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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 10 JULY, 2018

AT 2.00PM

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

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Thank you, Commissioner. Taking you, Mr Demian, to the evidence you last gave before the luncheon adjournment when I was asking you a question about your lodgement of a DA when there was a planning proposal on foot to increase the height limit, you referred to a 2008
10 circular and then a later circular from the department.---I believe it was 2011, November 2011.

Right. Good. Thank you. Could we have a look, please, at volume 1, page 128. And we'll get you a hard copy, but you can see the title page of the
- - -?---Yes.

- - - Planning Department document, Varying Development Standards, a Guide - - -?---Yes.

20 - - - dated August 2011 on the screen?---That's correct.

And if I can take you to page 133, please.---Yes.

There appears there what is described as a five-part test - - -?---That's correct.

- - - for determining whether the clause 4.6 - - -?---Is a measure.

30 - - - could be applied or SEPP 1 can be applied.---Correct.

What I want to suggest to you is that there's nothing there in that five-part test which suggests that council policy is a relevant consideration when determining whether clause 4.6 has been satisfied.---That's not correct.

Is there any particular part of it you'd like to take us to?---Yes. For example, if we look at, just give me one minute, please. Item 4 on the five-part test - - -

40 Yes?--- - - - where it says, "The development standard has been virtually abandoned or destroyed by the council's own action in granting consent, department, sorry, departing from the standard (not transcribable) compliance with the standard is unnecessary and unreasonable." So that's one of them, one of the five-part test.

That says nothing about council policy. It says something about council's approval of development applications, doesn't it?---Development standards and it's for the actions of the council, right? And if the objective of the

standards are achieved, not with, notwithstanding noncompliance with the standard is another.

Thank you. Now, if we can look at page 116, please, of volume 18.

MS RONALDS: Volume 18?

MR BUCHANAN: Volume 18, yes, back to volume 18, the 548 development application.---Oh, volume 18. Here, I'll just get it.

10

Sorry, have you got volume 18 there?---I'm trying to find it.

My apologies. We've just switched volumes, that's all.---Oh, yeah, I see.

So, page 116, that's a council form that's been completed by a council officer about the lodgement of a document that could be described as amended or additional plans but the date is 2 June, 2014. That's on the imprint of the council stamp on the top left-hand corner.---2 June, 2014. I can see that, yes.

20

And the next page, page 117, is a statement of environmental effects amended plans.---That's correct.

Dated May 2014. This was plans lodged on your behalf for the development to be no higher than six storeys rather than eight storeys. Is that right?---This is a statement of environmental effects describing that, yes.

30

Yes. And there were plans that were lodged accordingly, is that right?---I believe so, yes.

The proposed development still exceeded the 18-metre height limits but much less so than before the amendment to the plans?---It exceeded the 18 metres by the lift over shaft, which is allowed within the LEP instrument provided they use it as a design integration.

40

Why did you revise the plans for that development application to reduce it from eight storeys to six storeys?---I understand that when the JRPP were briefed on the development application, they suggested that the, the council policy or the rezoning or the increase in height, whichever way you look at it, may not be imminent as of that time because RMS had not responded, and I believe at that time the Department of Planning had not provided a Gateway Determination. So, that suggested that we, we reduce it in height.

Was it council staff who made that suggestion or - - -?---Well, council staff briefed our consultants on the feedback from the JRPP. So, obviously the council staff would brief them and the information came back to us.

Now, just to finish off with this particular DA, a council report to the JRPP found the DA was generally compliant?---I understand that, yes.

And considered that the variants in the height limits had been justified under clause 4.6?---Correct.

That happened I want to suggest to you on 22 September, 2014. If we can just look at page 203.---Sounds about right.

10 In the same volume. At page - - -?---Yes, 2 October, 2014.

Now, just to make this clear in case anyone else doesn't understand it, the report to the JRPP, like a report to the IHAP, was made by the council officers?---That's correct.

The planning staff?---That's correct.

20 And on 2 October, 2014, you received conditional approval from the JRPP for that DA?---No. We attended the JRPP meeting, we've requested certain changes to it and then I believe the JRPP voted in our presence on that day.

2 October?---I believe so, yes.

Yes, page 240 has the decision recorded.---That's correct, yes.

And again the JRPP accepted the recommendation that the variance of height limit had been justified under clause 4.6.---For the lift overrun, yes, and the staircases.

30 Now, thinking of the date of 22 September, 2014, the date of the council report to the JRPP, did you have any contact with Mr Hawatt shortly beforehand?---No.

How do you know you didn't?---Because I didn't need to.

40 So it's only because you didn't need to?---Well, there was no issues on hand, there was no problems at that time with the progressing of the development application. We were made aware that it will be reported to the JRPP and I think the report was made available a few days before that meeting was to review and make our submission if we needed to.

Do you have a recollection of needing to talk to Councillor Hawatt about any other issue that was before council in about September of 2014?
---I don't recall any discussions around that date, no.

Do you recall though a need to, that's to say an issue that you had with - - -?---Well, I'll rephrase.

- - - one of your projects?---It's not a need, it's actually concerns of a planning issues if we had from time to time, I've made a phone call from time to time, yes.

THE COMMISSIONER: But did you have any such concerns around September '14?---I don't remember that now, because the DA was going to the JRPP and there was no issues.

10 MR BUCHANAN: Can I take you to page 196 of volume 18, please.---Yes.

Sir, this is a report of an extraction from Mr Hawatt's mobile telephone of an SMS message, and as you can see, it's set out in tabular form.---I can see that.

It's in respect of one message only.---Yes.

20 It's identified as being made to you at 3.59pm on 3 September, 2014, and Mr Hawatt is recorded as saying, "Hi, Charlie. I am okay to meet earlier if you like, let me know."---I can see that.

Are you able to assist us? It would appear that you've had an arrangement at the time - - -?---I would have - - -

- - - to meet with Councillor Hawatt?---Yeah, I would have requested a meeting regarding one thing or the other, it would have been a planning issue of some sort. I can't remember, but I would have requested a meeting.

30 And certainly by then you were on first name terms with Mr Hawatt?
---Well, everyone calls themselves by first name except - - -

If I could ask you to go to page 198. This is three days later on 6 September.---Yes.

Mr Hawatt texting you at 9.06am. "We are at Salvatores café, Homer Street, Earlwood, opposite Minnamorra Street and corner Wardell Road, where we met last time."---That's correct, yes.

40 You were meeting with Councillor Hawatt and somebody else in this regard on this occasion?---Yeah, I think, I think George Vasil may have been present in that meeting.

And what makes you think that?---Because I've only had a few meetings there, I think would have been three to four meetings in that area over the whole period of time.

This is in 2014?---Yeah, 2014-15, I would have only had, I probably would have had about four meetings in that, in the Earlwood area.

And what were you and Mr Vasil and Councillor Hawatt meeting about at Salvatores café on 6 September, 2014?---Oh, look, I can't recall the specifics.

10 What was the relationship you had with Councillor Hawatt at this stage outside of council business and your business?---Okay. The concern was that the planning proposal for 548, that was the major one in particular, had not been progressed as per the guidance of the Gateway Determination. There were three things to be done and it was frozen, it wasn't going anywhere, and that was a major concern to us.

Were you of the opinion that George Vasil could assist you in this regard?
---No, they just happened to, I was invited to that location so I went to that location. George had some understanding of the LEP and DCP in the local area so - - -

Did you understand that George Vasil and Michael Hawatt worked together on some council issues?---Sorry, please rephrase?

20 Yes. Thinking of George Vasil and Councillor Hawatt - - -?---Yes.

- - - did you understand they worked together as a team on some issues?
---Look, I understood they were both in the Liberal Party but that's as far as it went. One of them was a councillor, one was a real estate.

But beyond the fact that they shared a political affiliation, did you understand they worked together as a team on various council issues?
---Wasn't aware of that.

30 You weren't aware of that?---No.

Can I take you to page 200 in volume 18. This is another text message, this time on 17 September, 2014, and Mr Hawatt is texting you at 8.49am and Mr Hawatt says, "I'm in a meeting."---Yes.

This would tend to suggest that you had tried to contact him - - -?---Yes.

- - - and he was indicating that he couldn't respond at that time and telling you why.---That's correct, yes, I can see that.

40 Why were you contacting Mr Hawatt at that time?---Well, I understood in September of 2014 from recollection that the planning proposal for all of those sites wasn't going anywhere and for example, there was only three, three points officially that had to be dealt with, one of them was the traffic modelling for those sites and we had made submissions directly to RMS and they were happy with our, with our desired outcome for those sites based on traffic management and had requested further modelling to be undertaken, but they were supportive of the density and extra parking, but the council

staff were not interested, as we understood, or as I felt it back at that period of time to actually progress any traffic modelling that RMS would have required to allow the Gateway Determination to progress, even though they have, from memory again, they have resolved on this, later from that date, that the site should be sent to the department for finalisation, but in our opinion they couldn't have been made or they couldn't have been finalised because as we understood it, the three items that were requested in the Gateway Determination of May 2014 was not complied with.

- 10 And why were you talking to Councillor Hawatt about that?---Well, it's a major concern. Our planning proposals were resolved some year earlier approximately by council and they haven't really gone anywhere.

Was there a reason why you didn't contact Mr Montague instead, or had you in fact contacted him?---No. Look, at that stage, as I said to you, I had not made any contact or presentation to Mr Montague on the planning proposal and the council had resolved that, his role was finished.

- 20 But he controlled the staff and you said the staff weren't interested in progressing it.---Correct, that's the discussion I had with the planning director at that time.

Mr Occhiuzzi?---That's correct, yes.

You didn't think you would take it up to the next level and talk to the person who could give directions to Mr Occhiuzzi?---Look, there was a meeting but I can't remember the timing of it. There was a meeting that I took following that discussion to - - -

- 30 With Mr Montague?---That's correct. And, and, and the director of planning, and that was the first request we've made that whether we'd be allowed to take our 548 out of the equation and pursue it as a standalone to Department of Planning.

And was that meeting not satisfactory?---No, no. Mr Montague said, look, can't do it, can't be done, we do it for one, we do it for all. So he declined our request to actually allow 548 to progress, you know, post the council resolution that it can be, or they're satisfied can be increased to 25 metres.

- 40 And what was it that you thought Councillor Hawatt could assist you with in this problem?---Look, from past experience, councillors can call an item up or make an inquiry into it so it can be reported to council for further consideration.

And was that what you were asking Mr Montague – I do apologise – is that what you were asking Mr Hawatt to do on this occasion?---I was trying to explain to him that this is the process if, if the council would accept and he wouldn't offer any assistance on that basis. He said, "Look, it's an RDS,

it's, we've got to do it as a whole." So they both declined our request to, considering that council had resolved that (not transcribable) technical reports required under the Gateway Determination.

So, you do recall taking this up with Councillor Hawatt and that being Councillor Hawatt's response when you took it up with him?---Look, I, as I said, I can't remember the specifics back from those dates but it was two meetings that took place regarding this very issue, which is whether we can take our site out of the RDS and continue with it on a standalone.

10

And are you talking about a meeting with Mr Montague and a separate meeting with Councillor Hawatt or are you talking about two meetings with Councillor Hawatt?---No, no, no. There was one meeting at council level, which is Mr Montague and, and the planning director, and there was another meeting with Councillor Hawatt regarding that very same issue.

