cost you nothing. Correct?---I don't know.

Well, isn't – I'm sorry, you were expecting, were you, to pay your father-in-law for the assistance he was providing - - - ?---Never.

40 - - - in relation to these DA's?---If I was to pay my father-in-law I think it'd be crazy.

I'm sorry, you think?---If I was to pay my father-in-law for any type of help anywhere, it would be crazy I think. What kind of relationship is that?

Why? Why?---I don't know.

What would be crazy about paying your father-in-law for assistance in relation to processing development applications?---I wouldn't get him to assist me anyway.

I'm sorry?---I wouldn't get him to assist me.

You wouldn't get him to - - - ?---Assist me in a, in an application like this.

10 You don't think that your wife was getting him to assist both of you in relation to Penshurst Road?---My wife was complaining to him, that's normal, females complaining. Excuse me.

Did you tell her, "Oh, shut up"?---I used to, yeah.

"You shouldn't be complaining."---I used to tell her, "Don't ring him, don't talk to him". Yes, I used to tell her.

"Stop bothering your father about this."---Definitely.

20 You told her that, did you?---Yes.

I see. And so she was communicating on what you've heard of the evidence, with Michael Hawatt, about Penshurst Road, contrary to your instructions to her?---Yes.

30 Right. When did you first instruct her not to communicate with her father about the Penshurst Road application?---The first time that she told me that she'd asked her father about our application, I told her, "Don't bother him, leave him alone. It's got nothing to do with him." But she was persistent because we had four kids I think at the time, we lived downstairs, it was three bedrooms, my parents lived upstairs. She, you know, to her, her life was in limbo. Every time she seen her dad she's complaining, generally as a daughter, and then I think that's why he asked her "send me your address" and he'd follow up and help her out or, you know, whatever. I don't know, whatever he done but it had nothing to do with me. I knew that it was, that I do not approach him, it's got nothing to do with him. I lodged the DA normally and that's it, like I do with everything.

40 You didn't share your wife's concerns about the impact on you and your family of the delays in achieving approval for the application in respect of Penshurst Road?---Sharing with who?

With your wife, your wife's concerns you've been telling us about.---She used to tell me - - -

You didn't share those concerns?---Share them with who, with her?

Yes.---Of course me and her talk about our living, the way we live or where we're going or what's happening, or - - -

And weren't you unhappy about the impact of how long it was taking to process the DA?---I wasn't.

I'm sorry?---I wasn't.

You weren't concerned.---No.

10

Didn't worry you how long it took.---Nope.

Is that right?---Because I was happy living there, she wasn't happy.

Right. And you weren't concerned about your wife's unhappiness about it? ---Look, she, you know, you're always concerned as a husband and, you know, and why not, but I mean, I mean, I don't go and, you know, do things where, you know, I'm gonna, you know, bug my father-in-law, you know, over something which he shouldn't be involved in which I know is against the law for him to get involved and whatever. So, I, I wouldn't do that.

20

What did you understand in 2015 to be against the law in relation to your father's activities in relation to your DA?---Well, if he was to push the DA probably and, and, and, and do whatever, you know, supposedly he's done and rang up Spiro and whatever, to me, I don't know if it's against the law but I know that you shouldn't, you know, probably he shouldn't, you know, I mean, he's not, he's not in a position, to me, a councillor just takes, you know, complaints from people. So, he's, to me he's not a planner, he's not a, you know, a director of planning or anything like that so to me I wouldn't have taken any, anything with my DA's to him.

30

So you thought it would be improper, did you, if your father in law put pressure on the people responsible for processing either of those DA's to hurry them up?---If he was to put pressure and it's not part of his job or he's not allowed to do it, yeah, of course it's wrong.

That's improper.---If he's not allowed to do it, I don't know.

Well, I'm asking you what you thought at the time in 2015.---I just told her "leave him alone, don't involve him, it's got nothing to do with him."

40

I just need to explore this a little bit more. Why did you say that to your wife?---Because you can be a pain in the ass if you're gonna, you know, every time you ask, every time you seen him or every time you rang him up once a week or whatever it is, he doesn't need a headache like that.

I see. It's not because you did think it was improper for your father-in-law to put pressure on council staff to assist you or your wife?---That too, that

too, that too. I think if he, if he does, if he is gonna do anything, I think he needs to declare it or, I don't know, something like that.

