

DASHAPUB02068
11/07/2018

DASHA
pp 02068-02125

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 11 JULY, 2018

AT 9.34AM

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

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

THE COMMISSIONER: Now, any administrative matters? Yes.

MS RONALDS: Just me. I seek leave for my learned junior, Ms Walsh, to appear with me.

THE COMMISSIONER: Yes. Ms Walsh.

MS RONALDS: Thank you.

10 MR BUCHANAN: Commissioner.

THE COMMISSIONER: We might, I think we'll re-swear - - -

MR BUCHANAN: Certainly.

THE COMMISSIONER: Yes, Mr Buchanan.

MR BUCHANAN: Mr Demian, can I return to the subject that I was asking you questions about yesterday which related to whether you had intervened at all to assist Mr Montague during his period of conflict with Councillors Azzi and Hawatt over whether he should be sacked or not. Do you
10 remember that area of questioning yesterday?---Yes.

And I suggested to you that you had accompanied Mr Montague to visit Mr Hawatt in his office in Lakemba and you said that didn't happen. Is that right?---That's correct, yes.

Now, I appreciate you say it didn't happen, but I do need to give you an opportunity of responding to this suggestion. I do want to suggest to you that as a result of your assistance that you provided to Mr Montague during that period in January 2015, Mr Montague, you understood, became
20 obligated to you.---Absolutely not.

At the end of proceedings yesterday we were in the era of August 2015 and I was asking you questions about the period between the meeting of the IHAP on 3 August, 2015 when they had said that they required further information to be supplied to them and that they needed to consider that and made no recommendation to council for approval of your development application for 570-580 Canterbury Road. Remember those questions?
---I remember the topic, yes.

30 And you agreed that you were aware that there was scheduled a meeting of the City Development Committee at some time thereafter, which ordinarily would have had this item on its agenda?---That's correct.

And we went through and what I suggested to you was your financial interest in avoiding a situation whereby the City Development Committee looked at the IHAP report and decided, okay, we'll defer this item to allow the IHAP to consider such further material as the applicant chooses to provide to the IHAP. Remember that?---That's your statement, yes.

40 And the ordinary course of things of course would be that the council or the City Development Committee as you understood it would give serious consideration to the recommendation or the report of the panel on a development application which it was considering?---That would be fair.

And in the ordinary course you would expect it to adopt the recommendation or follow the report of the IHAP on any DA that it was required to consider. Would that be fair?---Not necessarily.

You say do you that you can envisage there would be circumstances where it might not?---There would be circumstances it might not, yes.

But ordinarily, given the reason the IHAP was set up in the first place, you would expect that the council or City Development Committee would follow the IHAP - - -?---Oh, that's not my call.

- - - report or recommendation?---Not my decision.

10 And that was the thrust of the evidence you gave yesterday when I was asking you questions about your response to the position your DA was in after that meeting of the IHAP on 3 August, that it wasn't your decision, you had nothing to do with it, all you could do is provide the information that the IHAP had asked be provided?---That's correct.

And you denied having intervened with the Councillors Hawatt or Azzi to try to achieve a different result at the meeting of the City Development Committee on 13 August. Is that still your evidence?---Yeah. The word intervene doesn't exist as far as I'm concerned.

20

If you can explain what you mean by that?---Well, what I mean is, as I have, we, my evidence was that we provided the information that IHAP had raised at the meeting. We provided those information to the council and that was as far as we went. So, that wouldn't be intervening, that would be providing the information requested or raised.

Now, just to maintain some chronology to this, can I ask that the witness please be shown volume 20 of Exhibit 69, page 245. Can you see that this is an email from Mr Stavis to a person called Stuart Harding?---I can see that.

30

And you can assume that he is a consultant, a town planner and that it's cc'd to Mr Stavis' staff but that the subject is, "548 Canterbury Road," and using the words in the subject heading, "Urgent, urgent." Can you see that? ---Yes.

At the bottom of the email, the last paragraph, Mr Stavis said to the consultant, "I have a meeting with the applicant tomorrow at 3.00pm, so if could provide all of this to me before then, that would be appreciated. I want to prove to him that what we are saying is true." So this email is dated 40 6 August. Do you recall a meeting with Mr Stavis on 7 August about the 548 development proposal?---So this is a different topic now. It's not the IHAP. This is 548 - - -

Yes, yes. I'm trying to go through it in chronological order.---Sure, sure.

We had the IHAP meeting on 3 August. 13 August is ahead of us. This is just something I want to take you to, to ask what do you recall about that

meeting?---Look, I think there was discussions regards whether the 4.6 was the appropriate tool to be used in the amendment of the height or the increase of the height and I believe Mr Stavis was very thorough in his investigations and he brought forward the points of concern that the council had with use and that was what the meeting was all about.

10 Was Mr Stavis, as you could see it, trying to improve your position on the clause 4.6 hurdle that you had to overcome in relation to 548 Canterbury Road?---Look, Mr Stavis, as I said, was very thorough and a fair town planner. He wasn't taking sides, he was just providing the information as he saw it. He had a problem with the use of the 4.6, or some hesitation and we – that resulted in us providing further legal advice which I believe the council might have had that information reviewed by their legal side.

20 But this was an illustration, wasn't it, of something Mr Stavis did more than once that he was telling you that you needed to improve the quality of the material you were providing to council if you wanted to succeed in your proposals or applications and he was pointing out this is how you should attend to those materials to improve their quality?---No, I wouldn't put it that way at all. What he was saying, that he had a point of concern for the use of 4.6 on the back of the poor decision regarding the Ashfield matter and, and that was really the major, the major issue that he had and we had to provide further evidence, or to, to demonstrate that the use of 4.6 was appropriate in that situation.

Can I ask you to turn to page 260 in the volume, please.---Yes.

30 That is a record of an SMS extracted from Mr Hawatt's telephone that was sent to you by Mr Hawatt on 7 August, 2015 - - -?---Yes.

- - - which is a Saturday, if I can inform you of that - - -?---Yes.

- - - at 9.37pm. Excuse me a moment. On a Friday, on a Friday, I apologise, at 9.37pm. The message is, "10.00am at Pierre." Do you see that?---Yes.

40 It would appear to be providing information to you, most likely about a meeting the next day, as to the time and venue. You'd accept that? ---I accept 10.00am at Pierre. I'm not sure what day that meant, whether it's the same day.

Well, it couldn't be the same day if the text was sent in the evening at 9.37pm, could it, so it must be a future date.---That's correct.

Correct?---Yes.

And if I inform you that 8 August was a Saturday and you had previously you told us met at Pierre Azzi's house, the likelihood is that that message

was one which was either confirming or informing you of an arrangement for a meeting at Pierre Azzi's at 10 o'clock the next day.---Well, it was a 10 o'clock appointment, possibly the next day, possibly another day, I don't know, but it was regarding a meeting that was scheduled and I was confirming a time.

Do you know what that meeting was about?---No, I can't recall.

10 You had these issues on foot at the time though, didn't you, in relation to 570 and 548?---Yes.

Is there a possibility that you were discussing strategies or tactics that might be adopted in relation to either of those projects?---We don't discuss tactics, we discuss information, we provide information, that's our job.

In that case why couldn't you just put the information in an envelope, put a stamp on the envelope, put the envelope in a mailbox and sit back and wait? ---Sit back and wait for what?

20 For maybe a favourable outcome?---Why would it be a favourable outcome?

Mr Demian, I'm asking the questions.---I'm trying to answer.

30 And I'm asking you why was it that you were having meetings with these two men at a time when you were having difficulties with two of your proposals if it wasn't to canvass tactics and strategy to address the issues with those proposals?---Look, that's your statement. My answer is I wanted to see those councillors whenever they were willing to see me to make sure the information is provided and they have an understanding of our side of the equation.

Do you know why that meeting was at Councillor Azzi's house rather than in council chambers?---Well, you just suggested it was on a Saturday.

Yes, exactly.---And I believe he, he works all different odd hours and that suits him, that location suits Councillor Azzi.

40 Was Mr Stavis or Mr Montague at the meeting that I think we can safely assume at Councillor Azzi's house on 8 August, 2015?---Is that 10.00am? No.

That's what I'm asking you.---No.

Were either of them there?---No.

How do you know that they weren't there?---Because I was there.

Right. What happened on that occasion then?---I had discussions with the two councillors.

Was there anyone else there?---No.

THE COMMISSIONER: Sorry, so Mr Hawatt was there?---Sorry, Mr Hawatt was there and Councillor Azzi were there.

10 MR BUCHANAN: And you didn't see Spiro Stavis there at all?---Not on that occasion, no.

20 So, yesterday you gave evidence to us, page 2057 of the transcript, line 30. Question, "Between 3 August and 31 August," yes, I think that might be a typo, "Between 3 August," and we can assume it's 13 August, "2015, did you go to Councillor Azzi's house?" Answer, "Oh, look, I can't recall. I may have." Question, "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?" Answer, "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." Question, "And this was – what day of the week was this?" Answer, "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 I've ever come across him outside of council." You can assume that there was only one Saturday between the 3rd and the 13th of August and that the date of that Saturday was 8 August.---My answer clearly stated, I do not recall the dates and obviously this message
30 that I have just seen now was organised by Councillor Hawatt, so both of the councillors would have been in that meeting.

THE COMMISSIONER: Yes, but you're being asked about Mr Stavis. Your evidence yesterday suggested that Mr Stavis was there initially. ---That's correct but it may not have necessarily have been that particular meeting. So, when I saw Mr Stavis there, it was only Councillor Azzi on his own. Councillor Hawatt did not attend that meeting.

40 MR BUCHANAN: That was the only meeting you could recall in the answer you gave yesterday, between 3 August and 13 August.---So, I'll restate that fact again. I said I do not recall the date. These dates are suggested by yourself. I do not recall the date of that Saturday morning meeting.

But the date doesn't matter.---Oh, doesn't it? Really?

What does matter is that you have said you recall a Saturday meeting. ---That's correct. That still is the fact.

At about 9.30 or thereabouts.---That's what I said.

Yes. Did you take anything to that meeting?---No.

So, you weren't providing any documentation at all to Councillor Azzi or Councillor Hawatt?---Not that I can recall on that day.

10 Was there an understanding that you had when you left the meeting that there was a way through the problem with the IHAP outcome in relation to 570 Canterbury Road?---Look, I don't even recall that that topic was even discussed let alone a decisions made.

Even though it plainly would have been a matter of concern to you at the time?---No, you, you don't seem to accept my answers, you want to create your own answers.

20 That's quite correct, Mr Demian, I don't accept your answers. Now, can you as my question?---And the answer still remains the same.

THE COMMISSIONER: Well, can you repeat your answer for me, please?---That's regarding the meeting on Saturday morning, yep. Otherwise - - -

So that topic wasn't discussed?---No.

30 And I think Mr Buchanan put to you that that was an issue that currently would have been playing on your mind and you still maintained that it wasn't discussed?---Madam Commissioner, I had five projects in that precinct and they were all working simultaneously. The ultimate decision of the increase of height had already been resolved by council some time earlier. It was a matter of processing those applications that was at play in those, at that period of time. It was no longer about the council resolving to increase the height of my project or the, the corridor's precinct as a whole. That had already been resolved by the full council. My issues with those projects were purely processing as they had sat there for a good year and a half in between the change of directors. And the issue that the directors, or the previous director, had with the councillors at that time – not the council as a whole – in resolving to increase the height to 25 metres, as he refused to process the application of the Gateway Determination and withheld and
40 with-actually-held information that was essential for our projects.

MR BUCHANAN: Mr Demian, you've told us that your relationship with Councillor Azzi and Councillor Hawatt was not one of friendship but one which was professional.---Absolutely.

Why were you having a professional meeting with these two men on a Saturday morning when you took nothing to the meeting by way of papers?

---The, that, Councillor Azzi, as I understand, works long hours and I had the feeling whenever suits him, whatever time that suits him, and I understand Saturday morning he's, he's available and it was the only time he was available to see me.

But what was there a need to have a meeting about, let alone on a Saturday morning?---Five projects.

10 But it was all a matter of processing as far as you were concerned.---Which was going nowhere. The council officers were not processing those applications, not just mine, in general were withholding information and not processing the applications.

And why was there a need for a meeting rather than a phone call?---To explain to my parameters of the issues. I think I've answered that question about a hundred times so far.

If I can ask you to go, please, to volume 13. Excuse me a moment.

20 MS RONALDS: Commissioner, I'm sorry to intervene. We're in some difficulty. The afternoon transcript from yesterday wasn't up so we've not been able to print it and if my friend's going to take the witness to it I was wondering if someone would be kind enough to lend us a copy, because we've printed the morning but we can't print something that's not on the net.

MR BUCHANAN: Well, we can't do it right now, we'll do it as soon as we can.

30 MS RONALDS: Thank you.

THE COMMISSIONER: Can I just ask could a message be got to somebody outside to print a copy?

