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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
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OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 28 JUNE, 2018

AT 2.00PM

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

MR BUCHANAN: Mr Annand, before lunch we were looking at the report that is copied at page 40 of volume 12 in black and white that has handwritten annotations on it.---Yes, yes, yes.

And we were talking about, amongst other things, the plans and drawings that appear in it.---Yes.

10

And if I can just ask you to go to page 52, and if the witness could be provided with volume 11 of Exhibit 52, please.---I have volume 11.

And if you could turn to page 140. And have you found 140?---Yes, I'm there, yes.

That is a letter to Canterbury City Council dated 11 July, 2014 from Statewide Planning. Is that right?---Yes.

20

And did you know Statewide Planning to be a set of planners who worked for the development proponent, Mr Demian?---I didn't know the development proponent - - -

Right.---? - - - so I didn't know them.

Right. Well, we'll come back to that later, but I'd ask you to assume that for the present. And then if you could go please to page 144.---Yep. Yes.

30

You can see a resemblance between the two figures?---Oh, same plan.

Yes. Thank you. And then turning over the page, 145.---Yes.

And if you can look again at page 57 of volume 12?---What page, sorry?

Volume 12, page 57.---Yes.

There's a correlation, a correspondence between figure 12 - - -?---Same plans, yes.

40

- - - in the Statewide Planning document and - - -?---Yes. That's obviously where they came from.

Thank you. You don't have a recollection as you sit here of the circumstances in which you received those figures?---Oh, they would have been presented by council.

By council?---To me by council, yes.

Did you at any stage meet with what you understood to be the development proponent or the development proponent's planners?---I, I, I don't think so but I might have. It's conceivable, you know, it went on for so long, it's conceivable that I met them at some stage.

Thank you. Now, what I want to do now is take you to two further versions of the March/April report, and they sit in, excuse me a moment, in the first instance in volume 12?---Yes.

10 And if you go to page 96 of volume 12 - - -?---Okay.

- - - that's one version.---Right.

It has appendices that go through to page 154 I think. Just a sec, 155.
---Ah hmm.

And then if you could just sort of maybe hold a finger at page 96 - - -?
---Yes.

20 - - - and go to in the same volume page 171.---Yeah.

And that's another version of the report - - -?---Ah hmm.

- - - together with appendices.---Yes.

What we would like your assistance on, if you can provide it, is the order in which they were created and assumedly provided to council.---I'd have a little bit of difficulty there.

30 Right. We might be able to take you to some - - -?---Are they not sequential from council files?

In a manner of speaking they are, but the question is whether that sequence is reliable, and we've got reasons to ask you this because we need to try and sort out which came first, if we can, and there are just some features that we need, if we take you to them might assist you - - -?---Yes, yes.

- - - in you drawing a conclusion. If you can go to page 112 you can see that - maybe I need to take you back to page 106. This is the first page of the section of - - -?---Yes.

40

- - - the version commencing at page 96 headed "Conclusions."---Yes.

And it is in subsections, one of which is at page 112, subsection F, "Compliance with Apartment Design Guide."---Yes.

Now, if you still have your finger on page 171, if you could - - -?---I don't.

That's all right. In that case if you just go to it.---You're right, we'll get there. I've got a marker in there.

But hold your finger - - -?---That's, there we are, yes.

THE COMMISSIONER: Do you want - - -

MR BUCHANAN: Hold your finger on 112.

10 THE COMMISSIONER: Do you want a Post-it note, would that help or - - -?---It would be probably useful.

MR BUCHANAN: We can certainly provide you with them. Thank you. Thank you.---Okay.

Page 181 is the start of the conclusions in this version.---Ah hmm.

That is to say the version commencing at page 171.---Ah hmm.

20 But there doesn't appear to be a subsection F. Page 181 is where conclusions starts, and if you then flip through it there's an A, a B, a C, a D, an E, I'm looking at page 186, and then an F, but it's on a different subject, Development Yield. And the section that I took you to in the version of the report commencing at 96 subsection F, Compliance with Apartment Design Guideline, doesn't appear in this subsequently paginated numbered copy of the report. If one looks at, yes, 187, F has become Development Yield. ---I see.

30 And there's another – before you – I'm not asking you to chance your arm on just this.---Yeah.

If we can take you to an email at page 285, this is an email dated 24 June, 2015 from Tom Foster, to amongst other people, if you just look at the end of the - - -?---Sorry, what page was that, 285?

Oh, sorry, yes, 285.---Got it, right.

40 An email dated 25 June, 2015 from a Tom Foster at Canterbury and in the To line, the addressees' line, you can see yourself at the end of the addressees?---Yes, yes.

And it's addressed, "Hi, Peter."---It's addressed what? Hi, Peter. Yes.

And did you know Tom Foster, had you met with him?---Yes, yes.

In relation to this project I mean?---Yes.

Yes.---He could have been the person, the first person I met but I'm not sure.

Right. And he says, "Been through both sites now with Warren, generally both okay, just some minor tweaks."---Yes.

10 Leave aside him talking about sites, plural, can you have a look at the first dot point, Punchbowl, oh I see, yes now I see what he means by two sites. You're talking about a Punchbowl Road and a Croydon Street, they're two different projects. He's talking to you, perhaps, about the Punchbowl Road Project?---Yes.

First dot point. Then he says, "Side setbacks for four-storey components need to increase to nine metres" - - -?---Yes.

20 - - - "on northern and eastern boundaries to enable compliance with the new apartment design code setbacks (six metres for four storeys and three metres for transition to lower density zone). This will apply to any DA lodged on the site. We should ensure any planning proposal is compliant." It would have been logical for you to have inserted the subsection headed Compliance with Apartment Design Guideline, which is at page 112, after receiving that email, wouldn't it?---That does sound sensible.

There is another matter that I would take you to. I'm not suggesting it's as pointed an indication as to the order in which they came in, but if you go to page 118 in the version which commences at page 96. You can see that recommendation four reads, I'm sorry at page 118.---Yes.

30 Recommendation four, "Balance the floor space increase (additional height of seven storeys on corner) with reduction in site cover to facilitate provision of communal open space. FSR should be retained at 1.8:1 as per council planning proposal." Now, page 192, if you could just keep your fingers on 118, 192 is the recommendations page for the version which commences at volume 12, 171, and that recommendation isn't there.---Well it is in my mine.

Sorry.---Balance the floor space increase additional height to six to seven storeys, six to seven is slightly different but it's there.

40 Sorry, you're quite right, I apologise. It is, the new recommendation I want to suggest to you is numbered five on page 118.---Right.

When I say new, I'm trying to lead you to a suggested answer. The additional, the additional recommendation is numbers five in page 118. ---Yes, I see that.

And it does again - - -?---That indicates that and I'm not quite sure if the apartment design and guides came out in the middle of this process, they

could well have, but it would indicate that consideration had been given to them in that second one.

As requested by Mr Foster in the email - - -?---Yes.

- - - of the 24 June.---There is another email at some stage to that effect too.

Right.---In fact, I think it was, it might have been handwritten note about the first one, the handwriting one you showed me.

10

Yes, the version in black and white - - -?---Yes.

- - - that sits at page 40 of volume 12.---Does that matter, it's just - - -

It might but we're I think for our purposes, in sense of what submission I would make to the Commissioner about the evidence, I'm satisfied that the version that's in black and white would be the first version.---Yes.

20

What we're trying to work out is which is the second and which is the third?---Yes.

And so, on the indications I've taken you to and I appreciate that I'm putting words in your mouth and I invite you to respond with any words you like, it would be logical that the version that appears commencing at page 171 in volume 12 would have been the second version and the version which appears commencing at page 96 would have been the third version. Would you think?---First of all I'd say that over a long career in town planning it's been explained to me on daily basis that logic has no relevance. Secondly, I'd say that from the way you've put it would seem likely.

30

Thank you. Now if I could just ask you to pause for a moment, please. So can I just take you, then, to page 171. And I'm going to take the liberty of referring to this – and I'll be corrected if I get it mixed up – I'm going to take the liberty of referring to this as the second version of your March/April report.---Okay. Right.

Don't hesitate, though, at any stage if you want clarification.---Yeah.

40

In that version, if I can take you to page 176. Under the heading Urban Design Analysis you had a number of dot points as the conclusion of your review, and the first dot point read, "The proposal as set out in the proponent's planning proposal report is generally not able to be supported." Can I just pause there. That would be a reference to the document that I took you to earlier that had the plans in it from which you drew in order to illustrate the right figures for the first version of your report and subsequent versions.---Correct.

Is that right, sir?---Correct.

Thank you. You go on to say, “Whilst building heights are appropriate, the proposal fails to accommodate RMS road widening or council setbacks, nor does it provide any notion of useable communal open space.” Pause there. When you say “council setbacks” you were talking about the Development Control Plan’s requirements - - -?---Yes.

- - - as against the apartment design guideline.---Correct.

10 Because the apartment design guideline comes under SEPP 65.---That’s right.

You continue on, if I can just take you to the second dot point. “The proposed building heights, 15 metres (five storeys), seem appropriate within the general framework of building heights.” Third dot point, “An FSR increase from 0.5:1 to 2.2:1 does, however, represent an overdevelopment of the site. Our investigations suggest a building height of seven floors (15-21 metres) and maximum FSR of 1.8:1 would more appropriate and would be more likely to gather a development outcome compliant with the primary development controls for the site.” The fourth dot point, “A proposed FSR of 2.2:1 and height of 15 metres do not appear to be achievable given site constraints and assessment against SEPP number 65 and DCP controls.”
20 And it could well have been, I suppose, that at that stage it was the residential flat design guidelines which applied, rather than the apartment design guidelines which were coming through. I’m really just - - -?---I don’t know.