20

Thank you. Now, can I just ask, I just would like you to – if we still have volume 18, page 200. If you could assist us with – you see the telephone number that, according to Mr Hawatt's phone, he's assigned to you as Charlie Demian 3?---Yes.

It end in 9-4-5. If we go back to page 198, on 6 September, Mr Hawatt has called you on a different number, ending in 0-0-0. Do you see that?---Yes.

Are you able to assist us as to why that would have been the case, why he would have called two different numbers for you?---My, this number is the lead number, the [REDACTED]

30

THE COMMISSIONER: Is the what, sorry?---The lead, the main number. That's my, my personal number which I use and the other number would have been just another work number we had at that time.

MR BUCHANAN: I appreciate you're not the person who sent that text – it was Councillor Hawatt – but are you able to assist us as to why you think Councillor Hawatt would have sent it to this other number?---I would have, I would have made a telephone call from it on an occasion or two I suppose and he would have responded on it, on that basis.

40

Now, I just would like to take you briefly to volume 18, page 242, please and it goes through to page 273. It's quantity surveyor's report. It's dated 3 November, 2014. It's in respect of 548 Canterbury Road. It says, "In level 6 and level 7 only." Can you assist us as to, firstly, whether you commissioned this report?---I personally haven't but I've instructed my staff to do it, yes.

And why was a report commissioned for what's described here as level 6 and level 7 in the circumstances that we've already gone through of - - -?--- Well, following the requests that were decline by the council regarding

extracting our PP and taking it as a standalone, we decided to apply for the further two levels height limit under 4.6 for the reasons that as of that time both the Department of Planning had issued a Gateway Determination and RMS has issued an approval for the site to proceed.

Now, I apologise if I interrupt you, but - - -?---That's okay.

10 I understand what you're saying there and that is something I'll be coming back to in a moment, that you did put in an application to put an additional two storeys on the approved development.---That's correct.

But can I just draw your attention, as I'm sure you're aware, to the fact that the approved development was for a six-storey development.---That's correct.

20 So, why were you, given that you had approval for a six storey development, getting a quantity surveyor's report for a level 6 and a level 7? ---Based on the Joint Regional Planning Panel assessment one year earlier, that their decision to extend the height was not imminent at that time and for various reasons. One year later, we had the support or the approval of the Gateway Determination which means the Greater Planning Commission had supported it and RMS had basically allowed this particular site, based on the traffic modelling that we had undertaken up to that date, to be processed (not transcribable) and that's in that letter of August, 2014 from RMS.

Look, I must be being a bit slow, and I do apologise. I'm not pretending that I'm a planner or a developer or anything.---Sure.

30 What I don't understand is, you already had an approval for a six-level building. Why did you need a quantity surveyor's report that was in part for level 6?---So on the development application you have to pay an administration fee. The administration fee is based on the value of the works to be undertaken. So we do the quantity surveyor's report on every single development application, application to work out what the actual fee is when we submit the development application. I'm sorry, I didn't understand your question earlier. But that's the reason we do a quantity surveyor's report. So we do it for the assessment - - -

40 Okay. Sorry. On the one hand you have an approved development - - -? ---Standalone.

- - - which is six storeys high.---Yes, yes.

Then you apply for approval for - - -?---A further two levels.

- - - an extra two storeys on top - - -?---That's correct.

- - - which would take it to eight.---Absolutely.

Why is this quantity surveyor's report for level 6 and 7 and not level 7 and 8?---No, because level – sorry. This 6 and 7, it's just the interpretation or the actually labelling of the levels. So this guy would have used the ground level as, as ground, as G, and level 1 would have been the upper level, where we usually use level ground as 1, 2, 3, 4, 5, which is the height. So 6/7 is equivalent to 7/8, just different interpretation.

10 Okay. Now I understand.---And again I didn't understand your question.

So this report was prepared in respect of the subsequent - - -?---7/8.

- - - DA for an additional two storeys?---Yeah. I apologise, I didn't understand the question earlier.

And that was for an additional level that would be 7 and an additional level that would be level 8.---That's correct.

20 Thank you. Now, taking you if I can to November/December in respect of 548-568 Canterbury Road - - -?---Sorry, what year?

This is 2014.---Sure.

First of all can I take you to page 292 of this volume.---Yes.

This is a section 96 application with the number DA 509/13/A.
---That's correct.

30 And it's by Statewide Planning to modify the approved development. Is that right?---That's correct, yes.

And it sought additional car parking to accommodate extra units?
---That's correct.

And those extra units were contemplated by the DA 592/2014 to add two storeys to the approved development?---Yeah, that's correct.

40 And if we go to volume 19, page 4, we have there the first page of the development application 592/2014, received by council on 16 December, 2014, and that's for the extra two floors.---Yes.

And there is a status – sorry, I do apologise – a statement of environmental effects, page 13.---Yes.

And at page 30, if I have the, yes, I do, the reference correct, page 30 the building height for the combined approved development and the additional two storeys would be, looking in the middle of the page, 24.47 metres to the roof slab and 28.85 metres to the lift overrun.---That's correct.

And as well, at page 57 you included, or your staff included a clause 4.6 submission for height variation.---Yes.

Now, obviously an eight-storey development, if you could achieve it, would net you a greater profit than a six-storey development on the same site.
---It will add 70 extra residential units or possibly, up to that potential.

10 Can I just ask you to – still on this statement of environmental effects, page 37, the hope, if that’s the right word, was that by the time of determination the draft LEP will have been adopted by council and essentially be in place.
---Sorry, in December of 2014, we did not believe that the Residential Strategy, Development Strategy for Canterbury Road was going anywhere fast. It was pretty much in a no-go zone at that time and the simple reason is that there was only three steps to be undertaken by council to be able to finalise it and, as I understood, the council did not undertake those three steps.

20 But this is a statement of environment effects that I assume you approved before it went forward to council?---Oh, I don’t read every, I don’t read them. I just look at the summaries on them.

Right. Can you see the words, “It is expected that,” in about the middle, a bit over the middle of the first paragraph there? “It is expected that a determination as to the imminency and certainty of this LEP amendment will be available to council at the time of determination, thereby allowing an informed decision at this stage.”---Oh, we had no doubt that it will eventually take course. So, that was the understanding.

30 Was your strategy, that the planning proposal would have been approved and the development, I do apologise, the amendment to the LEP had been made by the time of determination?---No, no. Look, the reason the decision was made to use a 4.6 application at that time would support the application was that the planning proposals tend to take quite a while, especially if they’re not being pursued by council officers. So the instrument allows for the use of 4.6, especially when in our opinion the rezoning was imminent at that point of time.

40 And you considered, did you, that the immanency of the rezoning was something that could be taken into account in considering whether you had established grounds under 4.6 for a variance of the height limit?---I had advice from both our planner and our barrister at the time, regarding the appropriate use (not transcribable) of a 4.6. Those submissions were attached and submitted at the time and following the DA submission date, as the council officers requested further information.

Now, if construction value was less than \$20 million for the two additional storeys?---Yeah, somewhere like, around 13 million or thereabouts from memory.

So, the consent authority was not the JRPP but council?---I really didn't know how it worked. I, I understood that it was likely to go to JRPP considering they've dealt with the first development application. So, I personally didn't have that – it wasn't my decision but I didn't have an understanding on that.

10

Did you have an understanding in December 2014 that there was this \$20 million threshold?---Yes. I understand that, yes.

For the determination to be made by the JRPP rather than by council?---No, no. My understanding from previous experiences that if the JRPP deals with an item of a project, then they will continue dealing with it right to the end. That was my understanding at the time.

20

Did you consider at any stage that you had a better chance of getting approval for an eight storey, essentially 25-metre-high development by adopting the strategy of going for a six-storey development DA in the first instance and subsequently trying to add an extra two storeys on top?---No. My evidence earlier is that we submitted an eight-storey development application one year earlier, in late 2013. In around the first or second quarter of 2014 we were made aware that the JRPP did not consider the rezoning as imminent at that point of time and it wouldn't support an eight storey. So, we were given the opportunity via one of those information request letters to actually amend our application and resubmit it, which we did. So, we accepted that at that time.

30

Can we go, please, to volume 20, page 193. This is a report, an officers' report, that is part of the business papers of the IHAP for a meeting to be held on 3 August, 2015, and it's in respect of 570-580 Canterbury Road and a DA identified as 591/2014. The application date for that DA is identified as 16 December, 2014. You see that in the middle of the page?---That's correct.

Can I ask you some questions about 570-580 Canterbury Road?---Yes.

40

Did you own that site?---Not as of that date but we had optioned it. We had it under what we call an option, put-and-call option, and we settled I believe from, again based on memory, some short time after this date.

When you say settled as in you did execute the contract?---Finalised, finalised the transaction, yes.

Was that in 2015, then?---That's correct.

How did you finance that acquisition.---Same as the previous one. Loans against the properties, first mortgage facilities.

So you had interest payments to pay and holding costs to pay in respect of this property as you did the previous property?---That's correct, yes.

Now, this was for construction of a six-storey development?---Yeah, it was a development application, application for demolition and the development of a six-storey building.

10

And as you can see at the bottom of the page there, the director of city planning recommended that it be approved by way of deferred commencement, subject to conditions.---Yes.

The DAs for the extra two storeys on 548-568 Canterbury Road and the DA for 570-580 Canterbury Road were both lodged on 16 December, 2014. ---Yes.

Was there any connection between the two?---No.

20

Was it, at the time you lodged the application for 570-580 Canterbury Road, your plan to use a strategy of obtaining approval for a largely compliant proposed development on 570-580 and then, having obtained that, to apply for consent for an extra two storeys despite the building height limit?---No, look, at the time that we, excuse me, at the time we actually started working on purchasing or acquiring the site in 2014, the LEP had only allowed an 18-metre height, and this particular site wasn't included in the original council resolution back in October of 2013, so my intention was just to get a development application that is compliant and go forward. We exercised the option, from recollection, on 18 August, 2014 on this property, so our control had begun from that date and going forward.

30

August 2014 or '15?---'14 is when we acquired a put-and-call option on that particular property.

And is it just a coincidence, then, that you ultimately applied for consent to put an extra two storeys on an approved development at 570?---Well, again, when that decision was made I think a year later, would have been, we would have done our traffic model and submitted it to, to RMS. Would have had our proposal submitted to the department for their sort of advice. And I believe that the council had resolved in October of 2014 to increase the height. We had no input in that. That was made known to me at some later stage. But from documentation, the council resolved to increase the height on 2 October, 2014, which was some short time after we actually transacted on those properties.

40

So thinking then of the DA for the six storeys on 570-580, you understood did you that that DA would be referred to the IHAP for assessment?---No,

no. I mean the value, and again, look, it was a totally standalone site but there was some slight integration between it and 548, so I wasn't sure who was going to assess it, and the reason for that is we provided the access via a laneway behind or incorporated in 548 and we took some land to make the turning circles work for that particular development application, so I had no idea who was going to assess it.

10 Did you understand at some later stage that the application would go to the IHAP for assessment and recommendation?---I thought there was a process we understood that all applications go to IHAP.

Now, just to tie off 548 - - -?---Yes.

- - - to 568 Canterbury Road, on 23 December I want to suggest to you, if we go to page 232 in volume 11 - - -?---Okay.

There's a copy on the screen if it's of any assistance.---Yes.

20 That's a letter from council that I've shown you before.---Yes.

And it indicates that council told the department that it would pursue the increase in height for the development on the Harrison's site when the RMS concerns had been addressed.---I'm just looking for the date of that letter.

