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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

Reference: Operation E15/0078

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 16 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, if Mr Alae Osman could come forward, please.

THE COMMISSIONER: Mr Osman. Now, do you take an oath or an affirmation?

MR OSMAN: An oath.

THE COMMISSIONER: Now, Mr Osman, has section 38 of the Act been explained to you?---Yep.

And do you wish me to make a direction under that section?---Yep.

10 Now, as I explained to your brother this morning, there's a very important exception to that protection. That is, if you gave false or misleading evidence to this inquiry, you could be prosecuted for an offence under the ICAC Act. It's a very serious offence. It's like a form of perjury. It brings with it a maximum penalty of imprisonment.---Yep.

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

30 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Mr Buchanan.

MR BUCHANAN: Commissioner. Mr Osman, your name is Alae Osman?---Yes.

40 What is your occupation?---I work in sales. I'm a salesperson.

And what was your occupation in 2015-2016?---In sales.

And sales of what?---Retail products. Retail.

You were present in the hearing room today when your brother gave evidence, is that right?---Yep.

You heard his evidence, is that right?---(No Audible Reply)

THE COMMISSIONER: You've got to answer.

MR BUCHANAN: You have to say something.---Yes, yep.

10 What was your involvement in the purchase or attempted purchase of 31
Santley Crescent, Kingswood?---Not much. My brother just gave me a call
and said that, you know, there's a, property that's, that's come up if you'd
be interested in purchasing and that's about it, and then we went and signed
some documentation and that's pretty much it really.

Right. And were you told how much you would have to pay for the
property?---No. Not at the – no.

Did you ever find out how much you would have to pay for the property?
---Didn't get into any sort of detail with it.

20 Well, you'd know enough about sales, wouldn't you, to understand that if, if
a person sells something to somebody else there's usually a price?---Yep.

Were you interested on how much you were going to have to pay for this
property?---I just took my brother's advice and he said there's a, there's an
opportunity that's come up and, and that's about it, really.

30 But what was your brother's advice so far as concerned how much you'd
have to pay?---He didn't mention to me anything about the price at the time
we were talking about it and then after everything had gone through it was
just over before I even got any of the details, so - - -

Yes. I mean if your brother indicated to you that there was a property that
was worth buying - - -?---Ah hmm.

- - - was he suggesting to you that you buy it?---Yeah.

What did you understand you would have to pay for it?---We didn't get into
the details at the time because we, nothing was organised, so - - -

40 Why didn't you – I withdraw that. Were you not interested at the time your
brother - - -?---Yeah, yeah.

- - - introduced you to the property or introduced the property to you, were
you not interested in how much it was going to cost you?---My brother
wouldn't advise me to purchase something unless he knew I was going to be
able to afford it and then, yeah.

Why wouldn't your brother do that, in your experience?---Wouldn't he do
what?

You're the one who said that your brother wouldn't advise you to purchase something unless – well, tell us about your experience with your brother that - - -?---Well, he's - - -

10 - - - explains how you arrived at that conclusion.---So he obviously knows the amount of money I've got and what I'm capable of getting in a loan, so he's not going to tell me to buy something that's out of my capability, so he called me and said, "Look, we've got an opportunity to buy something and, you know, let's get it happening."

And what was the nature of your relationship with your brother whereby he knew what you could afford, can you explain to us?---I don't know what you mean.

Well, how did your brother know your finances?---He's my brother, he knows, we know everything.

20 Yes. That doesn't assist the Commission in understanding how your brother knew whether you could afford a particular property or not?---We've just spoken about it in the past, like, you know, he knows how much money - - -

What had you spoken about in the past?---That I've, I've got money and we can purchase something, so I wanted to purchase something as my first property and we wanted to get that happening.

So this was to be your first property, was it?---Yeah.

30 Had you been involvement in property development before this conversation with your brother?---Yeah, yeah.

What had you been involved in by way of property development before this conversation with your brother about Santley Crescent?---In the Strathfield development.

You'd been involved in the Liverpool Road, Strathfield development, had you?---Yeah.

40 With Bella Ikea. Is that right?---Yes.

What was your involvement in that development?---I just put some funds in.

And who did you give the money to?---My brother.

How much did you put in?---I'm not exactly sure.

If I could show you volume 8, page 131, please.

THE COMMISSIONER: Sorry, you said that you were in sales for retail products. What did you actually sell?---Home appliances.

And you're younger than your brother?---Yeah.

What's the age difference?---I'm 31 and he's 37, I think 37.

10 MR BUCHANAN: And can I ask, you would have heard your brother indicate that he thought you were living at his place at around the time that this transaction or these transactions were being considered. When do you remember leaving his place?---Maybe 12 months ago, maybe eight to 12 months ago.

Before then you were living at your brother's place?---Yeah, at that, yeah.

20 This is a document that is a solicitor's handwriting on a print of a couple of emails. Can you see that? And the print of the emails is dated 11 November, 2015 and the solicitor's handwriting has got a date, 14/11 on it. Can you see that?---Yes.

So if we assume 14/11 is 14 November, 2015, this is a note that a solicitor made of a conference with Michael Hawatt. You know the name Michael Hawatt. Is that right?---From, yeah, from this morning.

Where from?---From this morning.

Before then?---Never.

30 You're shaking your head. You have to say something.---No, never heard him.

Well, when had you first heard the name Michael Hawatt?---This morning.

Not before this morning?---Probably in, I think I've heard it once or twice in the news but that's about it.

You are appearing today as a result of receiving a summons to attend the Commission. Is that right?---Yes.

40 Did you read the summons?---Yes.

Did you see Michael Hawatt's - - -?---Oh, yeah.

- - - name on the summons?---Yeah, yeah, yeah, I remember actually, yeah.

Was that the first time you'd ever heard of or seen the name Michael Hawatt, is that what you're telling us?---Actually I think I, I seen it when I was, when I was signing the paperwork.

And you mean for Santley Crescent do you?---That's correct, yeah.

So was that the first time you'd come across the name Michael Hawatt?
---Yeah, yeah.

Had you come across it any time earlier than signing the paperwork?---No, I don't recall anything before then, no.

10 In this solicitor's conference note he says "Conference with Michael Hawatt, price half a million dollars, deposit 50,000, purchaser Alae Osman", and gives your brother's address.---Yeah.

You see that?---Yeah.

Do you know anything about why the solicitor would have been told that by Michael Hawatt around 14 November, 2015?---No.

20 Who – I withdraw that. Did anyone do any negotiating for you to go and sign paperwork? Sorry, that's not a very clear question. I'll start again.
---Yeah.

This was to be a contract for the purchase by you of some land. Is that right, I that your understanding?---That's, yes.

Did anyone negotiate with the owner of the land for you to purchase it?
---Not that I'm aware of, no.

30 Well, someone must have negotiated for it mustn't they?---Yeah. So obviously, yeah, so obviously, yeah, from what I - - -

From your knowledge - - -?---Yes, from my knowledge my brother obviously has called me so he knows what's going on.

All right.---Yeah.

