

DASHAPUB02126
11/07/2018

DASHA
pp 02126-02166

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 2.00PM

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.

MR BUCHANAN: Commissioner. Before the luncheon adjournment we were talking, Mr Demian, about a file which you sent attached to your email of 11 November, 2015, this is page 197 of volume 13, to Mr Stavis which you described as the marked-up plan.---Yes.

10 Do you recall that?---Yes.

If I can take you to page 199, please.---Yes.

Do you recognise that as the marked-up plan?---Yes.

The source of it, can I suggest, was from one of your consultants?---Yes, I can see that.

20 And if I can just take you to page 165, that would appear to be the same plan, but not marked up?---That's correct.

And that's part of what's called a building volume study, page 159, and it's attached to the DDC Urban Planning proposal dated 26 October, 2015 which starts at page 155. Going back to page 199, can you tell us whose handwriting is on that document?---The majority is mine within the exception of the bottom left-hand side of the document with the asterisks next to it. I believe that would have been Mr Stavis's handwriting.

30 Thank you. Now, and this is the plan that the two of you annotated at that meeting on 9 November, 2015?---Correct.

40 Can I take you, please, just to save a bit of time, to some evidence you gave yesterday at page 2041 of the transcript, which rather than me reading it out, we might be able to show you in the transcript. Page 2041, line 23, so you can see the sentence, it might be line 24, the sentence commencing, "We agreed and drew on that diagram." If you could just read that to yourself with a view to answering this question. In that passage there commencing, "We agreed and drew on that diagram," down to the end at line 31, you were talking about what you did on 9 November, 2015 with this annotated plan. Is that right?---That's correct.

Thank you. And what was it that you understood that Mr Stavis was doing when he worked with you on that plan?---With the northern boundary, we were discussing just to explain the footprints of the possible building on that site. The green line marks up the first four levels, the footprint of the first four level of a building and the blue line represents the second set of four-storey buildings, or up to four, which are three further metres from the green line. Those separations become from the northern one as you can see, they're ticked, 12 metres and nine metres, and that's consistent with the

ADG requirements. On the eastern side, right-hand side of the page, see that the six metres is from the red boundary up to the green line is what was discussed. The reason for that, can you see next door it's existing car yard and mechanical workshop, so it has existing use, right, which basically allows it to comply. So it's a high use and a lower use. The bottom of the page, we say six metres. Originally we had eight metres, as you can see in there, which would have been three metres for RMS and five-metre residential setback or thereabouts. But what we've agreed is that, or discussed, is that it will be a minimum of six metres off the new boundary once the RMS adjustment comes about. On the Punchbowl Road side, it's actually six metres and that was agreed by both parties. The upper level, which is the low lying, now, I'll just go back one, for one tick. Those, that green box is approximately somewhere in the, around the 750 square metres of GFA, gross floor space ratio. The upper level is set further back from the north and from the east to comply, or to make it consistent with the ADG again. So, these are the two footprints that would accommodate a building within that footprint. Obviously anything outside the green and the green-blue as well becomes soft soil landscaping and the north-eastern corner of the site, or the top right-hand side corner of the site, that's where the open space is being proposed. The ADG requirement is a minimum of three metres. We've actually got nine metres and six metres. You need to provide 25 per cent of the site area in a recreational open space, leisure open space, above three metres in minimum width. So, this plan pretty much, as I understand it, complied. This discussion was between the two parties and obviously we had to – one thing, we had to do and do another set of architectural plans and the FSR calculation would be provided. Mr Stavis requested that we also do an urban design peer review which, I think something is crossed there, I can't read it, traffic report and a planning report.

30 Yes. I should have been a bit more specific.---Sure.

You and he were designing a solution?---No. We were discussing acceptable setbacks to the council and the reason that had changed, because I said originally the ADG was not in effect. It became in effect in about June-July of 2015 and these changes in there reflected the proposed changes based on, on, on those requirements.

40 Usually when a planning proposal is prepared, it is prepared by council and submitted to the department, you understand that?---Sorry, can you reframe?

Yes, sure. The context for 998 Punchbowl Road was a planning proposal that council had submitted to the department, wasn't it?---That's correct.

And you had asked for that proposal to be amended?---No. The department actually asked for further justification on, on the actual paperwork that was submitted through the department.

I'm sorry, can I just take you back to your consultant's letter to council, dated 26 October, 2015, where at page 157, appears, "We requested that PP2014 is amended to allow on the site, a maximum building height of 25 metres and maximum permissible floor space ratio of 2.8:1."---Yes.

So, you were asking for the planning proposal to be amended?---Yeah. At that time, after the department requested the changes, we - - -

10 No, I'm sorry. You requested the changes.---Okay, I'll rephrase. At this particular instance, at this timing, at the time of that letter, yes we have.

I'm sorry, I didn't quite hear the last thing you said.---Oh, I, I'll say it again.

THE COMMISSIONER: Yes, we had.---So I'm saying that - - -

You said at the time of the letter, "Yes, we had."

15 MR BUCHANAN: You had requested that amendment, thank you. Now. If you hadn't see it before, you can see that the independent consultant that
20 council had retained to review your proposal said it can't be done?---I wasn't privy to this report.

No, I understand that, but you can see the input that Mr Stavis was receiving.---I can't comment on that.

You can see that what was influencing him at the time was independent expert advice that your proposal wasn't achievable.---I can't comment.

25 But you and he sat down, is this right, and cobbled together a solution
30 whereby 2.8 could be achieved and the planning proposal amended to that effect. Is that right?---We've discussed that draft plan, that's correct, yes.

I'm just trying to ascertain though the role that Mr Stavis was playing. Most of this writing as to design is yours, isn't that right?---Most of the writing except the bottom left-hand corner is my writing, that's correct.

That's right. And so can I suggest that the design input is yours?---I don't understand what you're saying.

35 Well, isn't it a fair characterisation of the material that's in your handwriting
40 to be discussing parameters for the design of the envelope of the structure? ---They are points of understanding that resulted from the meeting which I have noted and Mr Stavis added the last three points to it.

And you obtained in that meeting Mr Stavis's agreement, did you, that a design to this effect could go forward?---No, there was no discussion on his final assessment of the proposal but the, the sketching that we had discussed is deemed consistent with the ADG or acceptable to ADG setbacks and the

council DCP as a matter of fact has a setback from the front roads and he was happy for us to go ahead and amend our architectural outcome in line with this diagram.

What was the understanding then that had been arrived at on 9 November, 2016 between you and Mr Stavis?---Those point, those points which are actually written on this piece of paper.

10 But was it an understanding that that was what you would submit but no more than that or - - -?---That's it, that's as far as it goes, that's what we will submit and then obviously the, the application will go through its own due course processes.

Is it possible that it was an understanding that that design was what could be submitted and Mr Stavis would support?---No, that's, that's not the case at all. This sketch is consistent with the ADG and subject to final design and assessment.

20 And the notes by Mr Stavis are of the additional material that is going to be required if your proposal for amendment of council's planning proposal was to be able to succeed, go through?---These actual reports will either support the density proposal or otherwise. It will determine what's suitable as far as density is concerned on this site, in particular the traffic report.

30 Can I take you now to 548 Canterbury Road and the later in November 2015, 23 November, 2015, if we can go please to volume 22. And if we could go to page 118 of volume 22. Excuse me a moment. This is a copy of a letter, we got to page 120, that you were sent by a staff member at council in relation to 548-568 Canterbury Road. Go back to 118. ---I haven't, yeah, I'll just read that first.

Sorry, sure. In particular I'm going to ask you about the second paragraph. ---Sure. Yes.

There's more over the page but I'll take you to it. You were told in this letter that the IHAP had deferred consideration of both DA 592/2014 for two extra storeys on the approved development of 548-568, and the related section 96 application. You were told that in the letter.---Yes.

40 You can see that. And if we look into the reasons, you were provided with those for your information. Have you had a chance to read page 118? ---Not in full, but I've had a quick scan through it.

I'll take you over the page.---Sure.

Well, the statement is made at the bottom of page 118, "This history indicates that the council resolution would only be relevant as a policy which without further consideration by at least the RMS must be given little

weight in the determination of these development applications, one of which,” going over the page, “breaches the 18-metre height limit significantly.” Then sets out RMS comments. And if I can take you then to turning to the panel’s opinion, in almost the middle of the page commencing, “In addition.” Can you see that paragraph?---Yes.

If you could read that to yourself.---Yes.

10 It says essentially, to read the first three lines, “The panel’s of the opinion that the council cannot legally determine the development application until both the development application and section 96 modification application have been referred to the RMS.” Do you see that?---Yes.

And then in the next paragraph it commences, “The panel also notes that it was not satisfied with the justification for a variation of the height under clause 4.6.”---Yes.

20 If you go down to the bottom of the page, “Consequently the matter will not be submitted to the City Development Committee on 3 December, 2015, as previously advised, instead it will need to be reconsidered at a future meeting of the panel and you will be advised in advance of that meeting.” And I hasten to add, you can see from the indentation of the previous matter that that was a quotation from the panel’s report - - -?---Yes.

- - - but that the statement, “Consequently the matter won’t be submitted to the City Development Committee,” was advice from council. You can see that?---Yes.

30 It did say that the IHAP meeting report will be on the agenda for the City Development Committee meeting on 3 December.---Yeah.