30 Yes. The last page is 233.---Okay. Well, RMS is, and this is, this is not correct. RMS had issued its letter and supported our application for the increased density in August of 2014 and that was a comprehensive letter, not just our site, a variety of sites. I think that date would have been around 14 August of 2014, RMS letter addressed to council.

But nevertheless you can see that that's what council told the department at the bottom of page 232?---Can you please, can you go back to it, please?

40 Yes.---Yeah. That's a letter basically saying that even though RMS has recommended that our site be processed going forward, because we had submitted our traffic modelling as of that date and request that we modify it, and we do, I think what's it called, the SIDRA modelling or whatever reference was made to it, but it was a particular program that we had to use for that density, and the second proviso that we used the laneway at the back and not rely on Canterbury Road for multi-directional traffic management. We recommended left-turn only and the rest can actually be diverted away from Canterbury Road and around the area. For that reason RMS was prepared to accept our submission and density for that site as there was zero impact on Canterbury Road. Now, that was in August of 2014. The council, for whatever reason, didn't seem to want to do much with it, so we continued working with RMS direct by submitting those reports required.

Now, can I move forward, please, to February 2015. If we go to volume 12.

---Which volume, sorry?

Would you just pause for a moment. I might have to take you back to the subject that I've just been asking you a question about.---Sure.

Thank you. I apologise for that. Can I take you to volume 12, page 1.
---I don't have volume 12.

10 Sorry, we'll provide you with a copy.---Ah hmm. Yep.

But there's a copy on the screen as well.---Yes.

In the hard copy it goes through to page 32.---Yes.

This was a planning proposal by council to the department for 998 Punchbowl Road, seeking an FSR of 2.2:1 and a height of 15 metres.---Yes.

20 And can I jump forward to April 2015. Volume 12, page 156. Excuse me a moment.---Yes.

This is a letter, a copy of a letter, to Statewide Planning from the department – I do apologise, from council. And if you go to page 157 the date is 8 April, 2015. It's from the manager (land use and environmental planning).
---Yes.

And it tells you, it brings you up to date with what's happened with the planning proposal.---Yes.

30 Did you see this letter or were you briefed on this letter?---Oh, look, I personally wouldn't have read it, no, but I was aware of the process taking place.

And can you see in the fourth paragraph on the first page – that is to say page 156 of volume 12 – that Statewide Planning was told by council. It was subsequently confirmed with the department that this urban design study should be of an independent nature. That is to say, an urban design study that the department required as a condition of the Gateway Determination.---Yes.

40 And that that was, to look at the second paragraph, further justification in respect of the planning proposal prior to the matter being considered at the planning Gateway.---Yes.

You were aware, then, that council had decided to commission an urban design study to endeavour to provide that justification for that increase in FSR and height limit?---Yes, I was made aware of it.

Were you aware that council retained an urban designer called Peter Annand?---I had no idea who he was at that time.

Now, this is April 2015. Had you heard of Mr Stavis by this time?---Yes.

And had you met him?---I would say I would have, yes.

Had you heard anything about him from Councillors Hawatt or Azzi?---No.

10 You're quite sure about that?---Absolutely.

So - - -?---Look, there was – sorry, I'll rephrase. There was one message received from Councillor Hawatt at one stage, pending or post an inquiry I had made to him, forwarding an SMS from Mr Stavis. I cannot recollect the date. I have no idea what the date was. But there was a message that was sent to me which is a forward of another SMS from Mr Stavis addressing the issue I had of concern at that time. But I can't recollect the date.

20 In relation to one of your development projects?---That's correct, yes.

You were aware of this conflict that had occurred in December, January, going into February of 2015 inside council, where Councillor Hawatt and Azzi were trying to get Mr Montague sacked as the general manager?---I was aware of the issue, yes.

30 And were you aware of the issue over which Councillor Hawatt and Azzi indicated they wished to get Mr Montague sacked, namely the employment of Mr Stavis?---I wasn't, I wasn't aware of the intimate details but I knew there was an issue concerning the termination of a contract of employment.

In relation to Mr Stavis?---I understand that to be the case, yes.

40 Were you ever told anything by Mr Hawatt or Mr Azzi about Mr Stavis before, say, April 2015?---Oh, look, sometimes, look, as I said to you, I can't remember the first (not transcribable) we had with Mr Stavis as I had a lot of meetings with them at council regarding those applications, but I can't remember the first time I met him, no. And there was no discussions with councillors, I would say, until about May/June of 2015 regarding some of my projects with Mr Stavis's assessment of those or processes of those.

Were you ever given the benefit of Councillor Azzi or Hawatt's opinion as to the suitability of Mr Stavis for the position of director of city planning? ---No. That wasn't a matter for discussion. It's not my role.

Well, you knew that the director of city planning exercised a good deal of power over applications you had before council, didn't you?---I know he makes the ultimate decisions. I'll rephrase. I know he signs off on reports to go to council for determination.

And so you knew that he exercised, for at least that reason, a good deal of power over applications you had before council?---As all planning directors do, yes.

You weren't interested about the fact that there was this controversy that appeared to be as whether Mr Stavis should be employed or not?---It had nothing to do with our input.

- 10 Well, if a particularly pro-development candidate for the position of director of city planning was the subject of controversy as to whether or not he should be employed, wouldn't that interest you?---Well, you're saying that. I wasn't aware of that at the time and nor did I have any role to play in the appointment of the planning director. Imagine if I did?

I'm not saying you did, I'm asking. Your interests aligned, did they not, with the appointment of a pro-development director of city planning?
---Yeah, but how would I know he was pro-development at that time?

- 20 If you were told by Councillor Azzi or Hawatt?---I would wish for one, for sure.

Were you told by Councillor Azzi or Hawatt anything to indicate that the man with whom – the man over whom this dispute was occurring with Mr Montague was particularly pro-development?---Until the first time I met Mr Stavis, we've had zero discussions regarding Mr Stavis' experience and appointment. So, there was absolutely no discussion whatsoever.

- 30 Did Mr Montague say anything to you at any stage about the suitability of Mr Stavis as a candidate for director of city planning?---Again, nothing to do with us and the answer is no.

And you're quite sure that Mr Montague never gave you any indication as to why this dispute had arisen between him and Councillor Hawatt and Azzi about the employment of Mr Stavis?---No. Absolutely not. Why would he? I shouldn't be asking question, that's fine. The answer is no.

- 40 Because he was your friend, Mr Montague was your friend, that's why.
---Mr Montague was a professional person I've met at council and was not my friend.

And because, as I put to you before lunch, you intervened with Councillor Hawatt on behalf of Mr Montague in his presence, in Mr Hawatt's office in Lakemba during this controversy.---Look, as I said to you earlier, my only interest was that all the applications were on hold at that period of time. That's it, that's as far as it went.

You had a particular interest, didn't you, in the employment of Mr Stavis as director of city planning?---Absolutely not. It made no difference who came to be planning director of council to me at that time.

Mr Khouri was a person with whom you were in regular communication in 2014-2015?---Yes.

Mr Khouri must have said something to you about Mr Stavis?---No. We don't, he did not say anything about that to me.

10

I'd like you to assume that Mr Khouri had a good deal of communication with Mr Stavis at the time he was a candidate for the position.---I don't assume anything, so please ask me a question and I'll answer it.

THE COMMISSIONER: No.---I can't assume, I'm sorry. I, I don't know what to assume.

20

MR BUCHANAN: But if you just assume for a moment that there's evidence that the Commission has that Mr Khouri was in a good deal of communication with Mr Stavis at a time that he was candidate for the position of director of city planning - - -

MS RONALDS: Well, I object. If there – in my submission, even in this Commission, an unfair assertion to say, “Just assume it happened.” If there's evidence before the Commission, as we have been doing, the Counsel Assisting should properly put that evidence to the witness. It may take longer but that's what's fair.

30

THE COMMISSIONER: Ms Ronalds, you haven't been here for the past weeks. There is considerable evidence about Mr Khouri's contact with Mr Stavis around the time he was the applicant. I will allow the assumption to be put because otherwise your client will be here not for a day plus but for a considerably longer period.

MS RONALDS: Well, with the greatest respect, A, I have read all the transcripts, so please don't think I don't know what's been going on.

THE COMMISSIONER: Right. I'll allow the question.

40

MS RONALDS: All right. Well, I'd just like it noted on the record I think it's extremely unfair. There are many ways to tabulate complex evidence, that's the role of Counsel Assisting, not to put assumptions.

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Commissioner. Mr Demian, there is a lot of evidence before the Commission that Mr Khouri was in contact on quite a number of

occasions during his candidacy for position of director of city planning. Do you know why that would have been?---I have no idea.

MS RONALDS: Well, I object. First of all, as far as I know, Mr Khouri was never applying for the position.

THE COMMISSIONER: Sorry, I think there might have been confusion.

10 MR BUCHANAN: I'll reframe the question. I do apologise if I got my candidates mixed up.

THE COMMISSIONER: Yes.

THE WITNESS: Sure.

MR BUCHANAN: Please assume that there is a good deal of evidence that Mr Khouri was in a good deal of contact with Mr Stavis during Mr Stavis's candidacy for the position of director of city planning. Do you know why that would have been?---I have no idea.

20

Did Mr Khouri not say anything to you?---Sincerely, no.

Does it seem to you a surprise, given your dealings with Canterbury City Council and your interests before Canterbury City Council that this man who was a consultant to you would be having dealings with the man who ended up being director of city planning but during his candidacy for that position and not tell you anything about it?---No, there was no discussion whatsoever with Mr Khouri regarding that topic.

30 He never hinted to you that, look, there might be a good candidate coming up for this particular position?---There was general awareness that there were I think Mr Manoski and someone by the name of Spiro that had applied for the position. That's it. That's as far as I, I knew at that time.

Where did you get that general awareness from?---I don't know, it was industry, industry knowledge at that time. I can't remember who told me, but it wasn't Mr Khouri.

40 Who would have been the source in the industry for the knowledge that there were candidates for the position of director of city planning at Canterbury Council in July of 2014 by the name of Spiro and Manoski? ---I have no idea.

I suggest to you that the obvious source was Bechara Khouri.---That's not the case.

You got that knowledge from Bechara Khouri and you just let it slip out, didn't you?---No, absolutely not, it's not a slip out, I'm telling you what I

was aware of as a general industry gossip at that period of time and I can't recall who would have mentioned that to me.

So did you hear anything about how the process of selection of the successful candidate went?---No idea.

Did you hear that an offer of employment was made to one of the candidates?---No, not at the time it was made.

10 When did you first hear that an offer of employment was made to one of the candidates?---Oh, look, when all the commotion about the dismissal of Mr Montague became knowledge, industry knowledge, and that would have been early 2015 sometime, I don't know when.

You see it just seems very unusual that you would have this relationship with Mr Khouri that you've described, particularly in relation to Canterbury Council, particularly given his relationship with Mr Montague, and you would have been kept in the dark, if your evidence is to be believed, by Mr Khouri about what was going to with the employment of Mr Stavis as
20 director of city planning.---My evidence is factual and that wasn't something I was involved in or had any role to play, so it was of no interest who ends up in director of planning.

Well, I need to put it to you, your evidence can't be believed on that subject. ---Well, that's your issue.

Perhaps I should just take it one little step further. Were you involved in trying to organise the selection of Mr Stavis for appointment as director of city planning?---Absolutely not.