You don’t know. Very good. So you’ve registered those particular passages to which I’ve taken you. Then at page 17 – I’m sorry, my mistake. Page
30 187. You have the subsection of conclusions as to development yield. ---Yes.

Can I ask why did you include this, what function did you see this section performing, given that your brief in the matter?---Yes. Well, basically, it looks at the plans that we were given, right, the ones that - - -

The proponent had been provided to you?---That’s right. And a floor space of 4,600 metres, which yielded a floor space ratio of 2.3, according to this. And then we revised that by putting in the required setbacks and that
40 reduced things to a floor space ratio of 1.8:1 and then in order to provide a useable communal open space, option C came in at 1.75 to 1.87:1.

And you’ve just been reading through the options or the scenario, the three scenarios?---That’s, they were the three options that I explored for comparison purposes.

Could you assist us as to why did you think that information needed to be provided, given your brief?---Well, in order to work with height and, and

floor space ratio, it's need, you, you need to know what, what contributes to making it. Now, it's easy to sort of say, a building seven storeys high, you can see it, you can count, the floor space ratio's much more complicated. And a, a slight variation to setbacks can make a significant change to floor space ratio. Now, one of the problems with planning controls on a regular basis, is that people give heightened floor space ratios that are mismatched and what that leads to is, if, if, if a floor space ratio is you know, 2.1 and the height is six storeys and, and you can get eight storeys at 2:1, people want eight storeys. If, and oh, sorry, and vice versa. If a floor space ratio is below what is delivered by a certain height, then people want more floor space ratio. So, it's important to actually make sure that they relate to each other correctly. So, by doing these evaluations, one's able to sort of say, okay, the floor space ratio of the proponent is not actually achievable. A better one would be about 1.8, even, at that situation, you could probably even get your common open space, which is a desirable function.

What are the units of measurement for the numerals in the table?---Square metres.

20 Did council need to know what the development yield would be, given an particular - - -?---Not particularly, no. Not, not in terms of units per yield but they needed to know in terms of floor space ratio and height and that's a useful comparison for them to actually see what's going on.

And so, from that - - -?---Otherwise it's, otherwise it's, yeah, just trust me, it was just not a good look.

30 Yes. So, I just want to clarify then, whether I understand your last answer correctly. You thought this was useful information, given your brief came from council, not from the proponent. Not because you were informing as to the lot yield, but as to the sure meterage yield?---Well, as, no, I'm, I'm calculating the floor space ratio and you need to determine what the square meterage the floor is in order to do that and calculating the floor space ratio, in order that we've got a measure that says this is an acceptable and appropriate level of development at X number of floors.

I understand. Thank you. Then in the appendix at page 217, this is appendix 3, I think.---Page 217?

40 Yes.---Floor space ratio heading?

Yes.---Okay.

You've said, "It should be noted however that the currently very low FSR control reduces opportunities for development. This should be raised in order to support development. Our calculations and urban design analysis confirm that an FSR of 1.8:1 is appropriate.---Yes.

Can I ask by what measure did you provide that opinion?---By the calculations that we just looked at. Two of them, one was 1.8 and one was 1.87 at a particular height.

And when you said appropriate, what did you mean?---It's appropriate in the context of the site and council's aspirations for the site.

In their planning proposal?---In their planning proposal.

10 Now, thank you for that. Then there is what I'm now describing as the third version which commences at page 96. This is the third version of your March/April urban design review. And this, sir, if you can take it from me ---?---Yes.

--- is a final version of this particular report and if I can take you to page 101 just looking at the urban design analysis section ---?---No.

--- at the third dot point ---?---No, you're going to have to give me another page.

20

THE COMMISSIONER: 101, that's not it? Sorry.

MR BUCHANAN: 101 is, do you not have in front of you the pages on the screen?---Hang on. Got it. Yeah.

So it's the urban design analysis section.---Yes.

And it's the third dot point. You say again, as you have said, that is to say in earlier versions.---Yes, yes.

30

An FSR increase from 0.5:1 to 2.2:1 does however represent an overdevelopment of a site, and you go on to say your investigations suggest a building height of 15 to 21 metres and a maximum FSR of 1.8:1 would be more appropriate and more likely to gather a development outcome compliant with primary development controls. You say as well, referring now, tell me if I've got it wrong, to the proponent's proposal a proposed FSR of 2.2:1 and height of 15 metres do not appear to be achievable given site constraints and assessment against SEPP number 65 and DCP controls. ---Correct.

40

Excuse me. I just want to make sure I haven't misled you. Yes, I'd better take the precaution of restating the question. When I said the 2.2:1 was the proponent's proposal, if you can go to page 3.---Page 3.

Of volume 12. And again this is the planning proposal from council. The fourth paragraph. The resolution of council pursuant to which the planning proposal was made sought to increase the maximum floor space ratio to 2.2:1 and allow a development height of 15 metres.---Yes.

I might have misled you earlier when I said the proponent's proposal was 2.2:1. What I really wanted to take you to was what council - - -?---I see very little difference.

But it was council's planning proposal that you were being asked to assess. Correct?---You're saying that.

10 Well, that's what your brief said, the fee proposal.---My brief, my brief was to assess a planning proposal. It had council's name on the top, it had some architect's drawings in it. Whose it was, who, who was the original author was not altogether clear and, and it's, it's, it's not necessarily significant, given that the council is supporting it, to go to the Department of Planning.

20 All right. Excuse me a moment. And then can I take you please, to page 118 of volume 12. I took you to this earlier but just to fix it now, in chronological order, the paragraph 3, "Recommended, permit modified height limits as set out below," and then you identify the figure. "Permitting development to a maximum of 5 storeys/15 metres, perhaps with a seven storey tower in the corner. Recommendation 4, balance the floor space increase (additional height to seven storeys on corner) with reduction in site cover to facilitate provision of communal open space. FSR should be retained at 1.8:1, as per council planning proposal." Do you see that?---I see it, that's what it says.

30 If you can just excuse me for a moment. I just wanted to make sure, though, particularly if we come back some time hence and we're just reading the transcript, what it is that was the source, in your opinion, of the FSR of 1.8:1 and I'm not looking at volume 12, page 3, which is council's planning proposal. It'll come up on the screen. And in the third paragraph, the statement is made, "When considering the residential design strategy, council resolved to rezone the site from R3 to R4, to increase the maximum height to 15 metres and increase FSR to 1.8:1." But then that was changed, according to the fourth photograph on this page, by council at its meeting on 2 October, when it wanted to amend the proposal, so that the maximum floor space ratio was 2.2:1. You see that?---I see that.

40 And so, your reference to 1.8:1 is a reference to council's original proposal, is that fair?---No, it's, not, it's a reference to my analysis, which demonstrated that 2.2:1 couldn't be achieved within the constraints 1.8:1 could.

I understand that, but you've said, on 118, in the third version of your March/April report, "Recommendation 4, FSR should be retained at 1.8:1, as per council planning proposal." It's the words 1.8:1, as per council planning proposal that I'm asking you about, and that figure is a reference to the original council planning proposal, rather than the revised council planning proposal with a much higher FSR, is that right? In other words,

where did 1.8:1 come from otherwise?---Well, originally it came, it was in the document as you pointed out. It was in, analysed as one of three options and found to be deliverable within those height controls.

10 Yes. But, the source, to your understanding, you've said, "As per council planning proposal," it's not the council proposal that you've been asked to review but part of the history of that proposal that earlier, was 1.8:1. And so, when you say on page 188, "Recommendation 4, FSR should be retained at 1.8:1, as per council planning proposal," you're referring, aren't you, to the original FSR, the original council planning proposal as against the one you were asked to assess?---Well - - -

I'm not saying there's anything wrong with that?---No, no, it's the one, it was the one that we were assessing which was then, were then asked to sort of request the quality, the quantity of development. It was the original planning proposal. I'm okay with that, I mean, it's sort of yes.

20 Now if I can take you a bit further please to volume 13 if the witness doesn't already have that of Exhibit 52 please.---Thank you.

In the first instance to page 26. This is a fee proposal dated 24 August, 2015.---Yes.

It's address to Warren, Warren Farleigh at Council.---Yes.

30 And it reads, "Further to our recent conversation regarding the urban design and unrequested report for the above site, I'm pleased to submit a fee proposal for a review of an increase height in urban design terms." Then you identify what will be entailed in that and provide an estimate. Do you have a recollection of the conversation pursuant to which - - -?---If you turn to page 23.

Yes.---You'll find a letter to me from Warren which was the figure further work.

Thank you very much. That's an email to you dated 18 August, 2015. ---Correct. I'm going to take you straight to the first line of the first paragraph, instructed.

40 Yes. Well, that's my next question. How did you read that?---I read that as the town planning department or the echelons of the town planning department being told that their, the study that we'd done was not delivering enough and we should be looking at the implications for a taller and more dense building.

Were there any conversations that you were involved in or were there any other emails or text messages, whatever, which contributed to your understanding of what was happening when you received that email saying

that council's planners had been instructed to model the implications of 25 metres?---(No audible reply)

So I'm asking you about events rather than speculation.---Yes.

Do you have - - -?---There was an email conversation with Warren that was basically suggesting that this particular proposal along with other particular proposals in Canterbury were not delivering a good product.