MR BUCHANAN: I'm told it's gone out, the message.

THE COMMISSIONER: Sorry, thank you. We'll try and get it as soon as possible for you.

40 MS RONALDS: Sorry to intervene.

THE COMMISSIONER: No, no, that's fine.

MS RONALDS: It's just somewhat difficult to follow.

MR BUCHANAN: In the meantime, I wonder if we could please go to volume 13.---Exhibit 52?

Of Exhibit 52, at page 18. It's an email towards the top of the page, not right at the very top but about a third of the way down, dated 12 August, 2015 from Mr Stavis to one of his staff called Gil, G-i-l.---Ah hmm.

Saying, "I had a meeting with the GM and Charlie this afternoon re the Harrison's site and following this 998 was raised. Can you please see me tomorrow so I can brief you." The day before the 12th would have been 11 August. I'm sorry, my mistake, he is referring to a meeting that afternoon, because the message is sent at 9.22pm, so it's the afternoon of 12 August.
10 Do you recall that meeting with Mr Montague and Mr Stavis about the 548 site and following which the 998 site was raised?---I remember the 998 site was, was discussed in that meeting, yes.

And what was discussed?---As I said in my evidence yesterday that the new ADG had just come into effect which meant all the planning that was done prior to June 2015 had to be amended. (not transcribable) those extra separations between different zones came into effect, the RMS road widening was discussed, and the parameter setbacks for the footprint of the building were actually sketched on a diagram and discussed.
20

This was the day before the scheduled meeting of the City Development Committee on which 570 - - -?---Probably, yes.

- - - to 580 would have been an agenda item. You understand that?
---570 or 548?

570.---We're swapping. So what was 570? I can't even recall.

Well, remember the - - -?---So this is the date - - -
30

- - - IHAP meeting on 3 August in relation to 570-580 Canterbury Road for which there was a report saying that the panel wasn't satisfied with the information that was provided and required further information to be provided, particularly on the isolation issue?---Is that the, for the six-storey building, that proposal was, wasn't it?

Well, 570-580 was a six-storey building initially, wasn't it?---Development application, so is that the development application we're referring to now?

40 Yes. You don't recall the questions I asked you earlier this morning and yesterday on the subject of the IHAP meeting?---Oh, look, you've asked me all different questions. There's a lot of projects so I want to be specific so I can answer the question properly, if that's okay with you.

Certainly, but I'm just trying to ascertain, what we're trying to do, and I appreciate we do jump around a bit, but we're trying to go through chronologically, as you would have been going through chronologically at

the time.---And I'm trying to assist you the best I can but I've got to be more specific.

So you do recall that there was an IHAP meeting about the 570 project - - -?
---That's correct.

- - - on 3 August and that there was a CDC meeting fixed for 13 August on which the agenda of which 570 would have been an item?---I remember the date, I remember the meeting clearly, I don't remember the dates, but yes.

10

And the day before 13 August you had this meeting with Mr Montague and Mr Stavis - - -?---Regarding 998.

And 548.---But 548 is different from 570, that's exactly what I'm trying to say to you. 548 wasn't the item before IHAP, 570 was, and 998 had nothing to do with IHAP, so the question is, the night before or the week before or the day before, whatever the case, 570-580 was reported to IHAP for recommendation or discussions. That was 570-580, not 548. You've just said the meeting that I had with, that you referred to in there was 548 and 998. Is that what I understood to be the case?

20

That was the case. My question is about that meeting and 570, the item on the agenda of the City Development Committee that is to occur the next day. Do you understand?---I really don't follow you.

The third property.---Please reframe the question again.

Yes. 12 August was the day before 13 August, you accept that?---I can accept that.

30

13 August was the day your - - -?---Item - - -

- - - proposed development at 570 was to be considered, including the IHAP report - - -?---Sure.

- - - on that DA. Correct?---Fair, that's fine.

And you had a serious problem with your DA being considered, let alone approved at the CDC meeting on 13 August, didn't you?---That's your opinion. That's not the case.

40

Well, as at 12 August that was the case, wasn't it?---No, that was not the case.

Or was it the case that it was all taken care of as far as you were concerned - - -?---Would you like - - -

- - - because you had had communications with Councillor Azzi and Councillor Hawatt which led you to a degree of comfort that the matter would be taken care of.---That's a waffle statement but would you like me to answer the question?

10 THE COMMISSIONER: Mr Demian, I had a word with you yesterday. I don't appreciate commentary before you answer the question. If you would listen to the question and answer it please.---Madame Commissioner, I'm happy to do it. He doesn't want to accept my answer, he's twisting the questions based - - -

No, Mr Demian, please, listen to the questions and answer them.---All right. We'll start again.

20 MR BUCHANAN: So my question is, on 12 August, the day before 13 August, did you not have a concern that your project or development at 570-580 Canterbury Road was going to be further delayed because the IHAP report to the meeting of the CDC to occur the next day was one which deferred consideration of it and accordingly the CDC, in the ordinary course, would be likely to defer consideration of it. Did you have a concern about that on 12 August?---The first part of the question, no, I did not have a concern.

30 Why did you not have a concern about it?---Because I personally with my consultants made presentation to IHAP and addressed all of the issues that they had raised in that meeting. The very following day we provided all of those information again to council which addressed each and every one of those. So the biggest issue that we had was the integration and the overshadowing diagram for the property next door where the owner objected to our application being approved pending that decision. The diagrams, maps and diagrams - - -

Can I just ask you to pause there, please.---Sure.

Are you talking about 570-580?---Yes. I'm talking about 570-580 and house on Chelmsford.

40 And you're not talking about isolation issues?---That's exactly what I'm talking about.

Fair enough, thank you.---So, I'll start again?

But you say you had no concern about it on 12 August, is that right?---I had absolutely no concern for, for August.

Is that because you had communications - - -?---No. It's because the issues were resolved.

- - - with Mr Azzi and Mr Hawatt between 3 August and 12 August?---It issues - - -

10 About 570.---The issues were addressed almost immediately because they had been addressed prior. So there was a, a integration building that was provided, which is what we call to address the separation which didn't exist. There was the shadow diagrams, which actually demonstrated that, I think from memory, about 16 units may be developed on that property next door and the property on its own couldn't be developed, so it had to be an integration with our design which we actually master planned, incorporating that part of the land but because we didn't own it, we had a zero boundary which the owner of the next door can just attach to and continue with his design.

THE COMMISSIONER: Mr Demian, did you have communications with either Mr Hawatt or Mr Azzi about that development after the IHAP decision and before the meeting on 13 August?---It's possibly.

20 Possibly, okay.---Possibly, yeah,

MR BUCHANAN: What communications did you have?---Well, the communication would have been IHAP addressed the issues, the issues had already been pressed some time ago.

And was that it? It sounds like a very short conversation.---Usually is. I said the issues I'm concerned and provided to council officers.

30 And did you communicate – how did you communicate that to Councillor Azzi and Councillor Hawatt?---Oh, look, I can't recall whether it was a meeting or a telephone discussion.

There wouldn't have been the need for a meeting, would there, on what you tell us?---Well, I make decisions based on the days.

I'm sorry, you make decisions based on?---I make decisions based on what I need to do. So, as I said, my evidence is, could have been either a meeting or a telephone call.

40 Well, that doesn't explain why there was a meeting.---The meeting was to provide them the information and advice, in that those issues raised had been addressed almost instant.

In that case, there wouldn't have been a need for any other communications between you and Councillor Azzi and Councillor Hawatt?---Well, that was their decision, wasn't it?

Between 3 August and 13 August, would there?---No. Look, if I would have made a decision that I had to see them for one reason or the other, then I would.

Did you become aware of the report that Mr Stavis prepared to go to the City Development Committee at its meeting on 13 August in relation to 570-580?---Only when it was uploaded on the website.

10 And what's your memory of the of what the gist of what was recommended by Mr Stavis?---Well, my understanding is, there were two reports uploaded. One is the IHAP recommendation to the council or CDC, and one was the planning director recommendation to the CDC.

Yes. What is your recollection of the gist of the recommendation that was made by Mr Stavis is his report to the CDC?---Well, he was recommending approval, his support of the applications.

20 Yes. Did that come to you as a surprise?---No because that was his position with IHAP as well. So, he actually recommended support for the application as I understood it.

When did you become aware that that would be the recommendation to the City Development Committee?---When it was uploaded on the website.

No one told you beforehand that that would be the, the essence of the recommendation?---No.

30 You know that on 13 August, volume 21, page 81. I'm showing you minutes of the meeting of the City Development Committee held on 13 August, 2015, and it was resolved, as you can see halfway down the page, in relation to your DA for 570-580 Canterbury Road, moved Councillor Azzi, seconded Councillor Hawatt, that the development application be approved subject to conditions. You see that?---Yes.

Would you just excuse me a moment. If you could just keep in mind what the resolution was there, that the DA be approved subject to conditions. ---Yes.

40 You see that. If we could go back in volume 21 to page 43 - - -?---Yes.

- - - you can see that the recommendation that Mr Stavis made was that the DA be approved as a deferred commencement consent. Do you see that? ---I can see that.

Can you tell us anything that would assist us in understanding how the recommendation for a deferred commencement consent turned into a motion for the DA to be approved conditionally?---You've got to ask the right people I suppose. I don't know.

You don't know. You have no idea?---No idea whatsoever.

I see. Is it something that was discussed between you and Councillor Hawatt and Councillor Azzi?---No. I've provided the information and that was the end of it, that was as far as it went.

You don't know why the officers' report wasn't followed, recommendation wasn't followed in that case?---You're asking the wrong person.

10

But why are we asking the wrong person? It just seems inconceivable that you wouldn't have some idea about how come the councillors decided to do something different?---I'm not a councillor so you've got to ask the councillors.

But you were in regular communication with Councillor Azzi and Councillor Hawatt in relation to this matter, weren't you?---I was in contact with them, yes.

20 In regular communication, weren't you?---Well, I wouldn't say regular, but I was in contact with them.

And you say you had absolutely no idea, it was a complete surprise to you - - -?---That's what I said.

- - - that the deferred commencement consent recommendation turned into a motion for a conditional approval?---You're asking the wrong party.

30 And by that you mean you had no idea, don't you?---I didn't sit on council that night so I wouldn't have an idea.

No, no, no, no, no, no, no. When you say, "You're asking the wrong person," to me, you're saying to the Commission you don't know, aren't you?---That's correct.

Thank you. Can I ask you to go to page 79 of volume 21. This is an email dated 10 August, 2015 from Mr Stavits to Jim Montague, that's in the middle of the page. Do you see that?---Yes.

40 It reads, "Councillor Hawatt asked me earlier today to provide him with draft conditions which change the recommendation from a deferred commencement consent to a standard approval with the only material change being to deferred commencement condition 3 in my report being replaced by condition 6.2 in the attached, which allows for live work units as opposed to commercial units should the council decide to move away from a deferred commencement consent." You weren't aware that Councillor Hawatt proposed to change the reported recommendation to one of conditional approval?---No, I wasn't.

Councillor Hawatt never said to you he was considering it or canvassed with you the idea of doing it?---He never makes decisions and tells me about them, no.

So the information conveyed in that first paragraph of that email comes to you as a surprise, does it?---Oh, look, it's, it's, I've seen things like that happen before, where councillors addressed conditions to be amended. But this particular email, yes, I've never seen this before.

10

Just to complete the page, you see that on 13 August, the date of the meeting, at 6.07pm, Mr Hawatt sent to Mr Montague a message saying, "Okay, it's printed. I need draft copies to be circulated to the councillors." ---Yes. I can see that.

Do you have an understanding about why Councillor Hawatt would have adopted that approach?---No idea.

20 Can I just clarify with you, a conditional approval in this case was of advantage to you over a deferred commencement approval, wasn't it?---You ask me about the approval, the approval was satisfactory, yes.

But it was more satisfactory than the deferred commencement approval that had been recommended by Mr Stavis, wasn't it?---It's a much better outcome.

Could you have a look, please, at this document.---Thank you.

30 This document is a record of – well, it is a table of call charge records for contact between you and Spiro Stavis, Michael Hawatt, Pierre Azzi, Jim Montague and Matt Daniels. You see that heading?---I can see that.

It's set out in chronological order. There is a date column that is the fourth column from the right.---Yes.

40 And that is a column that we need to keep an eye on as we go through it. Commissioner, I do tender it but I do need to give a caveat. Two caveats. One is that it is – as with the previous exhibit that was I think tendered through Mr Vasil – it is a table that sets out metadata about calls and text messages, where the initiating service is identified in the third column from the left, and the destination service is indicated in the middle column that's headed Phone Service To. The underlying data for the preparation of this table is obviously with the Commission and if a party wishes to inspect that data they should contact the solicitor assisting the Commission, Ms Ellis, to make arrangements for that to occur and arrangements will be made. The caveat is that the table is not a complete record of what it purports to set out. There are a couple of very obvious indications about that. One, for Mr Demian's benefit, is that in respect of Phone Service 1 column, there is no

data that appears in respect of his mobile phone number ending in 0-0-0, and yet we know from other evidence that that was a number which both Mr Hawatt and Mr Demian used in the period under examination. And as well, from time to time, people who read this carefully will see that there is an obvious gap chronologically in the data. And so with that caveat that it is not a record of every contact or attempted contact, I tender the 10-page table CCR records for contact between Mr Demian and the five parties identified.