30 Now, can I take you, please, to volume 12, page 96, if I have the right page number, I do. This is the front page of a report – and please feel free to go through the hard copy, Mr Demian - - -?---Thank you.

- - - of the first, of the final version of the first report provided to council by the consultant they retained to satisfy the department's Gateway condition to provide justification for the increased FSR and height limit for 998 Punchbowl Road.---Yes.

40 Did you learn that there was a report by council's consultant which said – and I'm referring now to page 106, going over to page 107 – that said that the proposal had overlooked, or that is to say forgotten about, reservations of land for road-widening by the RMS which required three-metre setbacks on the southern side, thereby reducing available land for development? ---Sorry, which paragraph are we looking at?

Well, I'm giving it so that we all have a reference point, but I'm actually after your recollection.---Yeah.

Do you have a recollection of learning that council's consultant had said, look, there's a problem here with this proposal. You've overlooked the fact that on the Canterbury road side, going up into Punchbowl Road, there's a reservation for road widening and it hasn't been taken into account, and so the footprint for the proposed development is too big.---No, that's, that's, that's not the fact. Actually we was, we were aware of the potential for road widening in the past from RMS, and we provisioned between 2.8 metres up to about 4.5 metres of a reserve. Now, we maintained, from recollection again, a six metre beyond that provision. Now, the site is 2,000 square metres - - -

Sir, I'm not asking you to justify the planning proposal.---Sure. We were aware of that potential.

I'm asking you whether you learned that as far as council was concerned there was a problem.---Sure.

And the problem was a failure to take into account proposals for road widening, thereby reducing the available footprint for any development on that site.---Just so I can answer. A failure by whom? Us or the council consultant?

No, in the person who put together the proposal.---Well, who? Us or the council planner?

You seem to think that I'm trying to blame you or your consultants. I'm not.---No, no. I'm just trying to understand so I can answer the question. I'm trying to understand genuinely. Who are you referring to? Us as putting the submission - - -

Don't you remember that the council was told by the department to retain a consultant to provide further justification for the loosening of the planning controls in respect of FSR and building height limit that was set out in the planning proposal that had been sent by council to the department?---An urban study required, yes.

That was what, at that stage, the consultant was asked to look at and in this report reported on.---Yes. That's correct. I understand that to be the case.

So I'm not having a go - - -?---That's okay.

- - - at your planning processes. All I'm asking is did you understand a problem came up and this was a problem that had been identified by the consultant, whether he was right or wrong, but it meant that the footprint had to be reduced?---I became aware of that in a meeting with Mr Stavis where he had one single page with him and we discussed setbacks, and that would have been after mid-2015.

Is it possible that's a different meeting? Setbacks became a problem, were another problem later on. But I'm asking you about, at the moment, just simply the problem that the footprint was affected by the RMS road-widening reservation.---Well, that's not the case.

10 THE COMMISSIONER: So you didn't become aware that that was a problem raised in Mr Annand's first report?---Look, I wasn't aware of Mr Annand's reports. They were not provided to us. But we were always aware of the fact that is a potential road widening for that corner, going back years and years and years ago. So we're always aware of that and we provisioned for that.

MR BUCHANAN: Were you ever made aware that the footprint would have to be reduced?---No.

Never made aware of it?---By whom? No. The answer is I haven't seen these reports and the answer is no.

20 I'm not saying you have seen it. I'm simply asking whether anyone made you aware that here was a problem, that the footprint would have to be reduced?---No.

No one ever told you that?---No.

I take it you were never made aware that, in the opinion of the consultant, an FSR increase of 0.5:2.2 represented an overdevelopment of the site?---The consultant's opinion, is that what you're saying?

30 Yes.---I understand that to be the case, yes.

Were you made aware of that at the time when the – around the time that this report was provided?---No, no.

You weren't made aware?---I was not made aware, no.

40 Were you made aware that there was a failure on the part of the planning proposal to take into account SEPP 65 setback requirements?---I wasn't made aware of that.

THE COMMISSIONER: Are you answering that you personally or - - -?
---I personally, yes.

So, could it be the case that some of your consultants or staff were made aware of it?---Possibly, yes, and that would have led to a meeting at council to try and discuss those issues raised.

And would have you been a party to that meeting?---Yes.

MR BUCHANAN: And you would have been told why the meeting was needed?---Yes.

And a meeting would have been needed if you were asking for something from council?---Well, no. The department came back and advised that there were certain things to be undertaken. One is an independent urban design outcome and, following that, the council asked us to undertake a traffic report, which wasn't, which, mind you, was supported by RMS. We didn't
10 agree to do it but we were requested and a further architectural design outcome to be completed and provided back to council, which we did.

Were you made aware that council's consultant had indicated that, given the setback requirements, an FSR of 2.2 at a height of 15 metres didn't appear to be achievable on the site?---Look, I have no privy to those reports. At the time I had no idea.

Were you made aware that council's consultant recommended that the FSR be kept at the FSR originally proposed by council of 1.8?---Again, look, I
20 wasn't privy to those reports and I wasn't aware of that.

So, no one told you that there was a problem that had been raised apparently by council's consultant which had been retained to provide the justification report for the loosening of the controls?---The first I became aware that there were problems is at that meeting at council.

And which meeting are you talking about?---Well, the meeting that Mr Stavis had one plan, which is one page, which actually depicted the footprint for the first four levels of a building versus the further footprint for
30 any height above that and we had some discussions on those topics.

Is it possible that your consultants were told about the necessity to go back to an FSR of 1.8?---I have no idea.

They didn't indicate anything like that to you?---Oh, look, I can't recall.

But you would remember, wouldn't you, if you had been told by your own consultants, "Look, we've got a problem, we can't achieve what we set out to achieve. We've been told we've got to come back in," as it were?
40 ---Look, as I said, I was made aware of the issues in the meeting held at council.

Can I ask you, please, to have a look at – I withdraw that. And I take it in that case you didn't take up with Mr Montague or Mr Azzi or Mr Hawatt any of these issues that I've been running past you? Because they're all a mystery to you.---Absolutely not because they were technical discussions with, with consultants and experts. It had nothing to do with other personnel.

They didn't have any impact on you when they would result in a significant reduction in lot yield?---Well, it wasn't, look, when I became aware of it, I've put forwards our thinking of how they were wrong in our assessment and we left it at that.

And when you say you put forward, how did you do that and to whom?
---Well, the, the, at the meeting with council, they had a diagram and that was just shortly after the ADG came into effect in June of 2015.

10

This is with Mr Stavis?---That's correct. Which varied the setback requirements for flat buildings, which increases a further three metre separation to any of the potential separations in the ADG to different zones.

20

I'm listening. Yes, please go on.---Sure. So we've, in that meeting we've discussed that the six metres to the northern boundary be increased by a further three metres to the actual setback requirement, which was consistent with the ADG, effective from that date onward. We have decided and put our plan forward that on the western side we didn't need to do so, even though the zoning was similar to the northern one because there was a car yard and mechanical workshop operational on that site for some time, so we've suggested the existing (not transcribable) comes into effect and there was no need to have the further three metres. We agreed and draw on that diagram that six metres would be maintained from Canterbury Road site on the south side above any RMS requirements, which was estimated to be three metres on average. As I said, starting at 2.8 up to about 4-point-something metres. And on the western side we maintained six metres from the boundary. So there was six, nine, six, and six plus three, which is another nine. So that was the discussion. It was actually sketched on that piece of paper and which I took with me. From memory I had to email it back to Mr Stavis.

30

THE COMMISSIONER: Who was at this meeting?---It was myself, Mr Stavis, I think Mr Daniels was present, and Mr Stewart, Tim Stewart, from our side, and I think Mr Stavis would have had a staff member, which I have no idea who the name was.

40

MR BUCHANAN: That meeting was later in 2015, wasn't it?---No, no. It was around, around, as I said it was almost immediately after the new ADG came into effect, which became more prescriptive on, on the requirements of planning.

Yes, but what's your best memory as to when that was?---Oh, look, would have been in the third quarter of 2015, I would say.

So if you were meeting with Mr Hawatt in June 2015, it would have had nothing to do with 998 Punchbowl Road, is that right?---Regarding that at that time, no.

What would it have been regarding?---Oh, well, other projects in the area.

I'm sorry?---Other, other projects.

Other projects.---I can't recall, like, the specifics unless you guide me to it.

Well, thinking of June 2015, what other projects had issues that you needed to canvass with Mr Hawatt?---One was the planning proposal for 548
10 Canterbury Road. That was one I would have liked to actually progress forward. Two was the 570-580. I've informed them that we have been doing traffic modelling as per the RMS request of August 2014 and we've completed, and RMS had supported both of those project increases and densities. I think there was a, there was a, there was the August 2014. There was a letter on January of 2015 from RMS and a further one in March 2016. So we've had support from RMS in writing for those proposed planning proposals, and my interest was whether we could actually extract them and continue with them knowing that there are other projects in the
20 RDS that had issues with RMS and other agencies. So that would have been the premium interest that we had.

THE COMMISSIONER: So they were the two issues you say you would have been discussing with Mr Hawatt?---At that, at that period of time.

Around that time.---Yes, around that time, yes.

MR BUCHANAN: Could we have a look, please, at volume 19, page 154. This is another schedule with only one entry in it of an SMS extracted from Mr Hawatt's phone. It's an email – sorry, I do apologise, it's a text message
30 to you, to your 6-1-0 telephone number, on 12 June, 2015, at 11.14am. And it reads, "I am downstairs. Can you let me in?"---Yes. That would have been in my office at 7 Charles Street, Parramatta.

So why was Councillor Hawatt travelling to your office at Parramatta to have you let him into your office so that you could appraise him of these problems that you were having?---He had, I believe he had a meeting in the area and my request for that meeting was probably a few days earlier, and he said he will advise me on our rights, and that's what this SMS, you
40 know, does.

How many meetings did you have with Mr Hawatt at your office in Parramatta?---Oh, look, I'd say two or three. It wasn't very, it was a very rare times that he would come. The only time he would if he was in the area if there was an issue of some sort.

And when you say if there was an issue, you mean an issue with one of your development projects?---Yeah. We had five projects in the area at all different stages and they were being progressed in one format or the other.

Yes, it was very good service you were getting from Councillor Hawatt on this occasion, wasn't it?---Well, I mean it's his obligation as an elected official.

10 And you expected that to be provided to all other developers and ratepayers in the Canterbury municipality, irrespective of whether they lived in it or not?---I don't know what he does, but as I said, as far as I was concerned he was willing to meet and we informed him and put our cases forward from time to time.

Another construction that could be placed on it is that there was a particularly special relationship that Councillor Hawatt considered he had with you at the time that meant that he felt that it was appropriate for him to travel to your office and ask to be let into your office in order to speak with you.---That's not my construction.

20 Page 155. This is an email at the middle of the page from Michael Hawatt to Spiro Stavis, and you can see that it's been forwarded in an email by Spiro Stavis to Gillian Dawson on 18 June, 2015 at 11.04am. Do you see that?---Yes.

Now, first of all, Mr Hawatt's email to Mr Stavis mentions at item 4, "Also for Charlie Demian and," I think he misspells your name, "And Matt Daniel re Canterbury Road Campsie."---That's correct, yes, I can see that.

30 Canterbury Road, Campsie would be a reference to what, do you understand?---Well, we've got two sites in there, we've got 548-568 known as the Harrison and we've got 570-580, so it could be either one of those.