10 What do you mean by, is "good" the words that was used to you or was that your understanding of what you were told?---It's sanitised.

Yes. Well, we're grown people.

THE COMMISSIONER: Unsanitise it.

MR BUCHANAN: You can tell us the words use.---The statement was along the lines that this particular developer was also building stuff elsewhere in town and it was, I can't remember the words, but it was
20 horrible. I'm sure you've got it there, haven't you?

Well, what I need you to assist us with is when you say in town, do you mean elsewhere in the - - -?---In Canterbury, in Canterbury.

In Canterbury local government area?---Yes.

And who was the person who was speaking to you when - - -?---Warren.

30 It was Warren - - -?---Yes.

- - - Farleigh?---Yes. He was an unhappy camper.

Unhappy camper?---Unhappy.

But he didn't give an indication to you as to where this, what the source was of - - -?---The unhappiness, no, he didn't.

40 THE COMMISSIONER: But he'd refer to other developments from this proponent elsewhere within the municipality and you were using a sanitised term, that were horrible. Is that it?---Yeah.

MR BUCHANAN: But horrible is the opinion of Mr Farleigh?---Yes.

THE COMMISSIONER: And I take it he used more explicit language than horrible?---Yeah, it wasn't more, wasn't much more explicit.

MR BUCHANAN: Rightio. Thank you. So that fee proposal was accepted - - -?---Yes.

- - - as you recall it?---And that, that sort of changes the, certain aspects of the brief, doesn't it.

Well, you tell us in which respects you think it changed it?---Well, we've been asked to look at a new height and a new floor space ratio I think.
---Yes.

10 So 25 metres of height, compliant with SEPP 65 and the DCP, I thought there was something in there about floor space ratio but there doesn't seem to be.

Well, I'll take you to something that might assist in a moment.---Yes.

20 Do you remember a discussion with Spiro Stavis about what was now required? Excuse me a moment.---Not, not specifically, no. There would have been one. And, and let me say that a 25-metre height limit which I think was eight floors was not right out of the ballpark in terms of a corner element, which I went on to demonstrate in that August report. I basically felt that six and eight was not much different to five and seven, in terms of floors.

If I could just ask you this. If I can take you to page 17 and I - - -?---This is in the same volume?

Yes, in the same volume, sir.---Yes, got it.

And it's a set of emails between - - -?---Small print, isn't it.

30 Yes. Well, it's actually, we can make it larger on the screen in front of you.
---Oh, thank you.

Yes, thank you very much. Can you see there's an email by Spiro Stavis, 18 August, 2015 there?---Yes.

40 And it reads, "Pick up some of the 'lost' FSR by increasing the height on the corner of Punchbowl and Canterbury Roads from 21 to 25, therefore bringing to be more in line with the council resolution in terms of FSR."
---Yes, I see that.

Was anything like that conveyed to you by Spiro Stavis personally?---I can't say for, I'm not, I'm not really sure. It could well have been. Certainly the 25 metres is, we discussed, I don't recall - what, what FSR are we talking about though, are we talking, the 'lost' FSR?

Well, that's my next question.---Damn.

You had given advice as to - - -?---This, this might be, is this - - -

- - - the impact of setback requirements?---Is this the 2.2:1 that I set back to 1.8 perhaps do you think?

Yes. And in the course of which or as feeding into that recommendation, you had said, well, look, there are setback requirements that need to be taken into account?---Yes.

10 And you also drew attention to RMS road widening - - -?---Yes.

- - - where part of the land was dedicated - - -?---That's right.

- - - to future - - -?---It was, yes.

- - - road widening from - - -?---Yes.

- - - Punchbowl Road - - -?---Three metres I think.

20 - - - to Canterbury Road?---Yeah.

All of which, sorry, both of which had an impact on - - -?---Yes.

- - - FSR obviously.---Yes.

And so - - -?---But that, that had been taken account of in the previous analysis.

30 But it nevertheless resulted in what might be considered, depending on where you're coming from, as lost FSR?---Yes, it could.

Now, if I can ask you to go to page 24.---Got it.

Email to you from Mr Stavis dated 25 August, 2015, "Peter, can you please update me on how you're progressing as discussed."---Yeah.

That would suggest that there had been a discussion between the two of you?---I'm sure there had, yes.

40 And then - - -?---I would, I would have gone over there on appointment for a briefing with Spiros.

And then page 29 the same email appears as part of a conversation but immediately above it in the conversation is an email from you the next day, 26 August, "Sorry, Spiro, dragging the chain a little," et cetera, et cetera. ---So what page was that one?

Sorry, page 29. It's on the screen in front of you.---Much better. Yes. Okay. Yeah.

That all rings a bell to you?---It does.

Then if I can take you to page 28 because this is, that email I just took you to is an earlier part of a conversation that continued on 26 August as you can see on this page and you express at 11.48am, “25 metres on corner okay but no way can you get anything like 2.2:1 and provide decent and useful communal open space. Signed Peter.”---Yeah.

10 I apologise. That's after, yes, okay. It's an email, then you're responding to an email, I just need to draw it to your attention, that extends over pages 29 to 28. So at the bottom of page 28 can you see the words, “Pete, I've just approved your engagement. Please proceed. Main aim is to get 25 metres on the corner and as close to 2.2:1 FSR. Happy to meet to discuss.” And if we go over to 29 you can see it coming from Spiro Stavis.---Yeah.

20 And then it's after that or it's to that that you respond when you say, “25 metres on the corner okay but no way you can get anything like 2.2:1 and provide decent and useful communal open space.” Then you're told by Mr Stavis, “Do your best.”---Yeah.

What did you understand Mr Stavis was saying to you when he said, “Do your best”?---He'd like 2.2:1.

30 And was that something that you thought you had been briefed to provide or what did you understand to be the situation, what did you understand to be your brief at this time?---My brief was to look at the increased height and I did think that there was a floor space ratio thrown in there at that stage too and I suspect the 2.2:1 might have been it and my first cut had been this is going to be very difficult. I don't think it can be done. He said do your best and then I had an idea. A couple of ideas perhaps.

And it looks as if you are likely to have had a meeting - - -.---Yes.

- - - with Mr Stavis and then you provided your first draft of your supplementary report. Can I ask you to go to page 30.---That looks more familiar. Yes.

40 And that - - -?---Just let me just, can I just check this. Ah, interesting. Go on.

An email from Lili Avval, A-v-v-a-l. She worked in your firm.---That's correct.

To Spiro Stavis and Warren - - -?---Sorry, how much further on is this from the previous, how long have we - - -

About - - -?---It's about a month is it?

- - - six days perhaps. No, no, a bit longer. So it's 26 August and now it's 4 September.---Okay.

And it's an email of 4 September, from Ms Avval to Mr Stavis and his staff, CC'd to you. Was Ms Avval working on this project with you?---Yes.

10 “Hi everyone. Attached at the final drafts,” it says here, “of urban design and review of 998 Punchbowl Road. Please inform us if there are any enquiries.” And then the next page in this volume is page 31 and that's the cover sheet for this supplementary report. It bears the date on the front, August, 2015. Can you see that? Now, on page 32 of volume 13, you summarise a very short history of the matter.---Yep.

What appears not to be there in the first line of the introduction is, that this is an independent assessment. You know how that appears in other versions of your reports but it doesn't appear in this instance. Is there any significance to that?---No, there's not.

20 All right. Does that mean that, as far as you're concerned, you were providing an assessment which was independent of anyone, including a client, being council?---Well, the reports never indicated the, the client, they were always done in, sort of, in some sort of, some level of consultations and cooperation with the client. So, it's never independent of completely and it's not the sort of the thing that stands out there.

30 Yes. But it is, it is a report, isn't it, that you identify, sorry, when you say any report, is what I'm fastening on here, a report that you would prepare ordinarily, would take, as a given, what you're asked to do but then you would provide your professional opinion?---That's correct.

Uninfluenced by anyone saying, “Well, I want you to do this,” or, “I want you to do that,” or, “I don't want you to do something else”?---That has happened.

Right. Did it happen in this case?---It didn't happen in this case. When I say it has happened, I mean there has been a circumstance where I, I hadn't been asked to do something by the client. That's, that's the rarity.

40 If you could just explain what you mean by that?---What you're suggesting is that the, the fact that the council had some sort of input to this, is unusual, it's not. I'm saying the, the opposite is the unusual. Inevitably, with these sorts of projects, when you're dealing with a council, there are a variety of factors, political, community and so on, which influence councillor's attitude towards things, council officer's attitudes towards things. And that's something that one negotiates on the way through. Sometimes you say, “No, can't do that.” Sometimes you say, “Okay, well, we can probably squeeze that in.”

But when you say, as I think you've acknowledged, that you're being asked in these sorts of reports, to provide your professional opinion, you wouldn't accept a situation, is this right, where you would include in the report, something that was not your professional opinion?---No, not without comment.

10 Yes. So, you set out, in the introduction, where you were up to in the process, that's right I think. And then you set out a little bit more context on page 34 of volume 13, and can I just draw your attention to the words in the middle of the page, "It would be generally, however," sorry, "It would generally, however, be acceptable to establish a building height of six storeys along Canterbury Road with occasional additional towers to eight storeys to emphasise corners, vistas, et cetera, thus a six storey building with appropriate SEPP 65 setbacks, and with a two storey (to eight storey) tower in the corner, would seem acceptable. See sketches attached." You go on to say, "Further apartment development can be expected east along Canterbury Road, therefore side setbacks of six metres for four levels and nine metres for the next two levels are acceptable. It is possible that further apartment development may be considered north along Punchbowl Road in the future but no council documents, with the exception of Canterbury Road Master Plan, suggest so at this stage."---Yes.