10 THE COMMISSIONER: And on its face it covers the period from 10 November, 2013 to 29 November, 2016.

MR BUCHANAN: Correct, Commissioner.

THE COMMISSIONER: Ms Ronalds?

MS RONALDS: Our friend has indicated he identified some gaps in the dates. It would be useful if he could identify those publicly so we all don't have to repeat the exercise that the Commission has already performed.

20 THE COMMISSIONER: Are you able to do that at the moment?

MR BUCHANAN: No. That is a forensic matter, in my respectful submission, that can be the subject of submissions at the end of the day. Certainly there has been or will be a forensic analysis of it by the time of our submissions but there are particular matters that I need to take the witness to if I can while he is in the witness box.

30 THE COMMISSIONER: Ms Ronalds, what I propose, why don't we hear the further examination, and if you think you're disadvantaged or need that identified we can revisit it. But maybe if we hear the questions that are going to be asked based on this.

MS RONALDS: May it please the Commission. We've only had it for a nanosecond.

THE COMMISSIONER: Yes.

MS RONALDS: So of course we haven't had a chance to look at it.

40 THE COMMISSIONER: I haven't looked at it. It might be very obvious where the gaps are. I don't know.

MS RONALDS: It just seemed if Counsel Assisting has identified the gaps it would just be useful to tell us.

THE COMMISSIONER: We'll see. All right. The call charge records for contact between Mr Demian and Mr Stavis, Hawatt, Azzi, Montague and

Daniels covering the period 10 November, 2013 to 29 November, 2016 will be Exhibit 122.

#EXH-122 – TABLE OF CALL CHARGE RECORDS BETWEEN CHARBEL DEMIAN AND SPIRO STAVIS, MICHAEL HAWATT, PIERRE AZZI, JIM MONTAGUE AND MATT DANIELS FROM 10/11/2013 TO 29/11/2016

10

MR BUCHANAN: Can I ask you to go to page 6, please, Mr Demian, in this table.---Yes.

And if you go to item, looking at the – I apologise, I should have indicated that the left-hand column is simply item numbers from 1 through to the end.---Sure. Understand.

So on page 6, if you could look, please, at item 251.---Yes.

20

The date in the Date column is 4 August, 2015. Now, you know that 3 August, 2015 was when the IHAP panel decided to defer consideration of your DA for 570-580 Canterbury Road, correct?---Yes.

And on 4 August at 8.35 there is a text that you received from Michael Hawatt. You see that?---Yes. Yes. So that's received?

30

Correct. Can I take you then to the next item. You called Mr Hawatt at 9.10am and spoke with him for what's recorded here as 1 minute and 50 seconds. I should reinforce something I indicated in respect of the previous exhibit of the same kind and for your information. The duration data that appears there means that the line is open. It doesn't mean that you talked. It simply means that the line is open. And so, for example, occasionally you can see that there is a – for example, item 234 – it's zero, zero, zero, zero, indicating essentially that the line wasn't open but that in that particular instance Mr Hawatt attempted to call you. Yes, attempted to call you.

40

Now, when you rang Mr Hawatt at 9.10am and spoke to him, we can assume I think safely for 1 minute and 50 seconds, what did you talk about?---I think I would have informed him of the IHAP presentation that we did the night before and there were issues that were, became of concern to the panel that had been addressed in the past and that would have been, from recollection, the discussion of that call.

At item 253, at 4.26pm, you called Mr Hawatt and spoke to him for 11 minutes and 37 seconds.---Can I just verify. How do I call, how to tell whether it's incoming or outgoing call? There's nothing in that table in there that says that.

Sorry, I should have indicated that from the outset. Phone user 1, is the - - -
?---Caller.

Caller, quite correct. Phone user 2, is the recipient of the call.---Right, okay.
I understand. Thank you.

And so - - -?---So, the item?

10 Item 253 is an 11 minute and 37 second contact between you and Mr
Hawatt.---Yes.

20 What was that conversation about?---Look, again, based on my recollection,
I would have gone through the actual details of the points of issue that we
raised in the IHAP that we had in the presentation and I would have taken
through the material, which is the integration or the provision for integration
for number 2 Chelmsford, the shadow diagramming, the number of units
that may be developed on that parcel of land being only about a few
hundred square metres and just the, the, the issues that were provided to
council officers.

Two days later, on 6 August, Mr Montague rang you at item 254 and the
line was open for 2 minutes and 57 seconds. Do you know why Mr
Montague rang you on that occasion?---I don't recall.

Did you have any conversation with Mr Montague about the fate of your
development application for 570-580 Canterbury Road consequent upon the
IHAP meeting of 3 August?---I don't, I don't recall. I don't, I don't believe
so.

30 Was there a conversation involving Mr Montague in which there was a
discussion as to what might be done to fix the problem of the IHAP saying it
needed to defer consideration?---No, that's not a discussion I would have
with Mr Montague.

On 7 August there was, at item 25, a five-second communication. That is to
say the line was open for five seconds. That's long enough for someone to
leave a message saying, "Please call me"?---I don't have voicemail, so it
wouldn't have been.

40 The next entry is again on 7 August at 3.54. It's a text by Mr Hawatt to you.
Do you see that?---2.54, did you say?

3.54.---Oh, 3.54.

It appears there as 15.54.---I can't see it, sorry, on this table.

It's item 256.---Oh, 256, okay. Yes, I can see that.

The next time is 257, same day, same time and the line is open for 12 seconds. Enough for a short conversation.---257, 12 seconds, yes.

Item 257. You'd agree with that?---I can see that.

Why was Mr Hawatt contacting you on 7 August?---Oh, look, I don't recall. It was 12 seconds as well, so I can't recall.

10 At item 258, Mr Hawatt called you and the line was open on 7 August at 5.27 for 1 minute and 12 seconds. What was that conversation about?
---Look, again, I can't recall but it's fair to say that could have been regarding the information I provided or the discussion I had with him earlier.

Excuse me a moment. Now, consistent with the record that we showed you earlier of an SMS extracted from Mr Hawatt's telephone – this is volume 20, page 260, at 9.27pm on 7 August, 2015. I'm sorry, did I say – I did. 9.37, I correct myself. 9.37pm.---What page was it?

20 Saying, "10.00am at Pierre." There is a corresponding entry at item 259. Do you see that?---Yes.

For an SMS to you.---Yes. Yes.

Then the next day there are five contacts between you and Mr Hawatt starting at 8.42 in the morning with an SMS.---Which numbers are you referring to?

30 I'm sorry. Thank you for asking. 260.---260. Okay.

And at 261 you briefly contacted Mr Hawatt. You see that at 1.18pm?
---Yes.

And then item 262, at 1.19 you sent him a text.---Yes.

This is all after the meeting at Councillor Azzi's house.---Yes.

40 Why do you need to be in communication with Councillor Hawatt after the meeting at Mr Azzi's house on 8 August, 2015?---Excuse me. I would say they would have raised, they may have raised a query about the discussion and I would have gone back to my office, I would say, or somewhere where I can actually have my information, and I would have called back on that basis.

It wouldn't have been that the pair of you were discussing with each other the outcome of the meeting at Councillor Azzi's house and how it could be implemented, tactics, that sort of thing?---No, no. The only reason follow

up on the same day is, would be regarding information or unclarity about information.

There seems to have been a little bit of unclarity about it because the communications continue. Item 263, Councillor Hawatt rings you at 1.20pm, one minute after you have texted him. You see that?---I'm trying to make sense of it. I think, I can see the time. It's within a minute to two minutes apart.

- 10 Yes.---So it would suggest that the phone may have kept dropping out and redialled.

Excuse me a moment.---Sure.

- 20 It's been pointed out to me that there is a bit more information we can take into account in interpreting this data because at page 262 of volume 20 there is an extraction from Mr Hawatt's telephone at 1.19pm. This is item 2 on page 262 of volume 20. And do you see that it is a communication from you to Councillor Hawatt's telephone but it is a hang-up message where you didn't leave a message? That's to say at 1.19 he wasn't texting you, even though it does say here SMS. It registers as an SMS for the purposes of this metadata and indeed this metadata. As you can see, the detail of it is that the message that was given was that you rang and you didn't leave a message.---Well, that's an automatic message so I would have rang up and he would have answered. I would have hang up.

Thank you.---And I think I followed up with an SMS from myself. Is that what is on the screen? Or that was the SMS - - -

- 30 Well, I'll take you to item 264, the next item. It's a call by you to Councillor Hawatt, same day at 1.21 and you talk for 3 minutes and 34 seconds. Do you see that?---Item two six what, sorry?

264.---264. Yes. So that's - - -

So you spoke for 3 minutes and 34 seconds.---That's correct.

- 40 Then the next item is 265. It's a little bit different because although it's on 8 August and it's around the same time, at 1.25, you're making a call to Councillor Azzi.---Yes.

And the line is open for 1 minute and 45 seconds.---Yes.

What was that about?---Again it would have been exactly the same issue I would have discussed with Councillor Hawatt, which would have been a result of the morning discussion that took place.

Taking you then to item 266, that is a call by Councillor Hawatt to you on Monday, 10 August, 2015.---Yeah, that would - - -

The line is open for 17 seconds.---I'd say that would be a hang-up, yeah.

Well, do you know what it was that that attempted communication was about or - - -?---No, I don't recall.

10 Was it an attempt to organise a meeting?---Again I don't recall.

Then you attempted to call Councillor Azzi at 10.55 the same day.---Yes.

But the line was barely open, if at all.---Ah hmm.

Do you see that? The next day, Tuesday, 11 August, you rang Councillor Hawatt, this is item 268.---Yes.

And you spoke for 1 minute and 1 second. Do you see that?---Yes.

20 What was that about?---I can't recall.

But why was there a need for these communications, given the evidence you've given us about the fact that it was not a matter of concern for you, council just did what they had to do and you simply set about obtaining information with a view to it being provided to the IHAP.---Look, that development application was imminent, whether at that meeting or a month later or two weeks later. There was, there was queries raised at the IHAP meeting regarding the integration, which is the amalgamation or call it what you like, and solar access for that part of the land. That information had been designed right at the outset and we had to re-provide that information again. So the development application was imminent. It's a matter of clarity on the information that had been provided to satisfy those queries that were made.

30

Just while we pause and before I take you to item 269, wasn't the issue with isolation that 2 Chelmsford Avenue was a residential dwelling - - -?---B5 zoning.

40 But B5 zoned but a residential dwelling.---A house is on it, yes.

Yes. And the issue wasn't solar access, the issue was that it would be isolated because it couldn't be redeveloped.---Yeah, I've tried to explain that earlier. I'll do it again. Now, if you look - - -

THE COMMISSIONER: No, please, no commentary.---Sure.

MR BUCHANAN: If you wouldn't mind just answering my question.---Well, I'm trying.

It's not about solar access, is it?---No, no, I - - -

10 It's about potential for redeveloping a property which if yours went ahead at 570 would leave this property incapable of being, in a realistic sense, redeveloped?---Sure. There was two queries raised. One is solar access and two was basically whether the property at number 2 Chelmsford can be developed. We've demonstrated and represented to the panel on that night that we have taken on board number 2 as part of the integrated development with our development and hence building our property or our development to the boundary of our site. So what that means is number 5 can actually add onto that wall, okay, however much he can within his own property and I think from recollection he was capable of delivering about 16 residential units plus a shop down the bottom. We had to also provide that the solar access in June, in winter, can, can, can achieve a 70 per cent solar access, which we had also demonstrated via a shadow diagram modelling that we had done for it. That information was resubmitted again and then we had to provide it to the council officers, okay, to take on board and assess. So the property - - -

20

But the problem was that none of that had impressed the IHAP, had it, at its meeting on 3 August?---No, that's far from it. All they wanted is the information, so they were, they accepted our argument that we put forward but we didn't have on that night the information that they, they've requested. So, we had to, within the exception of pointing to our zero boundary wall, which is on the south face of the building, we had to provide the modelling, in particular the, the shadow diagram modelling had to be undertaken and provided to be of a satisfactory sort of manner.

30 THE COMMISSIONER: But my understanding from your evidence was that you have been saying that that evidence had been prepared and had been provided to the council staff?---Yeah. At the outset.

Previously.---That's correct.

