

DASHAPUB01533
28/06/2018

DASHA
pp 01533-01580

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 28 JUNE, 2018

AT 9.30AM

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

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

THE COMMISSIONER: Now any administrative issues?

MR BUCHANAN: I don't think so, for our part, Commissioner.

THE COMMISSIONER: All right. Mr El Badar.

<TALAL EL BADAR, on former oath

[9.40am]

THE COMMISSIONER: The order I made yesterday under section 38 continues.---Thank you.

MR BUCHANAN: Mr El Badar, can I show you a document, please.

THE COMMISSIONER: Thanks.

10

MR BUCHANAN: Remember that yesterday I showed you a copy of a draft option agreement between Michael Hawatt and Alae Osman.---Yes.

This is another copy but there is attached to it, about a third of the way through the sheets, a contract for sale and purchase. That's the difference between this version and the version I showed you yesterday. Have you got that page?---Yes.

20 Thank you. Now, you can see that nothing appears to have been – I withdraw that. The vendor is identified as Michael Hawatt.---Yes.

There's a date for completion that is identified of the 42nd day after the date of the contract. There's the property identified, 31 Santley Crescent, Kingswood, the RP number and so on. Then if you go over the page, this page has some writing on it. At the top of the page, it's a bit faint, it's on the left hand side against the words, the printed words, completion date, can you see what appears to be 12/2/16?---Yes.

30 Then further down in the place for the signature of the purchaser there is a signature that could be Alae Osman's signature.---Yes.

Do you agree with that?--Yes.

Do you know, do you recognise his handwriting, are you able to say - - -?
---No.

Okay. But it looks like Alae's - - - ?---Looks like Alae Osman. This is what I was talking about, this is what should have been there yesterday, sir.

40 Well - - -?---That's the contract that I was talking about and it should have been a contract.

Yes. Except that this is not executed.---Well, you need to take that up with the solicitor and Michael Hawatt and - - -

Well, no, either there's a contract or there isn't a contract. Do you understand the legal position and to say that you have a contract means that there are binding obligations on the party, on the parties to that contract?

---From my understanding, from my recollection I know that Alae went in, signed the contract, we paid a deposit and whatnot. What happened, they didn't sign, it's not filled out properly – I wasn't there so I can't tell you anything about this contract.

When you say, "We paid the deposit," what are you talking about?---The \$50,000 and then the \$250,000.

10 Thank you. Excuse me a moment. Excuse me I'll find the exhibit number for the previous version of this document.

THE COMMISSIONER: The one that we think's a draft?

MR BUCHANAN: I'm reminded that the option agreement that was the subject of examination yesterday is in one of the volumes for Exhibit 52.

THE COMMISSIONER: I think it's volume 8, page 120.

20 MR BUCHANAN: Thank you very much, Commissioner. I tender the document I've shown the witness, another version of the option agreement but with a, I hope I'm not leaping ahead of myself, when I describe the document attached as a draft contract signed by Alae Osman, apparently signed by Alae Osman.

THE COMMISSIONER: The put and call option not executed purporting to be between Michael Hawatt and Alae Osman with attached a draft contract for sale purportedly signed by Alae Osman will be Exhibit 105.

30 **#EXH-105 – UNEXECUTED PUT & CALL OPTION BETWEEN
MICHAEL HAWATT & ALAE OSMAN WITH ATTACHED DRAFT
SALE CONTRACT FOR 31 SANTLEY CRESCENT KINGSWOOD
PURPORTEDLY SIGNED BY ALAE OSMAN**

40 MR BUCHANAN: Yesterday, Mr El Badar, I was taking you to the stage that you were at on the day that the \$250,000 payment was made into Mr Hawatt's Trust Account, Mr Zreika's Trust Account for Mr Hawatt, on 21 December, 2015, and just to remind you, if the witness could be shown volume 6, page 90 please. On the screen there is the email I think I showed you between the lawyers, dated 21 December, 2015, to which was attached a document from the solicitors for council setting out a series of issues for them with the Willeroo Street development application. If we could just go to the next page. You remember me showing this to you yesterday?---Yes.

And that had a series of issues identified by council's lawyers. Do you remember a proposal being made very close to this time that you take part in

what was called by the lawyers a “without prejudice” meeting with Spiro Stavis about the Willeroo Street application?---Yes.

Thank you. Could we play please recording number LII 00867. Recorded on 21 December, 2015 at 5.45pm.

AUDIO RECORDING PLAYED [9.48am]

10

MR BUCHANAN: I tender the audio file and transcript of that recording.

THE COMMISSIONER: The audio file and transcript of LII 00867 recorded on 21 December, 2015 at 5.45pm will be Exhibit 106.

#EXH-106 – TRANSCRIPT SESSION 867

20

MR BUCHANAN: Thank you, Commissioner. If you just excuse me, Mr El Badar. Just looking at the transcript of the first page of that recording, Mr El Badar, obviously looking at the middle of that page you heard your father-in-law saying, “The things I do for you” and laughing. Mr Hawatt was indicating to you that he thought he was helping you in relation to the Willeroo Street development application. That’s a fair reading of that, isn’t it?---Yeah.

Thank you. Could we play please recording LII 00868.

30

AUDIO RECORDING PLAYED [9.51am]

MR BUCHANAN: I tender the audio recording and transcript of that recording made on 21 December, 2015 at 5.52, starting at 5.52pm.

THE COMMISSIONER: The audio file and transcript of LII 00868 recorded on 21 December, 2015 at 5.52pm will be Exhibit 107.

40

#EXH-107 – TRANSCRIPT SESSION 868

MR BUCHANAN: Mr El Badar, you recognised your voice and your father-in-law’s voice on that recording?---Yes.

If we could have a look at the transcript on page 3 please. About the middle of the page you say to your father-in-law after he asked, “Why did you talk

to me before you went to court, we tried to, like I said to you, I tried to do it and I don't like to ask too much, you know what I mean?" Were you indicating there that you didn't like to ask your father-in-law for too much? ---Yeah, like I try to do it without, you know, talking to him because I know that, he's just a councillor and I don't want to get him involved and I like to do things properly, like you know, go do it through the council. Like you could see, we lodged in March to this application or February or whatever it was. So if I wanted to go to him for help I would have went from April, I don't leave it till December. I said to you before yesterday, I said to you. I
10 was talking in the conversation with him that I'm taking Canterbury Council to court and they waste, they're a bunch of whatever, and they keep wasting taxpayers' money, we're going to court over five townhouses and this, you can see he, it says. We went to, tried to, I said, I like to do it, and I don't like to ask too much, I don't like ask from people to help me, I don't want anybody telling me. That's why you go to court, that's why go to the Council. Council should be able to help you, you shouldn't need to go to a councillor and complain - - -

Can I just ask you to pause. I think we're getting the gist of what you're
20 saying but I just want to establish that what you were saying there was, essentially, I don't like to ask you, my father-in-law, too much. Is that what you were saying?---I - - -

Or were you saying something else about the core system or options that you had?---I just don't want to ask too much from anybody, I don't, getting people involved that don't need to be involved. That's how I am.

See, what I want to suggest to you is that what you were indicating was you
30 don't like to ask your father-in-law, Michael Hawatt, too much?---I don't like asking him either.

If that's what you intended to say.---Like anybody, if I could do things on my own, I do it. I like to do things the right way, I don't need to go anybody.

But the inference from that, "I don't like to ask you, my father-in-law, too
40 much," is that you were prepared to and had asked him for assistance in some respects on this development application. That's the inference that an objective observer could reasonably draw from that statement, isn't it?
---You can draw what you want. I don't know. I'm just telling you what I believe, what I think.

Excuse me a moment.---You can see there he says, "No there's issues like that and people keep shifting the goal posts then you have rights." So he's telling me I have rights, you know, whether he means, you know, I don't know talking to him or talking to someone else, I guess he's a councillor. My father-in-law is a very, very helpful person when it comes to anybody that approaches him. He's been like that for the last 20 years that I know.

Could the witness please be shown volume 6, page 6 of Exhibit 52.---What page, sorry?

Page 6, sir. I just want you to have a look at a couple of text messages four and five on this page that were received from Spiro Stavis, that's number four, and sent to, forwarded I suggest, to you by Michael Hawatt again on 21 December, 2015 in the late afternoon, evening. Do you see the message
10 "Re 23 Willeroo, it's on appeal, they have not, I understand they have not made the changes we want in terms of bulk and scale, et cetera, happy to meet to discuss," and that your father-in-law sent you that, forwarded you that information from Mr Stavis. Do you see that?---Yes.

Can I ask that another recording be played please, LII 01036, recorded on 23 December, 2015 commencing at 6.57pm. No, I apologise, I withdraw that request. You were present when, you were outside the hearing room but you were watching the proceedings and listening to the audio of the proceedings when your wife gave evidence yesterday?---Yes.

20 And do you remember a call being played which, just for the Commissioner, is Exhibit 99 that was recorded on 23 December, 2015 which was made by your father-in-law to your wife in which your father-in-law said, in essence, "We settle on the unit today, he was very happy, he said, thanks Talal as well for that." Oh, sorry, yes. Could it be, if we could put it on the screen thank you very much. Thank you very much. Page one is on the screen at the moment, where your father-in-law said to your wife that "he was very happy, thanks Talal as well for that". Your wife said, "That's all right."
30 Your father-in-law said, "Without him we couldn't have done it." Your wife said, "No, no, it doesn't matter, that's good. It's good to know people and to help each other." I just pause there. Is there anything that you want to say about what your wife said using those words to your father-in-law in that telephone call?---No. I, before I said to you, he still needed the money so because we gave him the money this is what phone calls about, that we're still getting the money because when we agreed to buy his property he went and bought a property. So if we didn't give him the money to buy this property he would have, he would have lost his deposit on the unit. So this is what he refers to, this why he's thanking me because I still, we still gave him the \$300,000 in total to buy that unit so. After the \$50,000 we give him another 250 which he needed to settle on the property. So if we didn't give
40 him the money - - -

I'm sorry to interrupt you.---Then obviously there's not going to be another chance, is there.

We've heard you tell us about that a few times. What I want to ask you though is about the other side of the relationship that your wife describes there. It's good to know people and to help each other. Plainly, that's a

reference to help coming from your father-in-law to you and your wife, isn't it?---I don't know, you need to ask him, you need to ask her.