Excuse me a moment, Mr El Badar. Excuse me. I'll just see if I can shorten this a little bit, Mr El Badar, if you just give me a moment. Now, earlier I gave you a suggested description of what happened with the development application for Penshurst Road and you told us your recollection of what had happened, but just to formalise it, there was a DA and then because of this problem with not being able to get the easements, you were told to, I think, or advised to file what's called a section 96 modification application. You've got a DA consent and you needed to substitute a pump out system for the requirement for easements and to do that you were told you needed to file this different application which is a modification of your development consent. Was that your understanding?---Yeah.

Excuse me a moment. Now, I'd just like to give you a, just to establish timelines, a look at a text message. You saw that I was showing your wife some text messages. Can I show you a text message, volume 8 of Exhibit 52, page 202. And we've got it up on the screen if it assists, the screen in front of you if it assists, sir. Excuse me a moment. Now, I just, because you wouldn't have seen these I don't think, at least not as up close when your wife was giving evidence. If I can just explain to you how they work. This is a schedule, a table that's been prepared from extractions from text messages extracted from your father-in-law's telephone and it sets out in the form of a table the metadata, the information about the messages as well as the message, the content of the message itself, and we can refer to them by the column on the left hand side which has got a number, and as well there's, under the heading "time stamp" a date and time. Under the heading "party" it indicates who the party is, who is communicating with Mr Hawatt's telephone and then under "description" it's got a description of the message or the communication. Looking at number two, can you see that, about the second row, on 2 July 2015 at 5.31pm - - - ?---No, where is it? Page 202, or 201? 201 now, you've gone to 201. Yep. So, one, message two. Yep. Salam Talal.

Okay. No, you're quite right. Thank you very much. On page 201, item number 2, a message sent to you on 2 July at 5.31pm, Salam Talal, "Call me when you're ready re Kingswood." That's the content of the message that's reproduced there. Do you remember a communication with your father-in-law like that?---Of course there was communication with my father-in-law about Kingswood.

Right.---But what that message there is about, God knows. We need the messages before it, or by looking at it, it's probably meaning we're going to, we're pulled out of the sale because he's talking to someone else about it before, he's talking to someone else about it after it, so obviously this is maybe the time where we've said we don't want to buy the property anymore, just to help you.

Does it assist you to see that the date is in July, early July 2015?---Dates, I don't remember any dates. Maybe he's telling me to ring him maybe to talk about that it's okay, we're allowed to pull out of the sale, from what I can remember.

Can I ask you to go down to message number 4.---Yeah.

10 And do you see that that's a message from Marwan Chanine - - -?---Ah
hmm.

- - - on 17 September, 2015 at 7.44pm, reading, "Michael, can you please send me the address for the property in Kingswood. Thanks and regards, Marwan."---Ah hmm.

Did you - - -?---Yep.

I'm sorry?---Yep.

20 Did you know Marwan Chanine?---I know who Marwan Chanine is, yes.

Did you know who Marwan Chanine was at the time?---I know who Marwan Chanine is, what do you mean at the time?

At the time in September 2015?---I don't know when I met him. I know I've met him, I don't know what the date is.

30 Did you have a meeting with him – I'm sorry. At the time you met him was it anything to do with Santley Crescent at Kingswood?---No.

Did you hear of Marwan Chanine, a person called Marwan Chanine before you met him?---No.

Your father-in-law didn't say anything about Marwan Chanine to you before you actually met Mr Chanine?---No.

40 What were the circumstances in which you met Mr Chanine the first time?
---It was about the property. I met him because we bought a property that he originally I think sold to someone else that we bought it off. Well, not me, but the guys that I invested money with.

And is this an address at Liverpool Road, Strathfield?---Correct.

Now, could the witness please be shown volume 6 of Exhibit 52 at page 6. Going, changing over now to Willaroo Street, sir.---Yep.

This is a different set of text messages. The first message at the top of the sheet, again it's your father-in-law's telephone from which this data has

been extracted. The message is to Spiro Stavis, the date is 24 July, 2015 at 12.22pm, and the message reads, "Hi, Spiro. Can you let me know the issues associated with a site at 23 Willaroo Street, Lakemba? I am told that it's an isolated site with units on both sides. This should be assessed on its merit, not on the current DCP with the setbacks which makes it unworkable. Thanks, Michael Hawatt." Do you see that?---Correct.