This would appear to be an agenda that Mr Hawatt was taking to Mr Stavis or suggesting to Mr Stavis for a meeting.---I don't know, you've got to ask him that.

Well, we don't have to, because in the email from Mr Stavis to Ms Dawson he says, "Can you give me an update and any associate docs for the relevant sites below. My meeting is on at 3.30pm tomorrow."---Sure. I can read that.

40 And then at the top of the page you can read, "My meeting with Councillor Hawatt tomorrow."---Yeah, I can read that.

So this is an agenda for a meeting that Councillor Hawatt wanted to have with Mr Stavis.---(not transcribable)

Does it come to you as, are you pleased or surprised to see - - -?---What, reading this email now?

Yes.---Yeah. Well, I mean, that's good.

That's the sort of thing that you would have hoped that Councillor Hawatt was doing in respect of the issues you were taking to him?---Well, as I said, we make, we sort of put cases forward and it's up to them to do what they do.

Can I take you to a text the next day - - -?---Yes.

10 - - - on 19 June at page 157. Item 1 at the top of the schedule - - -?---I can see that, thank you.

- - - to you from Mr Hawatt on your 6-1-0 number, on 19 June at 12.17pm. "Hi. Can we meet at 2.00pm or tomorrow afternoon? I have too much on my plate as I need to be in the city early tonight and attend a meeting at 5.30pm. I'm also catching up with Spiro at 3.30pm to discuss a number of matters including yours."---Yes.

20 Signed, Michael.---I can see that.

It seems here that Councillor Hawatt, this is not the first time, is making approaches to you rather than you making approaches to him.---That wouldn't be the case. I would have put our issues forward for him to reply to them. He wouldn't just come out of the thin air and, and provide that.

You replied at 12.19pm, "Let's make it tomorrow then. I want to take you through a couple of documents of proposed strategies."---That's correct.

30 What is the strategies a reference to?---Well, planning strategies. So basically like it's all strategies on whether something is sustainable in a certain area based on character and surroundings, transport issues, (not transcribable) other issues. So we would have been talking about those sites at that time that would have been discussed with council officers.

Now, this meeting apparently did not take place at council chambers. Can you see the next text messages at 12.23pm and 12.24pm where Mr Hawatt proposes that you meet him at his place and you agree?---Okay. Yes.

40 Why did the meeting not take place at council chambers?---I don't know. I think from recollection Michael was doing a refurbishment on his house and his place is on my way home. I don't, I don't even remember what day that would be, whether it's a Saturday or normal day but his place, he lives on my way to my home and that would have been a convenient location for both at that time.

How many times did you meet Michael Hawatt at his place?---Look, I'd say no more than two or three times.

How many other councillors did you meet at their residence?---Councillor Azzi's.

Any others?---No.

10 It seems an unusual relationship to have with councillors with whom you were having only a professional relationship and discussing planning issues to be meeting them at their residence. What would you say to that?---I understand that is a normal process for some councillors to meet people at their homes where they turn their homes into meeting places but as I said, the proposal was that I meet him at his place and I didn't have an issue with it.

If I tell you that 19 June, 2015 was a Friday does that affect your evidence? ---It'll make it sensible. At 2.30pm that would have been my last appointment for the day, on my way home.

And was his place on the way home from Parramatta to where you live? ---That's correct, yes.

20

So did you socialise with Councillor Hawatt on that occasion at his place? ---No. Look, actually that would have been the time I think he might have provided me with a copy of the ADG guidelines, a hard copy, and I said I will return it once I had a look at it.

30 Excuse me. Are you saying that Councillor Hawatt was the source of the new Apartment Design guidelines to you?---No, I'm not saying that at all. What I'm saying I was aware of it and it happened he had a hard copy printed and I was interested in the changes that were made so I took the opportunity and took the document.

Can I take you then to page 158 in this volume, sorry, page 159. These are further SMSs, this time on 20 June, 2015. In the first instance from you at 2.28pm to Councillor Hawatt. It's a hang-up message. In other words you had rung him but got the message bank and you didn't leave a message. And the same occurred at 2.47pm and then at 2.47pm you sent him a message, "Please call." Do you see that?---Sir, this was incoming to my phone on the first, number 1 and 2, is that what you're saying, and 3?

40 No.---Or outgoing?

I apologise if I misled you. These are, this is all data in Councillor Hawatt's phone that's been extracted from it.---I understand. I understand.

And it simply indicates that at 2.28pm and 2.47pm you called or rather your telephone called and reached the message bank but no message was left on those two occasions but then you did leave a message at 2.47pm, "Please call."---I can see that, yes.

That message is suggestive of a relationship with Councillor Hawatt at that time which is different from the relationship that you've indicated or described to us.---No, that's not the case. All my relationships with the councillors at that time was on a professional level.

10 But essentially you were treating the councillor as person who was akin to an employee or a consultant.---That's not the case at all. I mean our contacts and discussions would have lasted no more than a few minutes at any time and he was interested in the planning matters surrounding the council so - - -

Can I take you to page 161, please.---Yes.

This is a message that was sent by Councillor Hawatt's phone to Mr Stavis's phone on 20 June at 4.35pm. "Hi, Jim/Spiro. Can we meet with myself, Pierre and Charlie Demian on Tuesday to discuss Charlie's developments along Canterbury Road. Please let me know. Thanks, Michael Hawatt."
---Yes.

20

Had there been a communication between the text message where you asked Councillor Hawatt to call at 2.47pm and this text message to Spiro Stavis, and apparently also Jim Montague, at 4.35pm?---Look, that may have been the case, yes.

30 Why was it, as you understand it, that Mr Hawatt wanted to organise a meeting with Mr Montague, Mr Stavis, himself, you and Pierre Azzi about developments along Canterbury Road?---That was a meeting I referred to earlier in my evidence, the meeting that happened in the general manager's office, and the two councillors had turned up to that meeting. So there was general discussion along a variety of projects and in that meeting I've requested whether we can schedule a series of meetings, which would be fortnightly or three-weekly period, until we resolve some of those issues. Mr Montague declined, and when I asked him why he said it's like the tail wagging the dog, basically that type arrangement, and the council will get back to me when they're ready and when they're happy to have a further meeting (not transcribable) have further meeting. So that was the meeting of, of that time.

40 And what were the sites that were the subject of discussion at that meeting?
---Look, there would have been a few because we would have taken on – and again I can't remember the dates – but we would have taken on some further properties, so we had a further interest in I believe 677 was one of the sites included in the 2013 council resolution but was excluded at a later stage.

Just at the moment I'm trying to just understand what were the properties the subject of the meeting? That is to say that were thought to be sufficiently

important to warrant a meeting of the general manager, these two councillors, Mr Stavis and you?---Okay.

Just simply if you could identify them.---I'm trying to, yeah. There would have been obviously the two properties at Campsie. Possibly, because I can't remember the date, the property or properties at Belmore. And there would have been the service station. It would have been, like, a schedule of sites that had different status progresses that would be discussed, and we were not really progressing that well at all in early 2015.

10

The service station is 998 Punchbowl Road?---That's correct, yes.

Again it would seem that you're getting particularly good service from these gentlemen at your request, even if you were dissatisfied with how the projects were progressing in council. Would you agree with that proposition?---No, look, it was a pretty serious matter and I think they're standard meetings. If you've got an issue, you request a meeting and you go and have a meeting.

20

With not the staff or the general manager responsible but also with two particular councillors.---Look, I think that really led on from attempting a number of times to try and schedule a meeting with Mr Stavis, and that wasn't achieved at that time and I had to try and organise to see whether we can organise a meeting to discuss those outstanding issues.

30

What I'm trying to get to, though, is an understanding of why in your opinion, what in your opinion was the contribution that these two councillors could make at such a meeting?---Well, as far as I was concerned at that time, I wasn't satisfied with the council staff performance on my projects and I have sought the councillors help to assist or in arranging a meeting where these issues can be, can be, can be discussed.

Did you think it was appropriate for councillors to use their office to participate in a meeting with the general manager and with senior management, senior staff, to address a property developer's concerns about how their project was being progressed?---What was asked of them, is to facilitate a meeting and I was the person putting the case forward to the council staff.

40

But they were there as well.---They were there as, as - - -

What did they contribute by being there, as far as you were concerned? ---They listened and they became aware of the actual concerns that I had. That would have been really the desire of the, of the meeting or the outcome of the meeting.

THE COMMISSIONER: What, that the councillors became aware?---Well, the thing is, yes. The, the, the, the projects were not progressing, they were

just pretty much neutral, right? And the, some of the reasons at that time or according to my understanding might not have been proper reasons or the correct reasons provided to councillors. So, I was actually seeking a meeting, trying to see whether they can forward, you know, those processes to, to, to recommence again.

10 But why did the councillors need to be there? Because it seems that you met with Mr Hawatt on the your way home back on that Friday, and I assume you would have raised your concerns and your criticisms with council staff on that occasion. He's now, it would appear, facilitated the meetings with Mr Montague and Mr Stavis. Why did Mr Hawatt and Mr Azzi have to be there?---Well, my understand is that, because they couldn't arrange for a meeting through the general manager or director of planning. So, I requested that meeting be organised via the councillors and I've requested if possible for them to be present so that they became first-hand aware of the actual issues of the planning processes at that time.

20 But you told them that, hadn't you?---Yeah, but they've got to hear it in front of staff. I mean, it's not my say, it's not my decision at the end of the day. I mean, I've got my side and the council officers would have had their side. That's pretty normal.

30 So, you wanted the councillors to, what, intervene? They hear the two sides and then intervene on your behalf, is that what you were aiming for?---No, that's not the case at all. All I wanted is for those processes, due processes, we are going to have to go forwards instead of being in neutral. That, that was pretty much the, the real reason of that meeting and that's the real reason I was trying to see whether I could get a series of meetings arranged periodically to continue with those processes.

MR BUCHANAN: Excuse me a moment. Can I just take you back to volume 19, page 159. I think I told you that, in relation to page 157, 19 June was a Friday. So, it follows that 20 June was a Saturday. I'm looking now at page 159. Why were you calling Councillor Hawatt on a Saturday? ---That was, as I understand, like, a, a probably more convenient timing to contact him, on a Saturday.

For you or for him?---More for him. I'm pretty much available any time.

40 Does it tend to indicate that the relationship you had with him was one whereby you could call him any time of the week, if not also, certainly late into the night and he would respond to you?---I disagree with that. I mean, I could call him but not just any time of the week.

So, excuse me a moment. So, if we go back to page 157, the message number 2 on the Friday, the 19th at 12.19 from you, is "Let's make it tomorrow." Then, "I want to take you through a couple of documents and proposed strategies." So, you were proposing a meeting at Councillor

Hawatt's place the next day?---I suggested the meeting. I didn't suggest his place, he did.

He did?---That's right.

Thank you. And so the relationship between the two of you was such that it was perfectly satisfactory, as far as you and he were concerned, for you to meet up at his house on a Saturday to go through your issues?---My evidence earlier said that he was building his house at that time and it was convenient for him to have meetings when he's supervising his property.

On a Saturday?---Absolutely.

So on the Saturday then you call him at 2.47pm, sorry, you text him saying please call. This is page 159.---Yeah.

And then there's this message that is sent to Jim Montague and Spiro Stavis, this is pages 161 and 163, on the Saturday by Mr Hawatt asking for this bigger meeting to be organised involving the two councillors, Mr Stavis and Mr Montague and yourself.---Yes.

Arising out of that meeting on the Saturday at Councillor Hawatt's place that you had with him?---I would say that's the case, yes.