Did your brother do any negotiating to your knowledge?---He didn't mention anything to be about it, no.

40 Did anyone mention anything about half a million dollars to you?---No.

When was the first time you heard of a purchase price of a half a million dollars for Santley Crescent?---I can't remember.

If I could ask that the witness be shown Exhibit 105, please. If I could ask you to turn to page 9 of that document and is that the front page of a contract for sale of 31 Santley Crescent, Kingswood that you've got in front of you there?---I think so, yeah.

You can see the address 31 Santley Crescent, Kingswood up in the top third of the document?---Yeah.

Now, can you see your signature towards the bottom third of the document?---Yeah.

10 What can you tell us about the circumstances in which you came to sign that document, please, what actually happened?---It was a long time ago. From what I can remember I think, I think me and my brother were there and we just went to sign the paperwork for the purchase of the, of the land.

Where were you?---I think at an office in Bankstown somewhere.

And I'm not having a go at you, Mr Osman. I just want you to if you can try to, just for the purposes of this question, separate out what you've heard your brother say this morning.---Yeah.

20 And I'm asking, forget that you heard your brother say that. Have you got a memory of being in an office in Bankstown?---Yeah, I vaguely, vaguely remember. It's - - -

And what sort of office was it?---I can't remember.

Was there anyone there apart from you and your brother?---The gentleman that was there I don't even know what his name is. The, just the gentleman that gave us the paperwork.

30 What function did he perform, what was his job?---I think he was a solicitor.

Whose solicitor was he?---The person that we're buying the land off. That's what I would assume. We were there to sign the paperwork, so I, that's what I would assume, yeah.

Did you sign anything more than this front page of a contract for sale of land?---No.

That's the only thing you signed?---I'm, I'm pretty sure, yeah.

40 Is there anything else you did whilst you were with that solicitor in that office?---I don't think so. I, I can't remember but, yeah, I don't think so, no.

Now, this document, page 9 is the start of a contract for sale, but what it's attached to is an option agreement for the purchase of the same land that is in your name but hasn't been signed by anyone. Feel free to look at the front page and page 7 so that you can see. Do you see it on there?---Yep.

Now, I want you to assume that this whole document, the option agreement and the contract for sale of land, were like that when then were produced by the solicitor to the Commission. And so my question to you is, do you know anything about the option agreement that's together with the contract for sale?---No.

Well, did anyone – I withdraw that. Before this hearing, did you know what an option agreement was?---No.

10 Had you heard of an option agreement?---No.

And you can see that the front page of this, what's called a put-and-call option, identifies the parties as Michael Hawatt and Alae Osman. Do you know anything about your name being on this document?---No.

And can you see on page 4, under the heading Call Option, paragraph A, it identifies the price of the option as \$300,000? Can you see that?---Yes.

20 Do you know anything about that?---No.

You know that \$300,000 is the total of what was paid to Mr Hawatt by way of what was called a deposit for the purchase of 31 Santley Crescent, Kingswood. You followed the evidence this morning, is that right?---Yeah, yep.

Take a step back. Did you understand the evidence this morning?---Yep.

30 That there was a total of \$15,000 – I'm sorry, my mistake, \$50,000 and then \$250,000 paid in November and December of 2015 to Mr Hawatt?---Yep.

That's a total of 300,000. Do you know how come a total of 300,000 was paid to Mr Hawatt?---No.

And you know – I withdraw that. Did you see on the screen the solicitor's trust account entry for the payment on 18 November, 2015 in your name of \$50,000?---Yep.

Do you know anything about that payment?---No.

40 THE COMMISSIONER: You said that, what was it, you took your brother's advice and he knew your salary and also how much money you could borrow. You were anticipating that you would borrow funds for this purchase?---Yeah, if were went ahead with it, obviously I'd get a loan. I wouldn't have, you know, an amount of money just sitting there.

And which bank did you approach?---I'm not sure exactly.

All right. So, you actually did go and see banks?---I think so, yeah. I think, I can't remember.

MR BUCHANAN: Did you get a loan?---No.

You went and saw a bank or a credit union or something like that, is that right?---Honestly, I can't remember. I think I did but I can't remember exactly.

10 Did you go with anyone?---No. I, I can't remember. Honestly. It was very long ago, I can't remember.

Well, some people would say, look it's only three years ago, it's two and a bit years ago. It's not a very long time.

THE COMMISSIONER: And it was going to be your first property that you bought.---Yeah.

20 I thought one would expect that you'd have a recollection. That's a big event in somebody's life.---Look, around that sort of time I think I may have gone but I can't, I can't exactly remember whether, if it was a phone call or if I went there because, you know, I'm very busy with work so if I, it was a phone call or if I went there, I'm not exactly sure.

MR BUCHANAN: And what was the amount of money that you were exploring borrowing?---I hadn't, it wasn't a dollar figure that I had put on to, like, I'm not, I'm not sure, I don't know, it was - - -

30 Was it your financial institution, the one that you bank with that you went to for a loan?---Um, I don't think so. Look, I can't remember. I, I can't remember where I went or what it was, I just can't remember.

You've got no memory of that at all?---No, it's - - -

Whether it was your own bank or some other financial institution?---May, may have been but I just can't remember.

40 And what was the outcome of the approach to the financial institution?
---Oh, it didn't go ahead because - - -

Yes, I know it didn't go ahead, you've told us that.---Yeah.

But what was the outcome of the approach that was made, was the outcome an indication that yes, you could borrow some money, or was the outcome, oh, you'll have to give us some more information, or was the outcome no, you can't borrow any money?---I, I don't think he, I, I don't recall at all.

So did you have any dealings with Penrith City Council in relation to this property, 31 Santley Crescent, Kingswood?---No.

You're quite sure about that?---Well, what do you mean by dealings with?

Well, did you make any application to Penrith City Council in respect of 31 Santley Crescent, Kingswood?---No.

You're quite sure of that?---Yeah.

10

Okay. Could you have a look, please, at volume 8, page 175. Is that your signature?---Yes.

And you can see it's on a form that's got on the bottom of it on the left-hand side, Penrith City Council?---Oh, yeah.

And you can see it's a pre-lodgement for DA application form.---Yeah.

Your name is on it, Alae Osman?---Yes.

20

Your brother's address. Correct?---Yep.

And it's dated 17 December, 2015. Correct?---Yep.

And it's in respect of 31 Santley Crescent. Is that correct?---Yep.

Is that correct?---Yes.

What is your signature and these details of yours doing on that document?

30

---Like I said, I couldn't remember exactly, but yeah, obviously I've, I've done some paperwork there.

Yes.---Yeah.

So what did you do to create this paperwork, why did you create this?

---It's obviously an application for a, for a DA.

Yes. We can read it.---Yeah.

40

Can you tell us the circumstances in which you came to complete this form or at least sign it?---Honestly I cannot remember. It does not even – I cannot remember.

Did you go ahead with this pre-lodgement for DA application?---I, I can't remember.

Did you get any response from Penrith City Council about this pre-lodgement for DA application?---I don't remember anything about that, to tell you the truth.