Now, I appreciate that's not from or to you, but you came to learn of a person called Spiro Stavis, didn't you?---Correct.

10

And when – I'm sorry, in what context, what circumstances did you learn of Spiro Stavis in relation to any of your development applications?
---Involving 23 Willaroo Street, Lakemba.

20

And what is it you can recall that brought Spiro Stavis to your attention in that regard?---One day I think, I don't know where we, I was with my father-in-law, whether it was at our house or his house or whatever, and I was complaining to him how silly council is, and he asked why and I said, "Well, we're going to court over five townhouses on an isolated site," you know, one, two, three four." And he goes, "No problem." He goes, "Send me the address." So I sent him the address and that's what happened, that's how I met Spiro, and I met Spiro after that, I think I sent him the address, I'm not sure, but then I met Spiro for 23 Willaroo Street.

Thank you. So it doesn't come as a surprise to you to see a text message like that from your father-in-law to Spiro Stavis in about July 2015?
---No. That's obviously he sent him a message after our conversation maybe.

30

Okay. And you are likely to have been the source of the information that's conveyed in there about the site and the issue about the - - -?---Yeah.

- - - frontage not being - - -?---Yes.

- - - big enough?---Yes. No, not frontage, I told you, frontage is never an issue, was never an issue.

40

So it was simply a question of lot yield, the lot yield you could get, depending on the size of the - - -?---Yield was not a problem. We had plenty of FSR and if you look at the actual plans, we're under FSR.

So why was it a problem to have "setbacks that made it unworkable?"
---It's an isolated site so it's hard to work with. You've got to meet, you know, deep soil and whatnot. If you look through a lot of the stuff that we went through with council forward and back, which are somewhere on the website, you could see why it took so long and all the problems.

So this is a requirement of the DCP, as you pointed out, that's quite separate from the issue of frontage for the type of development you were proposing, but instead made it "unworkable" as your father-in-law described it to Spiro Stavis, namely setback requirements. Why was it that the setback requirements made – I withdraw that. Did you agree that the setback requirements of the DCP made the development proposed unworkable?
---I don't understand the question.

10 Okay. You knew what a setback was?---Correct.

The distance between - - -?---On a normal site, yes.

- - - the structure and the boundary?---On, on - - -

THE COMMISSIONER: You need - - -?---Wait for him to finish.

Yes.---Yeah.

20 Thank you.

MR BUCHANAN: You understood what a setback was, you've told us yes. You didn't understand that the setback requirements of the DCP would make the structure so small that you couldn't make a profit out of it or couldn't make as much of a profit out of it?---No.

I see. So what was it – I withdraw that. Do you say to us that you don't agree with what your father-in-law said there to Spiro Stavis about the DCP setbacks making the project unworkable?---(No Audible Reply)

30 Is that what you're telling us?---I don't understand, I don't understand what you're trying to say.

So there was never a problem with the setbacks requirements of the DCP?
---With a 20-metre, with a 20-metre frontage in townhouses or units, probably townhouses you need to come back four metres in setbacks.

40 Yes.---When you have an isolated site, obviously if you come back four metres you'll pretty much not be able to get a development on there, so it's not based on that merit, from my understanding.

So that's what, as you understand it, Michael Hawatt meant that it's not worth carrying out the proposed development because it would be so small?
---I don't know what he meant.

Well, what else - - -?---You need to ask him.

- - - could he mean? Well, no, no, no. Where do you think Michael Hawatt got this information from?---I told Michael Hawatt that we're taking council

to court. What he told Spiro, it's up to him. I told him that it's an isolated site, we're going to court, we've applied for five townhouses, maybe I said to him, oh, they're talking about setbacks or they're talking about whatever, I don't know what I said to him. This message is from Michael to Spiro.

And you're telling – I just want to make it clear that - - -?---I'm telling you what - - -

- - - your memory - - -?--- - - - I understand.