40 So all you had to do was go into your files and find this information that had been prepared previously and provided again, and I know your evidence is you were frustrated about that but it's a relatively straightforward process, isn't it?---And that's exactly what we did, Commissioner. The following day or two days - - -

You went to your files, got the info, provided it again?---Got the consultants. So, there was the, the town planning consultants, the architect consultants and myself. I've made sure that the information was resubmitted to council and I, I recall that there would have been a receipt signed for. We provided to council addressing the demonstration that we had with IHAP at the following – the previous night.

I think what Mr Buchanan's asking you, if it was as relatively straightforward as that, and I understand your evidence is you were frustrated and you would have raised that frustration with the councillors, there seems to be a lot of communications and meetings in circumstances where you've prepared the information and it's been handed over.---Look, if, if, I suppose the, the difficulty is councillors aren't planners and you've got to show it to them in a certain way, where they have to verify it for themselves. We can't tell them what to do. We can only provide the information to them. So, we provide the information and they go back to their council offices and do whatever they do, but we, we, there's never been a discussion about whether it's supported or otherwise, ever. We provide the information, we take them through it, we try to convey a point and we leave it with them. That's as far as discussions go.

MR BUCHANAN: Mr Demian, I appreciate that is your evidence on the questions the Commissioner asked you, but the other factor to take into account – given this fairly high degree of communication, might I suggest, between you and Councillor Azzi and Hawatt at this time – is that what then occurred was that an officers' report went forward to the CDC which didn't adopt the IHAP report and instead recommended a deferred commencement on the one hand, which is I would suggest unusual, and then secondly, even more unusual, that recommendation was not adopted and instead Councillors Azzi and Hawatt put forward a resolution for a conditional approval, an ordinary straight-down-the-line conditional approval. So, those are two unusual things that we know occurred that could be explained by your relationship with those two councillors and we know now that there was this high degree of communication between you and them and your evidence doesn't explain it. Do you see the problem?---I don't see the problem.

Item 269, 11 August at 12.37pm, Michael Hawatt rang you. The line was open for 13 seconds.---11th?

On 11 August, 2015. This is item 269.---I can see that.

It's another communication on the 11th.---Yes.

Item 270, you rang Councillor Hawatt on 13 August at 9.46am. Now, 13 August is the date of the meeting of the City Development Committee. ---Yes.

Why did you ring Councillor Hawatt on the morning of the date of the City Development Committee if, as far as you were concerned, it was all matter for council and it wasn't a matter for you?---Look, I can't recall what that discussion was. Could have been related or could have been other projects within the area.

It's for 7 minutes and 33 seconds.---Yeah, I can read. I can see that.

I want to suggest to you your evidence does not explain these communications at all, but that the unusual treatment given to your development application between 3 August and 13 August is consistent with this relatively high degree of communication that you had with the two councillors with whom you were working closely in respect of your development applications. That does explain it.---Is that a question?

Yes.---Yeah.

10

And I'm inviting you, I'm giving you an opportunity of explaining it or responding.---Okay. Well, obviously at the beginning the council director wanted to defer the matter for further information. Or, sorry, defer commencement so we could actually provide further information post a DA submission. I have had similar issues and I wanted to defer for a month for this information to be sorted out. The information had been provided at the outset, so we were able to provide it almost, pretty much the following day or within two days. The consultants were instructed to communicate with council staff and provide them all their assistance or demonstrate what

20 needs to be done, if necessary. I did have five or four other projects apart from that all running simultaneously, so I can't recollect specifically of three years ago, or at least two and a half years ago, exactly what topics were discussed.

The next item is 271. This is still on 13 August. You ring Councillor Azzi at 11.19am and the line is open for 59 seconds.---Yes. Yes.

30

Why did you need to speak to both of those gentlemen on the morning of 13 August, 2015?---Look, would have been a related topic. I can't recall the specifics.

Well, the chances are it was about the agenda item comprising your development application for 570-580 Canterbury Road, wasn't it?---I wouldn't be that specific, no.

Why not?---Because I've just answered your question earlier and said I had five projects running simultaneously, and it may have been about 570, it might have been about other projects as well.

40

And you don't think the fact that that day, that night there was to be a meeting considering 570 improves the chances that the topic of conversation that you had in those phone calls you made to those two councillors was that agenda item 570-580 Canterbury Road?---Possibly.

What were you talking about?---The information requested by IHAP.

And if we can go over the page, at page 8 of the table, please, Mr Demian, there was a short communication, item 317, at 11.15, between you and

Councillor Azzi that you initiated. The line was open for three seconds.
And then a minute after that, at 11.16, item - - -

THE COMMISSIONER: Sorry, are we - - -

MR BUCHANAN: I'm sorry.

MS RONALDS: You've skipped a page.

10 MR BUCHANAN: Have I?

MS RONALDS: You've missed page 7.

THE COMMISSIONER: I think we should be on page 7.

MS RONALDS: You've now gone to November.

MR BUCHANAN: I do apologise. Thank you. Thank you. I appreciate
that. I apologise, Mr Demian.---Sure.
20

Can I take you back to page 7, please.---I'm having problems reading this
table. Do you mind putting it on the screen?

MS RONALDS: It's on the screen.

MR BUCHANAN: Yes, the screen is probably the best way of - - -?---I'd
say so.

THE COMMISSIONER: Have you got the screen? It's coming up.---I've
30 got the screen now up to item 308.

MR BUCHANAN: So looking at the top of page 7 - - -?---Sir, I can't see
the bottom of the page but what item are we looking at?

You can assume that it's page 7.---Okay.

Item 272.---Yes.

That's at the top of the page is it on the screen?---Yes, I can see, I can see
40 that. Thank you.

And Michael Hawatt called you at 11.27 and you spoke for 15 seconds. Do
you see that?---I don't know whether we've spoken for 15 seconds but yes, I
can see that.

So there's this series of communications around, a bit after 11.00 in the
morning on 13 August. Can you help us as to why those communications
occurred?---I think there was an attempt by Councillor Hawatt to call me

and he didn't connect. I tried to call him back. He didn't connect. There was a call from Councillor Azzi which didn't connect and I called back at 5.50 and spoke for about five minutes and then spoke to Councillor Azzi again. So I would have returned both of those phone calls at the later communication in the day.

Well, there's a bit of additional data that I need you to take into account.
---Sure.

10 But you were just reading from items 272, 273, 274 and 275 weren't you?
---That's correct, yes.

Thank you. Between 275 and 276 I want to suggest to you the meeting of the CDC occurred.---Between what time and what time, sorry?

Well, I can take you to particular information that will assist on that.---Sure.

20 Volume 21, page 80. If you look at page 80 in volume 21 you can see that it's the minutes of the meeting of the City Development Committee that was held on 13 August, 2015 and that at the top of the page it's recorded the meeting commenced at 7.43pm.---Sorry, what page?

It's in front of you on the screen.---It's not on the screen yet. I think we're on page 1 on the screen. Sorry, page 80. Yeah, I can see that.

We're at page 80.---Yes, on the right-hand side.

Yes. Can you read the top of the screen.---Minutes of the meeting.

30 Yes. Third line down.---Yes.

Meeting commenced at 7.43pm.---That's correct. I can see that.

And can I take you then to page 97.---Yes.

The meeting concluded at 8.10pm.---Yes.

40 If we return to Exhibit 122, page 7, first of all item 276 is a call by Councillor Azzi to you at 6.32 that lasted one minute and 31 seconds.---Yes.

I'm sorry, 8.32. That's my mistake. I do apologise.---Sure.

That's just after the meeting is finished.---Appears to be, yes.

What was that call about?---Look, possibly advice from the outcome of council.

So in relation to 570?---Possibly, yeah. I assume that would be the reason, yes.

So it would seem then that Councillor Azzi thought that you would be interested in the information as to what had happened?---Of course I'd be interested.

So you were interested in what happened at the council meeting?---I'm always interested in what happens in a council meeting.

10

And you were interested in how council would deal with your DA in light of the IHAP deferral of it on 3 August - - -?---Sorry, reframe the question, please.

I'm sorry?---Reframe the question, please.

20

Yes. You were interested in the outcome of the CDC meeting to be held on 13 August, 2015, after the IHAP meeting on 3 August, 2015, where consideration of your development application had been deferred.---Oh, look, it's my obligation to address the issues, absolutely.

But you were interested in the outcome. You had a concern about the outcome.---No, I wanted to provide the information that was raised at the IHAP panel and that's exactly what we did.

But you told us yesterday and today that as far as you were concerned it was simply a matter for council.---It is simply a matter for council. But - - -

30

Then can I take you to the next entry, 277, at 7.29. 9.29, at 9.29pm. Jim Montague rings you and there's a conversation for 28 seconds.---I'd say that'd be more of a message but I can see that.

Yes. So what happened in that conversation?---I can't recall.

Why did Mr Montague ring you?---Don't know.

Well, do you think Mr Montague might have been wanting to talk to you about the outcome for your development application?---I, I don't know.

40

You were good friends with Mr Montague at that time, weren't you?

MR ANDRONOS: Well, I object to this. This allegation that Counsel Assisting is advancing about a friendship has been asked and answered at least six times. The fact that Counsel Assisting hasn't got the answer he would like does not give him the right to keep asking the same question. It's been asked and answered. I can give you transcript references if that would assist.

THE COMMISSIONER: Mr Buchanan?

MR BUCHANAN: Well, the witness might and sometimes does change his evidence when confronted with fresh information.

THE COMMISSIONER: Mr Andronos, I'm going to allow it. It's in the context of now a communication by I think it's phone between Mr Montague and Mr Demian after this particular meeting. I accept that it is additional information. I would be interested in this witness's explanation, if he can give one, or if he can recall, I'm sorry, as to why Mr Montague was trying to contact him. Counsel Assisting has put a particular description or characterisation on that. The witness can respond.

MR ANDRONOS: With respect, what Counsel Assisting is doing is using the allegation of a friendship to explain the communication, not using the communication as a way to demonstrate the friendship. But I won't cavil, but just for the record, 1976, 1980, 1997 and 2034 are all occasions where the same allegation has been put and rejected.

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

MR BUCHANAN: Can you give us an explanation as to why Mr Montague would have rung you the day after the – I'm sorry, rung you on the evening after the meeting of the CDC on 13 August, where your development application had been approved?---I can't recall.

But you were the person who had the relationship you had, whatever it was, with him at that time.---Professional relationship.

How would a professional relationship with Mr Montague explain a call at 9.29 at night after the City Development Committee had approved your development application?---Well, we all work late so it's a normal time for us to make phone calls.

What was the aspect of the professional relationship which was, as it were, implemented by him making that phone call to you?---Look, I can't recollect. Could have been regarding a meeting I requested. I don't know.

You see, an explanation would be if it was more than a professional relationship and you had a friendship with him, wouldn't it?---Absolutely not.

No?---No.

You in fact had a long-standing friendship with Mr Montague as at this time, didn't you?---No, that's not the case.

Over many years, I want to put to you.---No, that's not the case at all.

Then can I ask you about item 278 on 14 August.---Yes.

Mr Hawatt rang you at 8.32 in the morning and the line was open for 2 minutes and 20 seconds.---Yes.

What was that conversation about?---I can't recall.

10 Was there a discussion about what had happened the night before at the CDC meeting?---No. The meeting was over, decision was made, so I would say it might have had something to do with the other projects we were working on.

Well, Mr Hawatt hadn't spoken to you after the meeting as Councillor Azzi had and Jim Montague had.---Yes.

An explanation would be that here he is touching base with you to receive your thanks for what occurred.---That's your opinion but I can't recall.

20 Did you thank him for what had occurred?---I always thank people.

And you thank them when they do something for you, don't you?---I thank them regardless.

You thank people regardless?---Yeah, for being nice, yes.

I see. Mr Hawatt had done something for you and Councillor Azzi had done something for you of considerable financial significance to you, hadn't they?---They did their job actually and they made, they may have made the decision based on the information provided. I think that goes a long way.

30 What they had done was of considerable financial significance to you, wasn't it?---The development application was imminent. The answer is no to your question, the answer is no, they had nothing, absolutely nothing to do with it. The development application was absolutely imminent and would have been that meeting or the following meeting that the information may have been finalised in one format or the other.

40 Excuse me a moment. I wonder if I can take you to the evidence that you gave yesterday on the subject of contact with Councillor Hawatt. Would you just pause a moment?---Sure.

THE COMMISSIONER: Have you been provided with yesterday's?

MS RONALDS: Yes, I have, thank you, Commissioner.

MR BUCHANAN: I need to find my place first though, Commissioner. Can you just excuse me a moment. Can I take you to some other evidence

that you gave yesterday. I want to change the subject now from the 570-580 DA in August 2015, and just ask you about the evidence that you gave yesterday about your relationship with Councillor Hawatt. If you'll just excuse me a moment. Can I go to page 1965, please of the transcript of yesterday's evidence. I'll read out to you the transcript of the evidence you gave yesterday. I was asking you about Michael Hawatt and it was essentially the first question I'd asked you about whether you knew him or not. This is page 1965, commencing at line 25. Question, "Thank you. Now, in 2013-16, you knew Michael Hawatt?" Answer, "I would say more like 2014 onward."---Correct.