When did you become aware of the IHAP decision?---I would have been advised shortly after it.

And certainly no later than the time you saw this letter?---I don’t actually recall seeing this letter or having read it.

It was sent to Statewide Planning.---That’s correct, yeah.

40 Does that indicate that it would have been, that the purport of it would have been drawn to your attention?---That’s correct, yes.

Now, did you do something about what you were told in that letter?---Yes.

What did you do?---Well, number 1, I’ve tried to advise the council staff that RMS had supported this application, both for the extra car parking spaces as well as the extra density. Now, I didn’t have that letter in writing at that point of time but I was, I believe recently we’ve discovered that RMS

has written to council in August of 2014 supporting this very application, the extra car spaces as well as the extra density.

Can I just pause there. I understand you're going to the merits of it, whom did you advise at council of this?---Look, at that time it would have been our planners, or our planners back to council planners. There had been, the traffic engineer that we used had done all the traffic modelling submissions to RMS - - -

10 Sorry, sir, my question is who did you advise at council of this?---Okay. I've asked our traffic engineer to contact the council officers and advise them.

Was there anything else that you did about what you were told in this letter about the IHAP decision?---I can't recall but I know that we probably reviewed our 4.6 again and whether any further recommendations were submitted again, I can't recall, but we've had quite a number of advice from our planners and our barristers at that time regarding the justification and the documentation of the 4.6.

20

Did you contact Mr Montague about what should be done, given the report and the fact that there was a meeting of the City Development Committee scheduled for 3 December?---I, I can't recall. We would have, as I said, been trying desperately to get a correspondence from RMS at that stage but we understood that had to go to council, not to us, and I believe that was sent again, or a letter confirming that sent again in January of 2016, but the initial approval was August of 2014 for this specific site, specific height, specific density.

30 Well, I'll just pause in my questioning of whether you contacted anyone to ask – you've been in the situation before back in August, hadn't you? ---That's the nature of the projects.

In relation to 257?---Sure.

40 We know that there was a good deal of communication that you had with Councillors Azzi and Hawatt between the adverse IHAP report and the scheduled City Development Committee meeting in August, in relation to 570 Canterbury Road. Surely that pattern would have recurred in this situation where you have an adverse IHAP report and a scheduled City Development Committee meeting. That is to say that you contacted Councillors Azzi and/or Hawatt to try to alleviate the problem?---I wouldn't use the word alleviate and I can't recall whether I had made contact or was too busy trying to make sure the information is provided to the right people.

With a view to achieving what at the 3 December meeting of the City Development Committee?---Well, to, to, to support our application obviously.

So, you knew that Councillor Azzi and Councillor Hawatt were members of the City Development Committee, didn't you?---Yes.

Are you telling us that you don't recall contacting them at all?---That's what I said.

But you accept that you did, in the almost identical situation back in August in respect of 570 Canterbury Road, yes?---Yes, that's correct.

10

Why wouldn't you have done the same thing here in respect of 998 Punchbowl, I'm sorry, 548-568 Canterbury Road?---My answer is, I don't recall. I could have, I may have but I can't recall.

It was in your interests, wasn't it, to try to get the adverse situation that you were in after the IHAP meeting, and before the CDC meeting, altered?
---There was no adverse finding in that letter, knowing what we had known at that time.

20

But the adversity I suggest to you is that you were told the matter will not be submitted to the City Development Committee on 3 December, as previously advised. Instead it would be reconsidered at a future meeting of the panel.---That's what the letter said.

I'm sorry?---That is what the letter said.

Yes. So, you having been told that, did you think that was wrong or shouldn't be relied upon?---I think we were more concerned about the information not being provided to the panel for a reasonable assessment.

30

Why wouldn't you have been concerned about the matter not being submitted to the City Development Committee? Wouldn't that have been a matter of considerable concern to you at the time?---No, no. It, I was fully aware the RMS has supported the project and the traffic modelling that we had undertaken for that project, so I had no issue as far as that was concerned. The 4.6 was actually addressed on a number of occasions and I can't recall whether further adjustments were made to it past that date or not. So, it's two, two points of issue there, which was one issue, RMS was second issues.

40

Mr Demian, were you paying interest to Abacus for the borrowings - - -?
---That's - - -

- - - to secure this property?---Yes.

And were you paying holding costs as well?---Yes.

And did the information that the matter wouldn't be submitted to the City Development Committee on 3 December but instead would need to be reconsidered at a future meeting of the panel - - -?---Yes.

- - - not necessarily mean to you that you were going to incur holding costs and interest payments that you wouldn't have to incur if someone didn't intervene like Mr Hawatt and Mr Azzi did in respect of 570 Canterbury Road back in August when you were in the same situation?---No, I don't agree with you at all.

10

Why not?---Because it doesn't make sense.

What doesn't make sense about it?---Your whole question and suggestion or assertion, whichever way you like it. So I'm happy to answer it but best I understand it.

Sorry, are you saying you don't understand? Because I'll happily put the question again, or reframe it if you'd like.---If you'd like to reframe it one bit - - -

20

Yes, sure.---One bit at a time would be good.

Thinking back to August - - -?---Yes.

- - - of 2015, you've agreed just a moment ago that you were in a similar situation there with, and I'm going to describe it as an adverse IHAP report, and you were told essentially that the matter wouldn't be considered at the subsequent meeting of the City Development Committee and that was a bad situation for you, and what happened, Councillors Hawatt and Azzi
30 procured not just a change to that situation but a change even from what the officers' report recommended by way of a deferred commencement, and you got a conditional approval.---So are you talking about 570 now?

That was in respect of 570 in August.---Right. So it wasn't a question about 548. Okay.

Yes. And that was as a result of the intervention of Councillors Azzi and Hawatt, wasn't it?---That's your expression, not mine.

40

Well, it's - - -?---The council voted.

It's in the minutes of the meeting.---No, the minutes - - -

It was moved, Hawatt, seconded, Azzi.---The minutes of the meeting said that I believe seven or eight councillors voted in favour of that application. It wasn't two councillors, it was actually seven or eight.

But you've also seen that Mr Stavis told Mr Montague that he'd been asked by Councillor Hawatt to prepare a set of ordinary conditions for approval. ---Alternative conditions.

And he then asked Mr Montague to circulate them. You've seen that? ---I've seen that.

10 Plainly an intervention on your behalf by Councillor Hawatt.---I don't agree with that.

Why isn't that an intervention on your behalf by Councillor Hawatt? ---Councillors are allowed to ask for alternative resolutions if they deem fit. Council as a whole decides on a decision, not one councillor.

It's plainly an intervention on your behalf, wasn't it?---That's your suggestion, not mine.

20 Didn't you want to achieve a similar result on this occasion to change the situation you were advised about by the letter from council on 27 November, 2015 – this is volume 22, page 118 – to ensure that the meeting of the City Development Committee on 3 December didn't defer the matter but instead approved your application?---(not transcribable) look, I can't follow your question, it just goes on forever. I can't follow it.

Didn't you want to have a similar outcome in respect of 548, namely that - - - ?---I would have like - - -

30 - - - instead of the matter being deferred, council approved your application? ---Obviously I was seeking an approval from the council on the application.

That's not what I'm asking you. I'm asking you, didn't you want to change the situation that you had been informed about by the letter dated 27 November, 2015, so that you had the same outcome as you achieved in respect of 570 in August but this time in respect of 548 in December? Isn't that what you wanted?---I have no idea what you're talking about. I really don't. It's very generalised, it's not specific, doesn't refer to names, doesn't refer to anything.

40 Did you want to pay extra interest?---Pay extra interest?

Did you want to pay interest that you could avoid paying - - -?---On the loan, on the loans of the property you're suggesting that would be extra interest if the DA wasn't approved on that occasion, the answer is yes.

And you didn't want to pay that, did you?---No. It's a normal part of our business. We have landholdings, we pay interest, we pay rates, we pay planning fees.

But if you can achieve a situation where you don't have to make those unnecessary payments because instead your application has been progressed, indeed approved, that is a good thing for you, isn't it?
---It's not my decision.

THE COMMISSIONER: No, no, no. You're not being asked that. It would be a good thing for you? It must be.---If the approval was consented (not transcribable) yes, of course.

10 MR BUCHANAN: Yes. Did you not do anything to try to achieve that good thing for you?---Yeah. We've, we've pretty much contacted our consultants to contact the appropriate people to provide the information.

But we know what happened in August, Mr Demian.---August of?

Yes, in August in respect of 570, you had numerous contacts with Councillors Azzi and Hawatt, you had a meeting at Councillor Azzi's house and it was after that that Councillor Hawatt intervened and you ended up with an ordinary approval of your development application for 570. Now - -
20 -?---The councillors - - -

Now, didn't you try to do the same things again using the same means, namely your friends, the Councillors Azzi and Hawatt?---I may have advised them of the situation. I can't recall the specifics.

Why may you have advised them of the situation?---Because until, until such time that documentations are on hand, it's no use talking to anyone about it. You've got to have the supporting documentation. And this actual document was the RMS, that for some reason some people might have held
30 back for almost a year.

Excuse me a moment. Can I ask you to go to page 177 of volume 22, please. This is an extract from the report, the officers' report to the City Development Committee meeting to be held on 3 December, 2015, and I'm taking you to the recommendation, and you can assume that it was drafted or signed off on by Mr Stavis. You understand that?---I'm reading it.