THE COMMISSIONER: On that page, other than your signature, is any of it your handwriting?---I'm not sure. I probably filled out the details on the top, yeah, I probably filled out my details.

Right.---Yeah.

10

So applicant details - - -?---Yeah.

- - - that's in your handwriting. What about the property details and the proposal details?---I, I don't think that would be. I can't, I can't remember.

But looking at it, usually you're able to recognise your own handwriting. ---I don't think so, but I, I, I can't remember whether I filled it all out myself or if it was just the section, but I don't, I don't think so, but like I said, it's that long ago, I can't, I can't be certain whether I've done the whole thing or if it was just the section of it, I'm - - -

20

Do you recognise the other handwriting under Proposal Details?---Again, like, if it was, if it was mine, I just don't know.

MR BUCHANAN: Well, just keep page 175 open in the folder that's there, if you wouldn't mind, and if we could go back to page 9 of Exhibit 105, please. Can you see that the two signatures don't appear to be the same?

THE COMMISSIONER: Do you agree with that?---Yep.

30

MR BUCHANAN: Is one of them yours?---Yep.

Which one's yours?---This one on the screen.

The one on the contract, so Exhibit 105, page 9, is that right?---Yeah, it is on the screen.

Now, in fairness to you, if you go over the page in volume 8 to page 176, you can see there's a credit card authorisation, debit authorisation by Abdullah. Do you see that?---Yep.

40

And the signature there looks very much like the signature on the front page, page 175 of volume 8, the front page of the pre-lodgement for DA application. Do you see that?---Yep.

And so, might it be that your brother signed it for you, signed the pre-lodgement form for you?---I don't know. I, honestly, I can't remember. I, I don't know.

I mean, do you know what your brother's signature looks like?---Yeah, I haven't seen it, oh, no.

You don't know what your brother's signature looks like?---Unless I actually seen it, him do it, I wouldn't know if you put it in front of me, no.

10 So, is it possible, thinking about your relationship with your brother at the time, thinking about your relationship with this proposal to buy 31 Santley Crescent, is it possible that the pre-lodgement for DA application form was filled by your brother in your name and signed by him?---I don't know.

Is that possible?---I don't know.

Does your brother look after your business affairs?---No.

Or some part of them?---No.

20 He doesn't look after your business affairs at all or your financial affairs at all?---Yeah, he does advise me a bit but doesn't, yeah.

Is he used to signing documents in your name, is that the sort of thing he usually does?---No.

30 So, you can't explain why this pre-lodgement for DA application form is in your name but signed with a different signature from your signature which is on the contract for sale and which looks like, that's to say the different signature looks like the signature of Abdullah Osman on the credit card debit authorisation form?---I, I don't know.

Were you involved in the transfer of \$50,000 into the trust account of Sterling Legal held for Michael Hawatt on 18 November, 2015?---No.

Excuse me a moment. That's the examination of the witness, Commissioner.

THE COMMISSIONER: Mr Moses?

40 MR MOSES: No questions, Commissioner.

THE COMMISSIONER: Ms Williams?

MS WILLIAMS: No questions, Commissioner.

THE COMMISSIONER: Thank you. Mr O'Gorman-Hughes?

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

THE COMMISSIONER: Mr Drewett?

MR DREWETT: No, Commissioner.

THE COMMISSIONER: Mr Pararajasingham?

MR PARARAJASINGHAM: No questions, Commissioner.

10 THE COMMISSIONER: What did you think happened? You were taken along to an office, you said you signed a contract, then what happened?
---And then it was some time later and my brother said that it's fallen through, we're not, we're not getting it anymore.

And when you signed the contract, you were the only one who signed it, there wasn't anybody else there who signed the contract in any way?---No. I don't, no. Yeah, it was just yeah, just me that signed that that's it. Yeah, that's it.

20 And you signed it even though there wasn't a price put on that?---Yeah.
Mr Buchanan.

MR BUCHANAN: Can I ask you why you signed it?---Because we were purchasing the property, it's for the purchase of the property.

But you didn't know how much you were going to pay?---Not to the - - -

30 Is that right?---I don't, I don't think I had spoken to my brother about the details as yet. I can't remember. I don't think we, we had spoken about it then, we were just going there to sign 'cause we were purchasing the, purchasing the property.

But you'd agree that it's very unusual for a person to purchase something when they have no idea how much they're going to pay, wouldn't you?
---(No Audible Reply)

That's very unusual?---Yeah, but it's my brother and I was just taking his advice on it so - - -

40 Excuse me.

THE COMMISSIONER: You keep on saying we, and I know your evidence is your brother was helping you, but your understanding was you were the one, it was going to be your property?---That it wasn't solely mine, so I knew that it was, obviously my brother was telling me that it was going to be with a group of other people so it wasn't just myself.

All right. Why in those circumstances was your name going on the contract and not a company that all the other interested parties were shareholders of or - - -?---I'm not exactly sure, but that was just what was advised to me.

By your brother?---Yeah.

Did you know who the other people who were going to be involved - - -?
---No.

10 Your fellow partners or - - -?---I just knew they, they were friends of my brother.

MR BUCHANAN: Sorry to play tag team, Mr Osman, but can I ask, were you present at a meeting with your brother's friends that you understood might be being involved in this acquisition?---No, not that I remember, no.

Did you know Hossam Matar?---I, I, I do know him, yeah.

20 And had you been involved in any discussion with him or had he been present, had you been present when he talked about being involved in Santley Crescent?---No.

Or Mohammed El Badar?---I don't know him.

Or Talal El Badar?---I don't know him.

You don't know those two guys.---No.

30 Hossam you do know?---Yeah. I haven't seen him in a long time but I do know him, yeah.

My application is the witness be excused unless there's something further, Commissioner.

THE COMMISSIONER: No. Mr Osman, you're excused.---Thank you.

THE WITNESS EXCUSED

[2.33pm]

40

THE COMMISSIONER: Is our next witness - - -

MR BUCHANAN: The next witness is Mr Farleigh. Ms Mitchelmore will be taking Mr Farleigh.

THE COMMISSIONER: Yes.

MR MOSES: Yes, Commissioner. I've explained the terms of section 38 to the witness.

THE COMMISSIONER: Thank you, Mr Moses. First thing, Mr Farleigh, oath or affirmation?

MR FARLEIGH: Affirmation.

THE COMMISSIONER: I know Mr Moses has explained this to you, but can I just emphasise that the protection under section 38 does not extend to circumstances if you gave false or misleading evidence to this inquiry that may lead to a prosecution under the ICAC Act. It's a very serious offence, a form of perjury, brings with it a maximum penalty of a term of imprisonment.

10

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

20

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30

THE COMMISSIONER: Sorry. Thanks, Ms Mitchelmore.

MS MITCHELMORE: Thank you, Commissioner. Your name is Warren Farleigh. Is that right?---Yes, it is.

You're currently employed at Canterbury-Bankstown Council as team leader of the Urban Planning Team. Is that right?---Yes, that's correct.