You were heavily involved in the drafting of the Canterbury Road Master Plan?---Yes, I was the author.

Were you aware of its fate, that is to say, the extent to which it had been adopted by council?---Yes.

30 Is it right that only parts of it were adopted by council?---That's correct.

Now the particular, obviously the two boundaries of significance when talking about setbacks are the northern and the eastern boundaries.---Right.

Is it possible that from your memory of the master plan, it didn't contemplate high residential development, intense residential development in this precinct?---No, it did.

40 On the northern side or the eastern side?---Both.

To what extent, sir?---Well, I think I've seen the photo, turn the page.

Yes.---You can see that it goes up Punchbowl Road for the full length of the park and along Canterbury for the full length of the park.

Had this section of the masterplan been adopted by council?---Had been adopted as part of the masterplan but it had never been implemented in the zoning process. For some inexplicable reason, I never worked out why, the

council only chose to rezone the area which were previously zoned industrial and they did nothing with the areas which were previously rezoned residential.

And these areas were obviously - - -?---These areas were residential, yes. In spite of the fact this one had a service station on it.

10 And the other matter I would ask is, when you say further, and this is the same paragraph, the further apartment development can be expected east along Canterbury Road. What was the basis of that statement?---Well, the basis of it was the master plan and the fact that council hadn't rezoned as a function of their tardiness more than planning theory, it was inevitable. In fact, I think at some stage, I can't, I'm pretty sure at some stage someone did come back and say, yes, council is planning to rezone along Canterbury Road for apartments but I couldn't direct you to that statement but you might have come across it yourself.

20 Well, we haven't and that's why I'd like to take up with you. Can I take you to volume 13, page 6.---Page six.

Yes. This is the same draft of the supplementary report.---Yes.

The second line underneath the heading building height, it will be on the screen in a second. There we are.---Okay.

30 It says, "Recent events has seen some six to eight-storey approvals and recommendations along Canterbury Road and this seems acceptable with the appropriate justification." There hadn't in fact been six to eight-storey approvals in the vicinity on this site had there?---I think there had. I think they had.

What was your source of information?---I'd worked on one of them.

An approval?---Well, I'm not a hundred per cent sure but it was certainly a recommendation and I would have thought it was approved.

40 See I want to suggest there hadn't been anything like six to eight storey approvals within the vicinity at all. What do you say?---I repeat that to my knowledge there had.

And where was the nearest six to eight storey building as you headed east? ---Can't tell you without a copy of the master plan but I would say it was two, two may be three blocks east on the other side of the road.

And how far was this site from Canterbury Station?---Ah - - -

One point something kilometres?---Not Canterbury Station, Punchbowl Station, yeah, it would be about a kilometre.

Do you happen to recall the address of the project or projects that you had an input into that involved a recommendation for approval for six to eight storeys to the east?---No.

It was Canterbury Road or - - -?---It was Canterbury Road, yeah.

Right. You can't recall?---No.

- 10 Was it near another cross street?---I, I don't remember. I've sort of got a vague mental image of what the plan looked like but I can't remember the address. I do remember that it was residential immediately to the south of it and that was a problem which is why we had two eight-storey towers on the corners and six storeys between to minimise the overshadowing on the towers behind, on the residential behind.

It wasn't planning staff at Canterbury Council who told you that development to the east was contemplated at the time, was it?---Well, I, I think it might have been.

20

Who was that?---I don't know. I don't know.

Male or female?---I don't know.

- 30 In what circumstances or on what project were you working at the time or - - -?---I don't know. It's just, it's something that's sort of like, I, I feel that I've come across in the documents which I thought, oh, okay, that's good, because originally one of the female planners there had, or it might have been Warren, I'm not sure, one of them had said that we couldn't depend on development happening to the east, therefore we needed a nine-metre setback.

The Residential Development Strategy you were familiar with, is that right, for this local government area?---No, I wasn't familiar, only in passing.

It didn't support the rezoning of adjacent properties on either Punchbowl Road or Canterbury Road for this site, did it?---I don't know. It didn't do much.

- 40 At page 8 of volume 13 - - -?---Yes.

- - - you say, underneath the heading, "Side Setback East," in the second paragraph, "The ADG also recommends an additional three-metre setback when adjacent to a low density residential zone. Whilst this is technically the case at the moment it's unlikely to remain so as further apartment development is likely on Canterbury Road."---Correct.

“Therefore east side setbacks should be lowered,” I’m sorry, “Should be six metres to level 4 and nine metres levels 4 to 6.”---Correct.

In the absence of adjacent development of the same intensity as was sought in this planning proposal, the setbacks would have been different?---Say again.

Well, you’re saying are you that the setbacks that you’ve identified there depend upon anticipation of development to the east on Canterbury Road?
10 ---Yes.

In the absence - - -?---If the, the, the Apartment Design Guide suggests that for, if you, if you’ve got high-density proposal adjacent to a permanent low-density cottage area, then you add three metres onto whatever the setback is. So if it’s six metres - - -

Except it doesn’t say the words permanent, does it?---No, it doesn’t.

No.---It doesn’t say a lot of words. And it’s, and it’s advisory.
20

Yes. If the ADG I think was a requirement of SEPP 65 and SEPP 65 had to be complied with. Isn’t that right?---ADG is - - -

Was incorporated by reference into SEPP 65?---ADG is a document which provides guidance to the implementation of SEPP 65.

I’m just wondering whether your argument here is a bit specious, depending upon, as it does, to try and use a neutral word about it, speculation as to whether there’s going to be further development to the east.---Well, to use
30 your word - - -

Yes.--- - - - it depends upon logic.

Yes.---And logically there will be further developments to the east. I’m not a hundred per cent sure here but I’m pretty sure that the adjacent site to the east is something like a tyre repair joint or a something storage, it’s not, it’s not a habitable cottage.

The likelihood of development to the east would have been developments in excess of a kilometres to the east in - - -?---No, no.
40

- - - in the vicinity of Canterbury Station?---No. If you look at the Canterbury Master Plan it proposes development along the whole of Canterbury Road at varying heights and densities, it sort of peaks at a number of nodes and they go up to ten storeys and Canterbury Station’s obviously one of those but there are a couple of others. Then it’s generally looked at, it was generally looked at about six storeys with potential for a little more in certain locations. Now, the only places with ten storeys was

considered was around railway stations but there's no reason why six or eight couldn't occur at other places.

In a very isolated location.---It's not isolated it's on Canterbury Road for crying out loud.

Yes and what were the average building height level around it?---
Redundant.

10 No. My question was what was the average - - -?---No.

- - - building height level around it?---The average building height in Sydney is single storey but it's got nothing to do with what occurs on any particular site. Particularly along main road.

The premise for your paragraph that I've been asking you about on page eight, the second paragraph under the heading, Side Setback East, was that the proposal was not compliant with setback requirements.---Correct.

20 I can take you back to page six. Under the heading Building Height, you said in the second paragraph there commencing, "this height is acceptable" do you see that, "this height is acceptable on Punchbowl Road only because it marks a major intersection entering into Canterbury LGA."---Yes.

Was that, again, was the premise that there is in fact no justification for the proposed building height beyond what you identified there as, it's on a major intersection and it's where they happen to have drawn the boundary for the Canterbury LGA?---And it's on a main road.

30 Was your professional opinion at the time that the fact that a site was on a main road would justify a height of this order?---Not by itself, no but to celebrate the entry into Canterbury and to nominate the turning point in t Punchbowl Road, yes.

To celebrate the entry into Canterbury is also, I'll suggest to you, is specious reason, what do you say?---You're the one who's telling me.

Well, what I'm inviting you to do is accept that that is a pretty specious argument.---Well, I don't.

40

Excuse me a moment. You at page six repeated that the FSR, this is under the heading Density, of 2.2:1 was not possible within the required setbacks and - - -?---Yes.

- - - building height and particular if reasonable and useable communal open spaces provided at ground level - - -?---Correct.

- - - unless communal open spaces provided at the roof top at level six.

---Correct.

You also said I think there, if not there then later on, that a roof garden would establish an undesirable precedent for Canterbury Road.---No, that's, that's, I didn't say that.

Right.---Tell me where.

10 It's under the heading Density. It's in the third paragraph. "Where" - - -?---
I see it. I see what you're saying.

"Where mixed development is concerned a roof garden would establish an undesirable precedent for Canterbury Road north side of a density that can only be achieved with roof garden communal open space."---Yeah.

Now, did you understand at the time that there were planning arguments as to the undesirability of a roof garden particularly in terms of their impact - - -?---No.

20 - - - once occupied upon the adjacent buildings - - -?---No.

- - - particularly where people live in them?---No.

You didn't understand a school of thought that it allowed people on the roof garden at some height to look down upon the properties adjacent and invade their privacy?---No.

30 And you didn't understand that they might be a source of loss of amenity through the space being used for parties and the like with amplified music?
---All of those things can be designed out and frequently are.

But you accept from my indication to you of the suggestion that those were considerations militating against communal roof gardens that there were undesirable aspects to them?---I don't accept that there are undesirable aspects to them. I accept that there are certain people who hold views that they would rather not have them.