10

If you could just listen to my question. You're telling us that your memory is there was no problem with the requirements of the planning instrument called the Development Control Plan for setbacks making your development unworkable?---It shouldn't be a problem. The assessing planner - - -

20

Well, I think you're conceding in that answer, aren't you, that it was a problem, but you didn't think it should be a problem?---When I bought the property with my partner we know that this site is the rules of four metres, 20 metres does not apply, okay, so when we went to our architect we told him we want to put townhouses on here, we know we can get X amount, he designed it, we went to council, council said, originally the council, I don't know if you can find it somewhere, that this, all this doesn't apply here, doesn't apply there, doesn't apply to this, this doesn't work, that doesn't work, doesn't, doesn't work, you need to go back and redesign it. That's the original comments from council. So the architect's gone back and asked them, okay, can you tell us what you want from us, how, how can we fix this up, and they said, well, we can't redesign it for you, we are not here to design it, you need to go back and work it out. That's the original what happened with council.

30

THE COMMISSIONER: So there was a problem that you faced - - - ?
---Yes.

- - - from council's decision?---Correct.

40

MR BUCHANAN: And would it be fair to say that you hoped your father-in-law could assist in resolving the problem?---No. Because if you, I just said to you we lodged an appeal in the Land Environment Court, that's before I spoke to my father-in-law, so I wasn't hoping for any help, but when I seen him, I just complained to him that council is wasting taxpayers' money and we are going to court over an isolated site, and that's all I said to him.

Now you went to court, I think, because you didn't get a decision on the Willaroo Street DA within the time that the law required it be made. That is, and it's called a deemed refusal. Is that your recollection?---I don't know, I don't understand the question.

All right. Can you have a look, please, at Volume 6 at page 52? Sorry, Volume 6, Exhibit 52, page 22. Page 24, it's been pointed out to me, as a more appropriate page to take you to. If we look at page 25, was Vasili Conomos your solicitor for Willaroo Street?---Yes.

He signed that document.---Yes.

And it's an application to the Land and Environment Court.---Yeah.

10 And your name appears under "title of proceedings".---Yes.

And the respondent is Canterbury City Council. Then under "details of application" over halfway down the page it says, "Deemed refusal of development application", then it has a DA number, "for premises known as 23 Willaroo Street, Lakemba." Do you see that?---Yes.

So, does that assist in recalling the circumstances in which you went to the Land and Environment Court?---Yeah. My recollection is that it took council a very long time to give us a deemed refusal.

20

And as a result you went to court about it.---Correct.

Okay. Excuse me.---So when was that message to Spiro from Michael? After all this or before?

Before, I'll take you to it. Excuse me a moment. 11 May 2015, it's volume 7, page 15. Have you got volume 7 there?---(not transcribable) Yeah.

30 I'm sorry, that's in relation to, that's another, that's in relation to Penshurst Road. Can you see that? Just while you're there, can you see that it's an email from Michael Hawatt to Spiro Stavis and at the top you can see, or the fourth line from the top, it says "51 Penshurst Road, Roselands."---Yeah.

40 And the date at the top email is 11 May 2015, and then the email by Councillor Hawatt to Spiro Stavis is at the bottom there. "The owners of the above property have been waiting for over a month for the engineer storm water response and the DA with council for 12 weeks, can you have a look and find out why the delays?" You would like to see again the Volume 6, page 6. And it's the first message, it's up on the screen. The date is 24 July 2016 and it's a message to Spiro, "Can you let me know the issues" and this is, and then he sets out what he understood to be the issues. I'm going to show you another document now. Are you okay for me to take you to another document?---Yeah.

This is from volume 6 of Exhibit 52 commencing at page 12, and can you see it's on the letterhead, the City of Canterbury?---Yeah.

And it indicates that the author of the letter has completed a preliminary assessment, that's in the first paragraph. Can you see that?---Mmm hmm.

Can I just take you to the addressee, Hamec, H-a-m-e-c Pty Ltd?---Yeah.

Was that your company?---That's an architect.

That's an architect, thank you. And that was your architect for Willaroo Street.---Yes.

10

Thank you. And then you can see there are some pages in which there are set out what council saw as issues with the development application for Willaroo Street, in particular can I show you on page 13 just a bit above halfway down against the letter C, with the heading "minimum setbacks" there's three lines that suggest that an issue for council was that the setbacks required, the minimum setbacks required, were not provided for in the plans for your proposed development. Do you see that?---Yes.

20

So it then goes for a number of pages and then on page 18, the last page of the letter, signed by a person called Emma Brown who says she's a planner and the letter is dated 15 July 2015. Can you see that?---Yeah.