And it's a recommendation that, so far as concerns the section 96 application, that it be approved. Do you see that?---Yes.
40

And then can I just take you - excuse me a moment. I'll get you another reference. At page 212, so far as concerned the application for development consent, the recommendation was that the clause 4.6 submission be supported and that the DA 592/2014 be approved subject to condition?
---Yes, yes.

What do you know as to how it came to pass that Mr Stavis made those recommendations rather than in accordance with the letter you had previously received, the recommendation being that the matter be deferred? ---From recollection, I believe the RMS support for the application, which in my, or as I understand was communicated to Mr Stavis and a copy of the first approval which dates back to August, 2014, was attached to that email. I understand that and I saw that recently as well. But, so Mr Stavis, I understand, wrote to RMS and they've, they've, they've supported the application and extra density and I think that would have been a major factor in, in any outcome at that time.

THE COMMISSIONER: Sorry, did you say Mr Stavis wrote to RMS?---As I saw in the evidence recently, we've, we've put - - -

No, no, no, no. I just didn't hear what you said.---I understand, yes, I understand Mr Stavis emailed the RMS.

MR BUCHANAN: You see what I want to suggest to you is that it is certainly true that Mr Stavis made urgent, very urgent efforts to try to obtain concurrence from the RMS but was unsuccessful.---Not to, according to my understanding.

And I want to suggest that for the reason that the recommendation was one which assumed that concurrence had not been received. I want to take you if I can, please, to page 126. This is an email from Mr Stavis to Mr Montague of 30 November, 2014 and it's about the Harrison's application as discussed. You can see that.---Yes.

And then he gives an explanation as to why an affirmative decision from the RMS has not been received. Mr Stavis goes on to say, "To avoid any doubt we have now referred the application to the RMS and await their concurrence." This four days before the meeting.---Sure.

"In order to avoid any delay", Mr Stavis says, "the committee could approve the applications in principle and once the concurrence is received from the RMS the general manager could be given delegated authority to issue the consents based upon suitable conditions as recommended by the director of city planning in his report." And then he sets out a wording for the motion. ---I understand.

So you can see that certainly as at that date Mr Stavis thought he hadn't received what was required from the RMS.---Appears to be from this letter.

Now, if I could take you, please, to page 226. Page 226 is the first page of the minutes of the City Development Committee meeting held on 3 December, 2015 and if I take you to page 228, starting at the bottom, item 17 in relation to 548-568 Canterbury Road, the motion, moved Councillor Azzi, seconded Councillor Saleh, was agreed to that the general manager be

authorised to issue the consent for modification application 509/2013 (a) once concurrence is received from the RMS. Do you see that?---I can see that.

And (b) the committee decided not to accept the IHAP recommendation given that the application has now been referred to the RMS - - -?---Yes.

- - - and resolved to accept the officer's recommendation.---Yes.

10 And then in respect of the DA in respect of the additional two levels item 18 on page 229 is to the same effect, that the general manager be authorised to issue the consent once concurrence is received from the RMS and that the IHAP recommendation not be accepted now that the application has been referred to the RMS. Do you see that?---Yes.

So would you accept that the RMS had not given their consent at that stage or provided the necessary information?---I don't accept that – I'll rephrase. I accept I may have overlooked it at that time and I understand that a letter was issued shortly after but for some reason their correspondence from
20 August, 2014 seemed to have been lost along the way. I think it was under page something, item number 6 from memory, which have supported precisely what we've put in. So I accept that it was a, if you like, a deferred commencement subject to concurrence from RMS in writing.

Do you know how it came to pass that Councillor Azzi moved those two motions?---I can see that a full council actually unanimously supported - - -

That's not the question I asked you. I'm asking you how was it that the motion was moved in the first place by Councillor Azzi?---I don't know.
30

And is that an honest answer, you have no idea?---Absolutely no.

And it came as a complete surprise to you did it that such a resolution was passed on Councillor Azzi's motion?---Again, I can't comment on that.

Were you expecting, in fact, the matter to be deferred in view of the IHAP panel's recommendation?---Look, you never know what they're thinking. You can get anything out of them.

40 And that's what you said about the state of affairs and your understanding of it in respect of 570 in August of 2015 and yet a remarkably favourable result emerged from the City Development Committee meeting of that month. ---The question is. I understand that was - - -

Look, we've seen that, we've see that there was a good deal of contact between you and Councillor Azzi and Hawatt in between.---Yes.

Did that not replicate in this case?---I don't know.

Was there contact between you and Councillor Azzi and Hawatt?---Look, there may have been. I can't recall.

Well, were you strategizing at any stage or considering tactics with Councillor Azzi and Hawatt to overcome the problem that faced you of the matter being deferred at the City Development Committee meeting of 3 December, 2015?---There's no such, such word "tactic" that can be used. My job is always to provide and, and modify information, resubmit it as many times as it takes, and the authorities will make the proper decisions when they will.

Can I go back to Punchbowl Road, please, 998 Punchbowl Road. Turning now to 2016. Just to summarise, were you aware that council's consultant that it had retained produced a report which concluded that a maximum FSR of 2.8:1 could be supported, provided conditions as to design of the building envelope were met?---I wasn't aware of, of the urban design, no.

Were you aware of the council's consultant report which came back that was favourable to you?---I was not aware of that report at all. I didn't really have a copy of it.

But you knew that council was getting an independent assessment of your - - -?---Urban design, that's right.

Were you not curious to know what came back when council commissioned such an assessment?---That was the assessment process. Assessment has to take its course.

That doesn't mean to say that you wouldn't be curious as to the outcome of that process.---The council did not advise me of the outcome from their consultants and I don't know that we've really held any other meetings, to be quite honest, for some time on that project after that.

And Mr Stavis didn't indicate to you what the outcome was of the independent urban design review of your proposal?---I don't recall him advising me of the outcome, no.

Can I take you to volume 14, please, at page 182.---Yes.

This is a report to the meeting of council held on 17 March, 2016 by the director of city planning in respect of the amendment to the planning proposal for 998 Punchbowl Road. Do you see that?---Yes.

And do you see from the second dot point from the bottom, "The amended scheme has been assessed by our external urban design consultant, who has recommended approval of this amended scheme from an urban design perspective"?---I see that.

Were you made aware of that recommendation?---We would have seen this recommendation when it was uploaded on the website a few days before the meeting.

But only in the form of this business paper.---That's correct.

10 And the next dot point, "Consequently the planning proposal is worthy of support and it is recommended that it is referred for Gateway Determination," and then it sets out the parameters to be altered by the amended LEP.---That's correct.

20 Excuse me a moment. Can I take you then to page 197 in the same volume. This is the minutes of that meeting of council on 17 March, 2016. Item 5, Amendment to Planning Proposal at 998 Punchbowl Road. Resolved on the motion of Councillor Hawatt, seconded Councillor Azzi, as recommended that the alternative proposal option contained in the urban design review of planning proposal prepared by Annand Associates be adopted, and the parameter are there reproduced, R3 to R4, maximum building height of 25 metres, maximum FSR of 2.8.---Yes.

Do you see that?---Yes.

And the second point was that the current planning proposal be amended accordingly.---Yes.

That was on 17 March, 2016.---Yes.

30 Could we play, please, an audio recording LII 05958, recorded on 18 March, 2016, the next day, at 12.23pm. I need to tell you, Mr Demian, that a transcript will come up on the screen. I invite you to follow what you hear reading the transcript. The telephone call that was recorded was much longer, there was a lot of irrelevant material, irrelevant to this hearing, and that irrelevant material has been redacted and thus there are two extracts, each of them is an extract, which are essentially run together.---Ah hmm.

AUDIO RECORDING PLAYED [2.52pm]

40

MR BUCHANAN: Sorry, I'm informed we missed the beginning of that second extract and we're going to restart the playing of it.

AUDIO RECORDING PLAYED [2.53pm]

MR BUCHANAN: Commissioner, I tender the two audio recordings that we heard played and the transcript of those two recordings.

THE COMMISSIONER: The two audio files and transcript of the extracts from the LII 05958 recorded on 18 March, 2016 will be Exhibit 124.

#EXH-124 – TRANSCRIPT SESSION 05958

10

MR BUCHANAN: Mr Demian, you heard those played?---Yes, I have, yes.

Those two extracts. Did you recognise your voice and that of Councillor Hawatt?---Yes, I did. Yes.

You thanked him twice, once in the first extract saying, “Thanks for last night,” and in a second extract, “Two things, well, one was to say thank you and second is,” and then you talked about the tips for the Dogs match. Why did you thank Councillor Hawatt on that occasion?---Well, obviously he
20 voted in favour of the application on the night so I was saying thank you for voting in favour.

Well, he did more than that, didn’t he? He introduced the resolution.---I don’t know, did he?

Well, I did take you to it earlier. You didn’t notice?---I didn’t pay attention.

I see. If you can assume that he did, you were thanking him for bringing about a favourable result and rescuing your development application and
30 section 96 application from what could have been a deferral for a serious period of time? Isn’t that fair to say?---He voted in favour of the recommendation made by the council officers.

Can I turn now to later in 2016, in respect, thinking now of the development application 510/2015, to add two storeys to the approved development at 570-580 Canterbury Road?---Yes.

In early 2016, did you have a disagreement with Mr Stavis about how that
40 application was being handled?---Not that I can remember, no. There were discussions about it.