40 You said it would establish a precedent for Canterbury Road but in saying that you used the adjective undesirable. What did you mean, what was the, what was it about them or about this one which you thought meant that the precedent it would set in Canterbury Road would be undesirable?---The undesirability was simply the fact that it potentially removes the obligation to attempt to provide communal space at ground level which has got deep soil and so forth.

Thank you. Now, can I take you to pages 9 and 11 of this version of the supplementary report. Your development testing table appears there.---Yes, yes, yes.

It's called testing this time rather than yield and you had four options but I think you came to a conclusion that option C was preferred. Page 11, top of page 11 in the bolded words "this is preferred option".---C, yeah.

And option C had an FSR of 2:1 on page 9.---2:1. That's correct. Yeah.

Can I just, just let me check something for a moment. Can I ask you what was the setback assumed for those calculations, and sorry, it's on page 9.
10 "Six metre only setbacks except the common court (15 metres)."/>---Yes.

That's on page 9. Can I just take you while I'm on that particular subject to page 108. This is the same subject but in the final draft of your supplementary review. Page 108.---Yeah.

And what you have here in addition I think – no, I stand corrected. You said it in your earlier version as well but just while you're on that page, "The eastern setback is six metres which is technically non-compliant but acceptable given likely future development to the east." So that's that same
20 issue that we were discussing earlier.---Yeah.

Then you had a conclusion, I'm going back now to the first draft of the supplementary report, page 14, under the heading, "FSR. A maximum FSR of 2:1 could be permitted based on the provision of a well landscaped communal open space," in the corner that you identified. And then at the end of that passage, "The maximum FSR that can be supported in this context with a generous and usable communal open space at ground level is 2:1."---Correct.

30 Can I ask you to go to page 30, in the first instance?---Same, same volume?

Yes, please, sir. Volume 13. Here you have an email from Ms Avval to Mr Stavits, Mr Farleigh, CC to you, dated 4 September, 2015. "Hi everyone. Attached is the final draft of urban design review of 998 Punchbowl Road, et cetera, "Please inform us if there are any enquiries." And then, excuse me a moment, there is the next draft, commencing at page 31. Can you see that?---Yeah.

40 Page 34, the appendices are not provided here, sir, but I'm just taking you through the body of the report, page 34, the material appears essentially again, if not identical wording, "A six storey," I'm sorry, this is third paragraph down, "Thus a six storey building with appropriate SEPP 65 setbacks and with a two storey (to eight storeys) tower on the corner would seem acceptable. Further development can be expected to the east," et cetera. I'm looking at the last paragraph, "In this case, setbacks of six metres at four levels and nine metres for upper levels would only be appropriate if care is taken to minimise overlooking of properties to the

north.” And then you describe how that might be achieved, how that might be engineered. Your option C was still preferred, at page 39 and 41.---Yes.

And it’s still at 2:1, this is on page 39. And then on 41, you have indicated that it’s still the preferred option.---Yep.

And then at page 44, in the conclusion, the conclusion as to FSR is the same, a maximum FSR of 2:1 could be permitted, based on the provision of a well landscaped communal open space in the northeast corner of the site.
10 Is that right?---Yep.

Can I take you now to page 65. This is a two emails. The bottom one is from Mr Stavis to you and Ms Avval, dated 4 September, 2015.---Sorry, which one are we looking at?

The bottom one, addressed Peter, Lili?---Yes.

“It’s been brought to my attention that the report presumes that the adjoining land on Canterbury Road will be rezoned to R4, high density and
20 as a consequence there can be a reduced setback to the boundary, six metres instead of nine metres required by the SEPP. I do not believe we can make that assumption, as there are no plans that this stage to rezone that land,” excuse me. “As a consequence the setback should remain as nine metres from the boundary, if that is what SEPP 65 requires and the FSR calculated accordingly. You need to be as accurate as possible when calculating the FSR, as it will be scrutinised. Please call if you have any queries,” signed Spiro Stavis. And then that seems to have been a forward by Ms Dawson, also of Canterbury Council’s planning staff, to Mr Stavis and yourself, of 4
30 September, but sent four minutes afterwards, “Hi all. Just to add, the setback to Punchbowl Road boundary will also need to be no-one metres as there is no plan to rezone that land either.” Yes. My attention’s been drawn to the fact that on page 62 is Mr Stavis’s original email, there is then some discussion, as you can see, on page 63 between the planning staff, Ms Dawson and Mr Stavis, about the neighbouring, the adjoining boundaries. Do you see that?---(No Audible Reply)

And it is consequent upon that discussion that Mr Stavis sends you on 4 September at 11.44 the email that I’ve read to you about no proposals to rezone to the east.---Yep.
40

To which Ms Dawson adds in, “And there’s no proposal to rezone to the north either.”---Correct.

Now, did that mean that you needed to revise the opinions that you’d expressed about what was achievable in terms of FSR and building height?
---It’s likely, yes.

If you'll just excuse me for a moment. Do you remember whether you had a meeting with Mr Stavis at around this time?---I don't, but I probably would have.

10 And the next version of your report, as I think I might have indicated, commences at page 72. Just quickly, yes, I'm not suggesting that there was any very significant change. Perhaps I should take you to the conclusion, page 89 of volume 13. Under the heading, "FSR." "A maximum FSR of 1.8:1 to 2:1 could be permitted based on the provision of a well-landscaped communal open space," et cetera. That seems to be the change from the previous version because your option C remains preferred, this is page 85 of the volume, and your option C in the development testing table still came out at 2.2:1. You accept all of that or you understand all of that?---No, I don't. I - - -

What I'm trying to do is identify what if any changes were made - - -?
---Yeah.

20 - - - pursuant to that advice that you were given.---Yeah, you're sort of losing me here I'm afraid. I suspect that, no, I was just, I suspect that 2:1 was the acceptable there and the drawing that you're showing me, am I supposed to be looking at option C now, page 85?

Well, it's the report itself. See, it's underneath page 71.---Well, I've lost, I've completely, I'm sorry, but I've completely lost track what report we're referring to.

30 Well, that's why, okay, I'll start at the beginning.---Oh, please don't start at the beginning.

40 No, no, volume 13, page 71. We've been looking at a series of emails of 4 September in which you're given this information about, well, look, there's no plans for rezoning either side, and you'll need to take that into account in your report. That's on 4 September. Then on 9 September, five days later, page 71. It will probably come up on the screen in a second. You, sorry, Ms Avval sends to Mr Stavis et al a final draft of the report and what is attached is what is at page 72 and following of volume 13. What I'm trying to find is, is there anything in this version, commencing at page 72, which indicates that you had taken on board and made any changes, taking into account the information you were asked by Mr Stavis to take into account about the impact of required setbacks?---Well, the problem I have with that is that the only way I have of knowing that this one is a result of that particular interaction was the fact that you said it was, you know? And so I, I don't have these things laid out chronologically to sort of be able to see, you know, if there's changes that respond to the things. I, certainly from that point of view one would imagine that after that letter there would be, the setbacks would be increased to nine metres on both.

And, yes. Excuse me a moment. Yes, option C, in which the achievable FSR is about 2:1, I do apologise, 2:1.---2:1. Yeah.

Doesn't appear to have changed between reports.---No.

Despite - - -?---No, I agree with you.

10 Despite you being asked to take into account that extra information. And it remains your advice that this option only partially complies with SEPP 65 setbacks. If you look at the conclusion, is there anything in the conclusion that indicates to you that you have modified your conclusion by reason of the information about the - - -?---No.

Right. Thank you. Just for the record, that conclusion appears on page 89. Now, can I just ask you – excuse me a moment. When you said in that report that the option was only partially compliant, in fact it wasn't compliant, was it, with SEPP 65 setbacks?---Not compliant would seem to me to be the same as partially compliant.

20 THE COMMISSIONER: How?---Well, partially compliant suggests that it complies with some setbacks, perhaps, but not others. Not compliant is not compliant. And that's, yeah, okay, if you want to, if you want to use the negative, it's not compliant, but you can say it's partially compliant because it complies with most of the things except for two, two items, which can be moderated in a variety of ways. And in fact SEPP 65 gives ways that those setbacks can be reduced. They're design elements, so, you know, you can actually reduce the setbacks if you do certain things.

30 MR BUCHANAN: Now, do you remember a little bit of a kerfuffle over this report being sent to Mr Stavis's staff?---Yes, I do.

If I can take you to page 90 of volume 13.---Yeah.

Email at the bottom from you, dated 9 September at 11.55am.---Yeah.

40 To Mr Stavis we can assume. “Try this revision with further justification. Option C is still my preferred. However, if you all wish to stick with the letter of SEPP 65 ADG, then I can wear option B or even a revised B with nine metre to the east boundary and slightly reduced FSR (lose about 416 square metres) of about 1.78:1. What do you reckon? Peter.” Shortly after that you got an email from Mr Stavis saying, “I notice Lili sent a draft to Warren and Gil, sorry, Gil, spelt G-i-l, as well contrary to what we agreed. I wanted to review first can you ask her to send an email saying it was sent in error and to disregard.” Can I just ask Mr Stavis seemed to be under the impression that you and he had agreed that you wouldn't send a draft of your report to his staff but would send it to him to review first.---Yes.

And do you say that you did have an agreement with him?---Well, it wasn't an agreement, he might have asked for that, I wouldn't say it was an agreement, it was a suggestion.

Right. Do you recall the suggestion or whatever it was that was said?---No.

Was it said in a face to face or was it a telephone call or - - - ?---No idea, no idea.