40

You held that same position with Canterbury City Council before it amalgamated with Bankstown Council on 12 May, 2016?---Yes.

You've worked at the council since 2000. Is that right?---Yes.

Now, you've made two statements to investigators in relation to this matter. Is that right?---Yes, that's right.

They're dated respectively 23 August, 2017, which for the record is part of Exhibit 53, and the second is dated 1 November, 2017, which is part of Exhibit 70. Do you recall those dates of the statements?---Generally, yes.

Yes. Can I provide you, Mr Farleigh, with copies of your statements and if you need to look at them at any stage please feel free to do so. Mr Farleigh, is it the case that you hold a Bachelor of Town Planning from the University of New South Wales?---Yes.

10 And after a couple of years with the New South Wales Department of Planning you've worked in local council since about 1987 or 1988. Is that right?---Yes, that's correct.

I wanted to ask you questions relating to your time at the council in the years 2014 to 2016 or thereabouts. I might ask you some questions about 2013 as well. But just looking at that time, perhaps 2013 to '16 the Urban Planning Team of which you were a member is it the case they dealt with strategic planning matters regarding the Canterbury Local Government area?---Yes, that's correct.

20

And what was your role as team leader?---I basically had a team of three planners that reported to me. I allocated their work, reviewed work and was part of the line of, or the chain putting reports through, through manager then director onto council.

I see. And you identified I think three planners. Is that right?---That's correct.

Is that Ms Lisa Ho?---Yes.

30

Mr, is it Allan Shooter?---Allan Shooter, yeah.

And Mr Tom Foster. Is that right?---That's correct.

Are they the three?---(No Audible Reply)

And you indicated that you in turn reported to the manager.---Yes.

40 Was that manager of land use and environmental planning?---That was the term used at the time, yes.

At the time. And in the period 2014 to '16 two persons held that role. Is that right?---Yes.

So initially Ms Gillian Dawson. Is that right?---That's correct.

And she was there until towards the end of 2015. Does that accord with your recollection?---Fairly closely, yes.

Yes. And was it the case that Mr Mitchell Noble took over - - -?---Yes.

- - - in about May, early May of 2016?---Yes, that's right.

Was there any acting manager in the period between Ms Dawson finish and Mr Noble starting?---I don't think so. I had acted in the manager's position prior to Gillian Dawson but I don't think that that happened after she left.

10 I see. It's the case that the manager of land use and environmental planning reported in turn to the director of city planning. Is that right?---Yes.

And in 2014 the director of city planning was Mr Marcelo Occhiuzzi. Is that right?---That's right.

And then from early 2015 that director position was taken up by Mr Spiro Stavis. Is that right?---Yes.

20 And is it the case that Ms Dawson acted in the role of director for some part of the period between Mr Occhiuzzi finishing and Mr Stavis starting?---Yes, that's right.

Did anybody else apart from Ms Dawson act in that role during that period?---At that time I don't think so.

Now, notwithstanding that you didn't report directly to the director of city planning, did you have occasion to work and liaise directly with the director, be it Mr Occhiuzzi or Mr Stavis?---Yes.

30 Just taking Mr Occhiuzzi first, what was your general level of interaction with him?---It was a fairly open office. If we needed to talk to him we would do that. If he wanted to talk to us he might come direct or he might go through the manager. It was a fairly amicable relationship.

I see. And insofar as your general level of interaction would that be a daily interaction with him to your recollection?---Probably, yes.

40 All right. And how would you characterise at that time the working relationships between the members of your team and Mr Occhiuzzi?---They were fine. He was an effective director. His knowledge of planning was, was quite good and logical. We didn't have any issues or problems with the way that he operated.

All right. And what was your assessment of his general approach, if there was one, to the assessment of planning proposals?---It was logical, it followed legislation. It was well grounded in planning theory.

Can I ask you then about Mr Stavis. What was your general level of interaction with him?---A lot less.

A lot less. So, again, in the case of daily contact or less than daily?---I'd probably say less than daily. I mean, you know, we would see each other on a daily basis but in terms of having actual contact or interaction about work-related matters, not always, no.

10 And how would you characterise your working relationship with Mr Stavis?---It was okay, it was fine.

And what about the team's relationship with Mr Stavis?---Yes, again, it was fine. I mean, he had a role to do as the director, we knew what we were doing as, as planners in terms of the reporting structure and that operated on a normal basis.

20 Thank you. What was your assessment of Mr Stavis' level of knowledge of strategic planning concepts and issues?---It wasn't as strong as Marcelo's was.

And I think you said Mr Occhiuzzi's knowledge was grounded in planning principle. Did it seem to you that Mr Stavis had, had that similar knowledge of planning principles in strategic planning contexts?---I, I didn't think so. I understood his background to be primarily in dealing with development applications and not in strategic planning.

30 And are you able just to briefly explain what you consider the difference to be insofar as what knowledge is required?---You're dealing with different aspects of legislation. It's a different role. Dealing with DAs is more assessing specific proposals against specific steps of controls, whereas strategic is a little bit more general, a little bit more theoretical, different sections of the legislation to work to.

To what degree did Mr Stavis involve himself in the assessment of planning proposals or other work of your team?---He took a more hands-on approach, particularly as time went on, in dealing directly with applicants and developers.

40 So, he was more involved than Mr Occhiuzzi or less involved?---He, he was more involved in dealing direct with, with applicants and developers as opposed to Marcelo, who was much more held back from that contact, or that was the impression that we got.

So is it the case that Mr Occhiuzzi had more involvement with members of the planning team, whereas Mr Stavis had less involvement with members of the planning team but more directly with applicants, is that the case?---I think so, yes.

All right. Can I take you to paragraph 9 of your second statement, so the statement of 1 November, 2017. I just want to take you to paragraph 9, which is part of Exhibit 73 and Mr Farleigh, I just wanted to ask you, you said in the last sentence, "Stavis appeared to have an overly facilitative approach towards developers." Can I ask what you meant by, "Overly facilitative approach"? Are you able to identify what it was about his conduct or communications that led to you forming that opinion?---It seemed to us that he was more trying to broker outcomes as opposed to just assessing what had been put in front of him or in front of us.

10

And when you say, "Us," can you just clarify who you mean there?
---Myself and my team of planners.

And in relation to brokering outcomes, did you see anything problematic about that?---to some extent, yes. I mean, I think our role is more to assess objectively what's been put in front of us and not to try and negotiate an outcome, particularly an outcome that is being sought by a developer or an applicant.

20 Thank you. Were there ever occasions where you challenged Mr Stavis about his views on particular planning proposals?---Not that I can recall.

Were there ever occasions where Mr Stavis challenged you about your views about particular planning proposals?---Yes.

Was that in relation to particular planning proposals?---Primarily in relation to the one at Homer Street in Earlwood.

30 All right. We might come to that particular development and I'll ask you some questions about that. Did you ever have an exchange with Mr Stavis in relation to planning proposals, one or more, as a result of which you didn't consider he was acting consistently with the role of council officers to assess such proposals on their merits?---No, I don't recall that.