Question, "What was the occasion on which you first had dealings with him, sir?" Answer, "I think it would have been about mid or later on 2014. I contact him via his mobile phone and asked whether I can meet him." Question, "And so was it Mr Hawatt who first contacted you, was it?" Answer, "No, I contacted him." Question, "Oh, you contacted him?" Answer, "That's correct." Question, "And was there a particular occasion or reason for that contact?" Answer, "Yeah, there was a reason for that contact." Question, "And what was that?" Answer, "Well, at that stage in 2014, we, I was interested in seeing whether we can actually separate our planning proposal from the comprehensive draft LEP and pursue it on a standalone basis." Question, "For any particular project?" Answer, "It was 548 at the time." Question, "And was this during the Residential Development Strategy process?" Answer, "That's correct, yes." Going over to page 1966. Question, "Did you have any discussions with Mr Hawatt with a view to loosening development controls that applied to either 998 Punchbowl Road or 548-568 Canterbury Road during the Residential Development Strategy process?" Answer, "No." That was the evidence you gave yesterday on the subject of your knowledge of Michael Hawatt. When I suggested to you that it might have been in an earlier period, you said it was in 2014 but can I just ask you to go to page 1 now of the call charge record table in Exhibit 122, and can you see that the first - sorry, item 3 and 4 are text messages that Mr Hawatt sent you on 16 November, 2013?---I can see that.

Can you explain that in light of the evidence you've given?---Look, my evidence yesterday was it's more likely early '14, mid '14 and I stand corrected that it must have started in November, '13.

40 And what was the - - -?---But that was based on my recollection.

I'm sorry. What was the subject matter of the communication in November, 2013?---Look, I honestly don't remember. It would have been enquire about when the council strategy is likely to be sent to the department and probably just enquiring about processes. I only had two sites of that stage and both had been resolved in, in, in October.

THE COMMISSIONER: Sorry, could you repeat that? You had two- - -?

---Sorry, I only had, I only controlled two properties at that stage, which is 548 to 568 and 998 Punchbowl, sorry Belmore Road, Punchbowl and that was, they were both resolved on 24 and 31 October, 2013. Punchbowl Rd, Punchbowl, sorry.

MR BUCHANAN: Did you have a relationship with Mr Hawatt that pre-existed the occasion when you first had dealings with him that you told us about yesterday when you say that you wanted to meet him to discuss whether you could separate your planning proposal from the comprehensive draft LEP in relation to 548-568 Canterbury Road?---That discussion was only likely around the mid-2014, when I requested the council officers first and the – I think that meeting took place with Mr Montague and the then planning director and that would have been around mid-2014.

But my question is, did you have a relationship with the councillor before then?---Well, I had a professional relationship with them before then.

What was that professional relationship?---Well, I said to you, it would have been inquiries regarding the, the council policies going forward with that strategy and when it's likely to move forward. They can sit on those for years and years sometimes, so it would have been inquiries relating or regarding those two items that had been resolved way earlier.

Had you met Councillor Hawatt in a social setting earlier than 2014?
---Look, I don't recall, but according to the phone data there had been communication from November going forward.

I do want to revert to an issue that I had been raising with you to suggest that the evidence that you've been giving about your relationship, the character of your relationship with Mr Hawatt has not been true.---No, that's not correct.

This is again further information indicating that the information you'd been giving us isn't reliable so far as concerns, at least on this occasion, your relationship with Councillor Hawatt. Isn't that right?---No, that's not correct.

And is it possible that you are misleading the Commission as to the nature of your relationship with Councillor Hawatt?---Absolutely not.

You had a more than what you've described as a professional relationship – that is to say a relationship that concerned your business projects – but instead something else, something - - -?---That's not the case.

Can I give you another copy of the Exhibit 122. This is a copy of the same document but it has had added to it highlighter markings.---Yes.

And the highlighter markings have been assigned to anyone who isn't you.

---Yes.

That is to say the other parties to communications with you.---Yes.

But there's just a slight quirk to that. Matt Daniels appears in this table and he has been assigned a colour and there are some communications that are with him, and indeed I think all the communications that are in here that are with him are not with you.---I see.

10 You understand that?---I can see that, yes.

Thank you. Commissioner, I tender the copy of Exhibit 122 which is marked up in colour, different colours for the different parties other than Mr Demian.

THE COMMISSIONER: The version of Exhibit 122 but with the colour coding indicating either callers or recipients of calls will be Exhibit 123.

20 **#EXH-123 – VERSION OF EXHIBIT EXH-122 BUT WITH COLOUR CODING - INDICATING CALLER OR RECIPIENT OF CALL**

MR BUCHANAN: It's visible on the screen now, Mr Demian, and please refer to the paper copy at any time if you're not quite sure of what the colour is that's on the screen, because I am going to be taking you to particular colours. You can see that Mr Montague is in green.---Yes.

30 Items 5, 6, 7 and 8 are contacts with you initiated by Mr Montague. Can you see that?---Yes.

And they're in November 2013.---That's correct.

What was Mr Montague contacting you about in November 2013?---Look, with the exception of trying to organise a meeting, I have no idea. I can't recollect.

40 It's over three different days, 17, 19 and 21 November. Does that provide you with any assistance for your memory?---No, I can't, I can't recall.

Now, there are, if one flips through this the colour yellow predominates. That's Michael Hawatt. There are an awful lot of contacts between you and him and more of them initiated by him than initiated by you. That's on this table. Do you see that?---Yeah, I can see that.

An explanation for the fact that there are more in this table of records of Mr Hawatt initiating contacts with you than you to him would be that as we indicated at the outset when tendering Exhibit 122 your phone service

ending in three zeros does not appear in the second column from the left, that is to say, the initiating caller and yet we know that you used that telephone number. Do you understand?---Yes.

And so what I'm suggesting to you is that a perfectly logical explanation for why there are so many more calls by Mr Hawatt to you would be that this table doesn't have in it calls you made to him from your phone number ending in triple zero. Would you accept that that's a reasonable explanation?---Oh look, I don't know. I mean I can only see what's on the screen. I can't see anything else.

Well, you can also see it as you flip through the table.---Yes. Wasn't that what the question is about to flip through to the colours?

And so the only alternative of course if that you made no calls to him other than on the, as indicated in this table and he was making an awful lot of calls to you to which you were not responding and which were not responses to you calling him.---Well, they were very short.

20 That's not likely to be the case is it?---Look, I don't understand this. As I said look, this is a table. I can only see what's on the screen. I can't really comment any further on that.

What the more likely explanation is, is that this is quite incomplete and doesn't show what are likely to be a large number of calls made by you to Mr Hawatt using your phone number ending in triple zero.---Again I can't comment on that.

Well, you can can't you because you're the person who used that phone. ---Yes.

Why can't you tell us - - -?---Tell you what?

- - - whether you used that phone number to call Mr Hawatt?---Triple 0, triple 0?

Yes.---Yeah, look, I've used both the phones to call Mr Hawatt with or Councillor Hawatt with.

40 So you accept that you have used the triple 0 number to call Mr Hawatt? ---Sure.

Plenty of times, would that be fair?---Oh look, I don't know plenty of times but I have used it. So it depends whether I'm in the car or in the office. I usually make the phone calls when I'm driving and that's usually the second number.

THE COMMISSIONER: Sorry, which number is the car number?---The 6-10, ending with 6-10. [REDACTED] ending with 6-10.

MR BUCHANAN: And what was the type of occasion on which you usually used the triple zero number?---Look, every other time I suppose. Mainly in the office.

And you would have spent more of your time out of your car than in your car. Would that be fair to say?---Oh look, I'm all over the place.

10

And so a reasonable conclusion would be having regard to the serious number of calls being made to you by Michael Hawatt on your other two numbers that you made a large number of calls to him using your triple zero number when you were not in your car that are not recorded in this table?--- I don't agree with that.

Why not?---Because I can't see on the screen.

20

Well, you can use the hard copy of it will assist you in appreciating, drawing conclusions from what you can see on the table.---Just to clarify, the question is the number of phone calls I made to Councillor Hawatt?

Correct, using your triple zero number.---I think my evidence has been consistent. I have made a number of phone calls to Councillor Hawatt from both numbers.

If you just flip through the pages in the paper copy of Exhibit 123.---Yes.

30

There's a remarkable number of calls between you and Michael Hawatt aren't there, there's a very large number?---Over a three year period or three and a half, yeah, there are a few phone calls.

That's not explained by what you've described as a professional relationship, is it?---Absolutely professional.

I want to suggest to you that the evidence before the Commission shows that you are withholding from the Commission the truth as to the true nature of your relationship with Michael Hawatt.---Absolutely not.

40

And I want to suggest to you that the evidence you've given as to the nature of your relationship with Michael Hawatt does not explain the extent of the communication that we can see that you had with him, taking into account that Exhibit 122 and 123 do not record the calls you initiated on your 0-0-0 number.---I don't agree with that.

Can I just ask you about, just back on page 1, can you see that on page 1 and 2, to a large extent, to a lesser extent on page 3 and it dribbles off after that, a lot of calls that Mr Hawatt made to Matt Daniels?---Yes.

Can you assist us in understanding what they would have been about?
---I have no idea.

Does it surprise you as to the level of communication that Councillor
Hawatt had with Matt Daniels?---No, it does not.

10 Why does it not surprise you?---Because people in business tend to make a
lot of phone calls so that's pretty normal, pretty normal behaviour.

What was the business that as you understood it Michael Hawatt had with
Matt Daniels?---I can't, I have no idea.

Was there a political association that the pair of them had?---Again, I don't
know.

Did they share an affiliation with a political party?---I don't know, you've
got to ask them. I understand that Michael is Liberal, I understand that.

20 What about Matt Daniels. He worked for you, surely you know his political
affiliation?---No, I don't.

So you can't help us at all as to why Michael Hawatt was making so many
calls to your strategic planning consultant on these projects?---You're
asking the wrong person. I don't know.

Excuse me a moment. Can I ask you please to have a look at the top of page
3.

30 MS RONALDS: Of what?

THE WITNESS: Yes.

MR BUCHANAN: Of Exhibit 123. And can I just take you to the calls
between you and Michael Hawatt on 12 January, 2015.---What number is
that, sorry?

THE COMMISSIONER: Sorry, which date?

40 MR BUCHANAN: I'm sorry, have I got it wrong?

THE COMMISSIONER: No, I just misheard.

MR BUCHANAN: It's 12 January, 2015.

THE COMMISSIONER: Thank you.

MR BUCHANAN: At the top of page 3.

THE COMMISSIONER: Thank you.

MR BUCHANAN: It actually starts at the bottom of page 2.---Yes.

One contact there. There's also a contact with Mr Montague that you initiated on 12 January, at 10.39pm for seven seconds. Do you see that?
---Oh, that's on the - - -

10 I'm sorry, I'll give you an item number.---Yeah.

96.---That's at 10.00pm.

Yes.---Seven seconds. Yeah, I can't explain that one.

Was it usual for Mr Montague to ring you in the evening?---No, that was me calling.

MR ANDRONOS: Objection.

20

MS RONALDS: I object.

THE COMMISSIONER: No, it was the other way.

THE WITNESS: It was the other way.

MR BUCHANAN: I apologise. Was it usual for you to ring Mr Montague in the evening?---No, that would have been, just looking at it, it would have been probably made in error by touchphone, so that wouldn't have been intentional.

30

And then there's a series of communications with Mr Hawatt on 13 January. Do you see those?---Yes.

And then down to item 104, and then you contacted Mr Montague, had a short minute-and-a-bit conversation with him at 12.37.---Yes.

And then there are subsequent calls on 13 January.---Yes.

40 As for the calls on 12 January, were they making arrangements for you and Mr Montague to meet with Mr Hawatt in his office the next day?---Look, I, I don't, I don't recall the contents of those discussions.

The calls that are recorded as being on 13 January, calls that were made in relationship to a mediation that you were trying to effect between Mr Montague and Councillor Hawatt in his office on 13 January, 2015?---No, I, no, I had no involvement in that.

Then there were a number of communications the next day between you and Mr Montague. Can you see that?---I can see a couple. That's on the 14th.

Item, yes. 14th, commencing at item 108.---Yes.

What were you and Mr Montague talking about in those calls on the 14th?
---Look, I can't recall but it would have been project related.

What else could they have been about?---That's it. Project related.

10

Item 116 on 29 January.---116. Yes.

Excuse me a moment. You're recorded as ringing Mr Montague at his home and speaking to him for 8 minutes and 56 seconds. I'm sorry.---116, did you say? Yes, I can see that.