Now, having received that, you say that you hadn't received a decision determining the application and you lodged an appeal by way of what is described in your appeal document as deemed refusal, and that was on 25 August 2015. Correct?---Yeah.

30

But you had received a very detailed letter setting out the reasons why there hadn't been a determination of that development application, hadn't you?
---Yeah. 15 July, in front of you.

Yes.---Yeah.

You accept that?---Yeah.

And essentially, you weren't prepared to try to fix the problems that council identified in that letter and instead decided to go to court.---Yes.

40

Is that right?---It's quicker and more efficient.

Righteo. And as far as you're concerned, did you think at the time it's also cheaper than trying to fix the problems identified by council in this letter, to go to court?---We go to court because it's the only way you're gonna get it approved.

And was that in your experience, the case?---It's always the case. In an isolated site especially like that.

All right. But what I'm actually asking is, you had experience as a developer, as a person who did developments, that if you encountered obstacles identified by council it's better to go to court, you're more likely to get a decent outcome that way than negotiate with council about the problems they identify. Was that your view at the time?---Correct.

10 Thank you. Now, I just want to assist with the timeline. If I could ask you to go to Volume 7 again there, page 81. Excuse me a moment. Do you recognise this document as being an application that you made to council to modify the Peshurst Road development consent?---Yes.

And you can see the stamp on it from council of 28 August, 2015?---Yes.

Is that right? And on the second page, the bottom of the second page, is that your signature?---Yes.

So this was the attempt to substitute for the requirement for easements to deal with stormwater drainage, a pump-out system, correct?---Yes.

20 Thank you. Now, can I ask you to look at volume 7, page 122 in the first instance. Excuse me a moment. Can you see that this appears to be an email, although it might have been sent by mobile phone, from your father-in-law to Mr Stavis, looking at the bottom of the page, "Hi Spiro, 51 Peshurst Road, Roselands section 96 was submitted last Thursday re stormwater access using pump-out system." That's the document you just saw. You accept that?---Yep.

30 "The applicant have tried on a number of occasions to get access through his neighbours' properties but to no avail. Even with good offers, no one is willing to accept. The applicant is avoiding going to court. How can we help him re his proposal? Thanks, Michael Hawatt." Now, do you know why Michael Hawatt sent that communication to Spiro Stavis?---Well, obviously his, his wife or, I mean, my wife, maybe told him that we'd put in a section 96 or whatever. I could have been me, I don't know who it is.

And do you know why he said to Spiro Stavis, in this communication, "How can we help him re his proposal?"---Obviously he's trying to help.

40 He's trying to help you and your wife?---Well, obviously. If he wants to help me or my wife, I don't know. It's up to him. I don't know his intention.

And did you ask him to help you?---I don't know.

You don't know?---I don't know if it was me or my wife, I said that to you before.

Well, I'm sorry, I just don't, firstly, I didn't quite hear that and that's my fault, I don't have fabulous hearing.---I don't know whether it was me or my wife that said to him that we'd lodged a section 96 with a pump-out.

And asking, "Can you see what can be done to get this moving?"---Doesn't mean we asked him.

You didn't ask him?---Maybe she was, I didn't ask him.

10 How do you know you didn't ask him?---Because I can't recall asking him.

So, it's possible you did ask him?---No, I can't recall it, so that means no.

Well, sometimes people lose memory of things that they did actually experience happening. You must have had that experience.---Maybe I'm going crazy, it was three years ago.

20 Thank you. Now, if I can ask you to go to page 203 of volume 7. And you can see this is a page of text messages extracted from, I ask you to assume, your father-in-law's telephone, and the one I'd like to draw to your attention is number 24, almost the middle of the page, dated 31 August, 2015 at 6.03pm, and can you see that it's to you and that it is an FYI and then it has a message about Penshurst Road ending in the word, "Cheers." Can you see that? And it sets out advice as to what we can assume, can't we, you and your wife needed to do to progress the section 96 application. Would you accept that description?---Well, I can't tell you the intention. Obviously that's a message he's sending to me. Why he sent, who asked him to chase that up and whatnot, I don't know. I can't tell you.

30 Well, you know that your father - - -?---That message from, obviously, maybe Spiro or someone to my father-in-law.

Yes.---And he's sent it to me.

Yes.---Yeah.

And so this is obviously of assistance to you.---And I've replied back, yes, it is in the section 96, the, the written evidence.