If we look at the next page, please. That's all in relation to that exhibit. Thank you very much. Now, can I ask you, go back over a little bit your involvement in this transaction to purchase, in an attempt to purchase 31 Santley Crescent, Kingswood. Was there a time when as far as you were concerned, you and your business partners had withdrawn from negotiations to purchase that property?---Santley Crescent?

10

Yes.---Yes, we said that yesterday.

Well, that's why I just want to check with you today.---So what do you want to check?

20

I want to check, was there a time when you and your business colleagues had withdrawn from negotiations to purchase Santley Crescent?---I don't understand what you mean by withdrawn from negotiations – the negotiations were done to buy the property for X amount. When he could sell it for \$1.5 million he approached me and I said to him, "Yeah, if you can selling for \$1.5 million, well, sell it and we'll withdraw from the sale." But he still needed the money to purchase the property, we said that yesterday.

30

So as far as you're concerned then, you had withdrawn from negotiations to purchase the property at the time of that telephone conversation where your father-in-law had indicated that he'd received an offer, an actual offer from Mr Chanine at \$1.5 million and asked you whether you were still interested and you said, "No, look if you've got an offer, you go ahead."---Yes, if you can sell it, sell it. If you can't sell it, then we still have to buy it though.

I'm sorry.---If he doesn't get a sale for \$1.5 million we still had to buy that property at that stage.

40

Why did you have to do that given your father-in-law had essentially said, no, okay, righto, I'll go ahead with this other purchaser and given you had no actual conversation.---Sorry, I take that back, yeah. Once he organised the other purchaser and gave him the option fee, then our deal was over. That's right, you're right. Once the other guy agrees to purchase it off him then we no longer had to purchase the property.

Well, I just want to point out - - -?---So he owes us at the moment, he owes us, just for the record, he owes us \$20,000.

I'll come back to that later. I just want to canvass what the situation was by early 2016. You didn't have an option to purchase it, no option agreement had been executed. Isn't that correct?---I know there, there was a contract, originally there was a contract, no option - - -

There's no executed contract.---Yeah, well you're saying it's not an executed contract I could see a signature here from Alae, why nobody else signed it, why they didn't fill it out, why they didn't put a price, I don't know, I can't tell you.

Yes, but you understand, don't you, that if you don't have an indication from both parties that they're entering into a particular agreement, then there's no agreement.---If you say so.

10

You understood that, didn't you?---I understood that once he had a purchaser for \$1.5 million then our contract is over. But he still asked for us to give him the \$300,000 in total to purchase the property and then he returned \$100,000. I had paperwork, which I forgot in the car, and there's messages asking when he's going to pay back the \$200,000.

Yes, we'll come to that, I told you that. If we could have a look please excuse me. Volume 8 of Exhibit 52, page 200. It might be at page 199.

20 No. So page 200, sorry. Page 199. Yes, thank you. Sir, this is a copy of an email from your architect, Gus Fares, dated 18 February, 2016 to Abdullah Osman. Do you see that?---Yes.

It's in relation to 31 Santley Crescent, Kingswood. Underneath it, however, it has an email from Abdullah to Gus Fares and it appears, if you can just quickly read it to yourself, that Abdullah Osman was of the view that he was still interested in purchasing 31 Santley Crescent and that explorations were underway about the adjoining property with a view to consolidating them and carrying out a development. Do you see that?---Yes.

30 Where would Abdullah Osman had got the idea from that negotiations are for 31 Santley Crescent might still be open, negotiations to purchase 31 Santley Crescent might still be open?---May be, may be at that stage he was still interested because I remember yesterday, he something in February going to Marwan asking him if he wanted to buy the property in February, I don't know. Here you've even got September, so I couldn't tell you, I don't know. May be there was still nothing with Marwan, I don't know.

40 Were you involved in attempts in 2016 to find out whether the adjoining property, 33 Santley Crescent, might be suitable for purchase along with 31 with a view to consolidating the properties and carried out the desired development?---I don't know, I don't know which one's 33, is the block of units it, is it the one on the corner, I don't know.

Do you remember an issue arising about whether 31 Santley Crescent was suitable on its own for the type of development that you were contemplating?---Like I said yesterday, when we went to a pre-DA they said you need 24 metres for units. That's when we weren't happy about us

getting told originally from the architect that it's supposed to be 20 metres in, it's due diligence, it says 20 metres.

Yes. You're telling us a story, though, Mr El Badar, and I'm not interested in a story. My question to you is, were you involved in negotiations in 2016 or explorations or research to see whether 33 Santley Crescent was available and suitable for a development as a consolidated block with 31 Santley Crescent?---I can't remember.

10 Were you involved in anything like that at any time?---I can't remember.

So you don't remember any exploration about the availability of this corner block next to 31 Santley Crescent to see whether it could be used with 31 Santley Crescent to put in a DA for a boarding house or residential units that would meet all the requirements, you have no memory of anything like that? ---First you say you don't want to hear my story, I can't remember.

20 All I'm asking is, were you involved? Your answer is, "You have no memory of anything like that." Is that right?---Who said I had no memory, I said no memory about what you asked about negotiating with number 33.

Or exploring the availability or suitability of number 33, were you involved in that?---To build units on that site we needed to get next door.

I'm not interested in a story. Were you involved?---I don't, I can't remember. I don't know if I was there.

30 You don't have a memory of anything like that?---I can't remember going there, I can't remember.

Thank you. Could I ask that another recording be played please. This is recording LII 041007 recorded on 23 February, 2016.

AUDIO RECORDING PLAYED

[10.14am]

40 MR BUCHANAN: I tender the audio recording and transcript for LII 04007 recorded on 23 February, 2016 at, starting at 6.00pm, sorry 8.00pm. Thank you.

THE COMMISSIONER: The audio files and transcript of LII 04007 recorded on 23 February, 2016 at 8.00pm will be Exhibit 108.

#EXH-108 – TRANSCRIPT SESSION 4007

MR BUCHANAN: Did you recognise your voice and your father-in-law's voice - - -?---Yes.

- - - in respect of that recording?---Yes.

Thank you. Now, you and Khaled K-h-a-l-e-d, your architect met with Spiro Stavis and Andrew Hargreaves. Is that right?---Mmm.

10 I want to suggest to you that that was on the 5 January, 2016, does that sound about right?---I don't know.

Okay. And an issue started to arise about whether there was in the plans for the development a space which was, a closed space which was identified as a study but which Council was concerned could be converted into a third bedroom making it a three bedroom development for each unit. Do you recall that issue?---Yes.

20 And you were involved in discussing that with Spiro Stavis. Is that right? ---I think so.

You think so?---I don't know exactly what was, we talked about all the problems in that meeting.

In that meeting with Spiro Stavis?---We would have talked about all the problems.

30 Okay. Could we play please a recording LII 01664.---That last audio, can we talk about it or, because it says there that the money we refunded and we pulled out of the sale - - -

There's no need for me to ask you a question because it's plain what your father-in-law's saying isn't it?---Yes, the proof is there that the \$300,000 has to be played back.

THE COMMISSIONER: This was 01664.

40 MR BUCHANAN: Yes and it's an extract of a recording. So go straight into the conversation.

AUDIO RECORDING PLAYED

[10.20am]

MR BUCHANAN: Now we've cut the recording at that point because it goes into matters that are not relevant to the inquiry. So I tender LII 01664 recorded on 5 January, 2016.

THE COMMISSIONER: The audio file and transcript of LII 01664 recorded on 5 January, 2016 will be Exhibit 109.

#EXH-109 – PORTION OF TRANSCRIPT SESSION 1664

10 MR BUCHANAN: Excuse me a moment, Commissioner. Can I just ask you some questions about a couple of the things that were said in that conversation, Mr El Badar. If we could go please to page 30, sorry, 4 of the transcript, page 4. What's recorded there about halfway down where it says, Hawatt 1, did he fix up the problem? From what you talk about afterwards referring to Spiro Stavis being a bit harsh, that's in relation to Willeroo Street?---Yes.

20 Thank you. Then on page 7 of the transcript at, before halfway down, so about a third of the way down where the entry is Hawatt 1, I'll send it to him now, but how's the other one, it's all fixed up yeah, that's in relation to Penshurst Road. Is that right?---Yes.

I'll show you please volume 6 of Exhibit 52 page 125. There's a copy on the screen there, there's two emails. The first is from you to Mr Stavis on, sorry, 20 January, 2016. Do you see that?---Yes.

Then there's a response by Mr Stavis to you a little later the same day. Do you see that?---Yes.

30 Now, in your email, you were referring, were you, to a communication that you'd been made aware of from council's solicitor saying that the section 34 conciliation conference had been terminated. Is that right?---The solicitor has terminated section 34, yeah.

40 Do you remember that problem arising in the processing of the application for Willeroo Street?---All I can remember is, I think, we went to this meeting, they said this is what they want, whatever. Like I can see, from here, you can see now they still wanted these studies smaller, so obviously, I don't know, I can remember that we didn't make them smaller and that's why I think the solicitors terminated the section 34. I can't remember exactly what happened but like at the stages but - - -

Could we perhaps go to page 122 on page 6. This might assist you. ---That's why I think I wrote I'm very upset because I can't believe that they were still being adamant that they had to be smaller.

Yes. I just want to suggest if you have a look at the copy of an email from Maria Lopes on behalf of council's solicitor Mr Jackson to your solicitor, Mr Conomos, on 19 January, 2016 you can see that there are eight issues that council's solicitor identified to your solicitor which were outstanding

and then Mr Jackson says, at the bottom of the email, in the circumstances council is of the opinion that without prejudice amended drawings are unacceptable and accordingly, will be seeking to terminated the section 34 process and have the matter listed for a defended hearing. You see that?
---Yes.

Did Mr Conomos either copy you in, sorry, forward that email to you or did he ring you or in some way make you aware - - -?---I can't remember.

10 - - - that he'd received that email?---I can't remember.

But something like that must have occurred?---He might have, I can't remember, from memory, I can't remember if he's called or if he sent an email. Obviously his job is to forward the email or contact me, so.

But in some way, someone likely Mr Conomos had regard to that email exchange made you, gave you the impression that council's solicitor had terminated the section 34 conciliation conference?---What you mean, I don't
- - -

20

Well, that's what you've said in your email to Spiro Stavis on 20 January, 2.23pm back on page 123.---Yes, yes, maybe it was the Vasili that told me, I don't know who told me but obviously yeah, if that's what I've sent to Spiro.