Can I ask whether you had much direct interaction with the general manager, Mr Montague?---Not a lot, no.

40 In terms of thinking about whether it was daily or weekly or monthly, are you able to put a rough estimate on it?---In terms of a work environment it was minimal direct contact.

Yes.---On rare occasions I might have been in a meeting where he was present with other staff, but certainly not on my own, it was usually the director, sometimes the manager, very rarely below that level.

Yes. Okay. Did you have much direct interaction with councillors?---No.

Did you have any?---Occasionally through councillor workshops many years ago where again you would be there to support the manager and the director and give them commentary or advice, but on a day-to-day basis, no.

Yes. So in that context it was in a supporting role to your superiors in whatever they were doing at that time.---Yes, particularly if it was a project that you might have been involved with.

10 Right. Mr Farleigh, I wanted to just ask you some questions about the amendment of the Canterbury Local Environment Plan and preparation of Residential Development Strategy. Do you recall amendment of the LEP was in 2012, it came into force on 1 January, 2013?---Yes.

Did you have any involvement in the preparation of the LEP, the 2012 LEP? ---Yes.

20 What was the level of your involvement in that matter?---It was quite involved. That was a comprehensive LEP using the Department of Planning's new standard instrument template, so it was a consolidation of all our previous controls into one document. There was a desire from council to expedite that process and we had engaged consultants to effectively do all the work, but all of us in the team had a lot of involvement with that process in terms of reporting, advising consultants, listening to the consultants et cetera.

It's the case that the amendment or the coming into force of that LEP was the product of a process which included public exhibition, is that right, of a draft LEP?---That's correct.

30 And is it the case that in response to that exhibition council received a number of submissions from individual site-owners who requested rezoning of their land?---Yes.

Or variations to applicable planning controls?---Yes, that's correct.

40 And is it the case that that's how the Residential Development Strategy came into being?---We were, we were doing a Residential Development Strategy separately to that process. When we were receiving submissions on the comprehensive LEP, we made the decision to defer consideration of those submissions to the Residential Development Strategy, so it was done by an independent consultant and that also meant that we wouldn't need to re-exhibit the comprehensive LEP, so we just sort of effectively parked those submissions, they were considered independently and reported to council separately and the comprehensive LEP just continued on its own way.

So rather than hold up the comprehensive LEP, those submissions and the particular developments and sites to which they related were hived off as part the Residential Development Strategy. Is that right?---Yes, that's right.

10 What was the difference in the purpose of the LEP as opposed to the Residential Development Strategy?---Well, the LEP was setting the framework for planning control within Canterbury. The Residential Development Strategy was initially primarily geared at setting policy for future residential development, looking at dwelling targets and where they might be achieved and how they might be achieved. In effect it got taken over by the consideration of those submissions and those submissions then effectively drove it.

And when you're referring to submissions there, you're referring to submissions that were made in the LEP process. Is that right?---That's correct, yes.

In relation to particular sites. Is that right?---Yes.

20 And it's the case that independent consultants were engaged for the Residential Development Strategy. Is that right?---Yes, that's right.

And is it the case that Mr Shooter was the planner in your team that had primary responsibility for that strategy?---Yes.

The draft RDS, I'll call it RDS for short, was endorsed for public exhibition at a meeting of council on 31 October, 2013. Does that accord with your general recollection?---It sounds close, yes.

30 And further submissions with respect to particular sites were made in response to the public exhibition. Do you recall that?---I don't specifically recall but it's likely.

All right. And is it the case in terms of timing that to your recollection the final RDS was approved at a meeting of council around 2 October, 2014? ---That sounds right.

40 Yes. So insofar as your involvement with the RDS was concerned, are you able to indicate what your level of involvement in that was?---Well, effectively I was supervising Allan on that work and would review his work and reports. We would discuss things in the office. I mean we sat next to each other so - - -

All right. I wanted to ask you some questions in the context of the RDS about a site at 998 Punchbowl Road also known as 1499 Canterbury Road. Are you familiar with that site?---Yes.

Is it the case that 2013/16 the owner of that site was a Mr Charbel Demian also known as Charlie Demian?---As far as I'm aware, yes.

Did you have any direct dealings with Mr Demian in relation to this site?
---No.

Can I take you to volume 11 of Exhibit 52 and page 2. Mr Farleigh, do you have that? I think it's also up on the screen.---Yes.

10 If that's easier for you to see. You will see that that's a planning proposal for the site 1499 Canterbury Road, Punchbowl and I just wanted to take you to page 19 of the exhibit. You will see that what was being sought was changes to be made to the LEP to enable construction of a residential flat building with a maximum FSR of 2.5:1 and a maximum height of 18 metres which could provide for a six-storey RFB residential flat building comprising a mix of one, two and three bedroom apartments. Do you see that?---Yes.

20 So this was a separate planning proposal that was submitted. Can you recall if that was included in the draft RDS, this particular site?---Yes, it was.

And is it the case looking at page 63 of volume 11 that the assessment report for the draft RDS was prepared by consultants called, I think it was GLN Planning. Does that ring a bell?---Yes, that's correct.

30 I'll take you to page 63 of volume 11 and you'll see this is the, it's forming part of GLN's report and dealing with this particular site. Is it the case that you and Mr Shooter reviewed the work of the consultants in the course of them preparing the draft RDS?---Yes.

And you will see the recommended action in the last column towards the right-hand side of the page. The recommended action was to retain existing zoning and associated planning controls but to review properties on Canterbury Road that were zoned R3 residential in the event of significantly increased housing targets for the local government area. Was that recommended action a recommendation with which you agreed?---At the time, yes.

40 Yes. And in relation to the justification there's a reference to ad hoc rezoning of this site wasn't supported and would be out of character with the neighbouring properties along Canterbury Road that were zoned R3 medium density residential. Again, was that a view with which you agreed at this time? This is towards the, coming towards the end of October, 2013.---In that context, yes.

When you say in that context, can you just explain what you mean?---If there had been a broader review of residential zonings along Canterbury Road then yes, that may have led to some support or call for change but as a

one-off site in that situation, in the absence of any broader review I agreed with the recommendations.

Now, can I take you to, or can I just ask this question, do you recall whether or not there was a recommendation made by council officers for 998 Punchbowl Road in relation to the draft RDS that went to council on 31 October, 2013?---No. We supported the GLN recommendation.

10 Yes.---Whether there was a specific recommendation in the report I don't recall.

All right. Can I take you to page 125. And, Mr Farleigh, you can take it from me that this forms part of the business papers for the council meeting on 31 October, 2013, and you'll see that there is a reference at item 7 to 1499 Canterbury Road and the proposal that was sought, what the recommendation was, and the comments under recommendation was that it was agreed that the submission was also seeking a residential flat building which wasn't permissible in the existing R3 zone. Do you see that?---Yes.

20 So, this was the comments, the last column, the comments on RDS recommendation, were they the council officer's comments?---Yes, they were.

So, that was Mr Shooter, is that right?---He would have originally written the report, yes, and that would have been endorsed up the line.