40 Yes. That's the same day at 6.08pm. This is message number 25. Is that right?---Yeah.

Thank you. Then message number – I'm sorry. If I can now take you to volume 5. If, does the witness have volume 5?---No.

I'll just check.---6, 7 and 8.

Volume 5, page 283. And if you could just go down to the number 276. This is, just for the record, page 279. And can you see a message there on 31 August, 2015, from Spiro Stavis to your father-in-law – it's his phone this message is coming to – and it reads, "Mike, I'm more than happy to help them but I need that evidence." And then in the next message, 277, he says, "Gee, my fingers are too fat. Sorry, Mike. If they give us the evidence, I can help. Cheers." Then the message, there's further conversation on the subject. There seems to be communication between Stavis and your father-in-law with a view to providing you with assistance in progressing this application. You'd agree with that?---Yes.

In September – excuse me a moment. In volume 7, if I can ask you to go back to that, page 283. It's on the screen if that assists. The information that Stavis sent to your father-in-law is at item 24. Do you see that? It's set out there at item 24. Can you see that?---We were there before.

Sorry, you do have to say something so it can be recorded.---Yes, yes.

Thank you. And then item 27, on the same day at 6.28pm, is a forwarding to you of, at item 27 and 28, the message from Spiro Stavis. Do you see that?---Yes.

So plainly it wasn't just Mr Hawatt communicating with Mr Stavis with a view to trying to help you. It was also Mr Hawatt forwarding this information for your information as to what was going on. You accept that?---Yes. Yeah.

Thank you. Now in, I want to suggest to you, September 2015 – so we've just looked at messages about 31 August, 2015 in relation to Penshurst Road – the proceedings in the Land and Environment Court in relation to Willeroo Street were still proceeding. Fair enough? You understand that? ---Yes.

And then the matter was sent to a section 34 conciliation conference. You recall that?---Yes.

And did you understand that to be a conference that's meant to occur between the parties – that is to say you on the one hand and council on the other hand – to try to come to a resolution of the dispute?---Yes.

In the meantime, can I take you to another volume, Volume 8, which you might have there in front of you, page 73.---It's here, it's here.

This is an email by you to your father-in-law on 8 October 2015 and can you see that there's an attachment which is titled "Architectural fee proposal Santley Crescent, Kingswood."---Yes.

Tala, T-a-l-a, at 15/10/08. Yes. And then if you go over the page, commencing at page 74 there's a document on the letterhead of Gus Fares, F-a-r-e-s, I've probably mispronounced it. How do you pronounce it?---Gus Fares, yeah.

Architects dated 8 October 2015, addressed to you. Do you see that?---Yes.

And do you recall getting this document?---Yes. Should've been.

10 If you look at it in the paper form, you can see, you can just flip through the pages and you can see that it goes through a number of pages and seems to conclude on page 105 in terms of this proposal to you, and was this the architect's fee proposal for doing design work for you in respect of 31 Santley Crescent?---Yes. For me and the partners.

Well that's the next question, actually. If you go to page 106 there's what appears to be another copy of exactly the same document but this time it's dated 13 October instead of 8 October. Sorry, sir, you're going to have to have a look at it if you - - - ?---Okay. So, Volume 8, what page?

20

We've now got a copy on the screen.---Okay.

Yes. So this is Volume 8 page 106. And it's the same document but this time it's dated 13 October 2015. Can you see that?---Yes.

And it's addressed to Croydon, 2195 Pty Ltd and it opens with "Dear Mr El Badar and Mr Osman." Do you see that?---Yes.

30 What was Croydon 2195 Pty Ltd?---It's a company.

Who owned it?---I think Abdullah Osman, Hossam Matar and Mohammad El Badar.

Now, so the Mr Osman to whom this is addressed as well as you would be Abdullah Osman?---Correct.

Thank you. You had asked for that architect's proposal, or you and your colleagues had asked for that proposal.---Yes.

40 And what were you trying to find out, what were you trying to create or find out at this point?---Obviously we've sought his advice about what we could get on the property at Kingswood and that's his fee proposal. If you go back to the first one it was never initialled, never agreed upon. The second one has been initialled and we've agreed to go forward with the, you know, applying for a DA.

Well, he was agreeing to provide plans, a design. Is that what you understood you were getting for the money you were agreeing to pay him?
---Yes.