And you can see, just for completeness, that at the top there on that page Mr Stavis wrote to a staff member of his asking, "what's the story, Andrew and I met with them on a without prejudice basis, we'd agreed to a position to give them time to submit amended plans, please find out what's going on, fix the issue." Do you see that?---Yes.
30

You can see there that it appears that at that stage wherever Mr Stavis was he thought that he had in his meeting with you and your planner arrived at an amicable agreement that settled the issues between you and on the one hand and Council on the other hand in relation to Willeroo Street?---Well, looking back at the conversation before or whatever, you could see that he was still not happy with the size of the study so, when you see the conversation between me and my father-in-law he says, oh he'll talk to him so. Whether he speaks to him or not and then he agrees on the size of the study, I don't know, you could see here that obviously they haven't agreed so that's why Spiro's probably contacted. I don't know, like you've got to go through it all, I'm confused. You've shown me something - - -
40

Well, the next page, page 126.---Well, I don't know.

THE COMMISSIONER: Sorry, which page?

MR BUCHANAN: 126. Your email to Spiro's at the bottom of the page that you've sent on 20 January at 2.23pm. This time, Mr Stavis has responded to you at 3.29pm, asking you whether you had submitted amended plans following your meeting with him. He indicates that he's on leave. He's asked his acting director of city planning to look into it and says, "I will get to the bottom of this. In the meantime, can you email me any correspondence you received from council's solicitor." And if we go over the page to page 127, can you see that's what you then did. You copied to Spiro Stavis, Mr Jackson's email sent via a Maria Lopes to Mr Conomos on 19 January saying that they are going to terminate section 34 conciliation process.---Yes.

Excuse me a moment. Could we have a look at page 147 in the same volume. Skip over a bit of correspondence and can I ask you to have a look at this email, it's part of the email conversation, it goes over on to 148 as well where you forwarded it to Mr Stavis the email you got about the conference being terminated. Then you sent to Mr Stavis in the middle of the page the same day now 5.41pm. "Dear Spiro, I really appreciated this, I think there's foul play from sources on both sides." Mr Stavis responds a little later, "Don't worry, I'll get to the bottom of this." Then keeping on going up the page. 27 January, seven days later, you sent an email to Spiro Stavis asking, "Could you please contact me so we can discuss any changes that you aren't happy with so we can finalise all work." Do you see that? ---Yes.

Now, just to provide you with context for the next recording that I'd like you to listen to. Can I ask you to go page 155 of Volume 6. This is an email the next day, 28 January, 2016 from you to Mr Stavis, cc'd into, I'm sorry, you to Mr Stavis and to Abdullah Osman and to your father-in-law. Do you see that?---Yes.

And you can quickly read that to yourself. I'll just ask you to note the third last paragraph, "we think that the amended plans issued to council's lawyer, copy attached, represent what was agreed to and the above dot points come straight out of left field." Then later on, "we are at a loss as to what other changes could be expected to be made arising out of the conference and the dot points are very unhelpful in that regard as well." And then you talk about when the matter's meant to go back to court. Do you see that?---Yes.

Then page 156. Mr Stavis responds on the same day at 12.36pm to you, to Abdullah and to Michael Hawatt cc'ing in his staff, "I've never seen the amended plans so I'm not in a position to confirm anything let alone my support, as I explained to you, I will review before 3 February and advise, if I believe, the changes reflect what was agreed to at our without prejudice meeting on 5 January I've only just returned from leave." Page 171. This is correspondence after that email you sent to Mr Stavis in the middle of, about a third of the way down the page there's an email to you on 28 January at 1.37pm from Mr Stavis saying, "I've never seen the amended

plans,” et cetera. Then after that, Michael Hawatt responds, “thanks to”, sorry – I withdraw that. Michael Hawatt responds to Spiro Stavis, “Thanks can you resolve this.” Do you see that?---Yes.

So, he’s obviously adding his support to you in an attempt to get a good outcome, to get a resolution.---He is a councillor, he’s there to help people isn’t he?

10 Whilst, were you, was Peshurst Road in Councillor Hawatt’s ward?---I don’t know.

Could we play please recording LII 02024 recorded on 29 January, 2016 at 2.57pm. This is also an extract from the total recording.

AUDIO RECORDING PLAYED [10.39am]

20 MR BUCHANAN: I tender the audio file and transcript LII 02024 recorded on 29 January, 2016 commencing at 2.57pm.

THE COMMISSIONER: The audio file and transcript of LII 02024 recorded on 29 January, 2016 at 2.57pm will be Exhibit 110.

#EXH-110 – PORTION OF TRANSCRIPT SESSION 2024

30 MR BUCHANAN: Thank you, Commissioner. If you just give me a moment.

THE COMMISSIONER: While you’re discussing that. Could we just go back to page two of the transcript, I just wanted to read something.

40 MR BUCHANAN: I’m going to ask Commissioner whether a part of the, part of the exhibit could be replayed and it might be easier just replay it from the beginning of the extract down to, towards the end of page two. If you could listen to it because I’m going to ask you, Mr El Badar, about language used so, I’ll need your input if you wouldn’t mind please.

AUDIO RECORDING PLAYED [10.39am]

MR BUCHANAN: That’s all that I wish to play at this stage, thank you very much. Can I just ask for a pause at the moment. Could we go to the first page of the transcript please.

MR DREWETT: Commissioner, just making sure I'm talking into the microphone.

THE COMMISSIONER: Yes, thank you.

MR DREWETT: I don't know if the purpose of my friend's question is to clarify an issue on page two.

THE COMMISSIONER: I think it might be.

10

MR DREWETT: Where the name is attributed, if that is, I'll sit back down.

THE COMMISSIONER: Well, I was going to raise it and I was going to let Mr Buchanan ask his questions first.

MR DREWETT: Yes, thank you Commissioner.

20

MR BUCHANAN: So there are two suggestions that we make for annotation of our copies of these transcript for this recording. The first is that in the first entry for Mr El Badar, we suggest that line three of the entry after over there and before 24 metre the words, "you need" should appear. Then in the second entry for Mr El Badar the end of that sentence as set out in the transcript say after the words 24 the words, "metre frontage" should appear.

THE COMMISSIONER: Sorry I think you need 24 metre frontage.

30

MR BUCHANAN: Yes. Just before Your Honour rules on that, ask Mr El Badar what do you think?---I think so.

THE COMMISSIONER: You agree with both of those?---I think so.

MR BUCHANAN: Thank you. On page two - - -?---There's another one there for (not transcribable) it's large site, I think it means last site.

Is that on page one?---Yeah, where it says large site, I think it meant, it's the last site, just there.

40

Oh yes.---I think it means last site I don't know if it's large.

THE COMMISSIONER: A last site?---Yes, last site or a last site.

MR BUCHANAN: I have to say, although I can't say I've heard it, that makes sense in the context as we understand.

THE COMMISSIONER: I didn't think large site actually made sense.

MR BUCHANAN: Yes.---I think it's - - -

Thanks Mr El Badar. If with Commissioner's permission we make a note on our copy of our transcripts to that effect.

THE COMMISSIONER: So last site instead of large.

10 MR BUCHANAN: If we could turn to page two of the transcript. In the third last entry for Mr Hawatt, on the first line, we can't hear the word money, what we can hear is, "name it is," that is to say, instead of money it should be "name" and what to the transcriber was inaudible, we think was "it is." As to anticipate, to possibly anticipate the suggestion from Mr Drewett that particular passage should be attributed to Mr El Badar rather than Mr Hawatt.

THE COMMISSIONER: The attribution that was my view upon hearing it before we turn to the words, is that, sorry if you go from the bottom of page two it's the third last attribution to Mr Hawatt.

20 MR BUCHANAN: Yes.

THE COMMISSIONER: So it should now sorry - I withdraw that. The suggestion is Mr El Badar starting with "Oh that will be excellent and finishing with cousin, whatever."

MR BUCHANAN: That's our submission. I don't know if that - - -

MR DREWETT: Yes, Commissioner, that's my hearing of it.

30 THE COMMISSIONER: Yes, that was what I heard before we actually turn to the content.

MR BUCHANAN: So perhaps we should ask Mr El Badar, do you have a view on that, do you know what we're discussing?---May be, I don't know, if I can hear it may be.

We can arrange to play it again.

40 THE COMMISSIONER: Just before that's done, what are your suggested words?

MR BUCHANAN: Delete money substitute "name". Delete inaudible substitute "it is."

THE COMMISSIONER: Sorry - - -

MR BUCHANAN: No, I didn't read that very well. I'll revisit that submission. Instead of the word money, it should appear the word "name."

And the words it is should appear after name but there might still be a word that is inaudible.

THE COMMISSIONER: The current reference to inaudible on the second line should stay?

MR BUCHANAN: Yes.

10 THE COMMISSIONER: All right. Thank you. If we could now listen to it.

MR BUCHANAN: Where the cursor is is where the part of the recording that's being played now should commence.

THE COMMISSIONER: Okay.

AUDIO RECORDING PLAYED

[10.56am]

20

MR BUCHANAN: Can I ask Mr El Badar - - -

THE COMMISSIONER: Yes.

MR BUCHANAN: - - - whether he did hear name used?---Yes, it's name, yeah, yeah.

Thank you. So we would make that submission that we make our notes, we note the transcript accordingly.

30

THE COMMISSIONER: Yes, I think it's appropriate. Does anybody else have an issue with those amendments? All right.

MR BUCHANAN: If we could have the transcript of this recording up on the screen again, please, at page 2. Sorry, I should ask to go back to page 1 first. Thank you. Mr El Badar, it would appear from this recording that as at 29 January, 2016 you were interested in acquiring 31 Santley Crescent still. Would you agree with that?---I don't know.

40

Well, can you assist us as to why in January 2016 you would be talking to your father-in-law about the problem with the extent of the frontage on 31 Santley Crescent and that 33 Santley Crescent was being looked at with a view to solving that problem, unless you were still going to buy 31 Santley Crescent?---Like I said to you, I mean, if we could have got 33 then most probably maybe we continue with the sale. But we, we, when we found out that you need 24-metre frontage, we were not interested in 31. But if you could get 33 then you'd be interested. Even if you had got 33 and then you

can sell them both to Marwan, then it doesn't really matter, does it? You could maybe make more money.

Well, that's what I was going to ask.---But you don't want to hear my stories, so - - -

10 No, I'm just interested in your answer to my questions, if you don't mind, please. As you can see and hear from that recording, this conversation that you had with your father-in-law about looking into the availability or suitability of 33 Santley Crescent was in the context of your father-in-law selling 31 Santley Crescent to Marwan Chanine, wasn't it?---I don't understand. So you're saying that we wanted to buy 33 but he wanted to sell 31 to Marwan?