That's right. So, reviewed and supported by you, is that right?---Yes.

30 Among others?---And manager and director.

Yes. Now, it's the case – perhaps if I can just take you to page 134 and this is the part of the minutes of this council meeting. If I can take you to, looking towards the bottom of that page, there was an amendment proposed – I think it's the second last underlined amendment heading with Councillors Hawatt and Nam – which was to add a dot point to rezone the land at 1499 to R4 with an FSR of 1.8:1 and height to 15 metres. Do you recall – or can I ask, were you present at that council meeting, can you recall?---No.

40 All right. Do you recall any discussions in advance of the council meeting about proposed amendments being made by councillors to the RDS?---No, I don't.

On exhibition of the draft RDS, you recall the council received a further submission from Statewide Planning about this site on about July of 2014? ---Yes, I do.

Can I take you to page 139 of volume 11, which is an email from a Mr Matt Daniel. Did you know Mr Matt Daniel at this time?---I knew of him. I had never met him.

10 And it was attaching a submission for 1499 Canterbury Road. Can I take you to page 140 and you'll see that that is, the first paragraph they were making a representation to the council in respect of the planning proposal on exhibition. And if I can take you to page 141, there's reference in that first paragraph of text, under the aerial photo of the site, which indicated that as part of preparations to develop the sites some initial plans had been prepared which began to explore a 15-metre or five-level residential flat building, and during that process it had become evident that an FSR of 2.2:1 may well be possible on the site. That was greater than the 1.8:1 that was exhibited and there were some plans and elevations showing the resultant building form. And at page 142 there was reference in that last paragraph of text before the figure, a request that council increase maximum FSR to 2.2:1 and an increase in HOB, that's height of building, to 16 metres. Do you recall reviewing this submission from Statewide at the time?---Oh, certainly we discussed it in the office along with all of the other submissions.

20

Do you recall having a view about its merit?---Oh, we thought that what they were asking for was too great for that location.

All right. And when you say, "We thought," is that you and Mr Shooter? ---And primarily Allan Shooter, yes.

30 All right. And can you explain why you thought it was too great for this particular site?---The resulting built form we thought was too high, too bulky. It wasn't sitting in context with surrounding low density, low scale housing.

Now, can I take you to the business paper in relation to the adoption of the planning proposal or the draft RDS at page 147 is the start of the business paper, and can I take you to page 174. Actually can I just take you back to page 183 so you can see that this part of the business paper was discussing 998 Punchbowl Road. Do you have it on your screen, Mr Farleigh?---It hasn't come up.

40 No, I think it's black. It's like mine. All right. So you can see the screen there is, so this is dealing with 998 Punchbowl Road. Can I take you over the page. You'll see that there were issue raised – actually can I just take you back to the bottom of page 173. You'll see that there were two site-specific submissions, one was an objection to the proposal and other was from the consultant seeking an increase. Do you see that?---Yes.

And they're dealt with on page 174. And can I take you to just under halfway down the page, there was an issue raised by the objector of loss of privacy and security. Do you see that?---Yes.

And the response, is that the response of the council officers to that statement in the objection, is that right?---That's correct.

And it was considered that the review of DCP controls arising from IHAP recommendations would address that issue, but the proposed increase in height may pose some challenges in terms of the interface of this site with the adjoining lower density zone. Do you see that?---Yes.

10 And that the LEP usually applied an FSR or between 1.6 and 1.8, sorry, 1.6 and 1.8:1 to land with a maximum building height of 18 metres, so because this building was proposed to be 15 it was recommended to lower the FSR. Is that right?---That's correct, yes.

To 1.5:1. And so that was a proposal that Mr Shooter put forward with your support and the support of your manager and the director. Is that right? ---Yes.

20 And there was also the issue of height was dealt with in the next paragraph which was something that was raised by the owner. Do you see that?---Yes.

And again that request wasn't supported over on page 175. It's the case, or can you recall, Mr Farleigh, that council's resolution of 2 October increased the FSR to 2.2:1. Do you recall that?---Yes.

And that was in accordance with the submission received from Statewide Planning in July 2014?---Yes.

30 Again were you at that meeting of council?---No, I wasn't.

Do you recall any discussions before the meeting about that amendments were proposed to be made of that nature?---No, I don't.

While you're in this volume, can I ask you some questions about 548 Canterbury Road.---Yes.

Can you recall that it was included in the draft RDS?---Yes.

40 And in the final RDS?---It was one of the sites that I think was subject to the RMS objection.

Yes, that's right. Can I take you to page 189 of volume 11. You'll see this is again within the business papers for the meeting of council of 2 October, 2014, so this is for 548-568, and you'll see what was current was 18 metres and what was proposed was 25 metres. I'm just looking at the table of the summary of proposed changes. Do you see that in the middle of the page? ---Yes.

And at the bottom of the page there was a proposed amendment to 25 metres was supported, is that right, by council officers? Do you recall that? ---I don't specifically recall supporting the 25. The, the review that was done by GLN had suggested 21 metres because it was a low industrial, a light industrial zone behind, so there would have been less of an impact on that.

10 Can I take you back to page 154-155. You'll see at page 154 about halfway down the page there's a heading, Roads and Maritime Services Submission. Do you see that?---Yes.

And it's the case that RMS raised a number of concerns in relation to some of the sites that were the subject of this proposal. Is that right?---That's right, yes.

20 And in particular looking at the second paragraph there were concerns that cumulative impacts of the further development on the classified road network hadn't been adequately considered particularly for the sites fronting Canterbury Road. Do you see that?---Yes.

And there was a request that council, looking at the third last paragraph on the page, a request that council identified suitable road network upgrades, transport infrastructure improvements to ameliorate any traffic and safety impacts associated with the proposed rezoning and is it the case that that was by way of a traffic impact study?---Yes.

30 And if I can just take you over the page to page 155. There was a note to council at about point 5 on the page that seeking to progress this planning proposal by referring it to the department whilst the RMS has raised issues carried a significant risk that the department may reject the approach and insist that work requested by RMS be conducted before proceeding to finalise the planning proposal. Do you see that?---Yes.

And it was nonetheless recommended that the planning proposal be finalised with the requested traffic work to identify potential future intersection or upgrade works and that proceed concurrently. Do you see that?---Yes.

40 In that same paragraph. Can you recall whether or not 548 and other sites on Canterbury Road were ultimately put to the department as part of this planning proposal, this broader planning proposal?---No, they weren't.

Is it the case that the department considered the comments of RMS to constitute an unresolved agency objection?---Yes, they did.

And the decision was taken by the council or by officers to remove it from the broader planning proposal. Is that right?---Yes. There were about 16 sites that were part of that RDS planning proposal so the decision was made

to effectively park or defer all the ones that were subject to the RMS objection and deal with those separately and thereby allowing the other sites where there wasn't an unresolved objection to proceed to finalisation.

All right. And that's a view that that you put forward with Mr Shooter did you?---I think so, yes.

Yes. And that was supported by your manager and the director. Is that right?---Yes.