20

Why did you ring Mr Montague at his home on that occasion and speak to him for almost nine minutes?---Look, again, I, I can't recall the specifics of the discussion but I think at that time I would have had the three projects, and possibly four projects, up and running. So there would have been major concerns that nothing was happening at council for some time prior to that date.

It's quite clear that you had a relationship with Mr Montague that you haven't fully explained to the Commission, isn't it?---Look, I've explained it a number of times and the answer again is it's a professional relationship.

30

And would it be fair to say that it was a professional relationship in respect of which you had a degree of influence over him?---I disagree with that totally.

Now, on page 5, if I'm correct, Mr Azzi turns up for the first time at item 193 on 26 June – no, I am wrong. He turned up for the first time, I think, on item 158, 159 on 6 June, and he appears again on page 5 at item 193 and following. Why was Councillor Azzi contacting you on 6 June, 2015, 26 June, 27 June?---I can read. I think, if you remember my evidence, that I've met Mr Azzi as he came along with Councillor Hawatt to a meeting around 2015, mid-2015, for the first time. That was my evidence yesterday.

40

But I suppose what I'm trying to ascertain is, given the description you've given us of the character of your relationship with both Councillor Azzi and Hawatt, why did those gentlemen ring you so frequently?---I would have initiated the telephone calls considering that at that point of time, from recollection, I've had five projects running simultaneously with different applications at the council.

Yes. And why would they have rung you instead of you ringing them?
---They'd be returning my phone call, wouldn't they?

I see. So you are telling us, are you, that you would attribute their calls to you as simply returning calls that you had made to them from your 0-0-0 number?---Or other numbers. I don't know. But I would have made a phone call for them to return it.

10 And all of these calls can be put down to these two councillors returning calls that you had made to them?---Look, returning phone calls or, or following up on, on other discussions that we had regarding those applications. So either/or.

I put to you before that you received a remarkably high level of service from these two councillors. Now that you can see the extent of the communication – and on this evidence it's incomplete, this evidence is incomplete – it's clear that they were basically at your beck and call, weren't they?---No, that's not correct.

20 They thought that if you made a request, they had to respond to it.---No, look, I've made requests, as applicants would do from time to time, and they responded to it.

And you made many requests on a sometimes daily basis. Is that your evidence?---Five projects with multiple applications for each one of those in a period of three and a half years, and that became continuous work on those projects.

Commissioner, this might be an appropriate time.

30 THE COMMISSIONER: We'll adjourn for the morning tea until about 10 to 12.00.

SHORT ADJOURNMENT

[11.32am]

40 MR BUCHANAN: Commissioner, can I raise an administrative matter that relates to Exhibits 122 and 123, the call charge records that we've been looking at this morning. Mr Andronos has raised with me a question which I dealt with when it came to Exhibits 74 and 75, admitted on 20 and 21 June, which were the call charge records relating to various parties, including Mr George Vasil, but I didn't deal with today when indicating the caveat that I gave about these particular call charge records and that is the Caller Location column on the right-hand side of the two exhibits. And Mr Andronos asked, do we intend to rely upon the data in that column. The answer, Commissioner, is we do not presently have an intention but I don't want to exclude the possibility that we may come to rely upon it, although of course people would have an opportunity of dealing with it in response to submissions for example, or in response to examination of a witness.

THE COMMISSIONER: Ah hmm.

MR BUCHANAN: The well-known, if I can say this from the bar table, qualification that one must always give in relation to data as to caller location is that the location of the tower which relays the signal isn't at all necessarily an indication of the location of the caller.

THE COMMISSIONER: Ah hmm.

10

MR BUCHANAN: And there are plenty of examples one can think of in a hilly city where the location of the tower can be quite a long way from the location of the caller.

THE COMMISSIONER: Ah hmm.

20

MR BUCHANAN: However there are other limited circumstances which might, I don't want to exclude the possibility arise during the conduct of this inquiry where we would wish to refer to the data in that column and will give notice of intention to do so if that does happen.

THE COMMISSIONER: Okay.

30

MR BUCHANAN: Can I take this opportunity of changing what I said on that subject on 20 June in relation to Exhibit 74, which applied to Exhibit 75, the revised call charge records relating to Mr Vasil, to the same effect. That is to say the data under the heading, Caller Location in the right-hand column for those two exhibits, no present intention to rely upon them, but I don't want to exclude the possibility that that may occur, this being an ongoing investigation.

THE COMMISSIONER: Right. Does that deal with your concern, Mr Andronos?

40

MR ANDRONOS: Yes, yes, it does, Commissioner. The concern is, I'm grateful to my friend for making it clear, the concern is that I understand the final column gives a reference to the tower, to the cell tower, and as my friend has with respect correctly pointed out, that's not determinative of the location of the caller.

THE COMMISSIONER: Right.

MR ANDRONOS: Or at the time the call is initiated. If the call is in the car there will be multiple towers of course, each of which comes on stream at different times during the call. But I'm indebted to my friend.

THE COMMISSIONER: All right. Thank you. Right, thank you, Mr Buchanan.

MR BUCHANAN: Thank you, Commissioner.

If I can just go back to say Exhibit 122, the call charge record – actually it might be easier to use the colour-coded one.---Sure.

Exhibit 123, Mr Demian.---Yes.

10 Page 7, item 279 is a text to you from Mr Hawatt on 17 August, 2015 at 6.14pm.---Yes.

The content of that text can be found in the evidence at page 109 of volume 21, and it's in the front of you on the screen now, sir, if that assists. The message reads, "Are we still on tonight?" Do you see that?---Yes.

20 That would suggest to the reader that there is something other than a professional relationship that you had with Mr Hawatt so far as he was concerned, as at 17 August, 2015. You'd agree with that?---No, I don't agree with that at all.

"Are we still on tonight?" is suggestive of a social get-together. ---A meeting.

Yes. You never had a social get-together with Councillor Hawatt or - - -? ---No.

You never had a social get-together with Councillor Azzi?---No.

30 Ever?---Pretty, within except of that Cancer Foundation fundraiser that we both attended, but not together, no.

THE COMMISSIONER: I'm sorry, when was the Cancer Foundation?
---Oh, there was an annual Cancer Foundation fundraiser that happens annually in Roseland at the club there, so we attend that as often as we can and so did they.

All right.

40 MR BUCHANAN: Which club was that?---It's in Roselands. I can't remember the name of it.

The Lantern Club?---That's it, the Lantern Club.

THE COMMISSIONER: And that's an annual event?---That's an annual event.

That you usually attend?---We've attended at least two of them so far.

Sorry?---At least two of them so far.

MR BUCHANAN: In what month of the year?---Oh, look, I can't recall. It's usually – I can't recall.

What season of the year?---Oh, again, I can't recall. It's an annual event.

10 Can I take you now to volume 13, page 126. This is an email dated 20 August, 2015, from a Craig McGaffin, M-c-G-a-f-f-i-n, to Spiro Stavis, cc to Tim Stewart and Matt Daniel. “Good afternoon, Spiro. DDC Urban Planning acts for Statewide Planning Pty Ltd and the owner of 998 Punchbowl Road, Punchbowl. We attach for your attention our letter in relation to that site. We're available to meet to discuss at your convenience.” That was right, DDC Urban Planning acted for you?---That's correct.

20 If you can turn over the page, page 127, and it's on the screen, at a letter dated 16 October, 2015, addressed to the general manager of Canterbury Council from DDC Urban Planning and it appears to be a proposal or a submission for a change in the building height and maximum permissible FSR. If we go to page 129, this in respect of 998 Canterbury Road, I do apologise, my mistake, 998 Punchbowl Road.---Punchbowl.

Towards the top of page 129, “We request that planning proposal 2014,” that's a reference to council's planning proposal, “is amended to allow on the site a maximum building height at 15 metres and a maximum permissible floor space ratio of 2.7:1.”---Yes.

30 Do you recall giving instructions for this to go out?---I recall giving instruction to the consultants to complete the analysis including the reports and resubmit it, yes.

And it was for an increased FSR?---Slightly increased, yes.

40 Why did you give instructions for that to occur?---With the planning principles having changed in about June of 2015, we had to amend the footprints of the buildings and we had to redesign it and it was demonstrated within that design the site is suitable for 2.7 and that was the reason. There was no other reason but that.

Was it because you realised the extent and implication of the impact of the RMS reservation for road widening on the southern side of the site would have for the lot yield for any development on the site?---No. That had nothing to do with it. We were aware of that fact from the outset. What really changed that made the urban design that we had be amended is the extra separation from the ADG requirement which came into effect in June of 2015.

And that had an impact in achievable lot yield from any development on the site?---No. What it did do, it actually had the footprint slightly reduced from the original design that we had and hence the request of the extra height you know, with similar, similar FSR.

But the setback requirements that flowed from the Apartment Design Guideline necessarily meant, you yourself said, the footprint was I think you said slightly smaller?---Slightly smaller, yes.

10 Which would have reduced your lot yield, unless you had bulked the building up.---No, it doesn't work in, in that manner. What you do is, with the extra separation from the boundary, which was nine meters on the northern boundary, the footprint of the proposed building was amended and we requested the extra height, you know, based, for that reason based on the merit of the design at that time.

But you requested an increase in FSR as well.---Slight.

20 And it was all because otherwise your lot yield would be reduced.
---Well, that doesn't make sense, but the FSR and the height are - - -

Why doesn't it make sense?---Well, there's got to be consistency in both height and FSR, so the design was amended and the design demonstrated that 2.7 was sustainable within the development and we applied for that.

30 Why aren't you prepared to accept that the impact of the Apartment Design Guidelines as you've identified them was to reduce your FSR, I'm sorry, to reduce your lot yield and in order to recover the lost lot yield you applied for an increase in height and FSR?---No. The design was amended and things had moved on over a period of two years, the design was amended and as I said, based on the analysis that were completed it demonstrated that the FSR and height were sustainable for that development being a Gateway site.

Would it be fair to say that you had lost FSR as a result of the correct application of the new Apartment Design Guidelines to your design?
---No, that's not the case at all.

40 And any urban planner who said that would be wrong, would they?
---Our urban planner and advice and consultation with the council officers at that time, there was a desire to have a slender tower on the corner of the site from a design articulation point of view, being a Gateway, so the higher levels didn't require the full footprint that would have been permissible or inconsistent with the ADG requirements.

You're not - - -?---So we've - - -

You don't want to answer my question, do you?---That's - - -

That if an urban planner had told the Commission, and suggest in fact two urban planners have told the Commission that your proposal was to recover lost FSR by increasing the height on the corner of Punchbowl and Canterbury Roads, they'd be wrong, would they?---It's a very generalised question. I can't answer it. So I said our urban designer came up with an analysis that demonstrated that we can accommodate the development on that site and taken on board the council officers' desire to have a slender tower on the corner of the site which uses - - -

10

Which officers?---Oh, look, the strategical planners at that time wanted to have a, they call it a node on the corner. So that means the - - -

Which officers?---I don't recall.

Why do you say they're council officers - - -?---Because they are council officers.

20

- - - wanted to have this node?---The council officers in consultation with our team of consultants came up, as it was reported to me, with a suggestion that the upper level be halved in size.

Why can't you tell us who the council officers were?---Because I don't recall and I wasn't in that meeting.

Was it Spiro Stavis, are you saying it was Spiro Stavis who wanted this? ---You obviously heard me. I was not in that meeting.

30

So can I take you to page 154. I want to give you an opportunity of commenting on some evidence that the Commission has that I'm putting in front of you now. Volume 13, page 154. It's an email from Spiro Stavis to the consultant that had been retained by council to provide the justification for the increased height and FSR in the planning proposal, his name being Peter Annand. And Spiro Stavis says on 27 October, 2015, "Hi Peter, see latest proposals for your review. I note that the FSR has increased to 2.8:1. A preliminary review seems to show that it does not comply with the setbacks and open space provisions under the DCP and a," I'm sorry, "under the DCP and ADG. Can you please review and finalise any comments and make an appointment to see me so we can discuss." Would you just excuse me a moment. I just want to make sure I've shown you the right document. My mistake. I do apologise, Mr Demian.---That's okay.

40

There's no excuse, I should have given you the right document.---That's okay.

I'll start again. Volume 13, page 149. An email to you, cc'd to Mr Daniel, blind carbon copied to Mr Montague and to Councillor Hawatt. The date is 23 October, 2015. "Hi Charlie, I tried to call you just now. I just wanted to

make sure we're on the same page. As you know, council resolved to increase the FSR and height on the site to 2.2:1 and 15 metres respectively. If you recall from our first meeting, we said we couldn't achieve the FSR within the 15-metre height control and that we would consider additional height on the corner of Canterbury Road and Punchbowl Road to allow you to get as close as possible to the 2.2:1. I note that the revised proposal submitted last week had an FSR in excess of 2.2:1, i.e. 3.2:1." If you can just note that particular figure.---Sure.