Well, yes. That doesn't make any sense, does it?---It does make sense. Why doesn't it make sense? Marwan hasn't bought anything yet. Why couldn't he sell 33 to Marwan?

20 I see.---But you don't want to hear the story. That's what I mean. It could be anything. When, when you tell me, when you bring this in front of me I start to get maybe, okay, maybe that's what's going to happen. But, I mean, that's all I can say to you. You know, if I could recollect anything, that's a story at the end of the day.

30 What I'm just asking you, if we could just look at page 1, is your father-in-law says, "I'm going to meet up with Marwan tomorrow." And you say, "Oh, that'll be perfect." So your response is you're glad to hear that your father-in-law is talking to Marwan in the context of him purchasing 31 Santley Crescent, is that right?---Yes. Yes.

So then you talk about the suitability of 33 Santley Crescent with your father-in-law, correct?---Yeah.

And then if we could go to the next page.

THE COMMISSIONER: When did you find out the requirement about the 24-metre frontage?---With a pre-DA. So - - -

40 That was the pre-DA meeting with council?---Yeah, so you can see there, yeah, as a boarding house, units will be too hard. I'll show you because we had a pre-DA with council, so - - -

MR BUCHANAN: The witness is referring to page 2. When was the pre-DA meeting held, sir?---I don't know exactly.

Was it before or after the end of 2015?---I don't know.

Were you present at the pre-DA meeting?---No.

Do you know who was from your consortium?---Maybe Abdullah Osman.

10 So looking then at the top of the transcript at page 2, you say, "I've got an email – I can send it to you – from the architect. But if we can sell it to this bloke, it's perfect." Now can you tell us the story? What did you mean in saying to your father-in-law, in the context of considering 33 Santley Crescent, that it would be perfect to sell it to Marwan Chanine, perfect to sell what you've described as "it" to Marwan Chanine?---Yeah, if he can sell his one to Marwan, it's perfect.

You mean 31 Santley Crescent?---31 Santley Crescent.

And in what way was it perfect, if you can explain it to us, please.---It's perfect. Sell it. If he can sell it for \$1.5 million, why sell it to us for 1.2 million and we had a problem with the frontage and you have to buy next door?

20 Yes. And are you indicating to us, please tell me if I've got it wrong, that what you intended to do was to have your father-in-law sell 31 Santley Crescent to Marwan Chanine, who then wouldn't be able to develop it for boarding house or residential units, and he'd be forced to buy 33 Santley Crescent off you if you had bought it? Is that what you're saying?---You can get a boarding house on 31.

THE COMMISSIONER: You can't get units?---You can't get units.

30 All right.---You could, you could get 90, up to, in one of the emails from the architect, you can get up to 90 units. But to build 90 units you need \$9 million, so if Marwan wants to build units, if Marwan wants to rezone it, I don't know. If Marwan wants to buy next door, I mean, if we had bought next door for whatever reason, then we could offer it to him as well.

MR BUCHANAN: So who is "we" when you gave that answer a moment ago?---We, the, the consortium, the group.

Including you and Abdullah Osman?---Correct.

40 And then just in the transcript to confirm this, where at the top line you said, "If we can sell it to this bloke, it's perfect," you're talking again about what I've described as the consortium including you and Abdullah?---Oh, that? I don't know. That could mean me or my father-in-law. That "we" could be just as a term saying "we". But 31, I mean, we could have even said, okay if we buy 33 then maybe we stick to buying 31. I mean, I don't know. I can't, that's two and a half years ago. I can't tell you exactly what was meant, you know, whether it was we buy, if we bought 33 maybe we say to him we keep 31. I don't know. I can't remember. I can only tell you what I

see here, and it tells you here that if he can sell 31 to, to Marwan, it's perfect.

And why is it perfect, just if you can tell us again?---We didn't have to buy it.

And - - -?---I don't know - - -

10 - - - why would that be a good thing? Just if you could assist me.---It's a good thing because you need 24-metre frontage and you're not certain that you're going to get next door, number 33. So if, maybe if he sold it then we wouldn't have to worry at all.

Yes. What I'm having difficulty understanding, if you could assist me, is why is that perfect for you?---I don't know.

20 Well, that's very difficult to believe, that you can't help us as to why that is good for you.---I just said to you before, because you need 24-metre frontage. And then you take me back to why we want to buy 33, I don't know why we want to buy 33. Why it's perfect to sell it to him? Because I, I assume that it needs 24-metre frontage to do units on its own. So I, I don't know.

30 None of this is assisting us, Mr El Badar, in understanding why you were talking about we, plural, selling 31 Santley Crescent to Marwan Chanine at a time when you are looking at the suitability, with a view to acquisition, of 33 Santley Crescent, which only makes sense if it's associated with 31 Santley Crescent.---I don't know whether it meant us, the consortium. I don't know if it meant my father-in-law. I don't know what it meant, so I can't tell you.

Well, if you could have a look, then, at the next large passage that's attributed to you, commencing "To try and still be able to get it". Can you see that passage?---Yeah.

40 If you could just read that passage to yourself. Again, what did you mean by "If we can sell it to this Marwan, it'll be perfect"?---Well, there you go. So that, that says what it says up the top. If we can sell it to this Marwan, it's perfect.

Yes. Who is "we" in that passage?---I don't know.

Now, then you have a sentence that says, "Now we want to try and buy next door if we can." Who is "we" in that sentence?---Obviously the consortium.

Now, your father-in-law then says, "Yeah, yeah, that's fine. Tomorrow I'm going to catch up with him." That's a reference to Marwan Chanine you've been told.---I think, yeah, I think.

And then if I can just take you down to “Oh, that’ll be excellent.” A passage from you. “Oh, that’ll be excellent. Excellent. Yeah, if he says to you whose name it is, just say to,” something inaudible, “in my, my relative’s name, nephew-type, cousin, whatever.” Could you help us with - - -?---I assume that’s referring to Alae Osman.

First of all, “Yeah, if he says to you”. “If he” is a reference to Marwan Chanine, isn't it?---Yeah.

10

And then what you're suggesting or proposing to your father-in-law is that if Marwan Chanine asks whose name it is, is that a reference, you say, to the person who you thought had made a contract to purchase 31 Santley Crescent?---I, I, I assume, yeah.

And when you used the words “my” in that passage, you were putting the actual words into your father-in-law’s mouth for him to use. And so “my” referred to your father-in-law, is that right?---I don't know.

20 Well, what other meaning would you attribute to it or could possibly be attributed to it?---I don't know.

Were you proposing that your father-in-law mislead Marwan Chanine as to the ownership of 31 Santley Crescent?---I don't, I don't know.

And shortly after that you went into – we’re looking now at page 3 of the transcript – a conversation with your father-in-law about Willeroo, is that right?---Sorry, so, then I called him back, yeah.

30 Yes.---About Spiro.

Yes, that’s right.---Yeah, how, this is referring to Spiro there, yeah?

So you change the subject to Willeroo Street.---No, I didn't. Where?

El Badar. Can you see - - -

THE COMMISSIONER: I think it might be page 2.

40 MR BUCHANAN: I'm sorry. It's on page 2, is it?

THE COMMISSIONER: I thought the change in topic.

MR BUCHANAN: Page 2.---Second-last line.

Thank you very much. “No, that, not, that’s excellent. Yeah. Now, did you see the response from your mate Spiro?” Do you see that?---Yes.

This again does seem to indicate in your mind an association between whatever deal was happening or being explored between you and your father-in-law in relation to 31 Santley Crescent and the assistance your father-in-law was providing you in relation to Willeroo Street, doesn't it?
---No.

Just so that no one wonders about it, when you talked about Eva, was that a reference to a person who was the, as you understood it, personal assistant to Spiro Stavis?---It would have been maybe, yeah.

10

Thank you.

THE COMMISSIONER: Have you finished with that?

MR BUCHANAN: Yes.

THE COMMISSIONER: Could we just go back to page 1, please. The problem with the 24-metre footage, when you start off when you talk to your father-in-law and say, "Look, I didn't want to upset your holidays, I
20 I knew before you left but didn't want to upset it," now, are you referring to the problem with the 24, and you hadn't told your father about that before he went on his holidays?---It doesn't seem like it, no.

Okay. And that would suggest - - -?---'Cause he, when he suggested the property he said, oh, you could get units on there, you could get boarding house on there, blah, blah, blah. So we agreed on that basis. And I've, you could see in one of the, in one of the due diligence that the architect when I told him about this property he refers back to, he says that you need 20-
30 metre frontage, him not, I think thinking it was a B4 zoning, 'cause I think the R4 zoning needs 20 but B4 or B5 needs 24. And here he says, "I thought it was your uncle's property," that's why he didn't, like, really go look hard into it, in one of the emails he says here. So - - -

And you learnt about the requirement of the 24 metre footage at the pre-DA - - -?---Frontage, yes.

Frontage, sorry, at the pre-DA?---Yes.

Which would suggest that was at least three weeks before 29 January,
40 because you - - -?---Maybe. I don't know the exact date of the pre-DA but it would have been before.

Okay. All right. Thank you, Mr Buchanan.

MR BUCHANAN: Commissioner. Now, again just to provide context for the next recording that I'd like to play, could we go, please, to page 186 of volume 6. And it's on the screen in front of you, sir. It's an email from Mr

Stavis to yourself, to your architect and to Abdullah Osman and cc'd to his PA and to your father-in-law. Can you see that?---Yeah.

And it's addressed to, he says, "Hi, Abdullah, Talal and Khaled. I have now reviewed the amended plans." And then he expresses disappointment and he then sets out what he said was the issues that he raised at the without prejudice meeting that is recorded here as having occurred on 5 January, 2016, can you see that?---Yeah.

10 And he says at the bottom, "Notwithstanding the above I have attached a sketch plan which provides some suggestions on how you can amend to satisfy our issues." And if I could just ask you to go to page 188 and 189, can you see that your architect's plans have got handwriting on them in red ink?---Ah hmm.

And were those two pages of plans attached to this email?---(No Audible Reply)

20 Do you recall these two pages with plans which have been annotated in red ink being attached to the email from Spiro Stavis at page 186 where he says, "I have attached a sketch plan which provides some suggestions on how you could amend to satisfy our issues?"---Yeah, I don't remember but yeah, since they're there, that means yes.