In about February 2016, had he told you, as far as you were concerned, had he told you that everything was fine with the DA to add two storeys to 570-580 Canterbury Road and it would go to the council meeting in April and then did he later turn around, as far as you were concerned, and tell you that there were problems with the DA?---Oh, look, I can’t, I can’t recall.

You don't recall thinking that you were unhappy with Mr Stavis' performance on that particular DA?---No. Absolutely not.

THE COMMISSIONER: Sorry, you'll have to speak up a little bit.---I'm losing my voice a bit. I don't recall this being a dispute. Honestly, I was asking for following up on the assessment processes.

10 MR BUCHANAN: Well, do you recall being told by Mr Stavis that if you were going to try to add two storeys to an existing six-storey development then you're going to have to modify the six-storey development in order to accommodate the other two storeys without adversely affecting amenity? ---Look, I remember that was, that took place prior to submission.

Prior to?---Prior to submission of the plans. We had what we call again a pre-DA and he marked up a set of the approved six-storey building with suggested changes he made to it. He also requested some community benefits and then we had discussions on that basis.

20 DA 510/2015 was the DA for the addition of two storeys to 570-580.---570-580, yep.

Sorry, 570-580. Did I say something else?---575.

30 Oh, thank you very much. And that was lodged on 27 October, 2015. You're talking therefore about something that occurred before October 2015, are you or before 27 October, anyway?---Look, I can't recall whether that discussion took place pre-submission or whether it took place following receipt of letter from council asking for certain amendments but there was a pre-submission. Whether it was pre-DA or pre-amended DA, I can't recall.

Did you have any issues with Mr Stavis's involvement in 570-580 Canterbury Road?---Did I have any issues? Such as?

Yes, complaints, problems.---No, it was fine. He's director of planning. He was assessing the applications.

THE COMMISSIONER: So you had no complaints.---I had no complaints, no.

40 MR BUCHANAN: Excuse me a moment. Commissioner, can I make an application to vary a section 112 order made in respect of testimony by the witness on 30 November, 2016, page 485 going over to page 486 of the transcript.

THE COMMISSIONER: Any particular line?

MR BUCHANAN: Yes, sorry. Commencing at line 20 and concluding at line 3 on page 486.

THE COMMISSIONER: I vary the section 112 order made in respect of the evidence given by Mr Demian on 30 November, 2016 to exclude the evidence recorded at transcript page 485, commencing at line 20 and finishing at page 486, line 3.

10 **VARIATION OF SUPPRESSION ORDER: I VARY THE SECTION**
112 ORDER MADE IN RESPECT OF THE EVIDENCE GIVEN BY
MR DEMIAN ON 30 NOVEMBER, 2016 TO EXCLUDE THE
EVIDENCE RECORDED AT TRANSCRIPT PAGE 485,
COMMENCING AT LINE 20 AND FINISHING AT PAGE 486, LINE
3.

MR BUCHANAN: Mr Demian, I'm going to read to you from the transcript of evidence you gave on 30 November, 2016, and the particular matter that I wish to ask you about is in the first two questions and answers that I'm going to read out. But in fairness to you I need to provide the whole of what
20 you said on that subject on that occasion, so I'm going to keep on reading until we come to the end of that passage.---Okay.

Question, "Yes, and did you ever have any issues with Mr Stavis's involvement in 578-580 Canterbury Road?" Question, "578?" I'm sorry, I'll start again. Question, "Yes, and did you ever have any issues with Mr Stavis's involvement in 578-580 Canterbury Road?" Answer, "578?" Question, "Sorry, 570-580 Canterbury Road." So, answer, "Yes, I did. Yes." That's the passage I would like you to consider but I'm going to keep on reading. Question, "So that's Campsie too?" Answer, "That's correct."
30 Question, "And what were the issues you had with Mr Stavis's role in that property?" Answer, "Look, there was a, I think there was an application for two levels for that building, and we had already an approval for six, six levels, and in that meeting Spiro wanted to amend the previously held application and create certain separations and certain applications to it. And, yeah, that was the involvement, so the application for the upper two levels." Question, "And what was the issue that you had with what Mr Stavis was doing?" Answer, "Well, usually when you get a development application approved, you wouldn't want to amend it and start all over again because, like, it's, it's almost like a restart, and we suggested that that was,
40 wasn't necessary. But the upper levels that we proposed would actually provide the setbacks in compliance with the, with ADG that he was requesting at the time." Question. "And did you tell Mr Hawatt about this issue?" Answer. "No, that was, as I said, that was a form of negotiations and that we end up, we ended up accepting most of his sort of, look, at the end of the day we had to do what we were told, not challenge it. There was in between on that, so we've ended up amending for approval for that particular application and created separations as requested by him and we tried to make the whole building ADG-compliant which is, as I said, came

to effect after the approval of that particular application.” Question. “And so you didn’t speak to Mr Hawatt about those issues at all?” Answer, “No, that was a process and that was a requirement that the planning team suggested, so we took that on board.”---Yes.

10 You seem to have thought in November 2016 that you did have issues with Mr Stavis’s involvement in relation to 570-580 Canterbury Road, specifically as to requiring changes to be made to the development the subject of the existing approval. That’s not the same as the evidence you’ve given today, is it?---No, it’s exactly the same. The, the issue I had with Mr Stavis and still remains the same, is he crossed out quite a number of bits and pieces from the approved six-storey apartment. One of those was actually a separation between it and number 2 Chelmsford, so obviously we had gone through the proposed changes that he came up with and agreed on some of them and, and we changed some once we explained the implication behind them.

20 Why didn’t you tell us that when I asked you the same question before this transcript was read out?---I did. I said there was a pre-DA where we were going through the plans and marked them up. I think, and I think what I said is, I can’t remember for, whether it was pre-submission or pre-amendment resubmission.

THE COMMISSIONER: It was put to you that you had issues with Mr Stavis’s involvement with 570 and you said no.---I understood that to be like personal issues, not technical as far as the plans were concerned, and I did not have any dispute with him as such.

30 MR BUCHANAN: You didn’t have any dispute with Mr Stavis - - -?---No. - - - about what he was requiring you to do to the approved development by reason of the application to add two storeys to that development?---I didn’t have a personal issue with him, it was, it was technical discussions, as I said, either pre-submission of DA or pre-amendment submission of the DA. I can’t recall the date. And we, he marked up the plans, we marked them and I think I emailed them back to him.

40 And, Mr Demian, you heard me read out the evidence that you gave on 30 November, 2016. Question, “And did you tell Mr Hawatt about this issue?” “No.” I’m sorry. Answer. “No. That was, as I said, that was a form of negotiations and we end up, we ended up accepting most of his sort of, look, at the end of the day we had to do what we’re told, not challenge it.” ---That’s correct.

That’s not correct evidence, is it?---Absolutely. At the time that’s, that was the state of my memory and that’s what I said, remains - - -

We now that's what you said, it wasn't correct evidence, was it?---It was the precise factual evidence that I provided.

Could we play, please, an audio recording LII 06331 recorded on 29 March, 2016, commencing at 12.17pm. I do apologise. Can I just check that I have the right reference.

THE COMMISSIONER: Yes.

10 MR BUCHANAN: Apparently I'm right. I don't know how that happened.

THE COMMISSIONER: And was that marked-up one for me?

MR BUCHANAN: Yes. So, LII 06331 recorded on 29 March, 2016, commencing at 12.17pm.

AUDIO RECORDING PLAYED [3.10pm]

20

MR BUCHANAN: Before asking you a question, Mr Demian, can I, Commissioner, propose some amendments to our copy of the transcript? And before I do that, I should tender the audio file and the transcript.

THE COMMISSIONER: All right. The audio file and transcript of LII 06331, recorded on 29 March, 2016 all right 12.17pm, will be Exhibit 125

#EXH-125 – TRANSCRIPT SESSION 06331

30

MR BUCHANAN: The first change to our copies of the transcript to propose is page 3, last paragraph, the passage attributed to Mr Demian, second line where it reads "unintelligible" I heard the word Bechara and that's consistent with the same assertion being made by Mr Demian on page 9 of the transcript at the middle of the page, "Bechara is saying that I swore at him, mate. I don't swear at people."

40 THE COMMISSIONER: Can I say to everybody when Mr Buchanan is going through these if anybody has got a different note or wants to say something contrary, can you just raise it, please.

MR BUCHANAN: So I think I can speak for the assisting team that we propose that our copies of the transcript at that point just be amended to substitute Bechara for unintelligible. And then four lines down there's another unintelligible that appears, the second word in that line, and we propose that instead of unintelligible it read "him on his own" so that it would read "I have never seen him on his own." Page 6 of the transcript,

second-last line and unintelligible appears there, we submit it reads “originally”, sorry that we heard the word “originally”. So it was Mr Hawatt saying, “Yeah, but I know you had the issue there originally where you had the sixth level approved and then you have to”. On page 8, the second line, the unintelligible that appears there was Mr Demian saying “ADG”. And further down the page, the fifth line from the bottom of that particular passage attributed to Mr Demian there is an unintelligible that appears that should be replaced with “some amendments” so that it reads “and he asked for a further, what’s it called, RDG design statement from an architect and some amendments. I said fine.” I think that’s the changes we propose to our copies of the transcript component of the exhibit.
10 Mr Demian, you heard the voices there of Mr Khouri. Is that right?---Yes, yes.