10

And that was ultimately the course that was taken. Is that correct?---Yes.

If I can just take you to page 232 of volume 11. This is a letter from Mr Montague, the general manager, to Ms Diane Sarkies who was the team leader of Metropolitan Delivery Planning Services and you will see it's titled Residential Development Strategy Planning Proposal and you will see that Mr Montague advised that council intended to progress under delegation various elements of the planning proposal that were not subject to council resolved amendments or government authority objection. So is it the case that 548 Canterbury Road was included within the rubric of government authority objection. Is that right?---Yes.

20

So what ultimately proceeded and was approved I think in about May of 2015 was a planning proposal that related to the properties that are listed in this letter. Is that right?---That's correct, yes.

And the rest of them were parked - - -?---Yes.

30

- - - as it were with a need to do further work in relation to the traffic impacts particularly on Canterbury Road. Is that right?---That's correct.

All right. So what was the status of the planning proposal for 548 Canterbury Road then as at the end of December, 2014?---Well, in effect it ceased to have status. Once the sites on Canterbury Road had been deferred from the planning proposal and then the planning proposal with the other sites that were listed in that letter proceeded to finalisation that was the gazettal of that planning proposal. The other sites in effect technically had no status. They would have required a fresh resolution of council to prepare a new planning proposal in each case or combined.

40

Now, in relation to 998 Punchbowl Road, just coming back to that site, it's the case again, because further amendments have been approved by the council it also had to be carved out from the RDS planning proposal. Is that right?---In that situation the, the RDS planning proposal had been exhibited with a certain height and FSR attached to it.

Yes.---A submission had come in requesting more on that. Council resolved to give that more so that represented a significant change which would have required re-exhibition of the whole RDS planning proposal.

I see.---So then in effect 998 Punchbowl Road was just hived off and it then got its own life as a freestanding separate planning proposal.

10 So it required its own planning proposal because it no longer formed part of the broader planning proposal.---It would have required the broader planning proposal to be re-exhibited which would have added to delays unnecessarily for the other sites concerned, so there was a decision made to progress it individually.

All right. And is it the case that Mr Tom Foster was primarily responsible for the preparation of that planning proposal for that site?---That's correct.

Did you have any involvement in the preparation of the planning proposal?
---I would have reviewed his work, yes.

20 Can you recall what the Department of Planning's response was to the planning proposal after it was submitted?---They effectively sent it back without a Gateway Determination and requested additional work, primarily in the form of an urban design study to support what was being proposed.

Can I take you to volume 12 of Exhibit 52 at page 35. And you'll see, Mr Farleigh, that's a letter from the Sarkies to Mr Foster as the officer who was primarily responsible for the planning proposal. Is it the case that that letter reflects your recollection of the department's response?---Yes.

30 And in relation to the urban design study that was required, is it the case that Mr Annand of Annand Associates was briefed to undertake that study?
---That's correct, yes.

Were you involved in the decision to brief Mr Annand?---I don't recall what happened specifically at that time in terms of how he was engaged, but he was looking at three different sites around that time, and I'm not sure whether his engagement in relation to 998 was initiated by us as officers or whether it had come from elsewhere.

40 Can I just take you to paragraph 31 of your November statement. You say there, Mr Farleigh, that "In our view the urban design review was to be independent of council and the proponents." Can I just ask you who you mean by, "In our view?"---Staff, officers.

So that included yourself. Is that right?---Yes.

Is that Mr Foster?---Yes.

Was it Ms Dawson in addition?---Yes.

Were any discussions held with Mr Stavis on the subject to your recollection?---I don't recall any, no.

10 The view that you there express that, "The urban design review shouldn't be swayed either by councillors or developers and there should be no financial or commercial connection between the reviewer and the proponent," was that specific to this project or more generally in relation to reviews and studies requested by the department?---I think that's a general view.

And that's a view that you held. Is that right?---Yes.

Why was there an issue to your mind with there being a commercial or financial relationship between an applicant and a reviewer in the context of a study like this?---Well, it's, it's more that the review or any review that's done should be independent of the proponent so that it presents council with an objective point of view of what's been looked at.

20 In relation to Mr Annand, had you worked with him before?---Yes.

And how often?---We first came in contact probably back in the late 1980s when I was working at Hurstville Council. He did some consulting with others for the council. Our paths crossed again when I was at Randwick council. He did a project there, I think it was in relation to Kensington, and then at Canterbury, he, he made a submission or put an expression of interest in to do the Canterbury Road study which was early 2000s.

30 I think you mentioned he was working on other matters with the council at that time, is that right, at or around this time?---Yes, that's correct.

Was that in relation to specific sites?---Yes.

40 What was your assessment of his knowledge of strategic planning issues? ---Planning, not so strong. As an urban designer I think he was quite good. He had significant ideas, some good solutions to sites. Sometimes his actual planning knowledge was a little bit not up to where it should have been, but that's not what he was engaged for anyway. It was to do the urban design work.

Yes. After he was engaged in the matter, what was your level of involvement in respect of this proposal?---Minimal.

Can you recall what Mr Stavis' level of involvement was in respect of the proposal?---He was a lot more involved certainly than, than my involvement was.

And how did you come to know about that?---Oh, I was aware that he had met with Peter individually. Probably with the developers as well. I certainly don't recall attending any meetings about, about that site with Peter Annand or, or others.

And how did you come to know of the meetings if you weren't there?
---Sometimes you just would have walked past an office or a meeting room and, and see Peter and Spiro in, in the room together and then just assume that that's what it was in relation to.

10

Do you have a particular recollection of that?---Not on any particular dates, no, but I do recall seeing him in the office and I'm assuming it was that, yeah.

And on what basis are you making the assumption that it related to this particular site?---It was the one that was being dealt with at the time. I could be wrong on that because it could have been one of the other two sites as well.

20

All right. Other than the evidence you've just given as to walking past meeting rooms, how did you know – is your evidence that there were planning staff present at these meetings? You obviously weren't present but was Mr Foster present, for example?---I think he may have attended one meeting when I was on leave.

All right. Was he otherwise present, to your knowledge, at meetings with Mr Stavis in relation to this project with Mr Annand?---I don't think so.

30

In your experience is that the usual situation?---No, it's more unusual.

Why do you say that?---The officer who has carriage of the project I would have thought needed to be involved in meetings, particularly if it's discussing something with a consultant that council has engaged to give them an independent opinion.

40

Can I take you to page 40 of volume 12 and you'll see, Mr Farleigh, that this is one of a number of drafts that Mr Annand provided the council in relation to his urban design review of this particular planning proposal. You can take it from me this was the first draft that was provided. Can I take you to page 42. You'll see that there's a handwritten annotation there. Do you know whose handwriting that is?---I think that's Tom Foster's.

Over the page, at page 43, you'll see there some handwriting on that page. Do you recognise any of the handwriting on that page?---It's mostly Tom Foster's and there's some of mine.

Can you identify what handwriting is yours that you can identify?---I think it's where it says 1.5:1.