- 10 Mr Stavis continued, "I don't believe an FSR of 3.2:1, which is more akin to business zones, can be justified on planning grounds given the site's content, that is being a residential zone away from town centre/public transport et cetera. Please make sure the FSR doesn't exceed 2.2:1 in accordance with council's resolution. I have also spoken to Matt about my concerns." So, my question to you is, first of all, do you recall this particular email?---Oh look, I don't recall it. I don't recall the 3.2 on it.

Well, that's the primary - - -?---But it has come to me, yes.

- 20 Do you recall how 3.2 came into play?---No. Look, unless it's a typo, I don't recall 3.2 ever being a consideration.

Well, of course it could be a typo but the typo's been repeated in the second last paragraph as well.---Well, the same typo, I suppose. It could be a type within our report or his email. I'm not sure.

But as far as your memory is concerned, 3.2:1 was never the subject of discussion or a proposal in discussions with council?---Not that I can recall, no.

- 30 Thank you. Can I now take you to page 154. This is the email I took you to earlier. The document I want to take you to perhaps in the first instance, because it predates it, is the next page, 155. It's from DDC Urban Planning, 26 October, 2015. This is a very similar letter to the previous letter of 16 October, 2015, except that the previous letter sought an FSR of 2.7:1, whereas this, if we go to page 157, requested an amendment of the planning proposal to allow on the site a maximum building height of 25 metres and a maximum permissible floor space ratio of 2.8:1. Do you see that?---Yes.

- 40 There's a reference in the preceding paragraph to further numerous meetings with council officers.---Where is that sorry?

I'm sorry, the second paragraph on the page commencing, "As a result of."---Yep.

As a result of numerous meetings with council officers. Can I ask you about that?---Yes.

Are you aware of meetings with council officers?---I personally did not attend those meetings but my consultants would have, on several occasions.

Do you know whether it was just Mr Stavis with whom your consultants met rather than the officers that had carriage of the planning proposal?
---It would have always been strategical planners and their support teams with them, I understand in those meetings, and they conceptual plan would have been discussed, strategies and direction.

10 Sir, my question is, why within a short period of time was there an application to increase the FSR to 2.7 and then an application to increase it to 2.8?---Look, again I can't answer it, unless it was a typo, I cannot answer it. 2.8 is what we had signed off on, that's what the urban design outcome demonstrated that can be achieved without using all of the available room for FSR on every level. So the FSR on every level was actually cut back, there was no requirement for the extra FSR.

2.8:1 nevertheless was a considerable increase in density on your previous plans.---2.5 to 2.8, not much difference.

20

Did you do anything to persuade council officers or the general manager or councillors that this submission should be adopted?---We submitted it to the council for consideration and assessment, yes.

Did you do anything more than that?---Well, we submitted it, that's it.

You didn't have any meeting or contact, other contact with Mr Stavis or Mr Montague or Councillors Azzi and Hawatt?---Oh, look, as necessary, there would have been some meetings and some discussions regarding the
30 submission that we've made.

Well, what are you telling us there, that yes, there would have been contact?---There was at least one meeting that Mr Stavis was in before the submission of this document, so that was basically discussing the outcome of the consultation between our consultants and council and we've scribbled on that piece of paper we had on what we believed was a reasonable outcome. Following that, this report and other plans would have been finalised and submitted to council for assessment.

40 Yes. Is - - -?---And that was pretty much the end of it for this project.

So you didn't use your relationship with Mr Montague or with Councillors Azzi or Hawatt to lobby for this proposal to be accepted?---I believe Mr Montague was in that meeting that I just referred to earlier, so it would have been Mr Montague, Mr Stavis, one or two of my consultants and myself.

So that letter from DDC Urban Planning is date 26 October.---Yes.

Turning to 570-580 Canterbury Road, on 27 October you would be aware – this is volume 23, page 7 – you would be aware that you lodged a development application numbered 510/2015 to add two storeys - - -?
---Yes.

- - - to the approved development at 570-580 Canterbury Road?---Yes.

10 This is a bit more than three months after the approval that had been granted by council to the application for the first six storeys, that was 13 August.
---Yes.

Why did you not apply for consent to construct an eight-storey development in the first place when you filed DA 591/2014 in December 2014?---For the similar circumstances to 548, the JRPP and council advised that they can only consider a height variation in the event it's deemed imminent. I think the council resolved the increase in height on 2 October, 2014 from recollection, and our submission went in, in November of 2014, so that was prior to a Gateway Determination and prior to RMS support for the extra density on that site.

20

But 2 October, 2014 was a planning proposal.---To increase the height.

Yes.---To increase the height from 18 to 25 metres.

30 It didn't actually change the planning control as to the maximum building height limit, did it?---No (not transcribable) obviously due process had to take its course and the next step would have been the Greater Sydney Commission which it supported and approved from recollection in April of 2015. Following that we took course with RMS and done all the traffic modelling and submitted it. RMS supported our application for the extra density in writing. So they're the three steps that we always consider as prime steps and that's when we assessed that the site has merit and the increase in height via an LEP or amended LEP is imminent, therefore the 4.6 you will see is considered reasonable where the objective of the site is not changed.

Before you lodged this development application on 28 October, 2015 - - -?
---Yes.

40 - - - did you have any contact with Mr Stavis about it?---We would have had pre, we call them pre-DA meetings, so would have had two or three of those, and again I think Mr Stavis was in at least one of them and we had discussions on what we believed the merits of the application were.

Was Mr Montague present at at least one of them?---Not that I can recall in those ones, no.

There came a time, didn't there, when you didn't want to meet with Mr Stavis unless Mr Montague was present?---That wouldn't be the case at all, no. Actually most of my meetings with Mr Stavis were, I didn't have Mr Montague in them. I think Mr Montague - - -

That's not – can I just focus on this. You didn't want to have a meeting with Mr Stavis unless Mr Montague was present. There came a time when that was your desire. Isn't that the case?---I've requested meetings to both of those individuals from time to time, yes, and there was - - -

10

That's still not answering my question, Mr Demian.---Well, that's the answer.

THE COMMISSIONER: No, answer the question, please. It's being specifically put to you.

THE WITNESS: Well, it's not correct.

MR BUCHANAN: Thank you. Before you lodged this development application on 28 October, 2015, did you have an understanding with at least Mr Stavis, if not also Mr Montague, that you would provide a submission in support of the DA explaining why the building height limit in the LEP should be varied under clause 4.6?---That's correct.

20

And when did that understanding commence, was there a meeting at which that understanding was arrived at?---We prepared a 4.6 variation - - -

30

No, no, no, no, no. I'm not after the fact that you prepared it, I'm after the meeting or discussion, if you had one, at which an understanding arose between you and at least Mr Stavis, if not also Mr Montague, that you would provide a submission under clause 4.6 explaining why the height should be varied.---Oh, look, I don't recall that meeting or discussion.

And was there before you lodged this DA and understanding that you had with Mr Stavis, if not also Mr Montague, that you would prepare such a submission explaining how the additional two storeys would be a better planning outcome than if the height limit was not breached?---I'm trying to – can you please reframe the question?

40

Yes, sure. What I'm asking about is, had you and Mr Stavis, I'll leave Mr Montague out for the moment - - -?---Sure.

- - - had you and Mr Stavis come to an arrangement or an agreement before you filed this DA that you would provide with it a clause 4.6 submission in respect of the breach of the LEP building height limit, explaining how the additional two storeys would be a better planning outcome than if the limit was not breached?---I don't recall that was mentioned or discussed in our meeting.

Was there any contact you had with Mr Stavis or Mr Montague which would explain why either of them would have thought there was such an understanding?---Oh, look, I can't answer your question.

10 Can I turn back to 998 Punchbowl Road and take you to what I suggest was a meeting on 30 October, 2015. Volume 13, page 176. Now, in showing you this page, Mr Demian, I'm not suggesting for a moment that it's a page that you had input in creating or that you would have seen it at the time. I just want you to see what evidence the Commission has.---Sure.

And this is a calendar entry or an Outlook entry saying, "Spiro Stavis accepted tentative Charlie Demian, 998 Punchbowl Road, Punchbowl." There's a date there of 10 November, 2015, and it appears that it's an entry made by Mr Stavis that he sent to his PA on 30 October, 2015.---I accept that.

20 So it would appear that a meeting was scheduled for 30 October, 2015 in relation to 998 Punchbowl Road.---Yes.

And just for completeness can I - - -?---Sorry, was that 10 November? 10 November?

I'm sorry.---10 November (not transcribable)

30 Thank you. I stand corrected, Mr Demian. Can I just ask you to have a look at volume 13, pages 172 to 173. And it's just another couple of similar calendar entries for a meeting about the same project with you. In the case of the entry on page 172, the date of making the entry is 28 October, and it's addressed to Mr Montague and Mr Stavis by Mr Montague's PA. Do you see that?---Yes.

And on page 173 a similar entry indicating, however, on this occasion that Mr Stavis had accepted it.---Yes.

It's the same subject matter.---Yes.

40 Entry made on 28 October. And page 175, and it's simply an exchange of emails internally in council which indicate that Mr Stavis's PA was trying to schedule a meeting in relation to 998 Punchbowl Road. This email at the top there is 30 October and Mr Stavis was saying, "Just look when the GM is free. Tell Charlie that's the way it is," in terms of the GM's availability and when the meeting can be held.---I understand.

So it would appear that it was a meeting being held at your request.---Yes, I would have requested a meeting.

Do you have a recollection of requesting this meeting and the reason why you requested it?---It would have been for pre-discussion or pre-submission discussion regarding the amended urban design outcome.

Can you just give me a little bit more information, please.---So, look, I can't remember the date that we submitted the application, but we usually have pre-DAs and then we usually have a follow-up to discuss the changes or amendments that were made.

10 But there's no DA on foot in respect of 998, is there?---Well, there was no DA. My mistake. I apologise.

That's okay.---It was a council planning proposal that we were asked to demonstrate and provide certain report, including our own urban design or architectural urban design at least.

And so did this relate to the DDC Urban Planning proposal that the height for the planning proposal be amended to 25 metres and the FSR be amended to 2.8:1?---That would have something to do with it, yes.

20

So, I want to ask you, can you think of that meeting, can you remember it? ---I remember it clearly, actually.

Can you tell us what happened, please?---Yep. I think Mr Stavis had an extract from a report that he may have had from council's consultant which I wasn't privy to at the time. I've had my own report and we had some discussions regarding a, an outcome that would be acceptable to council in that meeting. We scribbled on, as I said, that yellow design that we had and we made the appropriate adjustments to it.

30

Was the focus of the meeting the FSR that you were seeking?---No. It was more the, it was more the building articulation and design and the height. The height was definitely a, a, an area of discussion.

Is it a meeting where you were very angry with Mr Stavis?---No. I don't recall being angry at all with Mr Stavis.

40 Do you recall accusing him of being incapable of achieving the FSR you were trying to achieve?---No. I wouldn't have accused them of that. I would have suggested what could be achieved on the site in that meeting and we had a discussion over that.

Did Mr Stavis indicate that he was sceptical as to whether 2.8:1 could be achieved?---No. There was two point of issue. One is the, on the eastern side of the boundary whether we separated it by six metres, considering that there's existing (not transcribable) car yard and workshop next door, or whether the extra three metres applies. That was one point of issue. The second point of issue is that we maintain six metres on the southern

boundary beyond any road widening provisions within the (not transcribable) which made approximately an average of nine-metre setback on the Canterbury side, road setback. So there were really two points of discussion on setbacks and obviously he wanted the nodding height on the corner where, you know, towers up, and that's how the discussion came about.

10 In relation to the proposed FSR, did you accuse Mr Stavis of not knowing what he was talking about?---No, I would never say that. That would be disrespectful.

Well, you were disrespectful to Mr Stavis on more than one occasion.---I did not say disrespectful at all. I said we had discussions on several occasions, agreed to disagree on certain items.

20 And was Mr Stavis handed a piece of paper with notes on it in handwriting, including a particular FSR, I suggest 2.8:1?---I think there might have been, at the end of the meeting in print form, on the same piece of paper, what we understand the likelihood of the meeting but I can't remember - - -

And was Mr Stavis given it?---I think I may have emailed it to him after the meeting. I can't recall, recall, but it was made available to him.

And did Mr Montague say to Mr Stavis at that meeting words the effect, "We've got to come up with a solution"?---No. I don't recall that.

Well, the question was how 2.8:1 could be achieved on that site, wasn't it? ---Okay, again, I'll answer the same answer.

30 THE COMMISSIONER: No. Do not - - -

MR BUCHANAN: No, no. Was that the question or not? How 2.8:1 could be achieved on the site given that the work had all previously been done on less intense FSRs?---The urban design outcome that we had demonstrated a 2.8 FSR for the site.

40 But I'm talking about the atmosphere in that meeting. What was in dispute, what was in contention, what debate was about. Was there a – I withdraw that. Given that the history of the matter was that a less intense FSR was being sought and was attempting to be justified, it wouldn't be surprising, would it, that if you came up with a more intense FSR that there might be some querying of how that could be achieved on the site on the part of council?---We can only submit our experts' reports and it's up to the council to assess it and make a determination on it.