Now, can I just ask you to look at page 165, and I appreciate you're not party to this text but it's from Mr Stavis to Mr Hawatt on 21 June at 7.12pm so that's a Sunday evening. You can see that the director of city planning is saying, "Hi, Mike." Not Councillor Hawatt but Mike. "Just checked my messages. Re Charles Demian's jobs the GM said we'll meet later this week. FYI I met with Charlie two weeks ago re the corner Chelmsford/Canterbury Road DA and he agreed to make the changes and I am waiting for amended plans. Re the Harrison's site we're waiting for RMS as discussed but he agreed to submit further supporting info." And then it goes on to talk about other properties.---Yes, I can read that.

Does it come to you as a surprise that the director of city planning is texting Councillor Hawatt on a Sunday night saying that he's just checked his messages and then he goes through what appear to be three particular issues that he thinks that Councillor Hawatt needs to know about or was asking to be informed about?---It didn't come as a surprise. I mean I thought this sort of stuff happens. It's an update isn't it?

Yes. Do you think that this is indicative of a professional relationship between the director of city planning and a councillor?---I can't comment on that.

Well, I just want to suggest to you that there could be a view that it's indicative of something other than a professional relationship.---That's your opinion. Fine.

Did you ever come to understand that Councillor Hawatt had a relationship with Spiro Stavis whereby Spiro Stavis was essentially at his beck and call? ---No.

10 Never came to understand that Mr Stavis would do most things that were within his power if Councillor Hawatt asked him to do them?---No, I had no idea.

And Councillor Hawatt never indicated to you that Spiro Stavis was as it were on tap for him?---No, never indicated that.

To obtain information?---Never.

20 Or to ask for things to be done?---I was seeing Councillor Hawatt as my plans with Mr Stavis weren't progressing that well at that stage and I had no idea of their relationship.

And Councillor Hawatt never indicated anything by saying something about Spiro?---No.

He never mentioned Spiro in your presence?---With the exception of the SMS I received from him which is a forward of an SMS, no, there was never a discussion on that.

30 No, not suggesting there'll be a discussion. I'm just asking about the references that were made in conversations with you by Councillor Hawatt to Spiro Stavis, were they indicative of a particularly close relationship between the two of them in terms of what Councillor Hawatt could get Spiro Stavis to do?---Not aware of those discussions so I can't comment.

40 Now, just for completeness I will take you to a page 167 in volume 19. It's a text by Mr Hawatt to Mr Montague on 22 June, 2015 at 7.28pm. "I have confirmed meeting on Thursday, 4.00pm, with Charlie Demian at council. Pierre and I will be attending as well. Michael Hawatt." That's 22 June. So the Thursday – I'm informed by those who can work this sort of thing out in their heads, which I can't – would have been 25 June.---Yes.

If you can then go to page 172 of volume 19, you can see that there's a text from you to Councillor Hawatt at 5.53pm on 25 June, "Please call when possible." The meeting was scheduled for 4.00pm, am I right?---That's correct.

This is at 5.53pm. It sounds as if the meeting was over and you wanted Councillor Hawatt to ring you.---That's correct. That's correct.

Why did you want him to ring you after you've just had a meeting with him?---I just wanted to apologise because I might have been a bit aggressive in the meeting, or frustrated is probably a better word, and I wanted to, yeah, to apologise.

To whom?---To Councillor Hawatt.

10 And to whom had you been aggressive in the meeting?---Look, we got to where Mr Montague wouldn't reschedule a further meeting. He said it's up to Mr Stavis to get back to me in due course when he feels it's right. Mr Stavis was challenge me on some of the ADG building separations and I responded back, obviously, with my statement based on those. And I don't usually, I'm not usually very confrontational so I, that was the reason.

Is this re 998 Punchbowl Road?---That's probably all of the projects that we discussed in that meeting. I can't remember which ones.

20 But the one with setback issues was 998 Punchbowl Road, wasn't it?---That wasn't discussed in that meeting. That was a standalone meeting with Mr Stavis and his strategical planner and our consultants, obviously.

30 So the meeting on 25 June, 2015, why might you have become aggressive? ---We, I needed, I needed, I was putting forward that my applications had been in a mutual status for some time, since Mr Stavis came in, and I appreciated he would have had a huge backlog of work to catch up on, and I've requested that we, you know, sort of these projects get looked at. And I think one of the issues that was raised in as far as 570 to 580 was concerned is ADG separation between us and the property next door, and obviously I responded to that.

THE COMMISSIONER: So you were aggressive towards Mr Stavis and Mr Montague?---I wasn't aggressive. I mean, I was a bit forthcoming with responding to the requirement of the ADG.

Well, you said you were aggressive in the meeting and you rang to apologise.---Yeah, that's what I mean by forthcoming. So I was - - -

40 Who were you forthcoming with?---With Mr Stavis it was a challenge on the - - -

Right. So Mr Stavis?---That's correct.

MR BUCHANAN: Can I ask you this? Just taking a step back but keeping in mind that meeting on 25 June, 2015.---Sure.

From time to time you had serious arguments with Mr Stavis, didn't you?---I wouldn't say serious. I would say robust or, or forthcoming.

You lost your temper with him more than once, didn't you?---Oh, look, I mean, if you call forthcoming challenges as far as the requirements were concerned, but, yeah, no, there was no, I think there was only one single meeting that were, we both agreed to disagree and ended the meeting.

And was that this meeting on 25 June?---No. No, that would have been, I can't remember whether it was before or, or after. There was a meeting - - -

10 What was it about?---Well, again it was some planning issues. I've had my architect. I've had my planning consultant, urban designer. I think Mr Stavits had one or two of his staff with him. I can't recall.

So it's about 570 Canterbury Road?---It may have been about the 570 and the 677 Canterbury Road, Belmore.

You had a – I withdraw that. You yelled at Mr Stavits at more than one meeting, didn't you?---I did not yell at anybody.

20 You abused him at more than one meeting, didn't you?---Let me just rephrase. The meeting that took place I was referring to, he had his external urban designer also present at that meeting, and I do not yell, I reply, but
- - -

And you swear?---I do not swear.

And, sir, I need to put it to you, you, from time to time, engaged in behaviour which would have had the effect on an ordinary person of intimidating them.---Absolutely not.

30 You can be intimidating in your behaviour from time to time, can't you?
---Absolutely not. That's rubbish.

Certainly on this occasion, on 25 June, 2015, from what Mr Hawatt said to you in the second text, "Everything is okay, Jim will call you," it would appear that it was a, that is consistent with something having blown up at the meeting but you being reassured by Councillor Hawatt that everything was okay and you would be contacted by Mr Montague.---Well, look, there was disagreements and uncertainty. I've requested further meetings and they were declined with no certain terms of when they're likely to take
40 place.

But that's your reason for losing your temper from time to time, is it?
---I did not lose my temper. I've, I've, I've replied to certain things that were put forward which I did not believe at that time, based on my experience, were correct. That's not losing temper.

And again the texts from, sorry, the text from Councillor Hawatt at 5.55pm on the Thursday, 25 June, 2015, would indicate a relationship with you which was more than simply a professional relationship of constituent or ratepayer and councillor, wouldn't it?---I totally disagree with that.

It would indicate a much closer relationship involving a degree of friendship.---That's not correct at all.

10 You were a friend of Councillor Hawatt's at that time, weren't you?
---I was a colleague of Councillor Hawatt on a professional level.

And when you say colleague, what do you mean?---He's an elected councillor, I'm a developer. We have, and have for years, not with him but in general approach, if we have an issue before something gets out of hand, and by that I mean going through the Land and Environmental Court for example, you try and elevate it to the CEO at the time, if the CEO can't resolve it, try and elevate it again. But these are issues that the council had resolved, so it was more of a processing issues that we had rather than trying to achieve an outcome.

20 Can I take you forward to July of 2015. You were aware that Mr Stavis recommended to the IHAP deferred commencement approval for your 570-580 Canterbury Road DA?---At one instant I remember that and the reason I remember that, 'cause we addressed the IHAP panel and asked them to reconsider some of those issues.

30 So you were aware of the recommendation that was made by Mr Stavis to the IHAP?---I wasn't aware, I was aware when it became public knowledge on the website, we reviewed the document and myself and I think three of our consultants attended the meeting and addressed IHAP.

Yes. So you looked at the business papers for the IHAP meeting - - -?
---That's correct.

- - - before the meeting occurred.---That's correct.

40 Saw the recommendation and took steps accordingly?---Yeah. I don't remember the specifics but I know we addressed the panel on a variety of issues on that night at council, in particular the property next door.

And if I can just take you to page, in the first instance page 5 of volume 21. ---I don't have 21. Thank you. Yes.

And page 5 is the commencement of the minutes of the meeting of the City Development Committee – sorry, I do apologise, City Development Committee held on 13 August, 2015.---Yes.

There is set out there the IHAP recommendation that the development application in respect of 570-580 Canterbury Road be deferred to allow for you to provide additional information as required, and to allow for council to assess any additional information and provide an updated report to the panel.---Yes.

If I take you to pages 6 to 7, this is the extract, if I can just explain it to you, of the IHAP report which was being considered in the business papers of the City Development Committee at its meeting on 13 August.---Yes.

10

Thank you. And page 6 sets out the matters that it was of the opinion needed to be addressed before they could consider the application. I'm looking at the middle of the page. And then the first is under the heading Site Isolation. Do you recall an issue with the adjacent property, 2 Chelmsford Avenue?---Yes.

And then on page 7, under the heading Design Changes/Details, a number of relatively minor matters in terms of changes that were sought to the plans.---Yes.

20

An issue of site contamination and an issue of garbage storage and recycle areas. This is page 8 of volume 21.---Yeah.

You found out about the IHAP decision to defer consideration of the DA for 570-580?---Yeah, before the meeting with IHAP I became aware of the recommendation.

Had you before the IHAP meeting addressed the issue of site isolation for 2 Chelmsford?---Yes, on several occasions, absolutely.

30

But by the time the IHAP had given its report you needed to do a bit more in relation to site isolation in terms of satisfying the panel that the isolation issues were properly addressed, would that be fair to say?---No, that's not correct. I think the issue - - -

Sorry, it was your impression that that was what they wanted.---That's, that's what they wanted, yes, that's correct.

Yes, that was your impression of what they wanted.---True.

40

Thank you. The decision to defer consideration of the DA was a problem for you, of course, because it meant more delays and more costs. Is that fair to say?---It's fair to say.

Your understanding would have been that if the IHAP required further information about a DA, then the DA simply didn't progress until that information was provided, so that it could consider it.---Well, that's not correct. See, the information was provided but I think with the change

between directors and different, different, I suppose, (not transcribable) expertise between them, a lot of this information that was discussed in the earlier days were not processed on through the later days. Like, for example, the issue of separation, the continuation of the laneway at the back, the purchase of the three properties behind our property, and worst-case scenario, the modelling of a continuation of a building on our other side that will extend into, I think, that property next door, which was zoned correctly.

- 10 Yes. But leaving aside the merits of the isolation issue, the decision of the IHAP was a problem for you, wasn't it, because it involved further delays and further costs accordingly.---I didn't agree with that obviously, but, yes, I understand.

Well, you do agree that it was a problem for you. You just didn't agree with the merits of their decision.---I think I, the concern was that they have made a decision not having the information that should have been provided to them.

- 20 But the outcome of that was that your DA wasn't going to get approved - - - ?---It was going to be deferred.