10 How - - -?---I mean, look, it was inconsequential to me at the time which is why I didn't pass it onto Lili.

I see. Lili was the person who was conveying these, this product to the client.---Yes, while I was away at a conference.

Thank you. Then you can see, just for your information, page 91 at the top of the page a little later in the day Avval - - -?---Yes.

20 As request sent a please disregard the previous email it was sent by mistake. Excuse me a moment. Subsequently, page 93 I think you can see it's a Monday 14 September, Mr Stavis told you, I've proofread it and it sounds good, please send again as a separate email to Gil and me, please don't send as part of this email trail. What do you think was going on there, what do you understand was going on there?---Look, I really don't know but I mentioned earlier that Warren wasn't a happy person and I had noticed that recent meetings had been with Spiro only where previously they'd usually been another planner in attendance so - - -

30 When you say, I'm sorry go on.---So something was going on, there was unhappiness in the department.

Did you have an understanding as to why Warren didn't seem to be happy? ---No, I didn't. I'm beginning to however.

Yes. But unfortunately we're interested in what you were thinking at the time.---Exactly.

40 Page 94. There's an email from you to Mr Stavis and to Ms Dawson later that Monday 14 September, in which you say to Mr Stavis what you said in your earlier email. Is that right?---Yes.

Then for our purposes it's attached commencing at page 95 it's the same document. Excuse me a moment. Can I just ask you now for some of your thoughts that might assist us in understanding a couple of issues. This was a problematic site for intense development, wasn't it?---(No audible reply)

I want to suggest in the sense, for example, that it was an isolated site, isolated from services - - -?---No. No, I don't think it was isolated at all in

the context of a Canterbury Road development which was beginning to take place and it seemed inevitable to me that the residential sites would eventually play catch up with the rest of it.

It wasn't near any retail shops?---It doesn't matter.

But does that not matter to the people who have to live in it?---Take any major road in Sydney, you know. They're lined with apartment buildings. There may or may not be shops within the immediately proximity.
10 Sometimes there are, sometimes there aren't.

Yes, but weren't you being asked to provide an urban design assessment proposal?---Yes. Not, not a retail analysis.

Sure. But an urban design assessment takes into account strategic merit doesn't it?---Whatever that is.

Well, it takes into account the context.---It does.

20 The geographical context.---Yeah, which had already been done in the master plan.

But you're being asked to look at a particular site and say is this the appropriate place to put up a building of the height I am being asked about and the FSR I'm being asked whether it can be achieved.---Is this an appropriate site, not the appropriate site. It's an appropriate site. There are plenty more of them.

30 Yes, with one a half kilometres to the Canterbury CBD.---A kilometre. No, it's, well, it might be but it's less than that to Punchbowl.

With an occasional bus that went past it.---There are plenty of buses down Canterbury Road and there are buses up Punchbowl Road.

And I suggest to you that it was nowhere near any centre of development. It was an isolated site in that sense.---It's an isolated site in the sense that it's early in the evolution of the road.

40 Well, it's assuming that there will be development close by. Correct?
---Yeah.

But you had been told that there were no proposals that would, for rezoning that would permit similar development nearby.---No, there weren't at this time. They were happening all along Canterbury Road because the council hadn't got itself into gear enough to actually review the whole thing and I don't know how your document investigation kit is there but you'll find a letter of mine to the town planner and to the general manager to that effect.

I will come back to that. Can we go to volume 12, page 180.---Need a bigger table. Got it. What page?

Page 180.---Yeah.

10 And this is the second version of your March/April report in which the opinion is expressed, second paragraph, “The subject site is poorly connected to and poorly serviced by local retail.” You consider that a relevant consideration – sorry, first of all you obviously honestly held that opinion at the time.---Yeah.

And you considered it a relevant consideration under the heading of Canterbury Road Master Plan Discussion.---Yeah.

20 Isn't that a bit inconsistent with what you have been telling us as to the strategic merit of the - - -?---It's a matter of yesterday, today and tomorrow. You know, the sort of whole thing is an evolutionary process. Canterbury Road will redevelop whether anyone, you know, what can happen is that council can strategically review it and get it sorted as a strategic whole or they can sit there and accept or reject a whole pile of individual planning proposals. One way or the other it will all happen.

Doesn't this rather suggest that you weren't taking strategic merit into account at all in the opinion you expressed?---Well, no, I wasn't taking your definition of it.

30 You, an urban designer, don't know the meaning of strategic merit?---No, it's, it's one of those terms which is manipulable to prove a whole lot of points.

You understand what strategic means don't you, you understand what merit means?---Yes and strategic merit is the redevelopment of the Canterbury Road corridor, it's not sort of spot rezoning's happening along the place.

Sure. But that's not what you were being asked to do?---No, that's what I've done in the past and what this is, it's what contributes to the capacity for this site to accommodate this amount of development.

40 But that was a separate matter that wasn't the subject of this brief, was it?---It's a background to this brief.

It might be but it doesn't mean that there was strategic merit for the proposal in the context of a lack of services in the context of it being poorly connected to and poorly serviced by local retail, does it?---(No audible reply)

Particularly when a kilometre away, a kilometre and a half is what I've suggested, is a centre of development and a railway station. What do you

say?---It's, I was asked to review a proposal on this particular site, it's not a railway station, it's still got to get reviewed.

But it doesn't mean that you say - - -?---If you - - -

10 Sorry go on.---Were you, I have a bit of trouble where you're coming from, where you're going and how long you're taking to get there but if you were sort of in anyway comfortable with the previous volume at five to seven storeys and 1.8:1, I don't know whether you were or not, then the circumstances haven't changed, we've just got an extra floor on and a little bit more floor space ratio.

But no consideration of well, if we're going to loosen the controls to have more intense development, is this the right place to do it in this local government area?---Not the question.

Isn't that an assessment that looks at it from the point of strategic merit?
---No.

20 Can I take you to page 164 of volume 12.---164.

You'll see it's a letter to you to Mr Montague dated 24 April, 2015. It's headed Transit Oriented Development and, I mean you can see for yourself - - -?---Yes.

30 - - - that you're saying, "I've been looking at planning proposals for Council, this one probably was one of them that you had in mind at the time." And you go on to say, "Council's current planning instruments seem inadequate to facilitate redevelopment in residential areas around town centres/railway stations. I can, you make a proposal from a modest fee, for you to investigate one centre and use it as a model to try and access funds from the department for a centres review. You then give dot points, two dot points some reasons. The second dot point reads, R4 zonings are generally inadequate to generate redevelopment with heights to maximum of 8.5 to 11.5 metres (and 18 to 21 metres in town centres) and FSRs to maximum of 0.5 to 0.9:1 (and no FSR in town centres). Then you detail, you fleshed out your proposal a little bit more, "for a single centre you would investigate land use and planning controls within 200/400/800 metre walk from the railway station and identify sites which may have development potential.
40 Do you see all of that? Do you see that?---I see it, yes.

This is part of what you were talking about earlier in terms of what you thought ought to happen, isn't it?---It's one of the things that I thought ought to happen. But this came as a response to the government's release of the Rouse Hill to Bankstown railway corridor - - -

The Bankstown-Sydenham or something like that?---Yeah. Well, they had, you know, all the railway stations locked in. They had driverless trains and everything was going to be all right.

But irrespective of what might have spurred your, or inspired this proposal, what it does seem to indicate, is that your professional opinion at the time, was that more intense development had, in strategic merit, if it occurred within 200/400/800 metre walk from the railway station?---In this particular case for transit-oriented development, yes.

10

And that is one of the relevant considerations for assessment of strategic merit, if you're conducting an urban design review, which you had been asked to do?---Well, it, it, transport, public transport is the, the issue. It's not you know, trains are not the only focus of it.

No, but you can't just knock it out of consideration by saying that, can you?---It's now knocked out of consideration.

20

What I am just giving you the opportunity to explain to us, is how, when it appears on the one hand, you are telling Mr Montague that you had a professional opinion that there was more strategic merit in more intense development within walking distance from the railway station, on the other hand, this site, which plainly wasn't within walking distance of the railway station was one that you were prepared to give a tick to?---Two separate, two completely separate questions.

But both of them involve consideration of strategic merit, don't they? And urban design principles, don't they?---Sure.

30

Thank you. And if I can just, excuse me a moment. I'll take you to another, excuse. So, I'll show you another document now, and I want to suggest it's along similar lined, indicating a subject in which you were interested and which you thought had, to use the same word again, merit. We're going to Exhibit 85, Commissioner. We'll show it on the screen, but if the witness could have access to it as well. It's the calendar meetings folder. And if you go to page 21 of the folder, we're now showing you on the screen, the front of the documents that I want to take you to. This is a few months later in November, 2015, and 18th to be precise, an email from you to Mr Montague CC'd to Mr Stavis, addressed to Mr Montague's PA from the looks of it. "Re. Sydenham-Bankstown corridor development." And you identify, I think the background that you talked about earlier and you suggested that you contact, I'm sorry, you discussed it in general with Spiro and, "He suggested that I contact you," Mr Montague, "to seek an appointment to make a PowerPoint presentation to Mr Montague and Spiro to show my researches graphically and to indicate how I think they could be used to facilitate council (not transcribable) planning." Do you see that?--- Yes.

40

And if we go over the page, there's then a series of pages of what does seem to be, could have been a PowerPoint that go from pages 22 - - -?---No, it's not.