Well, do you remember making amendments at the suggestion of Spiro Stavis?---No.

30 Do you remember making amendments?---I don't – we need to look at the current plans and see whether they were amended according to Spiro Stavis's, you know, suggestions here. I don't, I can't, I couldn't tell.

Well, can I ask for example do you remember car parking spaces being deleted? Look at page 189, looking at the top on the right-hand side. To the lay eye it looks like car parking spaces with the word "deleted," and arrows to them.---No, that's not car spaces, that's, that's - - -

Righto. Could you tell us what it is?---That's ground floor.

40 Yes. And what is being deleted?---He wants, there, he wants there, from my understanding, for you to remove that section there, cut it off, bring it in.

Rightio. And do you remember doing anything like that?---I don't think so.

You don't remember any changes to the structure as proposed being amended by bringing in the external boundaries of the structure?---I don't, I don't think that the current, the plans we have today are been amended like that. I don't think so.

So what did you do - - -?---This is a - - -

Well, I withdraw that. And it's not every day that you would have got suggested amendments to your plans being provided to you by the director of city planning of the council, is it?---Look ah, if we want to talk about the say council does things, I think - - -

10 That's not what I wanted to talk to you about, I'm asking about your experience. Was it every day in the developments in which you were involved that you got changes being drafted on your plans by the director of city planning?---I, I don't, I don't think I've had a problem like this one.

That's again not an answer to my question, Mr El Badar.---I don't know what a director of city planning does every single day, I don't know whether he's allowed to do this or not.

I'm asking about your experience, sir, of - - -?---You should - - -

20 - - - getting your plans amended in written form by the director of city planning. Did that happen to you in your experience every day?---No, not that I recall, no.

No. So you don't recall these plans being sent to you in that form or you seeing your plans noted up like that in relation to the Willeroo Street proposal for a development?---I don't recall. All I know is this is where I think we kept going forward and back 'cause they wanted us to scale 'em back, scale 'em back, and we were not happy with that.

30 Rightio.---So whether it was Spiro - - -

You'd agree then - - -?--- - - - whether it was Andrew, whether it was - - -

Thank you, thank you for that. You'd agree that the effect of the one particular part of the changes to the plans that I've taken you to and that you've corrected me on is in fact bringing in the walls of the development? ---Yeah, they wanted us to bring 'em back, yes.

40 All right. So you don't think the fact that you did might have been pursuant to this particular annotation of plans by Mr Stavis?---I don't understand the question.

I'll ask you a different question. Thank you for that, Mr El Badar. Can I ask whether the witness can be please shown page 195 of volume 6. And if you can just skim this quickly, Mr El Badar, does it appear to you to be an email from you to Mr Stavis cc'd to Abdullah and your father-in-law in which you took issue with him, you disagreed with him about his description of what had been agreed at the meeting you'd had with Mr

Stavis?---Sorry? That's what it looks like. I don't know. I haven't read it yet.

Thank you. Well, take your time in that case to read it.---Okay, yeah.

You'd agree with that description of the email that you sent to Mr Stavis?
---This I sent to him, yes.

10 Yes. No, I'm not asking whether you sent it to him. You'd agree with my description of it? You're taking issue with him, with his description of what was agreed at the meeting you'd had with him?---I'm saying to him, yeah, that the landscape plan is required. Must provide – I, I don't know. I don't understand the question again.

20 Why did you send that letter to him?---To tell him that you wanted us to do this stuff. We've done it. You want us to bring back here – you can see, go back to that sketch now. This is talking about his sketch here and it says that you want us to bring in section, the section of unit 1 and 5, where he's done the red line, and I'm saying to him - - -

I'm not asking you to read the letter out to us. We can read it.---Okay.

My question is, why did you send that email to Mr Stavis?---Because I'm not happy with, with what he wants.

30 Thank you. Could you turn now to page 196 of volume 6. This is Mr Stavis's response to that email, dated 29 January, 2016 at 4.19pm. "Talal, I disagree with your recollection of the meeting. The issues discussed are clearly outlined in my previous email, hence please advise if you are intending to prepare amended plans, otherwise we'll instruct our solicitor to go to hearing." You see that?---Yes.

40 Now, could we have a look, please, at volume 5, page 295. This is another schedule of text messages extracted from your father-in-law's telephone. And the one that I'd like you to have a look at, please, is numbered 516 at the bottom of the page. You can see it's from your father-in-law to Spiro Stavis on 31 January, 2016, at 12.23pm, and it reads, "Hi, Spiro. What's the issue re 23 Willeroo Street, Lakemba? It's within the FSR and height limit and meets objectives of setbacks and is an isolated site. Why council is playing hard ball? Let me know. Michael Hawatt." Do you see that?
---Yes.

You obviously had, once you read that email from Mr Stavis, contacted your father-in-law to tell him that you'd received this response from Mr Stavis, is that right?---Well, I couldn't have contacted him because you would have had it here, but I would have maybe seen him somewhere and told him what's happening, that's all. He may be asked. May be I told him. There's no problem.

Well, the likelihood is that you were – to use words that you've previously used – very upset.---No, look, you can see there we're going to go to court. As you can see, we couldn't come to an agreement with council, so whether it was Spiro involved, whether it was Michael involved, whether Andrew Hargreaves, you can see here that at the end of the day it's going to go to court. So, well, that's what ended up happening anyway. So it doesn't matter who got involved. Whether you still think I paid \$300,000 to Michael Hawatt for this, this here, you can believe whatever you like.

10

Well, what we do know from what we've heard in a telephone conversation that you had with your father-in-law is that you were unhappy about paying fees to lawyers for work in court.---If you could save \$30,000, you'd do it. But if you, if you, if it means me cutting back the - - -

And you could save \$30,000 by getting your father-in-law to intervene with Spiro Stavis, couldn't you?---No, he, he was helping from his own free will. You can see here, he, he said before in one of the scripts you had, it said there's no need to go to court. And I said to you - - -

20

Why did you bother communicating to your father the effect of, or your perception of the effect of, that email you'd received from Spiro Stavis?---I don't know. Why not? I don't know. It's already started. I told you yesterday that I complained to him that council are a bunch of whatnot, that they waste taxpayers' money and I'm going to court. And this is why in one of the scripts there it says there's no need to go to court all the time.

30

Your father-in-law had already demonstrated to you that he had what might be called "pull" with Spiro Stavis, hadn't he?---If he's got pull, he hasn't got pull, I don't know. I know that Spiro Stavis there has got a team which look after planning. If there's an issue he, from what I understand, the director of city planning would step in. So you were asking before, "Is that his job?" Well, I'm pretty sure that's what his job is.

And it's a logical inference from these communications that you did talk to your father once you got that email from Spiro Stavis, isn't it?---Once, well, in that one there, yeah. Obviously I've spoken to him.

40

Yes. And that you asked him for his assistance. That's the reason - - -?---I asked him for his assistance? No, it doesn't mean I asked him for his assistance.

But the reason - - -?---I told him what happened. Maybe he, maybe we were having lunch and he asked, "Oh, how did you go?" and I told him what happened. Does that mean I asked him for assistance?

It's more likely, though, that you communicated with him as soon as you got that email specifically for the purpose of alerting him to the fact that

you'd received this communication from Mr Stavis which was quite unfavourable to you and likely to result in you having to spend a whole lot of money on lawyers' fees that you didn't want to have to pay.---You need to prove that. It was only another fifteen or twenty thousand dollars.

Now, can I just ask you to have a look at – no, I apologise. Volume 7, page 285. If you could have a look, please, at item number 47. You can see that that's a text sent by your father-in-law to you on 31 January, 2016 at 2.29pm. It reads, "Hi, Mike. I'll show you tomorrow when we meet. What I'm getting at, he can get what he wants but I think the architect and his solicitor are getting bad advice." Do you see that?---Yes.

Can I just ask you, what does that mean?---I don't know.

What were you intending to convey to your father and – I'm sorry, I withdraw that. What did you understand is happening there? Is that a forward of a text that's addressed to your father-in-law?---Yeah.

And it's been sent to you. It would appear to be a text from Spiro Stavis, wouldn't it?---Yes, maybe.

THE COMMISSIONER: Volume 5, page 296.

MR BUCHANAN: Thank you very much. Could I just ask, Commissioner, the item number?

THE COMMISSIONER: 517.

MR BUCHANAN: Item 517. Thank you very much. So assuming that item 47 on page 285 is a text that's been sent to you forwarding a text to your father-in-law from Mr Stavis, could you have a look then at the next text at item 48 on page 285. It's dated the 3 February, 2016. It's addressed to you. And here you're being told, "Yes, I've instructed the lawyers to back off. He needs to submit an amended package." That's again a forward to you of a text from Mr Stavis. You would have understood that?---Yeah.

Thank you. So it would appear that your father-in-law had intervened on your behalf - - -?---I don't know what - - -

- - - with Mr Stavis?---I don't know.

Well, you didn't get that impression from all of these communications and the effect of them?---If he's trying to help or intervene, whatever you want to call it, it's up to him. Like - - -

But it does appear that that's what he's done.---Maybe.

And if we could have a look at volume 6, page 206, please. At the bottom there's two emails there. The bottom one is from you to Mr Stavis, dated 2 February, 2016. "Hello, Spiro. Please find draft plan amendments. Please advise." And then you can see that Mr Stavis has forwarded that to a member of his staff, Mr Hargreaves. You agree?---Yes.

And then if I could just ask you to look over the page and you'll see that the attachment – excuse me a moment – the attachments are pages 207, 208 and 209. Was this redrafted plans prepared by your architects?---Yes.

10

And would you accept that they would appear to have been redrafted after you had received Mr Stavis's suggestions for amendment of your plans?---If the date's after, yeah.

Could we play, please, recording LII number 24 – might not be enough time before morning tea.

THE COMMISSIONER: Is it an appropriate point for a break?

20 MR BUCHANAN: It is an appropriate time, yes.

THE COMMISSIONER: All right. We'll adjourn until just after quarter to 12.00.

SHORT ADJOURNMENT

[11.32am]

THE COMMISSIONER: Mr Buchanan.

30

MR BUCHANAN: Mr El Badar, if we could just go back to volume 6, page 206, please, where you emailed Mr Stavis on 2 February, 2016, a set of amended plans. You recall that? It's the second, it's the bottom of the two emails on that page. And just over the page you can see the first of a set of amended plans. Now, that email is at 3.45pm. The Commission has evidence that a meeting was scheduled to be held between you and Mr Stavis at 1.30 on 2 February, 2016. Do you know whether you sent the plans after, shortly after meeting Mr Stavis?---That's what it shows there.