- - - at the next meeting of the City Development Committee, correct?
---That's correct. That's correct. I agree with that.

You knew that, I take it, the City Development Committee was due to meet on 13 August, 2015?---I would have at the time, yes.

- 30 You knew that Spiro Stavis would be responsible for the preparation of the business papers for that meeting?---Yes, I understand that.

- And can I ask you, then, before the CDC meeting of 13 August did you have contact with Mr Stavis about the IHAP decision on 570-580 Canterbury Road?---I, I can't recall. I can't recall but there might have been a discussion, either myself or the consultants I had, regarding the information that had been provided before and the reissue of those information. In particular the laneway proposed at the back and the offers that we made to next door and the third most important issue is the potential development of, I believe it was number 5, the first property behind us, as a result of our design, which is incorporated or integrated that property, if you like, and that's the reason we had a zero boundary at our property, between the two properties for that continuation.
- 40

So, you're saying you might have had contact with Spiro Stavis about the IHAP decision or non-decision?---I can't recall whether I personally have or whether one of the consultants did, and that was the following day, I would take it, because of the information that was in our (not transcribable)

probably misplaced or forgotten or been left too long or somewhere. So, we discussed those issues and we provided those, those plans and reports.

With a view to what happening?---Well, with a view to, of addressing or having address those issues much, much earlier than, that that meeting.

The difficulty was, though, that the IHAP wasn't due to meet again until its next scheduled meeting, was it?---Oh, well if that's the case, that's the case.

10 Yes, but you understood that, didn't you?---I wasn't really thinking about that. I was thinking about responding to the issues they raised as quickly as we can possibly do, to the director of planning.

But you understood that this decision of the IHAP's, or rather it's non-decision, was a problem for you because it caused further delay and further costs for you. Isn't that something you wanted to address?---Well, technically you can say that but as I said, we got on to the issues that were raised at that meeting (not transcribable)

20 But that's not going to do a thing, is it, in terms of satisfying the IHAP, because they're not going to meet again for a while.---Look, I wasn't, I wasn't aware of the meetings spacing that they had. It could be fortnightly or monthly, I don't know.

You weren't concerned to know, well, when am I going to get a decision in my favour so that council can determine the application?---Oh, look, one is always concerned with those circumstances.

30 But according to you it's water off a duck's back. You don't mind paying out extra in holding costs or interest. You'll just go with the flow, is that it? ---I didn't say that at all. What I said - - -

No, I know. I'm saying that that's the impression you're giving us and it doesn't sound right. It doesn't gel with the fact that you had financial interests at stake here.---It's your opinion.

40 Did you have contact with Mr Montague before the City Development Committee meeting on 15 August, 2015 about the IHAP decision?---I can't recall but I don't believe that would be the case because - - -

Did you have contact with Councillor Azzi or Councillor Hawatt about the IHAP decision before the City Development Committee meeting on 13 August?---Look, I don't recall but I may have.

And when you say you may have, what may you have done?---Well, I may have contacted them to address the issues of concern, but in particular because (not transcribable) at the property next door regarding the

information that we were, that were submitted and were going to be provided again.

But how could those two gentlemen deal with the problem that, according to the policy that council had, it wasn't going to consider a development application that was in the IHAP until the IHAP had made a recommendation in respect of it and there was no recommendation?---Look, I wasn't aware of those policies. I was interested in addressing the issues that were raised on the night and the following days.

10

Mr Demian, it doesn't seem credible that you weren't interested in the decision making processes on your DA.---I didn't say that. What I said, I was interested in providing or addressing the issues that were raised on that night by the panel and in particular, the, the issue regarding the property directly behind us.

20

Were you interested, then, in the decision making process of council in respect of a DA that was going through the IHAP?---Well, as I said, I had no knowledge of the, the processes of the council. I understood that it will go to a, a development committee or a full council following that IHAP meeting and obviously council will, will make a decision on it.

Did you indicate to Councillor Azzi and Councillor Hawatt this is a very unsatisfactory situation, I want you to fix it, or anything like that?---No, absolutely not. That's not how we communicate. I provided, what I made them aware of is that the issues that became the night before the meeting were provided some time ago or were addressed some time ago and that information will be resubmitted again to council in one format or the other.

30

Between 3 August and 31 August, 2015 did you go to Councillor Azzi's house?---Oh look, I can't recall. I may have.

40

Did you meet Spiro Stavis or Pierre Azzi or Jim Montague or Michael Hawatt at Councillor Azzi's house on a date between 3 August and 13 August?---Look, I can't remember a date but I do remember on a Saturday morning at about 9.30 or thereabouts I had an arrangement to meet with Councillor Azzi at the time and when I walked in I noticed that Spiro was there and we both were a bit uncomfortable with that position. I think Mr Stavis left within a minute or so of me arriving so obviously had finished his business and left.

And this was, what day of the week was this?---Would have been on a Saturday morning. I remember him saying that his kids are at sport and he was leaving. So that's the only time ever I've come across him outside council.

Were you surprised to see the director of city planning at the councillor's house on a Saturday?---Yeah, that's, that's a fair assessment.

Did you find out what he had been doing there?---No, I did not. It's not my, my role to ask questions.

Pierre Azzi didn't tell you what Mr Stavis had been doing there or indicate why Mr Stavis had been there?---There was no discussion on that.

10 That's not the question I asked. Was there any indication from Pierre Azzi as to why Mr Stavis had been there?---No.

And Mr Stavis didn't give you any indication as to why he was there?---No.

Now, before the City Development Committee met on 13 August, 2015 did you have any idea at all as to whether this DA for 570-580 Canterbury Road would be considered by the committee?---I understood it could be considered. That's correct.

20 Why did you have that understanding?---Because that's understood to be the process. The recommendation of IHAP goes to councillors. Councillors make a decision on it.

Well, you understood the process to be what in relation to a DA that hadn't come out of the IHAP yet, what did you understand the City Development Committee - - -?---Well, my - - -

30 - - - could do or would do or might do?---I don't know. My understanding is that the planning director's report goes to IHAP. From there both of them go to the committee and the committee makes a decision on, on that. That's, that's how far I understood it at that time.

The problem here was that there was no decision from the IHAP to go to the committee.---It's not my process. It's the council's process.

But you make it sound as if it was a matter of no concern to you when that patently couldn't be the truth could it?---That's not what I said. That as my evidence.

40 I'm just inviting you to respond to the proposition that as you sit there on the witness box and the answer you give, you give us a picture that at the time it was as I suggested before water off a duck's back. You just didn't care.---I didn't say that either.

And that doesn't make sense.---I didn't say that either.

So did you do anything before the CDC meeting of 13 August, 2015 to address the problem posed by the IHAP meeting decision or non-decision about your DA?---Did you say the CDC meeting, before the CDC meeting?

Yes, before the CDC meeting did you do anything to try and address the problem - - -?---Yeah, following - - -

- - - that there was no decision by the IHAP for the council, City Development Committee to consider?---The only thing that we did is I've instructed the consultants to reissue those reports or plans regarding any of those concerns raised and to discuss them with council officers and make sure that they'd been received and if there's any issues to modify them. So that would have happened like, immediately basically.

10

Who was the consultant who was looking after the 570-580 project at that time?---So there was Mr Daniels who was the strategical planning. Mr Tim Stewart was the planner. I'm trying to remember the architect, whether it was John, I can't remember John's surname.

But these aren't architectural issues, the real ones, the real ones are planning issues, aren't they?---No, no.

20

The isolation issue?---They're all both planning and architectural, so one of the points that was raised is that we have to demonstrate that the property next door, in the event that we couldn't purchase, is developable in its own right within its zoning, and so that would have been architectural, which included plans, density, overshadow diagrams and the rest of it.

Thank you very much. Thank you. Yes. So can I ask you, did any of your consultants tell you, oh, you've got a problem with this DA being approved by the City Development Committee meeting because they can't, because there's been no decision by the IHAP to make a recommendation?---No.

30

Your consultants didn't tell you that, you didn't know that, is that what you tell us?---I'm not telling you that at all, you're fabricating words. What I said is that the consultants were busy the following day responding and being disappointed that this information had been provided time and time again in the past, was not provided to the panel. So we got busy to re-provide this information and assist if there was any further information required.

40

And did any of your consultants tell you, well, the panel's not meeting again for another month?---No, that wasn't discussed.

They didn't tell you when the panel - I'm sorry. They didn't tell you when the IHAP would be able to consider this information?---The advice I had is that the, the IHAP deferral report will also be submitted to councillors alongside the planning, sorry, the planning team's report and then councils make a decision. I had no idea that it had to go back to them before it went to council, I wasn't aware of that.

So were you expecting then that the council would take a decision that could indeed approve your DA despite what the IHAP have said?---I wasn't aware of anything with the exception of providing the information, and it's the planning director may advise the councils that those issues had been advised, but look, it's a decision they make, whether they support or otherwise, that would have been their decision.

Did you - - -

10 THE COMMISSIONER: Sorry.

MR BUCHANAN: I'm sorry, Commissioner.

THE COMMISSIONER: Who told you that the IHAP deferred application would go to the CDC?---Our planner advised.

20 That was Mr Stewart?---Yeah. Between Mr Stewart and Mr Daniels, they would have advised that both these reports get submitted to the council for consideration and that was the urgency in trying to address and provide the information of those issues that I raised the night before.

MR BUCHANAN: And the logical outcome of that would have been that the council would have said, oh, okay, well, we'll have to wait until the IHAP can come back to us with a recommendation after they've been provided with the information.---It's a matter for them, not for me.

30 You say that, Mr Demian, but plainly you had an interest in changing that situation, you had an interest in the council or the City Development Committee saying, we don't care that the IHAP hasn't made a recommendation, we don't care that they say they need more information and that they haven't received it, we're going to approve this development application anyway. That's what you had an interest in, wasn't it?---No, the answer is no.

Why didn't you have an interest in that?---Because our job is to provide the information requested and it's a matter for them to assess based on their, based on their decisions. I've got nothing to do with that.

40 But you told us you had a financial interest, you were incurring holding costs, you were incurring interest payments by reason of the delays that were happening, this was a significant delay and you try to make it sound as if, oh, well, I didn't care, it was a matter for them.---It's our business. We incur costs on every project that is in, in a land bank we call it processing. That's pretty normal.

It's I suggest to you not credible evidence that you're giving on this subject. --- (not transcribable)

Because it just simply is contrary to your evidence about where your financial interests lay and it's contrary to the evidence that you've given that your consultants would have told you what the process was.---Totally disagree with that. That's your issue.

And it's contrary, isn't it, to the relationship that you've told us, or that we've been able to see that you had with Councillor Hawatt.---No.

10 You didn't call in a favour?---My business was very consistent. We had a very professional relationship there.

You didn't ring him up on a Friday night or a Saturday morning and say, oh, look, can I come over and see you, I've got a bit of a problem?---Look, I may have but I can't remember the dates which I've contacted him and spoken to him.

20 You can't recall anything that you did. Apart from ensuring that information that was sought by the IHAP was assembled with a view to it being provided to the IHAP, you can't recall anything you did to try to ameliorate the situation of the likely deferral of your DA at the City Development Committee meeting?---I remember everything I did. I don't remember specific dates and specific information that were taking place.