It's not.---What that is is just as it says, a list of recent projects, which, which includes the South St Leonards one, which is an appropriate, relevant - - -

10 To illustrate the sort of thing you're talking about.---Yeah.

The sort of project that you're talking about in respect of another centre. ---Yes.

So that goes through to page 31, and then I was going to ask you about page 32, which is a copy of an email from you to Mr Montague of 24 November, 2015, in which you try to chase up the correspondence with Mr Montague, asking whether it's possible to get together with Mr Montague.---Yeah.

20 And then page 33. Same day, Mr Montague gets back to you.---Yeah.

He says, "Hi, Peter. No problem. This is a big issue out here. I'll ask Andrea to arrange a meeting. Regards, Jim." Did you have a meeting with him?---To be honest, I don't recall. I don't think so.

Thank you. That's - - -?---I'm not a hundred per cent sure.

No.---I would think I'd remember - - -

30 I haven't got a follow-up question, so if that's your evidence, thank you for that. That's Exhibit 85. Now, if I can ask if we could go to volume 13, please, page 127.---I've got it here somewhere. Here it is.

Page 127.---127 or 37?

127.---127. Yes.

40 Actually, it might be better just to take you straight to the operative correspondence, page 155. Now, you remember I asked you about Statewide Planning earlier and I suggested they were planners for the proponent of the development at 998 Punchbowl Road. This is a letter from DDC Urban Planning dated 26 October, 2015 in relation to 998 Punchbowl Road, and you can see in the reference at the top the reference to the 2014 planning proposal by council.---Which, I'm sorry, which page are we on?

155.---I can see in the reference to the top - - -

I'm sorry.---Oh, yes. Yes.

My mistake. When I say top I meant the heading.---I've got you, yeah. Re 998.

The reference number for the planning proposal.---Yeah.

10 Now, it then says, "We act for Statewide Planning Pty Ltd and the owner of 998 Punchbowl Road." And it recites a history at page 156. It says that particular planning proposal was seeking an amendment to the zoning to R4, amendment to the height of building map to allow maximum height of 15 metres, and amending the FSR to 1.8:1. If you can go to page 157, what is here presented is an amendment, if you look at the third paragraph, an amendment of council's planning proposal to allow on the site a maximum building height of 25 metres and a maximum permissible floor space ratio of 2.8:1.---Now it gets interesting.

And does this ring a bell that you were told?---It rings a bell.

20 And indeed, I'm sorry, I think you were sent a copy of it by Mr Stavis. I might be able to find the email.---It's familiar.

Page 169.---Yeah.

So you can see at the bottom of that page of volume 13, a person called Matt Daniel - - -?---Ah hmm.

- - - says to Spiro, "Please see attached."---Yeah.

30 And then Mr Stavis says to you, this is on 27 October, 2015 at 9.01am, "Hi, Peter. See latest proposal for your review. I note that the FSR has increased to 2.8:1. A preliminary review seems to show that it doesn't comply with setbacks and open space provisions under the DCP and ADG. Can you please review and before you finalise any comments, make an appointment to see me so that we can discuss." And you said, "Will get straight onto it." This is your email of 27 October. Now, then on the 27th, we're looking at page 170, you sent an email to Mr Stavis, "I need more information. Site area claims 2,056 square metres, this appears to include road widening setback? Building footprint lower floors claims 844 square metres. I can only get 665 square metres for these setbacks in this configuration. Again I think that they have failed to include the road widening," it says, "wetback," 40 setback. "Can we confirm this please before I start work? And where does eight storeys over whole site come from?" And Mr Stavis said that he would call you later. Do you recall having a conversation with Mr Stavis to try and consider those issues that you'd identified?---No, I don't. I'm sure I did.

Okay. Excuse me. Page 174 there's a couple of emails in which the two of you schedule a meeting at 1.15pm the day of the emails, 29 October, 2015. You would have seen him on that day, as far as you know?---Yep, yep.

Now, can I take you to page 183 of volume 13.---Wow you guys have been digging around.

This is an email to, sorry, from you to Mr Stavis of 9 November, 2015, and you say to him, “Spiro, please ring me so we can discuss this as soon as you have read it. Final answer, 2:1 at 18 metres with 25-metre tower.” Do you see that?---Yep.

10 And there’s an attachment, Punchbowl Road Planning Proposal October 2015 doc, and that would appear to start on the next page, page 184, and go through - - -?---Yeah, this one I haven’t seen for a while.

Right. And it goes through to page 87. So it’s a short review.---Yep, yep.

And you set out the recent history under the heading, “Recent History,” on page 185.---Yes.

20 Then a bit over halfway down you say, “However the following should be noted.” And you proceed to identify floors, is that the right word, in the proponent’s revised proposal? What you saw as floors - - -?---Yeah.

- - - in the proponent’s revised proposal.---Yep.

And you go on to say, “Thus we contend that,” first dot point, “The proposal at general height of eight levels, (25 metres) is an overdevelopment of the site.”---Yep.

30 “The proposed FSR of 2.8:1 is unachievable.”---Yep.

And then you say why. “RMS setbacks are not deducted on the Canterbury Road frontage and the site area is therefore significantly overstated.” And then you say on page 186, “Building footprint is significantly overstated at 840 square metres. (We cannot see how this can be achieved given RMS, council and ADG setback requirements.)”---Thank you for that document. That’s the one I’ve been missing.

40 Right. I’m sure we can provide you with a copy. This is on the public website. This is part of the evidence that’s already before the Commission so it’s something that you can yourself access.---Thank you.

Volume 13, if you could just keep that in mind. Now, you then have some calculations.---Yes.

Sorry, you identify the setbacks that should be in place or should be taken into account on page 187.---Yes, yes, yes.

And you say that an overall FSR in the order of 2:1 is based on the following development potential and then, what does GFA stand for?
---Gross floor area.

Thank you. And you have levels, the gross floor area for levels - - -?---And, you know, about 85 per cent of that is what you actually get in terms of lettable, saleable floor space.

For each level, 1 to 8?---Mmm.

10

And so you're explaining how you arrive at a calculation for an FSR of 2.2:1 which is non-compliant with setback requirements.---Yeah.

At least council setback requirements.---Yes.

And then an FSR of 1.995:1 which is as good as 2:1 to achieve compliance.
---Yeah.

20

I should direct your attention to the email to Mr Stavis on page 188 of 9 November in which you say, "Tower dimension needs resolution but an area of 225 square metres gross seems about right." And then over the page which I think it the attachment described in that email you have a drawing taken from the planning proposal with which you had been provided perhaps and you've - - -?---It's my drawing originally.

It's your drawing?---I think so from one of the previous - - -

30

But you've certainly annotated it?---My annotations. I recognise my grubby writing. And that's sort of got nine metre setbacks, yeah, but that's attempting to sort of get a bit of a feel for how much, how, how big the tower might be and how you calculate the floor space per floor.

Can you go to page 190.---Yeah.

40

Mr Stavis sends an email to a person that you can assume is the proprietor, Mr Demian, cc'd into the general manager and also a councillor, "Charlie", the proprietor, "can you please email me the marked up plan we discussed today." That's on the same day, the 9th, as you sent your diagram to Mr Stavis. Now, excuse me a moment. Can we go, please, to - I apologise but I just withdraw that and ask for just a minute to make sure I refer the witness to the right document. Yes. There's another document I need to take you to in a moment. If we go to volume 14, please. This is a letter, I'm sorry, page 5.---Do I have 14?

I'm sorry. I'll arrange that.---They keep disappearing. Okay, no worries, there we go. That looks familiar, yes.

And it's a letter from you to Mr Stavis in which you say, "I've reviewed the annotated plan provided." Now the first thing I'd like to do is try and identify the annotated plan provided if we can. If we go to page seven, is that the annotated plan provided to which you refer to on page five on volume 14.---Just let me have a look at the text again. It could be I'm not sure.

Rightio.---Is it attached, did they come on the same - - -

10 I can't say that it did but can I take you back then to volume 13.---It's my, it's my previous plan but it's been, that's my problem, the plan provided, provided by whom?

Right. Can I ask you to go back to volume 13, page 197. Can you see the top of that page there's an email from Mr Demian to Mr Stavis in which he says, and it's dated 11 November, 2015, in which he says to Mr Stavis, "Thanks for following up on the marked up plan, I have attached it above for your information." Now, the next document that we have for you is
20 volume 13, page 199 the people who do the technical exercise of looking at the meta data of one document and the meta data of another document say that, page 199, volume 13 is the attachment to that email which says, "design understanding meeting," 2015 1109.pdf. That's on page 197. So, back to page - - -?---That looks like it could be the plan that he's referring to, I haven't particularly seen that one.

You're not sure that that was sent to you as - - -?---It might well have been but it's, all I'm saying is it's not one of my plans so it could well have been sent.

30 Right. Do you identify, sorry. Are you able to identify any of the handwriting on that plan?---No, I can't, I don't know it.

None of it is yours?---No.

Of course, I'm just looking at the legend at the bottom, the block at the bottom of that plan and it does say GEO Form which is not your firm. ---No.

40 Thank you. Could you go then to volume 14, page 6, please.---Yep.

In the middle of that page there are two options, 1 and 2 - - -?---Yes.

- - - that are discussed or described. You've got your, am I right, your square meterage in the columns - - -?---Yes.

- - - for option 1 and 2 in the table above?---Yes.

And then the description for option 1 identifies the square meterage.

---Yep.

And says, "As specified in ADG." Then it identifies the reduced square meterage.---Yes.