40 Yes. Can you remember though the circumstances - - -?---No.

- - - in which you sent the plans? Okay. Commissioner, just the reference for that in terms of the scheduled meeting is Exhibit 85, page 37.

THE COMMISSIONER: Thank you.

MR BUCHANAN: Could we play, please, recording LII 02467, recorded on 3 February, 2016 at 9.04am.

AUDIO RECORDING PLAYED

[11.54am]

MR BUCHANAN: And the recording, sorry, the audio file of the recording which I tender, Commissioner, ends there. The conversation went on but about family matters that weren't relevant to any – it's an extract that I'm tendering, just to tell people and in particular, Mr El Badar, that there was more spoken in that conversation but I haven't played that because it's not relevant to the inquiry.---Okay.

THE COMMISSIONER: All right.

MR BUCHANAN: Commissioner, I tender the LII 02467, recorded on 3 February, 2016.

THE COMMISSIONER: Right. The extract from - - -

MR BUCHANAN: And the transcript.

THE COMMISSIONER: Sorry. The audio file and transcript of the extract from LII 02467, recorded on 3 February, 2016 at 9.04am will be Exhibit 111.

#EXH-111 – PORTION OF TRANSCRIPT SESSION 2467

MR BUCHANAN: Thank you, Commissioner.

You identified yourself and your father-in-law speaking in that conversation?---Yes.

Thank you. That's all I want to ask you about that recording. Eventually you learnt that Mr Stavis had instructed council lawyers to back off in relation to the issues between you and council in the section 34 conciliation conference?---I think there was a letter there or something.

And you didn't, or did you have to go back to court before the judge? ---I can't, I think it was, it was, the approval was given when the administrators came in.

Right. There were further, was there a further meeting involving you and Mr Stavis and Mr Hargreaves to discuss the plans that you provided on 2 February, 2016?---I don't know.

And was a small change requested of you, but otherwise the plans were considered satisfactory?---I don't know. After that?

Yes.---I don't know.

Could we play, please, LII 03115, recorded on 11 February, 2016.

AUDIO RECORDING PLAYED

[11.59am]

10

MR BUCHANAN: I tender the audio file and transcript for LII 07449, I'm sorry - - -

THE COMMISSIONER: 03115.

MR BUCHANAN: 3115, I apologise.

20 THE COMMISSIONER: The audio file and transcript of LII 03115, recorded on 11 February, 2016, at 9.53am will be Exhibit 112.

#EXH-112 – TRANSCRIPT SESSION 3115

MR BUCHANAN: Did you recognise the voice of your father-in-law and yourself in that conversation?---Yes.

30 And it would seem that you had had a reasonably successful conference with Mr Stavis and maybe another staff member as well?---Yes.

Is relation to Willeroo Street?---Yeah, I think so.

Thank you. Excuse me. I'd you go to page 3 of the transcript for that call, please, and the reference to, "That Australian, the donkey," would that be a reference to Andrew Hargreaves?---Could be, yeah.

40 And when your father-in-law said, "Yeah, I think he wants to show," something and you said, "He just wants to look good again." You're talking about the person who was also at the meeting for council, in addition to Mr Stavis, is that fair to say?---Maybe, yeah.

That's all in relation to that, please. Could we play please, recording LII 07449.

AUDIO RECORDING PLAYED

[12.03pm]

MR BUCHANAN: Subject to one, matter, Commissioner, I tender the audio file and transcript for LII 07449.

THE COMMISSIONER: The audio file and transcript of LII 07449, recorded on 26 April, 2016, at 7.30pm will be Exhibit 113.

#EXH-113 – TRANSCRIPT SESSION 7449

10

MR BUCHANAN: And on page 1 of the transcript on the screen, I make an application for a section 112 order in respect of the second word in the second line, for the last entry, attributed to Mr El Badar on that day, just that word at the beginning with K.

THE COMMISSIONER: And that was page 1, wasn't it?

MR BUCHANAN: Yes, page 1.

20

THE COMMISSIONER: Pursuant to section 112 of the ICAC act, I make a non-publication order over the second word of the second line of the last attribution to Mr El Badar on page 1 of 3 of Exhibit 113.

SUPPRESSION ORDER: PURSUANT TO SECTION 112 OF THE ICAC ACT, I MAKE A NON-PUBLICATION ORDER OVER THE SECOND WORD OF THE SECOND LINE OF THE LAST ATTRIBUTION TO MR EL BADAR ON PAGE 1 OF 3 OF EXHIBIT 113.

30

MR BUCHANAN: Thank you. Mr El Badar, on page 2 of the transcript, it's set out in the transcript at a bit below the middle there. You said this, "Spiro, can you find out what's happening with Willeroo because it was supposed to make the April meeting." Is that a, when you said April meeting, was it your understanding there would be a meeting of council in April and you were hoping that the approval would, or the report for the approval of Willeroo Street would go to that meeting?---I can't remember.

40

Can you suggest anything else it was a reference to?---No.

And you did understand, at that stage, didn't you, on 26 April, 2016, that the approval had to be given by council at a meeting?---I don't know.

Well, who did you think would approve it?---I can't remember.

If anyone as going to approve it?---I can't remember.

Why had you submitted it to Canterbury City Council in the first place?
---Submitted what?

We've been talking about a development application for Willeroo Street that you were involved in.---Yes.

Did you submit it to Canterbury City Council?---Yeah, in 2015.

10 Why did you submit it to Canterbury City Council?---To get an approval for townhouses.

Who would give the approval, as you understood it?---Council.

Thank you. Can I ask please, oh no, no, I apologise, before that, can we go to volume 7 of Exhibit 52 at page 286. This is a part of a schedule of text messages, extracted from your father-in-law's telephone and the item number I'd like to take you to is number 60 and it's a message from you to your father-in-law, sent on 27 April, 2016, at 1.07pm. The message reads,
20 "Hello Umy," U-m-y, "Could you find out about Willeroo?" Was Umy a reference to your father-in-law?--- Yes.

And what were, why were you sending that text message?---Obviously there, it's to find out about Willeroo.

Yes. But what was happening at that stage to cause you to send that message?---Well, if you go back and he said there was supposed to be a meeting or something, of some sort. The one you just showed me before.

30 Yes, right. That was the transcript of the telephone conversation we just heard.---Yep.

And so, you think now that that might have been a reference to a meeting scheduled for council in April at which you were hoping that the development application for Willeroo Street would be approved?---Oh, I, I, I can't remember the date exactly but I'm pretty sure they're, this like, very close.

40 You think that's what that text message would be about?---About Willeroo.

Yes. Is that right?---About Willeroo Street, yeah.

Well it says Willeroo, what I'm trying to get from you is a sensible answer as to why you sent that text message to your father-in-law on 27 April, 2016?---I sent it about Willeroo Street.

Yes. We can see that. Why did you sent it to your father-in-law?---I don't know.

Excuse me a moment. Now, that message was on 27 April, 2016. I'll give you a piece of information now. You remember that Canterbury City Council was amalgamated with Bankstown Council in May 2016, and the information I can give you is that the date on which that occurred was 12 May, 2016. Could we play, please, LII 08939, recorded on 13 April, 2016, at 2.57pm. I'm sorry. I said April, didn't I? 13th of - - -

10 THE COMMISSIONER: May.

THE WITNESS: No, you said April.

MR BUCHANAN: - - - May, 2016.

THE COMMISSIONER: Sorry, it's May?

MR BUCHANAN: Yes, it is. I misspoke. I apologise.

20 **AUDIO RECORDING PLAYED** **[12.11pm]**

MR BUCHANAN: Excuse me a moment, Commissioner, before I continue. Excuse me a moment, Commissioner. I apologise for that. As you could hear, Commissioner, the recording was cut off before the conversation concluded. I propose to tender the whole of the recording, and for that purpose it will be necessary to play the whole recording and starting at the beginning. I apologise, Mr El Badar.

30 **AUDIO RECORDING PLAYED** **[12.16pm]**

MR BUCHANAN: Commissioner, I tender the audio file and transcript of LII 08939, recorded on 13 May, 2016.

THE COMMISSIONER: The audio file and transcript of LII 08939, recorded on 13 May, 2016 will be Exhibit 114.

40 **#EXH-114 – TRANSCRIPT SESSION 8939**

MR BUCHANAN: Mr El Badar, you recognised the voice of yourself and your father-in-law?---Yes.

And can I just ask you if we could go, please, to page 5 of the transcript. At the bottom of the page of the transcript you change the subject from the

amalgamation to the questions of whether there's going to be a transfer from your father-in-law to Marwan Chanine in respect of 31 Santley Crescent, Kingswood. Is that right?---That would be the transfer of the money back to us.

I see. But when you say, you said to him, "Are you going to, going to do that thing," what do you say, "That thing" referred to?---The money coming back to us, to, to Bella Ikea Strathfield.

10 So had you previously – I'm sorry. You go on.---The money going back to Bella Ikea Strathfield, the transfer back to Bella Ikea Strathfield.

So before this telephone conversation had you had a conversation with your father-in-law about that?---Yeah, the money's got to come back. We always said that when he gets paid the money's got to come back, the \$300,000 needs to be paid back, so if you go back here, somewhere here he talks about the transfer coming back and he says, well, he still hasn't, still hasn't signed the contract or something, so one of them in, in, in this script here there's somewhere where he's talking about the contract, him not signing it
20 as well, maybe not paying either, I don't know, but this is referring to the money coming back.

But as you understood it, first of all the money had to be paid by Mr Chanine to your father-in-law.---Yeah, and then, and I also say there that if he wants to pay it straight to us, no problem, whatever's easier.

Thank you.

30 THE COMMISSIONER: Could we just go back to page 4 of the transcript, please. I'm sorry, could we just to back to 2, and sorry, then 3. Mr El Badar, do you see on page 3 right down the bottom you say, "I said beautiful, praise to God," and then Mr Hawatt says, "So at least we can keep the control over the - - -" – did you pick up what he said?---Liberal. I think he meant Liberal Party, Liberal.

"So we can keep the control over the Liberal Party?"---I, I picked up something about Liberal.

40 All right. At that point?---The Liberal can keep control, yeah, that's what I believe he said.

All right. Okay.

MR BUCHANAN: Excuse me, Commissioner.