And just while I’m on him, you see that in the transcript that’s appeared in front of you on the screen that there are square brackets around some English words. They are translations of Arabic.---Right.

20 And I don't know whether you know Arabic but that’s what our translator says - - -?---I understand.

- - - was said at that point, just so that you understand. You heard the voice of yourself speaking to Mr Hawatt. Is that right?---Yes.

That would appear to be a complaint to Mr Hawatt about how Mr Stavis had been handling the DA in respect of the additional two floors for 570-580 Canterbury Road. You agree with that?---It was information about the late notification to make changes to the plan after so many months, yes.

30 And it was late changes that were being sought by Mr Stavis from you? ---That’s correct.

And it was a complaint to Mr Hawatt?---Look, I wouldn’t say a complaint. The whole telephone call was around that someone accused me of having sworn at Mr Stavis which was never the case.

40 And so when you told the Commissioner on 30 November, 2016, page 485 line 41, Question. “And did you tell Mr Hawatt about this issue?” Answer. “No, that was, as I said, that was a form of negotiations and that we end up, we ended up accepting most of his sort of, look, at the end of the day we had to do what we’re told, not challenge it,” that was incorrect, wasn’t it?--- Obviously I didn’t recall that telephone discussion that took place because that was a part of the negotiations, or not negotiations, part of the pre-submissions and workshopping of those applications with the council.

Your evidence was incorrect, wasn’t it?---My evidence was very consistent with what it is now, within the exception that not having remembered a

telephone call had been made, and that did not really include the pre-DA meetings I was referring to today.

This plainly was not a pre-DA meeting that you were talking about because you're complaining that after the lodgement of the, sorry, you're complaining to Mr Hawatt that after lodgement of the DA you'd basically been left to believe that there weren't problems with the DA until only recently you had been told by Mr Stavis that he did require changes to be made to the approved development by reason of the DA for the additional two storeys.---So my answer was that there was a pre either DA or pre - - -

Yes, I know you've said that, but this obviously wasn't about a pre-DA meeting, was it? You were complaining about something that had happened much more recently because your complaint was, we've been left to believe that this DA was all right and now all of a sudden we're being told that it's not.---I haven't finished my answer.

I'm asking you to answer my question - - -?---I'll try – please reframe.

20 - - - rather than what you would like to say.---Please reframe.

This complaint that you were making to Michael Hawatt on 29 March, 2016, was not about something that had happened at a pre-DA meeting obviously, was it?---I agree, I agree.

You accept that?---I accept that.

Thank you. Now, was it the case that the last four meetings, I'm looking at page 2 of the transcript, almost halfway down, that the last four meetings you'd had with Mr Stavis since December had been in the presence of Jim Montague?---Yes.

And you say that that was, "So there's no, there's no confusion about what was said."---Misunderstandings.

Did you request that these meetings be held in the presence of Mr Montague?---I would have invited Mr Montague, yes, or made the appointments through his office, I can't remember.

40 Why was it that you thought there might be confusion about what was said if the meetings with Mr Stavis weren't held in Mr Montague's presence?
---Sorry, I can't get that. Can you - - -

Yes, sure. You've told Mr Hawatt - - -?---Yes.

- - - that there was a reason why the last four meetings since December with Mr Stavis had been held in the presence of Mr Montague, to use your words, "So there's no confusion about what was said."---The ah, the

reference was made to that once, in the past we've reached understandings on certain outcomes and a month down the track those understanding were not accepted anymore, so the, one of the reasons to actually sort of have Mr Montague in the meeting, so once an agreement is reached that we can process or progress the application further from that point.

10 So were you wanting to have Mr Montague present so that Mr Stavis couldn't backtrack from what you believed had been agreed between the two of you?---Well, as I said, I didn't, wouldn't use the word backtrack because sometimes his decisions later could be the subject of further assessments, but it was getting to the stage that those projects were pretty much at the end of the span and I just wanted to get on with them.

The end of their - - -?---Well, the end of the process, the due process for those applications.

20 You hadn't organised the meetings with Mr Stavis to occur in Mr Montague's presence, had you, in order to endeavour to intimidate Mr Stavis?---Absolutely not.

Mr Montague being Mr Stavis's boss you didn't think that you could more easily achieve your goals in your dealings with Mr Stavis by having Mr Montague present?---That wasn't the intention at all.

30 Excuse me a moment. Now, can I take you to page 9 of the transcript of Exhibit 125. It does seem firstly that Bechara Khouri was present at a meeting with Mr Stavis where Mr Khouri seemed to think there had been angry words used by you to Mr Stavis.---I understand Mr Khouri had attended two meetings over the years with Mr Stavis. I don't, I can't relate to the words that you're saying as far as angry words being said.

But Mr Khouri was present on that occasion. Is that right?---Which occasion?

40 Any occasion that you met with Mr Stavis at all in relation to the DA for the additional of two storeys to 570-580 Canterbury Road.---No. I said Mr Khouri had been to two meetings or was present in two meetings with Mr Stavis but not necessarily regarding 570. Like, for example, I can recall clearly one of them was regarding 677 Canterbury Road, Belmore.

What I want to suggest to you is that from what you said in that conversation with Mr Hawatt which was exclusively about 570-580 Canterbury Road it would appear that you were recounting to Mr Hawatt that Bechara Khouri was a witness to what had happened between you and Mr Stavis.---That's not, it doesn't say that at all, not even close. What it actually says that Bechara had informed me that someone had told him that I swore at Spiro or Spiro understands that I swore at him and I wanted to clear that issue that I don't even swear to anybody let alone Spiro.

I'm not asking you at the moment about swearing at Spiro. I'm just trying to ascertain had Mr Khouri been present at a meeting between you and Mr Stavis about 570-580 Canterbury Road?---No.

Now, you say that – I do apologise. I'm still on page 9 at three entries from the bottom, there passages from the bottom. In the transcript you say, "Well, Bechara spoke to Jim and Jim's saying that there's a meeting you've organised for today."---Yes.

10

Is this typical of the contribution that Bechara Khouri made to you and your business that he would speak with Jim Montague and be an intermediary between you and Mr Montague on your developments?---No, look, absolutely not. I wasn't invited at that meeting. I had no idea what the meeting was all about. There is only one point of concern and that's the one single point that Bechara has raised with me about some misunderstanding.

Well, I might have, I might need to reframe my question.---Sure.

20 It says Bechara has spoken to Jim.---Yes.

Why would Bechara have spoken to Jim?---I don't know. He speaks to Jim at his will.

Why would Bechara have told you that he spoke to Jim unless it was to give you feedback that would assist you in your business?---I'm trying to make sense of it. Said spoke to Jim and Jim saying that there's a meeting organised for today. I had no idea what that meeting was all about or had no involvement in it.

30

No, that's not my point, Mr Demian, and I'll keep on going until you get my point.---Sure. I'll try.

I'm asking you about the function that Bechara Khouri performed in your business or at least an aspect of the function he performed in your business. ---Yes.

40 An aspect of the function he performed in your business it would appear from this passage is that Bechara was a line of communication that you had with Jim Montague.---That's not correct.

Why otherwise would it appear that you were telling Mr Hawatt that Bechara had said something to you after he, Bechara, had spoken to Jim Montague?---I said that I have heard from Bechara there is going to be meeting on that day. No other reference was made.

THE COMMISSIONER: But you go on and say, "Should I be there?" So, it obviously suggests that the meeting was to do with one of your projects?

---I think, I agree with you, whether I could be invited to a meeting, if it was relative to my projects. But the one issue I had on mind at time is the misunderstanding that was brought between me and Spiro which I had nothing to do with, where someone told Spiro that I said certain things about him. That was my point of issue.

MR BUCHANAN: Yes, but we're trying to find out from you, if we can, what your understanding was of the role that Bechara Khouri played in your business, so far as concerned his relationship to Mr Montague. Do you
10 understand that that's what we're looking at?---Yeah. I'm trying, I'm trying to figure out what it is that you really mean but – so, Bechara was a business advisor, wasn't a planning expert or even close to it. So, he would assist wherever possible regarding any points of issue with the business, and obviously with him being informed that someone had said something that I have said, which is not the case, he brought it to my attention.

THE COMMISSIONER: But they weren't having a meeting about you swearing at Mr Stavis. The conversation just doesn't deal solely with whether or not you swore at Mr Stavis. It's dealing more with your
20 particular project. And at that point where you say, "Bechara told me that Jim told him that they're organising a meeting," and then you go on further and say, "Should I be there?" That suggests that Mr Khouri has spoken to Mr Montague, as suggested by Mr Buchanan, as some kind of intermediary or trying to facilitate a meeting at council with Mr Montague about your concerns with the project. And Mr Buchanan's asking you, is that something that Mr Khouri did for you?---I understand what you're saying. Mr Khouri has said, was, would help resolve any business issues that we had. The swearing or alleged swearing - - -

30 Forget the swearing, forget the swearing. It's not relevant for this part of the conversation.---Sure, sure. I had no idea what the meeting was all about within the exception of wanting to clear that, that issue.

What, the swearing issue?---The swearing issue, yes.

MR BUCHANAN: Mr Demian, now can I take up the swearing issue. It would seem that from what you were talking to Councillor Hawatt and saying Bechara had told you that there was a view that some people held,
40 maybe it was someone that Bechara spoke to, that you had sworn at Mr Stavis?---I can't comment on that.