Yes, but in terms of your memory of what happened at that meeting, was there tension between you and Mr Stavis - - -?---No, there was not.

- - - about whether 2.8:1 could be achieved and whether he was working hard enough to achieve what you wanted?---There was no tension and there was hardly a discussion that I can recall about FSR. It was more height and setbacks and whatever fits in the envelope.

10 So after that meeting was over, what did you understand would happen at council with your submission seeking a maximum FSR of 2.8:1?---If I recall correctly that the council will finalise its own independent urban design and we are to provide a traffic report, architectural designs, and I think there was one third report that we were requested to undertake and I can't remember what that was. There would have been traffic at least and planning. Sorry, environmental. There was an environmental report, the site being a service station. So we had to provide a traffic report, an environmental report, architectural, and I understood that the council will do its, or will do its own independent urban design.

20 Was there a reason why you didn't provide an urban design report for what you were asking for in the first place?---We provided submissions on that site. As you understand, there was no planning proposal application from our side. We provided the submission back in 2013 for that site.

But is it fair to say, then, that you went away from the meeting with the understanding that council would provide an independent urban design report that would justify 2.8:1?---No, my understanding the council will undertake an independent urban design.

30 It appears, though, that the outcome of the meeting, so far as you were concerned, was that some of the work that needed to be done to support what you were asking for was going to be done not by your consultants but by council's consultants at their expense.---I understood that the council had to be satisfied and undertake its own urban design.

That doesn't mean to say, however, that surely a developer who is seeking even more than they've sought in the past mightn't be expected ordinarily to support what they're seeking with consultants' reports on each element, including urban design.---I can't (not transcribable) your question. Can you please reframe it?

40 Essentially this is work that you understood was going to be done by council at their expense, rather than yours, to support your request for the planning proposal to be amended to have a 2.8:1 FSR substituted for the previous FSR, isn't that right?---I can't recall.

Now, apart from that meeting at Mr Montague's office, did you go to Mr Azzi's house and have discussions there with Mr Azzi, Michael Hawatt, Jim Montague and Spiro Stavis about 548 Canterbury Road and 998 Canterbury Road?---No.

I'm sorry, my mistake. 998 Punchbowl Road.---No.

Were there discussions at Councillor Azzi's house involving any of those gentlemen as to what you were trying to get out of Spiro Stavis?---No.

10 You were trying to get out of him, weren't you, a solution to the problem, the urban design problem, of the FSR being breached and the height limit being breached, and now you're seeking an even more intense FSR.---It was a planning proposal application, so there was no breaching. There was an urban design, I understood, that council will undertake.

But in order to get the LEP amended to have those controls loosened, you had to justify it.---You don't loosen controls. You put an application, a planning proposal, that would (not transcribable) the process, and if there's an approval at the end of the day, the LEP gets amended and gazetted. And I hardly call that loosening.

20 Can I ask you this. You had made it clear to Mr Stavis that you wanted 2.8:1 and you left it up to him to provide a solution as to how that would be achieved.---No.

Is that fair to say?---No, that's not fair to say at all.

30 What's unfair about that?---Everything is unfair about that. What we did, we submitted the architectural designs with what we call an area analysis that shows the FSR in the area on every level which come up with a final outcome of 2.8:1 and we suggested from our designs or our professional outcomes the 2.8 is sustainable within that height and as I said, Mr Stavis wanted to do his own independent urban design, which, which, the, the planning proposal is a council planning proposal by the way.

Would it be fair to say that you were using Mr Stavis as a consultant to your business and not paying him?---That's nonsense. The site was part of comprehensive draft Canterbury Road Residential Strategy. We submitted submissions in 2013. The council included that in its - - -

40 I'm sorry, I'm going to interrupt you. This is simply nothing to do with the question of whether you were using Mr Stavis as a consultant for your business and not paying him.---No.

Can I ask you to go to page 83 of, I'm sorry, 183 of volume 13. Page 184, can I change that, please. Now, I accept that it's quite likely you might not have seen this, but I do want to show it to you in case you have. You can see that the front page indicates a Planning Proposal Review, 998 Punchbowl Road, Punchbowl for Canterbury Council, November 2015 by Annand Associates Urban Design.---I can see that.

Can you go over to the next page, 185, and it will be on the screen, there it is. There is an introduction section on that page, a recent history section on that page, but if you can go to halfway down, the consultant says, "However the following should be noted." And then there's a series of dot points. Do you see this?---Yes.

10 That series of dot points identified seven problems with the proposal that you had put forward that involved amending the planning proposal so that the FSR would be 2.8:1. Do you see that those various problems are identified by council's consultant?---I can see those issues raised, yes.

They're identified as flaws in your revised proposal.---Where does it say that?

20 Well, that's what they are, aren't they? You can go through them. You can see what they're a response to. The dot point in the middle of the page. "The proponent has now provided a revised proposal which purports to satisfy ADG setbacks and which proposes a general height limit of 25 metres and an FSR of 2.8:1." So this is what it appears council had asked the consultant to review, and that's what the consultant has done and he's identified eight adverse aspects, adverse to your interests.---I wouldn't use the term adverse. He noted a number of issues to be, to be considered.

They were flaws in your proposal.---No, they were not flaws in my proposal, they were an opinion of another consultant.

Can you go to the next part, the last part of that page.---Yes.

30 The consultant contended that, "The proposal of a general height of eight levels (25 metres) is an overdevelopment of the site and the proposed FSR of 2.8:1 is unachievable." And then he sets out reasons why.---Yes, I can see that.

Amongst other things this consultant, and this is now November 2015, says you still haven't taken into account the road-widening reservation on Canterbury Road.---No, that's not correct.

40 THE COMMISSIONER: No, no, no, no. That's what he's saying.---That's what he's saying in the report, sure.

MR BUCHANAN: Yes. The consultant goes on to say, "Site area is therefore significantly overstated." And over the page, 186, "Building footprint is significantly overstated at 840 square metres (we cannot see how this can be achieved, given RMS, council and ADG setback requirements.)" Now, my first question is, were you shown this document or did you see it? ---No, just seeing it for the first time now.

Was the gist of it conveyed to you at any time? Were any of these points conveyed to you?---None of this report was ever conveyed to us, no.

So, Mr Stavis never had a meeting with you or a phone conversation with you in which you said, "Look, there are problems with your proposal. This is what our consultants identified"?---No, no. I don't recall that at all.

10 Can I just take you to page 187. There the consultant has taken the next step and has tried to redesign it and says, "This is what it should be." Can you see that?---Which part of the page?

Well, starting at the top, "Building height should generally be 18 metres."
---Yes.

Then the next point, "Building setbacks should be as follows," and then there's a series of dot points in relation to what the setbacks should be at the various points of the building.---I can see his comments, yes.

20 And then there is the dot point in the middle of the page, "An overall FSR in the order of 2.1 based on the following," I'm sorry, 2:1, my mistake, "An overall FSR on the order of 2:1 based on the following development potential," and then he gives an FSR for different scenarios but comes up essentially with 2.1:1 if you wanted to be compliant. Do you see that?---I, I can see his writing, yes.

Was any of that run past you by Mr Stavis?---No.

Or any other council planner?---No.

30 Excuse me. If I said 2.1 again, I have to correct myself. The FSR that the consultant spoke about was 2:1. You see that in the document?---I can see that, yes.

Thank you.

40 MS RONALDS: Well, with respect, can I object. Originally it was put 2.1 was the compliant. What has just been put to the witness is not correct. Noncompliant with council setbacks is 2.2 if you look at the document, compliant is 1.995.

MR BUCHANAN: Which is as close to 2:1 as one could get, in that discipline, isn't it?---Sorry, what was the question?

1.995:1, is very close to 2:1, isn't it?---I assume so, yes.

Yes. And for rounding purposes that would be acceptable, wouldn't it?
---That would be acceptable.

To call that 2:1?---Yes.

Thank you. Now, can I ask you – I think Ms Ronalds wants to make a submission.

THE COMMISSIONER: Sorry, have you got another issue?

10 MS RONALDS: Well, no. It's just it was put to the witness that he was quoting the document. If he's not going to quote the document and is going to make generalisations, then that should properly be put to the witness that it's his view of what it says not what the document says, because the document clearly doesn't say that. It's simply unfair when you go back to the transcript later, trying to work out what he was talking about, with respect.

MR BUCHANAN: All right. I'll start again.

THE COMMISSIONER: Thanks, Mr Buchanan.

20 MR BUCHANAN: Can you see in the middle of the page of 187, the consultant says, "An overall FSR on the order of 2:1 based on the following development potential"?---Yes.

Can you see that for a compliant development he comes up with 1.995:1?
---Yes.

And you've accepted for the purposes of argument you could call that 2:1?
---Yes.

30 Thank you. None of that was run past you or raised with you or advised to you?---No.

Can I ask you - - -

THE COMMISSIONER: And to your knowledge, none of your consultants?---Oh, look, I, I'm not sure, I don't know. I wasn't aware of it this document until today.

40 Or aware of the issues being raised?---Contents until today, that's right.

MR BUCHANAN: Excuse me a moment. Can I ask you to go back to – if we could go back to page 183, please, of volume 13. This is the email under cover of which that consultant's report – we'll call it that for the moment – document was sent by the consultant to Mr Stavis, and it was sent on 9 November, 2015 at 9.40am. You see that?---Yes.

If I could ask you then to go to Exhibit 85. We can bring it up on the screen. It's probably an easy way to do it. Page 20. On 9 November, the

Commission has evidence that there was a meeting scheduled at 4.00pm. Same day but some hours later. Now, it could be that Mr Montague and Mr Stavis were just talking about you, but the greater likelihood is that it was a meeting with you in relation to 998 Punchbowl Road.---I can't see that there, but anyway. I can't comment on that.

Do you remember a meeting on 9 November?---There was a meeting around that time. I can't recall the date.

10 If there was a meeting on 9 November, 2015 involving you and Mr Stavis and Mr Montague, do you say that your attention was never drawn to a problem that had arisen in this urban design review that they were going to commission, that you were told about when you had left the previous meeting about this, and which you expected council to provide?---Mr Stavis had an extract of a report which is a parameters of footprint of a building on that site, and we discussed the setbacks and the consistency with the ADG of that document regarding, as I said, setbacks, dimensions, open space and the likes.

20 Excuse me a moment. If I can show you another page in volume 13, page 190, please. It's an email to you from Mr Stavis on 9 November at 5.55pm. "Charlie, can you please email me the marked-up plan we discussed today."---That would have been the plan I've been referring to.

And so it would appear that a meeting did occur on 9 November, 2015, some hours after Mr Stavis had received that consultant's document.---Yes. Yes.

30 And if we go to the next page, you said at 6.39pm on 9 November, "Sure, Spiro. I'll scan and email a copy in the morning."---Yes.

Just to ask you are you sure that the consultant's thinking about what was achievable on the site had not been conveyed to you at that meeting, I just want to show you the consultant's email to Mr Stavis at page 192, on 10 November. Mr Annand asked Mr Stavis, "How did you go yesterday?" ---Yes.

40 Which would seem to suggest that he had some knowledge that Mr Stavis was going to meet with you and there might have been some issues that needed to be thrashed out.---I can't comment on that.

Now, would you just excuse me a moment. Can we go to page 195 of volume 13. Two days later, on 11 November, it appears that you had not sent the marked-up plan to Mr Stavis, and he sent you a reminder on 11 November at 10.28am. Do you see that?---Yes.

And do you see that Mr Montague has been cc'd in?---Yes.

It would appear that Mr Stavis that thought he needed to keep Mr Montague apprised of why there was no progress at that point.---I can't comment on that. I can't comment on that.

Can I take you to another email on 11 November, page 197, a little later in the day at 12.44pm. You say, "Thanks for following up on the marked-up plan. I attached it above for your information." Do you see that?---Yes.

10 Can I just ask you to look at the name of the file that you attached to the email. The name is Design Understanding Meeting 2015/11/09, which is a reference, obviously, to 9/11/2015. Do you see that?---Yes.

Who gave that file that title?---I did.

Why did you use the word "understanding"?---Because that was the understanding I had from the meeting we, we had.

20 And are you able – I'll show you a diagram in a moment but can you just generally help us as to what the understanding was that you had?---Yeah. I would have made notations of, well, one, I would have marked out the plan. Two, I would have made notations of further works that we had to undertake. So I would have noted the setbacks. I would have noted the RMS requirement. I would have noted that we had to do a traffic report, environmental report, further planning based on those understanding that we had on the setbacks. That would have been written all on one page.

I note the time, Commissioner.

30 THE COMMISSIONER: All right. We'll adjourn for lunch and resume at 2 o'clock.

LUNCHEON ADJOURNMENT

[1.03pm]