Now, you learnt that because of amalgamation, council meeting was cancelled?---Yes.

And that then I'm going to suggest to you it was on 14 June, 2016, but I suggest to you about a month later the council comprising this single person called the administrator resolved that the council enter into the section 34 agreement with you and your wife in respect of your development application for Willeroo Street.---Not, not my wife.

I'm sorry, I apologise.---Yeah.

Not for you and your wife, you and your colleagues?---Yes.

10

Thank you. Do you still own the site?---Yes.

Now, if we could show the Commission and the witness what appears to be a cheque. I haven't got copies, I haven't got paper copies I'm afraid, I should have made arrangements for that but I didn't at the time, but can you see that cheque? It's a bank copy of the cheque as paid as I understand it. ---Yes.

20 Addressed to Bella Ikea Strathfield Pty Limited, dated 7 July, 2016, and it's for \$100,000. Did you see this cheque or did anyone tell you about it? ---No, this is, he paid back \$100,000 to Bella Ikea.

Yes. Did you personally get the cheque?---I don't, I can't remember.

How did you know that it got paid back?---They would, they would have told me, the partners would have told me he paid back 100,000. I don't know. I can't remember.

30 THE COMMISSIONER: And when you said "He paid back," that's Mr Hawatt?---Yes. He told me also that he was going to pay back 100,000 so - - -

MR BUCHANAN: Right. Do you know whether he sold Santley Crescent to Mr Chanine?---I remember, I recall that I think Mr, or someone, don't know who exactly at that point, he sold it on an option. He was complaining that he's sold it on an option and that he'd only been paid a small amount of money and so that's why he was having problems and he said, "I can't pay you guys back the money till I sell the unit or I be paid for the site," so - - -

40

And the evidence you've just given is a conversation you recall Mr Hawatt having with you?---I can't remember if it was with me, with my partners, with - I don't know.

You don't remember whether you spoke directly to your father-in-law about the money he was going to pay you?---I would, I would have, I would have been there, so whether it was me on my own or together with the partners, but I definitely would have been there.

And you remember Mr Hawatt saying to you words to the effect that indicated that he was paying \$100,000 to you and your partners?---He was paying \$100,000 back from, for, the, for the 300,00 that he - - -

Yes, I understand.---?--- - - - that he was paid.

I understand when you say back. What about the balance of the 300,000?
---He still owes \$200,000.

10

Do you know whether any steps have been taken on behalf of you or Bella Ikea Strathfield or any of your partners to recover the rest from him?
---Yeah. There's, I, I, I have some proof with messages being sent, his, my wife used to send him messages about, look, the, the partners want their money back or whatever and he said, "Look, I can't do nothing till I sell the unit." The unit, if you look it up on the, on the internet, it is for sale. So unless he sells the, the house or the unit, he, he said, "I can't pay back the money."

20

And when you say unit, you're talking about the Queensland unit?
---Yes.

And when you say house, you're talking about 31 Santley Crescent?
---Correct.

And no legal steps have been taken to recover the \$200,000 from Mr Hawatt. Is that right?---I wouldn't do that to him.

30

Can I tender that sheet that was shown on the screen showing a bank record in respect of a NAB cheque to Bella Ikea Strathfield dated 7 July, 2016 in the sum of \$100,000.

THE COMMISSIONER: The NAB bank cheque drawn in favour of Bella Ikea dated 7 July, 2016 for the amount of \$100,000 will Exhibit 115.

**#EXH-115 – NAB BANK CHEQUE TO BELLA IKEA
STRATHFIELD PTY LTD FOR \$100,000 DATED 7 JULY 2016**

40

MR BUCHANAN: Did you ever tell Spiro Stavis that you were related to Michael Hawatt?---No.

Did you ever hint to him that you were related to Michael Hawatt?---If you go back to the scripts we listened to - - -

No, no, no. Please, all you've got to do is tell me.---No, not that I recall.

So Mr Hawatt having told you that you should tell him that if you needed to you didn't ever feel a need to tell him. Is that right?---Yes.

That's my examination of Mr El Badar. Thank you.

THE COMMISSIONER: Thank you, Mr Buchanan.

MS BULUT: No questions, Commissioner.

10 MR ANDRONOS: Nothing, Commissioner.

THE COMMISSIONER: Mr O'Gorman-Hughes?

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

THE COMMISSIONER: Mr Drewett?

MR DREWETT: Commissioner, I have no questions.

20 THE COMMISSIONER: And, Mr Pararajasingham?

MR PARARAJASINGHAM: No questions, Commissioner.

THE COMMISSIONER: Mr El Badar, thank you very much for giving evidence. You are excused.---Thank you very much.

THE WITNESS EXCUSED

[12.31pm]

30

MR BUCHANAN: I'm sorry, did I ask for the witness to be excused?

THE COMMISSIONER: I think I did excuse you, didn't I?

MR EL BADAR: Yeah.

THE COMMISSIONER: But in any case you're excused.

MR EL BADAR: Thank you.

40

MR BUCHANAN: Thank you very much. I apologise. I overlooked that. Could we call, please, Mr Annand.

THE COMMISSIONER: Mr Annand. And we might just clear some of these folders and also get you a fresh glass of water. Now, Mr Annand, you are not legally represented today?

MR ANNAND: Yeah.

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

MR ANNAND: An affirmation.

THE COMMISSIONER: Now, has anybody explained to you section 38 of the ICAC Act?---(No Audible Reply)

10 Generally at common law if you are asked a question that may incriminate you, you have a right of silence, you can say I'm not going to answer that. Different rules apply in this public inquiry. If you are asked a question and you say look, for example, theoretically I object because it might
10 incriminate you, I will say to you no, you've got to answer that question. So you can be compelled to answer those questions but what I can do is make an order under section 38 which has the effect that any answers you give during the public inquiry in your evidence or if you're asked to produce any documents those answers or documents can't be used against you subsequently in any proceedings. There's one exception to that which is very important, that is, if you give false or misleading evidence in this public inquiry and you are prosecuted for an offence under the ICAC Act,
20 which is like a form of perjury, then your answers which are alleged to be false or misleading can be used against you. Now, did that all make sense?
---Not very but I get the drift.

Would you like me to make an order under section 38 which means that with that exception of if you give false or misleading information to the public inquiry any of your answers can't be used against you?---Yes.

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

40 **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: Mr Buchanan.

MR BUCHANAN: Thank you, Commissioner. Your name is Peter Annand?---Correct.

And what is your occupation, sir?---I'm an urban designer, architect, town planner.

How long have you been in that business?---Forever. Since 1972.

And do you have a corporate vehicle or a business name that you use?
10 ---Yes, Annand & Associates Urban Design.

You took part in an interview with Commission investigators in July, 2017?---Correct.

Could the witness please be shown his transcript of his interview. The first page is on the screen of a record of an interview of you by Commissioner investigators on 4 July, 2017. Excuse me a moment. And what we might do, we've got 25 minutes before lunch but over lunch we'll get a hard copy that you can have beside you that you can refer to if that will be of
20 assistance to you. If at any stage just before we get to then you would like to have a look at a copy of it, please tell us.---Okay.

This is for the record part of Exhibit 53. Part of Exhibit 70 I'm told. Sir, can you give us a thumb sketch of your experience as an urban designer?
---Well, since '72 when I started work as an apprentice if you like on the Woolloomooloo Action Plan under the Whitlam Government, I worked for a couple of years in association with the city council. Moved on - - -

Do you mean Canterbury City Council?---No, Sydney City Council,
30 Woolloomooloo, Ultimo, Pyrmont. And then I moved briefly to Newcastle for, worked with the city council there for six months. Came back to Sydney and - - -

Can I just ask you to pause. We can probably shorten this a little bit. You've been in private practice all that time?---Well, I haven't got to private practice yet. I'm still working for Newcastle Council.

Oh, you are actually an employed planner or designer?---I am a planner working for Newcastle City Council.
40

Yes. Employed. Is that right?---Employed. That's what working for means.

No, it can mean subcontracted or consultancy.---Well, I was working for Newcastle City Council. To me that means I was working for Newcastle City Council.

Mr Annand, we need to understand what you're talking about that's why I asked you?---Employed by, in fact, I was on very, very close personal relationship with the (not transcribable)

Can you proceed please, just all I want to know what is a very short history of your experience.---I'm attempting. By that stage I think we're up to about 1980 I suppose and I came back to Sydney and started work as a consultant planner for Jackson Teece Chesterman Willis, a
10 planning/architectural firm. Worked there for a number of years. Started my own business planning consultancy with a couple of people that I had met at Jackson Teece.

When was that, sir?---That would have been '85 may be, something like that.

Thank you.---Master Planning Consultants ran for a number of years probably eight, ten years and then I was increasingly focused on urban design work so I broke away from the other guys and set up Annand Associates Urban Design.
20

When was that?---About 1990s, I think one of the first we did, some of the early jobs were relating to the Sydney Olympics so it's late '90s.

Yes.---Then worked through there in various forms, took on a partner at one stage so became Annand Alcock Urban Design. A number of years, may be another ten years or so and then he left and I sort of downsized a bit and to this day continued in the, as an urban design consultant to local government and to the private sector.

30 For how long have you been doing consultancy work to local government?
---Well, since I became a consultant in 1982.

Thank you. Now, as a consultant have you prepared numerous urban review studies, reviewing planning proposals and the like?---Yes.

And assessing them or providing a report in respect of them or in support of them, whatever?---Yes.

40 You in, excuse me a moment, in 2014/15 were reattained by the Canterbury City Council to conduct an urban design assessment of a planning proposal, is that right?---I don't know.

You have no memory of this?---Of, well, which planning proposal?

So, I'll perhaps if I show you a particular one.---Sure.

If the witness could be shown volume 12 of Exhibit 52, please, page 36. This is a four-page document, sir, and the first page is on the screen in front

of you. It's sometimes easier to read on the screen. Can you see this appears to be, although it's headed attachment A it appears to be a brief, sorry, it appears to be a consultancy agreement for an urban design assessment.---Yes.

If we just flick through pages 2 and 3 and 4. I'm sorry, the page numbers I'm referring to are on the document itself but in volume 12 that's pages 36 through to 39 looking at the pagination on the bottom right hand corner. ---Yes.

10

Do you recognise that document?---Yes, yes, yes.

Thank you. You can see that on page 36 under the heading objectives, the document says, "the purpose of this project is to provide an independent urban design assessment of a planning proposal for land at 998 Punchbowl Road, Punchbowl also known as 1499 Canterbury Road."---Correct.