Well, it's an obvious inference from what you said to Councillor Hawatt, isn't it?---I said, Bechara said that I, someone told Mr Stavis that I said certain words by swearing at him.

No, that's not what's there, Mr Demian. Listen, what I am simply asking you is this, I've asked you a few questions yesterday and today and it's to

this effect. From time to time you abused Mr Stavis, didn't you?---
Absolutely not.

Whether you swore at him or not, you abused him.---We agreed to disagree
is a, is a better interpretation.

And I want to suggest that you endeavoured from time to time to intimidate
him.---Oh, look, that's rubbish.

10 And I want to suggest that this conversation with Councillor Hawatt is an
illustration of one such occasion, at least in the opinion of somebody.---I, I
really can't comment.

Now, can I just go the last of this recording. And I'm looking in particular --
I'm sorry, this is page 10. I'm looking in particular at the passage attributed
to Mr Hawatt a bit after halfway down. After you say, "All right," Mr
Hawatt says, "'Cause I really don't know exactly what the issue. I knew
that there was some problem. Let me sort out what the issues are." "All
right." So I just want to explore, if I can, why you were talking to
20 Councillor Hawatt at all. What was it you expected him to do?---I think it
was regarding the, the swearing or the alleged swearing, and the discussion
just went on on how that swearing is alleged to have come about, because of
the late proposed changes on 570-580.

What this conversation was was a complaint to Mr Hawatt that Mr Stavis
had said one thing on one occasion and then come back and said, "Oh, no,
changes need to be made to the approved development." That was the
complaint to Councillor Hawatt, wasn't it?---I wouldn't say complaint. I
said there was issues that needed to be discussed.

30 Well, a communication to Councillor Hawatt to that effect.
---Communication is a better word, yes.

And you weren't happy, were you?---I wasn't happy that there was
allegations on things that I have said which aren't the fact.

Forget about the swearing now, okay? We've put the swearing into a box,
closed the box. The reason that you were speaking to Councillor Hawatt
was because you wanted him to do something about something that
40 concerned you, and what concerned you was that Mr Stavis had sat on the
development application for a number of months, not indicating that there
was anything that was a problem. All of a sudden turned around and said
there is a problem. You're going to have to do something to the approved
development. You're going to have change that design. And you weren't
happy with that, were you?---We disagreed with some of the requests that
he had made, and obviously I did not want to interfere with an approved
development application, or keep the interference to a minimum.

And you wanted Councillor Hawatt to intervene on your behalf to see if that could be solved, is that fair to say?---No, it's not fair to say.

Why not?---Because I didn't call him for that reason. I called him up for the other alleged wordings that were said.

10 Councillor Hawatt said to you, "I know there was some problems. Let me sort out what the issues are." So he seems to be saying, he seems to be accepting a task that you have given him to try to sort out what the issues are and maybe address the problem that you've raised with him about being required to go back and make amendments to your approved development, isn't that right?---That's not how I understand it.

How could you not understand it that way, given what Councillor Hawatt said and given what you said to him that caused him to then say, "I knew there were some problems. Let me sort out what the issues are"?---No, he said to me he's, he's aware that there might be some issues and let him look into it. That's, that's as I understand it.

20 And when you say he said words to the effect, "I'll look into it," or "Let me look into it," does that mean that you hoped that he would bring his power to bear to solve the problem in your favour?---No, I don't agree with that.

How otherwise could it be interpreted?---Well, you know, he, either himself or the council staff would make contact again to work out what the issues are.

30 Yes. Having worked out what the issues are, it doesn't help you very much if you then have to redesign your approved development, does it?---Well, I think in that discussion I did say, well, we'll change what needs to be changed if, if necessary.

But you'd prefer not to, wouldn't you?---Well, of course I'd prefer not to.

Yes. And you wanted an intervention that would be as favourable to you as possible, didn't you? That's why you called him.---No, that's not the case at all.

40 And can I suggest that this is typical, this conversation and the character of it, is typical of the relationship you had with Councillor Hawatt and Councillor Azzi in relation to the projects that you had that were before council in the period 2014-2016.---Of putting a planning case forward to them from our angle, yes.

Excuse me a moment. Mr Hawatt, you gave some evidence this morning on the subject - - -

MS RONALDS: Mr Demian.

MR BUCHANAN: I do apologise.---That's okay. I understand.

Mr Demian.---Thank you.

You gave some evidence this morning on the subject of whether you wanted to meet with Mr Stavis but only in circumstances where Mr Montague was present. Can I read to you from the transcript of page 2115, there's no hard copy available at this stage. Question. "There came a time, didn't there, when you didn't want to meet with Mr Stavis unless Mr Montague was present?" Answer. "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" - - - Question. "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?" Answer. "I've requested meetings to both of these individuals from time to time, yes, and there was" - - - Question. "That's still not answering my question, Mr Demian." Answer. "Well, that's the answer." And then the Commissioner said, "No, answer the question, please. It's being specifically put to you." And your answer was, "Well, it's not correct." ---Yes.

That evidence was incorrect, wasn't it?---For a period of time I stand corrected.

In fact it was false evidence to your knowledge, wasn't it?---No, it was to the best of my knowledge and memory at that time.

Do you mean to say you had completely forgotten, not only about the fact that you had had multiple meetings with Mr Stavis deliberately with Mr Montague being present, but that it was part of your business practice at that time, since December, to have had meetings with Mr Stavis only in the presence of Mr Montague? You'd completely forgotten that?---I did absolutely forget it, yes.

I suggest to you that that is most unlikely.---That's not the fact.

Excuse me. Now, I'm not going to play you a recording but I do want to give you the opportunity of meeting this suggestion, that on Friday, 22 April, 2016, so it's after this conversation with Councillor Hawatt - - -? ---Ah hmm.

- - - you and one of your planners had a meeting with Spiro Stavis and one of his planners, and it may well not have been any of 548 or 570 or 998 that this investigation is looking into - - -?---Yes.

- - - but the reason I'm asking you a question about it is because of what I want to put to you next, that on the occasion when you had a meeting with

Mr Stavis with one of his planners present and one of your planners present, you used bad temper and intimidation to pressure Mr Stavis into acceding to your demands. What do you say?---If it is the meeting I'm thinking of, it was a meeting on the lower level and I had my urban planner designer with me and so did Mr Stavis, and one of his other staff. I think there was a disagreement about something with his staff member from memory and I responded to that staff member. Then we had some discussions on, between the two urban designers on the outcome of what was being discussed and I think that there was a bit, I think the meeting didn't go anywhere at that stage as far as the contents of it.

Can I take you now to the month of May 2016.---Yes.

Thinking now of 548-568 Canterbury Road, I can show you in fact. Volume 23 at pages 276 and then we'll go to 279. Now, I appreciate this is not a copy of the section 96 application. It's a council document. In fact it's after amalgamation and it could easily be that you haven't seen it before unless you've been looking at the brief of evidence that's been on the council's public website, but can you see that this report is in respect of DA 509/2013/B and that the application date is identified a bit before halfway down as 7 April, 2016 and the description of it halfway down under the heading Background is that it is modification to the internal layout of an approved development which was for ground floor residential units, 254 residential units, 88 multi-dwelling housing units and associated basement car parking and the address is in the third line of the summary at the top 548-568 Canterbury Road?---Yes.

And if I can take you then to page 279. This is just to get you to fix the dates in your mind of these events.---So what's the date of this report?

It's certainly after 7 April. I can tell you it's 12 October, 2016.---Yes.

The date of the report. That date appears on page 278.---Sure.

But if I can just ask you to have a look at page 279. The other section 92 application was DA 592/2014/A.---Yes.

Again in respect of 548-568 Canterbury Road. The description of the modifications appears there against the word "development" and the application date is identified as 7 April, 2016.---Sure.

Do you recall those section 96 applications?---Yes.

I'm going to try and shorten this by just asking those applications were refused for lack of information. Do you recall that?---On these documentations, yes.

And that's right, and you're pointing to the council reports?---That's correct, yes.

Thank you. Can I now just turn to a different subject. Thinking of the Harrison's site 548-568 Canterbury Road, was there a point when you considered selling the development?---Yes.

10 What was that point or when did you first consider selling it?---I've listed it with CBRE in February of 2016.

February, 2016 did you say?---12, yeah, 12 February, 2016.

Yes, but, I understand that but what I'm really asking is when did you first consider selling it?---12 February, 2016.

You must have thought about it a bit earlier than that.---Sure, but that's - - -

20 What, you woke up one morning and thought I'll sell this development and picked up the phone and rang CBRE?---Something like that.

Mr Demian, please.---All right. Look, in 2015 I think we had a couple of cold offers where people just made an offer without the property being on the market and I remember that was in writing via an email that offered a certain price per certain unit for what we had approved at that time.

What I'm - - -?---So that's - - -

Can I ask a different question now.---Sure.

30 Did you first consider selling the development before you had received DA approval or after you had received DA approval?---The consideration was when we had the, I think it was in late 2015 and at that time the latest section 96(1A)s went on the agenda.

Perhaps I should ask you a different question. Had you always considered selling the development?---No.

When did you first consider selling the development?---In late - - -

40 Whether you received an approach or not, just your own considerations as to what you think you will do with this investigation?---Late 2015.

And it was in late 2015 that you thought you might sell it?---That's correct.