And you say, "Give an FSR of 2.8:1."---2.8:1, yeah.

The next option that you discuss gives an FSR of 2.57:1.---Yeah.

10 Say 2.5:1. Now, can you go over to page 7. Are you able to relate anything that's on that page, either by way of drawing or writing, to either option?
---(No Audible Reply)

In other words, does the drawing have a representation on it of the boundaries of the development given either option?---Hmm, it's conceivable. I need to sort of give it a bit more attention at a slightly larger scale perhaps. Yeah, but six metres, six metres.

20 You can see it blown up a bit on the screen there.---It's not, it's not ADG compliant to the east.

Because it's only six metres.---Yeah.

But there's an indication of compliance as to part of it on the northern boundary.---Yes.

Because it indicates nine metres.---Well, yes.

30 Can I just ask for my own edification, the blank or un-coloured-in oblong on the top left of the drawing - - -?---Yeah, yeah.

- - - is that - - -?---That - - -

- - - a driveway or - - -?---Yes.

It's a driveway.---Yes. And on the bottom right is - - -

40 A ramp?---No. On the bottom, bottom right is a, what do you call it, electric substation.

Oh, yes, right. Thank you. Thank you. Yes.

THE COMMISSIONER: And is that your handwriting?---Yes. And what, and, you know, it looks, the scribbly pink lines look like me too I must say. See, which is sort of interesting because, and it looks like I did the drawing and I wrote the notes there, but I don't, but you know, we're saying this came from somewhere else.

MR BUCHANAN: Can I go back to page - - -?---Oh, actually - - -

Yes, go on.---Yeah, if, if that previous one, which I didn't recognise, came from someone else and I was attempting to redraw that in a way which was more amendable, then this would possibly be it. Excuse me, could I ask what time we're - - -

THE COMMISSIONER: Sorry, I was about to say 9.30, sorry, 4.30. ---4.30, that's okay.

10

MR BUCHANAN: Would you like a break?---Well, I'm just getting that way, but I can probably make it to 4.30. Yeah, I can make it 4.30.

We'll continue on in that case. Thank you. I'll just take you to the opinions you express at the bottom of - - -?---Yes.

- - - page 6 of volume 14. You personally and professionally prefer a six-storey height limit with capacity for some eight-storey in a particular location like a tower element. You note the inadequate communal space at ground level would mean that you've got to take the communal space up to the rooftop, and you say, "Thus I am comfortable agreeing to the setbacks proposed above." I'll just pause there. Those are the setbacks identified in the description of table option 1. Is that right?---Yes.

20

Continue on. "However, I would prefer a six-storey building with an eight-storey tower and the maximum FSR of 2.5:1 (six/eight-storey) rather than 2.8:1 (all eight-storey). An FSR of 2.8:1 is a dangerous precedent, particularly for the south side of the street." In terms of the impact on the south side of the street?---Yeah, in terms of the fact that whilst you could theoretically tolerate eight-storey buildings along the north side of the street, they'd only be overshadowing the street.

30

That's right.---If you ran along the south side of the street with the same, you'd be overshadowing the residences behind and that would be unacceptable.

And just then to pick up the words "An FSR of 2.8:1 is a dangerous precedent," what did you mean by that?---Well, if, if you allowed 2.8:1, which resulted in eight storeys, here then you could theoretically apply it anywhere else along, along the street, particularly on the south side.

40

Because a relevant consideration in urban design is precedent.---Yeah.

Volume 13, page 202. I'd like to take you to that, please. Now, this is, it seems, the final version of your December 2015 report, is that right?---I don't know.

I'm sorry. No, I'm being told I'm wrong.---This is, this report starts to get really confusing.

I'm sorry, yes. 202 is the covering email, I'd suggest.---Okay. December. That is the final report, depending on how many versions of it there are.

That's a fair comment. If you just excuse me a moment. I'm told there is a later version, so I misspeak again. I apologise. Can I just ask you about this version commencing at page 203.---Yes.

10

What was the purpose of this exercise? I mean, I can take you to page 205 and you can see there that you've got an introduction. "Council have engaged Annand Associates to provide an independent urban design assessment of a planning proposal at 998 Punchbowl Road."---This is the third time.

Yes, but which proposal?---Well, this is obviously something new, isn't it? Well, I don't know, is it - - -

20

Well, can I help you, perhaps?---Thank you.

Page 215. Under the heading Planning Framework, after talking about the LEP's requirements you say, "The proponent is seeking eight storeys, 25 metres height, and an FSR of 2.8:1." And then there's similar - - -?---This, this is effectively the third planning proposal.

Yes.---First, you know, there was one.

30

Yes.---Which was the March/April one. Then there was the review of it, which was the August one, and then this one is, is virtually a different scheme.

40

Well, sorry, I suppose at a point like this, we've got to try and be careful with the language we use. It's not the third, in a sense it is the third planning proposal but in a different sense to what you're talking about. You're talking about your reports. It's the third report. The first one was in respect of what you were sent the first time when you were first commissioned on it, they you were asked to prepare a supplementary report. Now, we're looking at, can I suggest to you, an assessment of a proposal that the proponent has sent and that you have been asked by council to assess, does that makes sense?---Well, I would suggest that the first one was sent by the proponent, the second one was instructed by the proponent and this is another, a, a, a further review by the proponent to try and get even more than - - -

Sorry, it depends on what we're talking about. It's going to be a bit confusing, I apologise if I'm contributing to the confusion. On the one hand, you have a council planning proposal and sometimes what it emerges from,

is a resolution by council to rezone after considering a submission by a development proponent. And strictly speaking, we should be using that sort of language. There is a proponent or proprietors submission but to get Gateway Determination, it has to be a proposal that is submitted to the department by council?---Yeah.

And so, if council - - -?---Is, is this not that, another one of that?

10 I suppose that's what, that's part of what we're investigating. That's part of what we're trying to find out about.---Well, it's not the same scheme as we looked at in the first place. It's a different plan, it's a different, you know, it's a different architecture, it's more developed. It's by a different author, but it's, as, as far as I know, and I've got no idea really, but as far as I know, it's the same proponent.

20 Well, I'm not suggesting that the identity of the proponent, the development proponent has changed, but what I'm suggesting is that the first report you prepared, the March/April report was pursuant to a commission you received from council to review its planning proposal or at least a revision if its planning proposal?---I don't believe that's the case.

Sorry?---I don't believe that's the case. I believe, I believe that I was engaged to review, on council's behalf, a proposal that was done by someone for this site. Don't worry about the sort of, the crossing the I's and dotting the T's, the plan tells the story, the fact that there is a plan that's provided by an architect tells us that something's been, someone's made considerable money doing it.

30 If you just pause for a moment. If I can just take you back to volume 12, please. Page, at this stage if you could have the title page, page 1 and then to page 3. So, briefly to page 1, so that you can see the title page and then page 3. So, this is a council planning proposal and then on page 3, there is, sorry, my mistake, page - - -?---Just wind it forward to the plan.

Yes, to page 3. Wind it forward to the?---To the plan. The plan will, is evidently not, and see, those, even those diagrams turn up again later on in one of the planner's reports.

40 Certainly. I'm not asking you to take in to account the origin of, or the source of the materials in this document but it's a council planning proposal and it says - - -?---And, and, and why isn't the, why isn't the last one?

Well, I'll come to that in a moment but I just want to fix - - -?---For me, for me as a humble consultant it was a continuum. I, I, at no point along the way did I see it change from being a council proposal to being a private proposal.

Well, I want to suggest that you did and I'll - - -?---Well, I didn't.

Well, I've shown you the documents that indicated that but first of all can you just look, please, at page 3 because we went through this history in the second, third and fourth paragraphs of the planning proposal (not transcribable) and then the fourth paragraph says, "At the council meeting on 2 October, 2014 council resolved that a planning proposal be prepared to amend the plan to achieve, for a maximum floor space ratio of 2.2:1 and to allow a development to a height of 15 metres." And you signed an urban design, sorry, a consultancy agreement, page 36, which is an assessment of a planning proposal for the land and that's shortly after this document was prepared. So you were asked to assess a council planning proposal irrespective of its origins. Do you understand that, and do you agree to do that?---I obviously don't.

But how could you get the impression otherwise?---Why would I care? It's a task to be done given to me by council. It's plain obvious to me that they're working on a site that's had previous work done on it because there were drawings and plans. If the drawings and plans change on the way through it means those people are continuing to do work on it. It doesn't mean anything else and I just, I, you know, I don't quite understand what the level of pedantry is about.

Well, I hope I'm not being pedantic but what I would like to see if you accept is that you agreed to assess a council planning proposal and you did? ---And they then changed it.

But the proponent - - -?---And I did - - -

Excuse me.---No, I'm sorry. The proponent did not, at no stage did I have any contact with the proponent. There was - - -

But you were sent the proponent's revised proposal - - -?---So?

And asked to assess it.---By council.

Yes.---Yes.

And so what you were then doing was assessing the proponent's proposal not council's proposal?---I was always assessing the proponent's proposal because that was the basis of council's proposal that they resolved in the council meeting.

I note the time, Commissioner.

THE COMMISSIONER: Yes.

MR BUCHANAN: I don't know if this is an appropriate time.

THE COMMISSIONER: Probably an appropriate time. We resume tomorrow morning at 9.30.---9.30, right.

THE WITNESS STOOD DOWN

[4.33pm]

AT 4.33PM THE MATTER WAS ADJOURNED ACCORDINGLY

[4.33pm]

10