Now, please tell me if I'm wrong but you had, you were exploring putting either residential units or a boarding house on this property. Is that fair?
---Yes.

10 Can I take you now to Volume 7, page 163. This is a copy of a letter taken from council files. It's addressed to you. Do you agree with that?---Yeah.

And if I take you to the next page, 164, you can see it's from a Felicity Eberhart and it's dated 26 October, 2015. I'm very happy for you to read it because I want to ask you, do you recall getting a letter like this that indicated that, according to the Development Control Plan, the development you proposed on the site where you lived, Penshurst Road, was required to be drained by gravity?---I'd have, sorry, say that again?

20 Do you recall getting a letter like this from council saying, "Look, there's a problem with your section 96 application. The problem is the rules in the Development Control Plan require stormwater be drained by gravity." That's to say, which was what was contemplated by the easement perhaps, whereas you were asking for modification to substitute for a pump-out system for the easement requirement.---Correct.

And so the upshot of this letter is that you are being told you either have to address other avenues or withdraw the application.---Correct.

30 Now, this was a problem for you, wasn't it?---Of course it's a problem.

And can I take you to page 283 of the same volume. That letter, you recall, was dated 26 October, 2015. If we go to this extract, this page of extracts from your father-in-law's mobile phone, on 27 October, it's the last item, number 30. You sent a text to your father-in-law which appeared to set out the URL, the website address, for the status of either the DA or the, perhaps more likely, the section 96 application you were making. Can you see that?
---Yes.

40 Why did you send that to your father-in-law?---I don't recall.

You don't remember?---I don't recall, no, I don't remember.

And if we go over the page, there's another very similar text, number 31, at the top of page 284. Can you see that?---Yes.

And then at item 32 on that page is a text to you from your father-in-law two days later, 29 October, at 5.01pm, which reads, "I'll speak to you tonight re Penshurst. It's resolvable. Phil Brown will inspect hoarding

tomorrow.” Leaving aside Phil Brown inspecting hoarding, do you recall your father-in-law contacting you like that to indicate that, whatever it was that you had sent him by way of a pointer to council’s records on its website, was in your father-in-law’s opinion resolvable?---Yeah, I can see that, yep.

You do recall that?---Yes. Oh, I don’t recall, no, but I can see it.

10 Do you recall him communicating to you, look, the problem can be fixed?
---I don’t recall.

You agree however that from the texts that I’ve shown you it does appear that A, there was a problem, B, you drew it to your father-in-law’s attention, and C, he was telling you it can be fixed.---Well, I didn’t draw it to him, the problem, and that message I think is sent to him maybe from Spiro and he’s forwarded the whole message to me. That’s what I could see.

20 THE COMMISSIONER: Hold on, which message are you referring to?
---32.

MR BUCHANAN: So are you saying to us that you have, you don’t think taking into account your recollection and your understanding of what was going on, that you sent the content of this material to your father-in-law? Is that what you’re saying?---Say that again.

30 I’m just trying to ascertain what it is you’re telling us about the two emails that are numbered 30 on page 283 and 31, when I say emails, I should have said texts, on 30 on page 283 and 31 on page 284. What is it you’re telling us about those?---I don’t know. I don’t know why I sent them to him.

But you’d agree with me that it appears to be a record of council’s in respect of your section 96 application for Penshurst Road?---Correct.

And you did send that - - -?---Yes, well, I - - -

- - - to your, you accept that you sent it?---Yes, I accept that I sent it.

40 And your father-in-law’s response is, “It can be fixed.” Do you see that?
---That’s what it says, yeah.

Yes.---Well, he sent me a text, like I’m saying to you, I think that’s sent to him and he’s forwarded it to me and obviously saying that it’s resolvable.

THE COMMISSIONER: Sorry, so the text in 32 you’re now saying that was sent to your father-in-law who then on-sent it to you?---That’s what it looks like, ‘cause I don’t know who Phil Brown is, so I think whoever sent him the text, “I’ll speak to you tonight regarding Penshurst, it’s resolvable,” then he’s forwarded the whole message to - - -

MR BUCHANAN: Can I say that you're right, and after lunch I'll show you that just to complete the circle.

THE COMMISSIONER: All right. We'll adjourn until 2 o'clock.

LUNCHEON ADJOURNMENT

[1.01pm]