And did you intend to sell it DA approved?---We sold it, from memory, or we put it on the market with - - -

No, sir, sir, sir. Did you intend to sell it DA approved? Your intentions is what I'm after now.---Which DA? You've got to be specific.

Well, first of all the DA approving the first six storeys, that DA?---That's already, it was already approved so give that a tick. That was already approved at that time and the upper level was already approved at that time.

10 So, when you first considered selling it, you wanted to sell a development, or rather a proposed development, which was DA approved as to eight storeys?---That's correct.

Now, did you have any discussions with Mr Hawatt about the potential sale of 548 Canterbury Road?---In late May, 2016 - - -

Sir, sir. Is the answer to my question, yes?---Yes.

20 Thank you. When did you first have a discussion with Mr Hawatt about the potential sale of 548 Canterbury Road?---I believe, to the best of my knowledge, would have been late in May, 2016.

And what makes you think it was late in May and not early in May, for example?---That discussion led to a meeting. I think somewhere very late in May or early June.

And was that the meeting you told us about yesterday that involved Mr Vasil and Mr Dabassis?---That's correct.

Was that meeting held at a café?---Yes.

30 Called Frappe?---I can't remember the name but it's at the car park at Earlwood.

Thinking now of the CBRE agency agreement, when did that agreement commence?---12th, from recollection 12 February, 2016.

Thank you. And I do apologise, because I think you told us before.---That's okay.

40 But can I ask it again, when did it expire?---I think around the middle, whether it was 13 or 15 May, I have terminated all – I've issued notice to terminate a week later from that date.

So you terminated it before it would otherwise have expired?---Well, it was only for a period of time and from there it extends monthly unless someone terminates it but what I did terminate is the exclusivity. So, they still had an open agency continuing.

I see. Now, you've told us that there was a period in which you started getting cold call messages about offers the purchase the development?
---That's correct.

And who was the first person to provide you with such a contact?---I think one of the marketing individuals I've dealt with in the past provided an email with I think some sort of an offer, yeah.

Yes. And who was that?---I'm trying to remember the name.

10

THE COMMISSIONER: Sorry, who the offer was from or the agent?

MR BUCHANAN: No, the person who provided – I do apologise, I should have made that clear.---Peter, Peter Mokas, I think it was.

Peter?---Mokas.

How would you spell that?---I'm trying to remember. I think it's M-o-k-a-s or something.

20

Thank you,

THE COMMISSIONER: And sorry, he was the marketing person you'd dealt with in the past who provided you with this email containing an offer?
---That's correct.

MR BUCHANAN: And when did you receive that?---Look, from memory, it was around mid-2015 some time. I can't, I can't recall. I can't remember the actual date.

30

Did you receive a proposal for a purchase from, that you understood to be from George Vasil in 2015?---No, I don't believe so, no.

So can I ask you to have a look at volume 29.---Yes.

I'm sorry, my mistake. 21. Page 212. I do apologise. Can I withdraw that. I should try and get this into order. Volume 21, page 174. This is an extract from Mr Hawatt's telephone of SMS messages, and these are dated 21 September, 2015, and can you see that item numbered 1 is a text message to you at 1.38pm, and it reads, "Hi. George Vasil is telling me that his people are serious and need a contract of sale. Michael Hawatt." That's from Mr Hawatt to you.---Yes, I can see that.

40

Now, you received that text message.---Look, according to this obviously I should have received it. That's some time ago now, so - - -

It suggests that there had been, that you would have understood that George Vasil had potential purchasers for your property.---I remember saying that

George Vasil and other people (not transcribable) from time to time had said that they had interested parties, and I didn't respond or take up that, that, that expression at all.

And who communicated that to you?---I think once George, once or twice George said, look, he's got interested parties and I said to George, I said, George, I can't deal with you and, at this stage, and I think Michael might have once said that he's got some Chinese or a Chinese interested party in investing in the area.

10

But just focusing at the moment on this particular text message, the implication from it is that you had some knowledge already about George Vasil having potential purchasers for 548-568 Canterbury Road.---Well, that's what George suggested, yes.

So those communications would have been before 21 September, 2015. ---21 September, '15. This - - -

20

Yes, so it - - -?---When, you're talking about George communicating with me?

That's what I'm talking about at the moment.---Okay. Look, would have been '15 right through up till mid-2016.

The second text message on this page is at 7.50pm and it asks you to call Mr Hawatt. Do you see that?---Yes. Yes.

30

And the third text message at 8.41pm reads, "Hi again. The offer is 56 million for current approval, which includes the extra units being approved. The buyer is willing to exchange with only one condition subject to the extra units being approved. Michael." Do you see that?---Yes.

Do you recall receiving that from Mr Hawatt?---Look, I don't recall it but I can see it now, yes.

\$56 million? You don't recall the offer?---No, I don't, actually.

You received a number of offers, is that right?---I've had, I, yes.

40

And you had difficulty keeping them all in mind.---Well, no, no. At that stage a final decision had not been made whether we'd develop or sell the, the property.

You responded at 8.42, a minute later, "Thanks, Michael. Let's talk over the next couple of days."---Yes.

You didn't reject the offer out of hand, did you?---But I didn't accept it either.

Can you tell us why you didn't reject it out of hand?---The way which I market projects is usually by the major marketing groups, and at that time I said to you I hadn't fully made up a decision whether we would develop the project or whether we would sell the project. So 2015 was the peak of the market and we're still considering developing the project.

But you didn't indicate anything like that in your response to Councillor Hawatt, did you?---Just being polite.

10

Instead it's, "Let's talk over the next couple of days," in response to his indication that there was an offer of \$56 million to be paid for you for the current approval, including the extra two storeys.---I, I didn't accept it or even entertain the idea.

Yes, I know you say that but you don't indicate that in your response. Instead you, as it were, string him along.---It was a polite response.

20

So can we go back to the call charge record, please, exhibit 123. You might not have it there right now. Looks like that.---Yes, I've got it.

You do have it. Thank you very much. Could you go to page 7, and keeping the SMS in front of you, you can see that the SMSs on page 174, volume 21, are on 21 September. And on page 7 at 7.50, I'm looking at item 297 on 21 September, there is a telephone contact that you initiate with Michael Hawatt that extends for 2 minutes and 58 seconds. Do you see that?---Yes.

30

Was that about the offer that Mr Hawatt had spoken of – no, I'm sorry, it couldn't be. It must have been earlier.

THE COMMISSIONER: No, it's probably in response.

MR BUCHANAN: It must have been just before.

THE COMMISSIONER: It might be in response to item 2.

40

MR BUCHANAN: Yes. Thank you, Commissioner. In response to item 2, "Can you call me?" You did call him and then there's a conversation for almost three minutes. I take it that that was about potential purchasers. ---Oh, look, I can't recall. Possibly.

The likelihood is that it was given how quickly afterwards the SMS was sent to you - - -?---Well, I said possibly.

- - - which put in written form an offer price and the subject matter of the price, of the offer.---Possibly. I can't recall.

Now, can I just ask you to have a look, then, at the rest of the communications that are recorded in the call charge records for 21 September. There's the text then at 8.41.---So which item is that?

I'm sorry. That's on page 174.---Yes.

And that would be coincident with the entry number 298. Do you see that, on the call charge records?---Yes.

10 Then there's an SMS at – sorry, 299, 299, I apologise.---Yes, I can see that.

Then there's the item 300 where Michael Hawatt rings you, this is on the 22nd at 3.31, and there's a four-minute conversation.---Yes.

Did you have a conversation with Mr Hawatt about whether or not you could accept an offer to purchase on the terms that Mr Hawatt had advised you?---I would have explained to Michael that the property is not on the market and at that time I would have declined any suggestions of an offer.

20 Can I ask you then to go to page 212 on page 21, volume 21, page 212. ---Yes.

And you can see there a text message extracted from Councillor Hawatt's phone that was sent by him to you on 17 August, 2015.---Yes.

“Are we still on tonight?”---Sorry, I'm looking, must be looking at the wrong one.

30 I'm sorry. Thank you, Mr Demian.---That's okay.

There's three messages there.---Yes.

This is on 8 October, 2015, commencing at 10.49pm, a reasonably late hour for text messages with someone that you have a professional relationship, would you agree?---That is very late.

40 And Mr Hawatt says, “For your information, message I received, Michael.” And the message apparently is, “What figure will it take for owner to exchange on Harrison's. We will lose big client.” Shortly after that there's a text message from you, “Hi, Michael. Hope you're enjoying the party. As I explained, my joint venturer is a public company just like a government agency. We must sell via an expression of interest but I will get George involved when we go to the market.” And then there's a response five minutes later from Mr Hawatt, “No problems. I understand. Regards.” ---Sure.

Do you see that?---Yes.

Can I just ask, you understood that Mr Hawatt was at a party at the time?
---I must have.

Were you invited to it but hadn't attended?---No.
How did you know he was at a party?---Oh, look, would have had to be mentioned by him.

Now, you seem to assume in your response to the 10.49 text from Mr
Hawatt that the message that he forwarded to you was from George Vasil.
10 ---I honestly had no idea because the language used is, yeah, I had no idea where it came from.

But why did you say, "I will get George involved when we go to market?"
---Well, George is a, is a real estate, expressed interest in doing, or doing some marketing on the side a couple of times and I declined, so I said I will, I will communicate with George when the time comes and I did.