30 Well, what did you do in respect of the fact that it looked like, on the face of it, that council City Development Committee was going to defer consideration of your development application on its meeting of 13 August?---As I understood it, the IHAP report was requesting that council defers the resolution to be made for a further month, not IHAP, until the information had been addressed. Now, we had jumped onto the issues immediately and we addressed them because we had undertaken those reports in the past.

Can I take you to page 5 of volume 21.---Yes.

40 Can you see that Mr Stavis's report to the City Development Committee says that the IHAP recommendation was the applicant to provide additional information as required – I'm sorry, the recommendation was that the DA be deferred, that the applicant provide additional information as required, for council to assess any additional information and provide an updated report to the panel.---Yes.

Not to council, not to the City Development Committee, but to the panel. ---Yes. I can read that.

You would have been made aware of that, wouldn't you?---That's correct, yes.

Yes. Did Councillor Hawatt give you any reason to believe that he might intervene at the meeting of the City Development Committee to address the problem that you had of this DA being deferred?---No, I had no idea at all (not transcribable)

It came to you as a complete surprise when he did, does it?---When he did what? You mean council resolved a resolution?

I withdraw the question.---Good.

10

Can I ask you, can I go back to 548-568, and I'm going to ask you to go, if we could, please, to volume 20 of page 243. Page 243. Excuse me a moment.---Yes.

This is an email to you from Mr Stavis on 4 August, 2015. Do you see that?---Yes.

20

And it says, "Dear Charlie, I received your phone message this morning." Can I just pause there. The heading is 548 Canterbury Road Update. Do you see that?---Yes.

What was the phone message about or would you like to read the whole email?---No, no. I've read it. I've had a quick look at it.

Yes. What was the phone message you had left for Mr Stavis that morning?---I became aware from the, our planner Tim Stewart that the council wasn't satisfied with his advice regarding the 4.6 justification they had provided.

30

The submission, you mean?---The submission that was made by, by Mr Stewart.

Yes.---So my reason of the call to work out what it is that he wasn't satisfied with and, and then seek legal advice from our barrister. So that, that was the reason I was trying to contact Mr Stavis at the time.

40

And what did you need – why did you need to talk to Mr Stavis?---Well, just, I needed to, to become aware of what issues the, the, the council were concerned about in, in, so we can actually address them and provide you know, those outcomes back to them.

But you know what the problem is. You just told us what the problem was. ---Did I?

Yes.---I'm sorry, I can't, I don't - - -

So, what was it that you asked Mr Stavis for or to do?---Okay. So, I became aware that Mr Stewart was my planner - - -

Yes, you're telling us the problem but what did you ask Mr Stavis to do?---I asked Mr Stavis to advise me which, what the issues that he had of concern, so we can inform our barrister to actually review those concerns or actually advise on those concerns and see where we go from there.

10 You didn't complain to him about the concerns that you were told were held about the clause 4.6 submission?---No, that, that was technical. So, I need to get, I needed to – whatever council requested, it's our job to provide supporting documentations if we could.

Oh well, that's not your approach to doing business with Canterbury Council in 2014-16, was it, Mr Demian?---That's contrary. Actually, that was exactly what we did. Provide anything and everything they requested.

The fact of the matter is that Mr Stavis frequently asked you for material of one sort or another in respect of one project or another and you failed to provide it, isn't it?---That's not, that's not correct at all.

20 Now, having said to you in this email that he tried to call you several times but your phone just rang out, he says in the second paragraph, "I am still working through the issues and trying to find solutions." What did you understand him to mean by that?---Well, there was, I understood the feedback was as that time there was a litigation involving a similar case at Ashfield Council and everyone was trying to get legal advice on, on that and how that related to our project. He addressed it, I believe that Mr Stewart had addressed it. Mr Stavis wasn't satisfied with, with, with the justification that we provided. So, the next step would have been that we've (not transcribable) our barrister to investigate the particular case between
30 Ashfield Council and the developer at the LEC and then provide his further advice on whether it, it relates to our development or not.

Mr Demian, in giving that answer, all you were doing was taking your lead from the content of the email that Mr Stavis provided to you. I am asking you what solutions did you understand that Mr Stavis was trying to find? Why type of solutions, I should say, was it that you understood Mr Stavis was trying to find?---Look, the only issue I understand he had an issue with was the latest Land and Environment Court outcome regarding that particular case in there. That's the only, that's the feedback which I had. I
40 wanted to verify that and following that we've commissioned our barrister to provide advice.

Mr Stavis concluded his email, "Anyway, please understand I am doing my best, Charlie, to assist and to hopefully find a solution." That doesn't sound as if he's expecting you to obtain legal advice. It sounds as if he is of the understanding that you expect him to find a solution, doesn't it?---No, it's our obligation to provide any justification for any issue that ever comes about that we become aware of.

THE COMMISSIONER: So, have you got any idea what Mr Stavis is saying where on two occasions in that email he says, "I am trying to find solutions"? Do you know what he's referring to?---No. I thought, I thought the understanding at that time was the, the LEC case determination, he was trying to make, to determine whether that had, that had an impact on our 4.6 justification that we had provided and for that reason I had to provide further justification or get any legal advice on it.

10 But he's saying, "I'm trying to find solutions. Please understand I'm doing my best to assist and to hopefully find a solution." My construction of that is Mr Stavis is positively trying to find a solution for your issues.---I agree with you.

So, and putting to one side whether you're going to a barrister or what else you're doing personally, what did you anticipate Mr Stavis would do to find a solution to your problem?---Look, I honestly don't know. I believe that he was going to get his own legal advice on the matter before he can make an informed decision.

20

MR BUCHANAN: That paragraph in the context of that email is capable of the construction that Mr Stavis was scared of you, isn't it?---No, that's not the case at all.

Did you believe that he was scared of you?---Absolutely not.

Did you believe that you might have given him reason to be scared of you?
---Absolutely not.

30 Did he have perhaps reason to be concerned for his job if he met with the displeasure of his boss, the general manager, or Councillors Azzi and Hawatt?---You'd have to ask him that.

But they had been present at certainly one meeting where you had been indicating that you had problems. That's correct?---That's pretty standard, yes.

40 There wasn't anything that you were aware of to support a concern on Mr Stavis's part that his job might be in jeopardy if he didn't keep you happy?
---No, look, that, that's far from the truth. That's rubbish, actually.

It would make sense if he believed that you had a relationship with Councillors Azzi and Hawatt of some proximity, some closeness, and they controlled the council, wouldn't it?---I have no idea. I wasn't aware they had a relationship beside councillor, the planning director.

And it would also make sense if Mr Stavis had been led to believe that they, Councillors Azzi and Hawatt, had influence over Mr Montague, your boss. I'm sorry, Mr Stavis's boss.---I have no idea. Got to ask them that.

You had no understanding, though, of anything that might have given rise to a thought process on Mr Stavis's part to that effect?---The understanding I have is that your question is far from the truth and your assertion doesn't make any sense at all.

10 Tell me, can I just ask you to assist me as to why it was that this email was cc'd, sorry, bcc'd to Mr Montague?---I don't know. I suppose Mr Montague is his boss, isn't it?

It sounds as if he thought he needed Mr Montague appraised of the approach he was taking to you of - - -?---Just having a - - -

- - - being apologetic and trying to help and having a dedicated team working on your problem and finding you solutions and asking you for patience.---I think from reading that there's about five people he copied in including Mr Montague and our consultant and our architect, Mr Daniels. I don't know that there was anything untowards in there.

Can I ask you to go to page 244. I'm sorry, at volume 20.---Yes.

It's on the screen there.---Yeah.

You can see that the same email that we've just been talking about was forwarded to Michael and Pierre as Spiro Stavis addressed them in his email of 4 August, 2015 at 11.25am.---Possibly he's updating them on the progress.

Why would you have understood Mr Stavis would have felt that that was a good idea?---Not sure. You've got to ask him.

Do you mean it's a matter of complete mystery to you as to why Mr Stavis would have thought he should send that email to them?---Look, I've seen this for the first time ever so you've got to ask him not me.

40 Yes, I appreciate that.---Thank you.

But I'm just asking you seeing it as you do it comes to you as a surprise does it that that email that we've just been discussing was forwarded to Councillors Azzi and Hawatt?---I'm not sure - - -

Is that right?---No, that's not the case.

It doesn't come to you as a surprise?---No, it doesn't.

Why doesn't it come to you as a surprise?---Well, obviously he would have been updating them on progress of that project (not transcribable) - - -

Why would he have needed, as you understand it, to update those two councillors? This is not just progress, this is an email that could be described as grovelling - - -?---I have no idea.

- - - to you.---No, I have no idea.

- 10 Being very apologetic and trying to assure people that he was doing everything he could to placate you and make sure that your problems were solved.---That's nonsense.

But that is what he was saying in that letter, isn't it?---According to you.

You can't help us as to why he thought he needed to keep Mr Azzi and Mr Hawatt in the loop?---I've answered your question to the best of my ability. You don't seem to accept it.

- 20 Can I just ask then, this is in relation to, this is in August 2015. Thinking of August 2015 now, you had a number of issues in relation to your development projects that were before council, I want to suggest, and I just want to propose four of them to you and invite your response. One is you had a problem with the decision of the IHAP to delay consideration of the development application for 570-580 Canterbury Road. That was one issue, correct?---That was a very minor issue, yes.

Yes. A very minor issue, did you say?---Very, very minor issue, yes.

- 30 Minor?---Minor.

That's not honest evidence, is it?---It's my evidence, thank you very much, and - - -

Yes, I know it is, and I'm giving you an opportunity to respond to this proposition. It's not honest evidence.---And that's your issue. The answer is absolutely correct.

- 40 You understood that the role of the IHAP was to make recommendations to council about how it should handle a DA?---I understood that IHAP will make a recommendation to council, yes.

And that any decision, any delay to the decision meant that there was likely to be a delay in the determination of 570-580 DA?---Possibly, yes.

And that you needed to satisfy requirements of clause 4.6 of the LEP in relation to non-compliances with the proposed development for 548-568 Canterbury Road - - -?---Yes.

- - - so far as the maximum height requirement was concerned.---That's correct, yes.

10 So did you do anything in relation to the first three issues, sub-issues that are all rolled up in terms of the position that 570 was at in relation to the IHAP and the City Development Committee?---So we've addressed the issues raised at the IHAP meeting immediately the following day or within two days at max. The appropriate consultants reply immediately and provide the information addressed in that IHAP meeting, so that was out. The second one, as far as the 4.6 justification that we submitted, I understood that the council wasn't fully satisfied and we had to do more work on it, so we did.

THE COMMISSIONER: Would you just excuse me for a minute?---Sure.

MR BUCHANAN: I'm sorry.

20 THE COMMISSIONER: Sorry.

MR BUCHANAN: Commissioner, sorry, if, Commissioner, you were thinking of sitting on - - -

THE COMMISSIONER: No, no, no, no. I was just concerned whether there was an issue about the recording.

MR BUCHANAN: Oh, right.

30 THE COMMISSIONER: But we're all right at the moment but it may be about to end.

MR BUCHANAN: Precarious. Well, this might be a suitable time. Can I indicate that?

THE COMMISSIONER: Look, I think particularly because there may be an issue about to arise. It would be a convenient time.

MR BUCHANAN: Understood. Thank you, Commissioner.

40 THE COMMISSIONER: Now, Mr Demian, you'll have to return tomorrow morning at 9.30.---Understand.

All right. We stand adjourned until tomorrow morning at 9.30.

THE WITNESS STOOD DOWN [4.29pm]

AT 4.29PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.29pm]