So that's the assessment or study that I will be asking you questions about. ---Good.

20

Before I take you to some more material in this document, can I take you to another document in the same volume, volume 12, commencing at page three. The whole of the documents should be in the volume in front of you, sir, volume 12 if you'd like to just turn backwards it's a bit of a long document.---Yes. Sorry, are you going to give me a page. We've been passed page three haven't we?

I'm sorry, my mistake, page one. The title page, "This is a planning proposal to amended Canterbury Local Environmental Plan 2012."---Yep.

30

It's dated February 2015.---Ah hmm.

If you just flick through in the hard copy that you've got in front of you. ---Yes.

Because it's a bit lengthy, just to satisfy yourself in answer to, in order to be able to answer this question, have you seen this document before?---I have yes.

40

When did you first see this document?---Oh - - -

Or what circumstances that might make it easier, in what circumstances did you first see this document?---It would have been provided to me, there's two possibly ways and I'm not sure which way it occurred it was either emailed to me in order to put together a fee package or it could have been hard copied, given to me at a meeting with council.

And you would have had this document or access to this document at the time you were carrying out your studies?---Oh yes.

Thank you. And what I wanted to do is just take you to page three, if I can, just to see what is in there as to history of the matter because it becomes relevant as we progress through the work that you did. In the second paragraph, there's, it says, "in 2013 council received an unsolicited submission from a planning entity on behalf of the land owners during the preparation of the Canterbury Residential Development Strategy. The submission sought re-zoning of the site from R3 medium density residential to R4 high density residential to increase the maximum height from 8.5 metres to 18 metres and to increase floor space ratio to 2.5:1. The final version of the RDS recommended that the current controls be maintained." I read on, "When considering the RDS, council resolved to re-zone the site from R3 medium density residential to R4 high density residential to increase the maximum height to 15 metres and increase FSR to 1.8:1. These resolutions were included in the planning proposal submitted to gateway determination and was subsequently exhibited publically." Now can I just pause there and take you back to the first paragraph at the top. No, no, I apologise I've taken you there a bit too early in the piece. Two objections were received going back to the middle paragraph. "Two objections were received during the exhibition of the planning proposal. One submitted on behalf of the owner seeking a further increase to the FSR, namely to 2.2:1 and 16 metres in height and the second submitted by an adjoining property owner objecting to the proposal on the basis of loss of privacy, security, amenity and additional traffic impacts." At the council meeting on 2 October, 2014, council resolved that a planning proposal be prepared to amend Canterbury Local Area Plan in respect of the subject land by amending the maximum floor space relation to 2.2:1 and to allow developments to a height of 15 metres. Now can I take you back to the first paragraph where it says, "Council on 2 October, 2014 considered a report on the exhibition of a planning proposal and there appear in brackets the reference number for the planning proposal (PP_2014_Cate_001-00)." That's the reference number for that particular planning proposal. And it goes on to say to implement the Residential Development Strategy through amendments to the plan, and one of the sites was 998 Punchbowl Road, Punchbowl. Now that you see that do you recall understanding that history at the time that you embarked upon this project?

---I don't really recall but - - -

40

You would have understood that history at the time?---It, it, but it, it's, it's sensible, yes.

Thank you. Then page 36, going back to page 36, the urban design assessment consultancy agreement. You can see that in the middle of page 36, under heading Planning Proposal, that history of the planning proposal is reiterated. It's set out there on the first page of your agreement. And then going over the page, under the heading Scope of Work, this is on page 37 of

volume 12, there is set out under the headings of Analysis and Expectations, and Outcomes, what Canterbury City Council was asking you to do and expecting to obtain as a result of the work agreements retaining you to undertake. And you signed that, looking at page 39.---Yeah, yeah.

Now, I just want to make one thing clear, if we can go back to page 36 if we could. The planning proposal that you were being asked to assess was council's planning proposal. That's right to say?---It would appear so, yes.

10 Can I just take you for information and clarification purposes to volume 11 of Exhibit 53, page 111.---Page number again?

THE COMMISSIONER: 111.---111, thank you.

MR BUCHANAN: I apologise, Commissioner, and Mr Annand. Can I just ask you to pause for a moment. In the course of being retained to conduct this assessment, did you meet a Spiro Stavis?---I would imagine I did. I can't say for sure. It's most likely. It's unlikely that it would have occurred through a, a less senior planner.

20

And in any event you do remember Spiro Stavis?---I do, yes.

And what's your earliest recollection, in terms of progressing your work, of having dealings with Mr Stavis? At what stage of your work? As best as you can recall now.---Oh, it would have been, it would have been very, very early. It would have been at a briefing stage, I would imagine, although I might have been initially briefed by one of the less senior planners and then taken to a meeting afterwards.

30 Can I ask you to turn to page 40 of volume 12. This is a black-and-white copy, and I apologise for that, but hopefully you won't need colour in order to assist us with this document. It says Urban Design Review of Planning Proposal, 998 Punchbowl Road.---Yes.

And it's got a date of March/April 2015 and down the bottom "Annand Associates Urban Design".---Correct. Yeah.

40 What I want to suggest to you is that this is the first draft that you prepared for this consultancy of your report, and I'd just ask, if you could flip through it you'll see that it's been annotated.---Yes.

Do you remember receiving a version of your first report, a draft of your first report, which had been annotated in the fashion that it's been annotated here, such as, for example - - -?---Yes, I do.

You do?---Yeah.

Thank you. Now, could I just ask you to go to page 56. You had on page 56 set out a set of options for considering the possible development yield, scenarios A, B and C, is that right?---That's correct.

And in here, although at the top of the page you've said the proponent has proposed an uplift to permit a maximum height of 15 metres – five storeys – and an FSR of 2.2:1, I think you concluded in this report that required setbacks meant that that FSR could not be achieved.---Can I just make a clarification here?

10

Certainly.---We're now looking at something which is, which has a developer's set of plans on it, so is no longer theoretically council's planning proposal. It's a planning proposal which council is doing on behalf of a submission that they've had from a developer. Is that correct?

Well, that's what we need you to help us with.---Well, that's what it appears to be, because I see architectural drawings there which council wouldn't have done.

20

No.---Right? That would have been done by a developer.

Yes.---And I would, I have looked at that, noticed that there's a bunch of inconsistencies with various planning proposals, various planning controls, annotated those and done some fairly rough calculations of what sort of floor space ratio you might be able to achieve under various circumstances. And my conclusion was that – I think I can't quite remember what it was. It was four and five storeys and a floor space ratio of 1.8 or something like that, if I remember rightly.

30

Yes. Can I, I think you've - - -?---Sorry, if I can just - - -

Yes, go on.---The set of plans that were given to me to analyse proved to be unimplementable because there was a road widening that hadn't been taken into account and a bunch of other stuff, so the, the planning proposal A was not realistic. I did a planning proposal, a concept B, which revised the setbacks, and another concept which provided an open-space courtyard, which would provide an appropriate area of open space for recreation of residents, and that changed the floor space ratio from 2.3 in the one that's not buildable down to 1.8 approximately in the others.

40

THE COMMISSIONER: Sorry, the open space courtyard, that was incorporated in to option B, was it?---No, option C, I think.

Option C. I see, revised and court, as it says on page 56.

MR BUCHANAN: The planning proposal that you were asked to review was a planning proposal that sought to amend the maximum floor space ratio from, sorry, to 2.2:1, is that right?---That's right.

And is that what you were doing in this particular document?---That's, I was, I was looking to what was feasible and appropriate under the general circumstances and came to the conclusion that 2.2:1 wasn't doable.

Do you know now, as you sit there, where the plans that are in this black and white version of your report came from?---I do but I don't, not specifically because I don't - - -

10 When you say, "I do," what do you mean?---They were developers plans which were then part of a proposal, I councillors presume, was put forwards by a developer to, or the landowner, one or the other, to develop that site. So, my, my, my sort of understanding at the time was that someone, which is a regular occurrence, a landowner or a developer had put a proposal to council, council has supported it and said, "We'll go ahead and investigate this as, as a proposal and we'll put it forwards to the Department of Planning.

20 Can I just ask you, I note the time, Commissioner, there's just one question before we rise, if I could ask the witness. Could you go please, to page 55. Do you see the figure at the bottom of that page?---Yes, yes. I'm there. That, that's my drawing.

But you think that the plans, literally a bird's eye aerial view, were supplied to you, rather than you drew them?---Page 52 is a plan that was provided to me, done by someone else. I presume the owner or the owner's representative or the developer.

30 Now, when you say that, do you know whether it was in fact directly supplied by the owner or their representative or do you know that it was supplied to you via Mr Stavis or his staff?---It came from council but originally, it came from someone else. Not, it's not my drawing.

Thank you.

40 THE COMMISSIONER: Just before we break for lunch, can I ask you, when you were taken to this document, you said something like, "No longer," or, "Theoretically, it was no longer a council planning proposal." Do you remember saying something - - -?---Well, it, it wasn't a planning proposal in the sense that the council had come along and said, "Let's do a planning proposal on this site," but they were actually moving forwards with a planning proposal on behalf of an owner or a developer who's approached them.

Does that make any difference to your approach?---Well, it, it didn't really but the, the difference is that where we were looking at the, at the contract agreement originally as being a council document, then as we move in, we find it, okay, it's been pushed by a developer to a land owner. So, I just

thought it was necessary to make a point, it wasn't strictly a council thing. that they were sponsoring a private sector thing.

MR BUCHANAN: Well, and just before, a second time just before we rise, Commissioner, could I ask you to go back to volume 12, page 1, the title page of the council's planning proposal.---What volume?

I'm sorry, volume 12.---I looked at volume 11, there was no page 1.

10 I'm sorry, I might have - - -?---Oh, yeah, okay, got you.

And you said earlier that this is a document you would have been supplied very early in the piece of the consultancy?---Yes.

Can I ask you to just go to pages 28 to 29. 27, 28, 29. So, these drawing were already in the material that was supplied to you?---Yes.

20 But it doesn't appear, from what I've shown you anyway, that the planning proposal contained the drawings that we've been looking at, that you've said would have come from the proponent?---I don't know. I'd have to look further.

Very well. Thank you, I just wanted to make sure what the status was of these documents. Thank you.

THE COMMISSIONER: All right. We'll adjourn until 2.00pm.

30 **LUNCHEON ADJOURNMENT**

[1.06pm]