But doesn't it appear from your text at 10.52pm that you believed that Michael Hawatt was passing on messages from George Vasil - - -?
20 ---Possible, yes.

- - - with potential purchasers?---Possibly.

You said in the message "as I explained". That suggests that you had previously or you believed you had previously explained to either George Vasil or Michael Hawatt or both that you had constraints on the way you could take the property to market and you indicated that it had to be by expression of interest.---It was a polite response saying I'm not going to list it with you guys if I sell the property but if I do I will let you know in the
30 future.

Yes. It's the words "as I explained".---Yes.

I'm just asking, that would seem to suggest that you had already conveyed that information and you were conveying it again.---That's correct.

Had you already conveyed that information to Michael Hawatt or to George Vasil?---I think it's likely to be George Vasil.

40 Can I ask that a telephone conversation be played, a recording of a telephone conversation. This is LII 04962 recorded on 4 March, 2016 commencing at 8.30pm. This is an extract from the full recording but we've cut it down to what is relevant to the inquiry.

AUDIO RECORDING PLAYED

[4.17pm]

MR BUCHANAN: I tender the audio file which was just played and the transcript of what was just played.

THE COMMISSIONER: The audio file and transcript of LII 04962 recorded on 4 May, 2016 at 8.30pm will be Exhibit 126.

#EXH-126 – TRANSCRIPT SESSION 04962

10

MR BUCHANAN: You heard that recording, sir?---Yes.

You recognised Councillor Azzi's voice in the beginning?---Yes.

And then you recognised your voice and Councillor Hawatt's voice talking, is that right?---Yes.

20 Do you recall that conversation?---Look, there were several conversations but I remember something of that nature and I suggested that we get George to go and see CBRE and possibly negotiate a, a, a, I think, what do you call it, in conjunction with them on the agency.

What we've seen now is that there've been a number of contacts made to you by Councillor Hawatt well before late May of 2016, haven't we?---he is trying to create introductions and I've kept declining, that I can't deal direct, and he's – I mean, all I understood from him that he's got investors that want to invest in the area. That's the understanding that I had.

30 Why did you tell the Commission that the contacts you had from Councillor Hawatt were not before late May 2016?---Well, that's the first time I've accepted the invitation to meet up with, with someone he had, but prior to that date I've declined them.

If you'll excuse me. It would seem that there was – I withdraw that. Is a reason why you told the Commission that the contacts from Councillor Hawatt were not before late May of 2016 because you know that before 12 May, 2016, Councillor Hawatt was a councillor?---Sorry, please reframe?

40 Yes, sure. You told us that the contacts from Mr Hawatt, I'll call him, about potential purchases for your property were before late May of 2016.---I said about late May.

That was wrong, wasn't it?---No. I was making specific reference to a meeting as a result of that meeting. Prior to that we had, the property was in exclusive agency for a period of time and prior to that I've declined any discussions or any potential discussions with potential purchasers or investors.

Have you been trying to give the Commission the impression that Councillor Hawatt did not attempt to introduce a purchaser to you until he was no longer a councillor?---Well, he, actually at all times he didn't. He was introducing other people that believe they had other potential investors.

And you know, don't you, that people who introduce purchasers like to think that they're entitled to a commission for that?---Absolutely not.

10 But you know that that is practice in the market, don't you?---Practice is sign an agreement and the agreement usually negotiates a commission and a marketing budget and so on.

And the commission can be for people who introduce the purchaser to the owner, can't they?---Only the listed agents.

I'm sorry?---Only the listed agent from the agency.

20 You've never been involved in a suggestion that a commission might go to a person who introduced a purchaser who was not a listed agency?---No. Absolutely not.

Of course, if an owner got a price they were happy with from a purchaser by reason of that fact that that purchaser was introduced by anybody at all, whether they were a listed agent or not, then they might be more inclined to pay a commission to that intermediary, mightn't they?---(not transcribable) your understanding. From my point of view, no. The answer is no, that's not, that's not right.

30 If you got a price that you wouldn't have otherwise got from a purchaser by reason of being introduced by an intermediary, you'd be likely to think that it'd be worth paying the intermediary something for something you wouldn't have otherwise got, wouldn't you?---No. Absolutely not. You would not allow people to go and market your property without consent anyway. It's against the Department of Fair Trading practices.

So are you saying it's unlawful?---As I understand it for a licensed real estate to market a property without consent is either illegal or inappropriate at least.

40 That might be the case but leaving aside whether a person is a licensed real estate agent or not, if there is an intermediary who gives you money that you wouldn't have otherwise got from a purchaser of your property then that intermediary is both likely to want a commission and you're likely to consider paying them one.---No, it's - - -

That's simply market logic isn't it?---No, it's not. Far from it.

What's illogical about that?---Well, for one when a property sells it's usually via marketing and I said, made it clear - - -

That's not what I'm asking you. Forget about marketing, forget about real estate agent. I'm simply asking about ordinary market forces. You, an owner, get money that you wouldn't have otherwise received because an intermediary introduced you to the person who gives you the money.---The answer is no, it's not an acceptable practice.

10 What's unacceptable about it?---Everything is unacceptable about it.

No, no, sorry, you'll have to explain it to us. What would be unacceptable about the intermediary being paid a commission for work that they did introducing the purchaser to the owner?---Okay. Reason one is you'd be encouraging every individual out there to market your property without authority, number 1. Number 2, could lead to misunderstandings on expectation from the two sides. Number 3, they would do unjust by the purchasers because they wouldn't know much information the property, not having the information being provided to them. So it's not a practice that
20 any business person will accept. It's totally unacceptable.

All you're talking, all you're doing there is addressing countervailing factors. You're not indicating why it would be wrong at all for a commission to be paid, either by the purchaser or by the owner or both, to an intermediary whose work ensured that the owner got money they wouldn't have otherwise got and the purchaser got a property they otherwise wouldn't have got.---I've answered the question based on the business practice out there.

30 You mean to say that business practice is you don't pay commissions?

MS RONALDS: I object. That's so far wide of what the witness said. The witness has explained his position now four times. Not moved his position. Counsel Assisting may have a hypothetical world about how business works. The witness has clearly made it clear that that's not how his business works and no amount of hypothetical putting to him about what might be the nature of capitalism is going to help. He's made it abundantly clear what his position is and it's unfair to put to him something that he didn't say.
40

THE COMMISSIONER: I don't think he was doing that but, Mr Buchanan, do you want to respond?

MR BUCHANAN: Commissioner, speaking for myself I don't accept the witness's evidence and unless something were to change I would be making a submission that his evidence is not true to his knowledge. That he didn't actually hold the belief that he has purported to put forward because it is simply illogical and further, there is going to be further evidence on the

subject of commissions and expectations in that regard which will contradict him so in my submission I'm entitled to test the evidence of the witness when he rejects these propositions. That is all.

THE COMMISSIONER: Do you need to respond?

MS RONALDS: No. I just seek that we be given notice when those witnesses come so we can attend.

10 THE COMMISSIONER: Ask the question again, Mr Buchanan.

MR BUCHANAN: Commissions are perfectly lawful. Correct?---(No Audible Reply)

Generally speaking commissions are perfectly lawful aren't they?---I don't know.

20 You know that they're not unlawful don't you?---I don't know what you're talking about.

Unless they're secret commissions.---Again, I don't know what you're talking about. Be specific, please.

You know that commissions are paid in respect of the sale of property and in respect of a purchase of property aren't they?---In a general term, yes.

30 Yes. And they're paid to people who do the work that is involved in bring a purchaser together with an owner or bringing an owner together with a purchaser, aren't they?---Only if appointed.

Sorry?---Only if appointed. (not transcribable)

When you say only if appointed, what do you mean by only if appointed? ---Okay. Well, you can't just go and sell someone's property or house or car without their consent, can you now?

40 No, but say Mr Hawatt had introduced you to a purchaser and Mr Hawatt had not been appointed an agent, but he introduced you to a purchaser who offered you a figure that you thought you could not possibly reject?

---Well, I've declined all of those suggestions at all times.

But no, I'm just testing your evidence. If it was the case that an intermediary offered you a purchaser who was going to give you money that you couldn't expect from any other source, why, what would be wrong about A, accepting the offer from the purchaser, and B, paying the intermediary for bringing about the introduction of that purchaser, what would be wrong with that?---That's unacceptable business practices.

What is unacceptable about it?---That people sell properties without authority. So I can't - - -

Who says it's been sold without authority? You are the person who sells it, you own the property, do you not have authority to sell your own property? ---I have.

Yes.---But I haven't authorised anyone else.

- 10 So if you were introduced to a purchaser, forgetting about any real estate agent, where you're introduced to a purchaser, the purchaser makes you an offer, you think that's a great offer, I'll accept it, here, let's sign on the dotted line. The person who made the introduction to you is a person who would have done something worth remuneration and that's called a commission, isn't it?---Not to me it's not.

Excuse me. Yes. I note the time, Commissioner. I will be a little longer with the witness.

- 20 THE COMMISSIONER: All right. Mr Demian, can you be back here tomorrow morning at 9.30?---Sure.

And we will be adjourned until 9.30 tomorrow morning.

THE WITNESS STOOD DOWN [4.32pm]

- 30 **AT 4.32PM THE MATTER WAS ADJOURNED ACCORDINGLY** [4.32pm]