With question mark?---Yes.

And then the dash, “Exhibited at 1.8:1,” is that yours as well?---No, I think that’s Tom’s writing.

So, you’ve got the question 1.5:1, is that right?---And he's probably answered the question next to it, yes.

10 I see. And then can I just take you to page 45. Again, can you identify the handwriting on this page as being that of any particular officers?---Again it’s mostly Tom Foster’s and there’s some of mine there.

And where is yours?---The bit that says, “Add a comment,” that, that commences that part.

And does that say, “Add a comment,” that - - -?---That “The proposed FSR of 2.2 and height of 15 metres do not appear to be achievable given site constraints and assessed against SEPP 65 and DCP controls.”

20

And what did you mean by that comment?---It was to get the consultant to be more precise and more specific in some of his commentary in relation to that, whatever his views were, we wanted them to be definitive views and strong views.

So just looking at this page, you'll see that the first bullet point indicated that the proposal as set out is generally not able to be supported. Do you see that?---Yes.

30 Did you agree with that view?---Yes.

And there was an indication in the second bullet point that the proposed height seemed appropriate within the general framework of building heights. Do you see that?---Yes.

Do you agree with that assessment?---If there was a broader review of residential zones generally on Canterbury Road, yes.

40 But not otherwise, is that right?---As a one-off isolated site, I would have said generally no. But the work that had been done on the Canterbury Road Master Plan had generally suggested building heights varying between four to six storeys would be appropriate, and 15 metres falls into that range.

And then looking at the third bullet point, that “an FSR increase from 0.5:1 to 2.2:1 does, however, seem like an overdevelopment of the site”.---Yes.

Did you agree with that assessment?---Yes.

And that a building height of five to six floors and a maximum of 1.8:1 would be more appropriate. Did you agree with that as well?---I didn't object to that. I wouldn't necessarily say that I totally agreed with it but they're the sorts of numbers that would match, if that's where you were going with it.

But can I just take you, just to finish identifying the handwriting, page 46. Is that your handwriting towards the bottom of the page under the heading DCP?---Yes.

10

That's your handwriting just indicating that that wasn't a DCP matter, is that right?---Yes, that's right.

And then page 47, is that your handwriting?---Yes, it is.

And is it the case that you're suggesting language to replace the first bullet point above? If you just want to have a look at it.---Yes. Again we would have wanted him to be more definitive in what he was saying.

20 And similarly, page 48, is that Mr Foster's handwriting? Next page.---Yes.

Page 49, I think there may be some handwriting of yours, is that right? ---That's correct.

Is it "The master plan" - - - ?---"Master plan envisages development at four to six storeys in this location".

Yes. And then page 50. Is that a minor amendment by you about halfway down the page?---The word "are" is mine, yes.

30

Yes. And over the page, page 51.---Tom Foster's handwriting.

That's Mr Foster's?---Yes.

Page 56. Is that your handwriting at about point 4, "at five storeys"?---Five storeys, "What is the SEPP 65 separation?"

And "12 metres", is that query from you?---That's a question from me, yes.

40 And then page 60, the recommendations. A reference to providing additional – is that your handwriting?---That's my handwriting, yes.

And then "reservation was suggested as identified in the CRMP". Is that Canterbury Road Master Plan?---Canterbury Road Master Plan. And DCP.

And DCP. And then I think there's a further comment of yours on page 61, is that right?---Yes.

Were the comments that you've made on this document of a type you would normally make in relation to a report of an independent consultant?---If it was one engaged by us, yes. It was, it's, it's to ensure that we get clarity in the work that comes back to make corrections if there were some mistakes in it, some, some wrong assumptions that we just needed to clarify. And as I had said previously is that we generally preferred quite a definitive statement one way or the other, whether something was supported or not.

10 Can I just take you back to page 47. Are you not there telling Mr Annand what he should say?---I'm making a suggestion to him because earlier in his report it says it's generally not supported, and then there's a bit of a change in that paragraph, "is generally able to be supported with the exception of open space".

So there was an inconsistency, in your view, in terms of the content of the report, is that right?---Yes.

20 In providing comments of this nature on an independent consultant's report, what's your understanding of the limits, if any, on the type of comments that council officers should be making?---I certainly wouldn't be telling him that there's an outcome that we were seeking to have. He had made some earlier statements about it being an overdevelopment of the site generally not able to be supported, yet that paragraph doesn't accord with those previous comments. So I would have just wanted him to, to be clear in what he was saying and what he was recommending.

What about page 45, where you're saying "add a comment"?---Yes.

30 Again, are you not there telling Mr Annand what he should say in his report?---Well, again, he had previously said that he thought 2.2:1 was an overdevelopment of the site and we wanted that sort of comment to be reiterated, so it was quite clear what his position was on that.

So you weren't seeking to change his outcome.---No.

40 Can I take you to page 96 of this volume, which is a further version of Mr Annand's report. Yes, and this, Mr Farleigh, is the final version of this report. Can I take you to page 101. And you'll see that this sets out the conclusion of the review in a series of bullet points, is that right?---Yes.

And you'll see the fourth bullet point has picked up the suggestion that you made as to additional content that should be included, is that right?---Yes.

Did you agree with the conclusions that Mr Annand reached in this version of the report?---Generally, yes.

Yes. Do you have a recollection of reviewing the versions of Mr Annand's report as they came through in relation to this first tranche of work that he

did?---I would have seen them, yes. I don't recall providing any, any comments on the second one that came through.

Can I just take you to page 112, and you'll see that there is a conclusion. This is headed Compliance with Apartment Design Guideline, and the conclusion at the end was the retention of the FSR at 1.8:1 as in council's planning proposal. Do you see that?---Yes.

10 And did you agree with this justification of the FSR at that level?---I didn't have an objection to it.

All right. Insofar as it was relying on the fact that adjacent properties were likely to be up-zoned at some stage, do you have a view about the availability of that as something that you relied upon?---I didn't think it could be relied upon because there had been no decision to make any further zoning changes. We were just looking at one individual site. If there was a broader strategic review of residential zones either in that location or more generally on Canterbury Road then yes, it's likely there would have been some change promoted but we were only looking at one individual site.

20 At this time?---Yeah.

I see. And then page 118 were the recommendations that Mr Annand made and you will see that in point 4 there was a recommendation that the floor space increase be balanced with reduction in site cover to facilitate provision of communal open space.---Yes.

30 Was that a recommendation with which you agreed?---Not really, no. I didn't support the heights of seven storeys.

I see. And then there was a point 5, comply where possible with SEPP 65 setback and an additional three metre setback to side boundaries will provide justification for noncompliance. Can you recall there being an issue with setbacks in relation to the planning proposal?---Yes, there were. During the course of this planning proposal the Apartment Design Guide was, was released and one of the features that was in that said that wherever you have a zone that transitions to a lesser zone that the building separation or the setback had to be increased by a further three metres and we didn't believe that that aspect had been taken into account properly in the
40 proponent's submissions.

I see. Is that what this is referring to on page 118 can you recall?---I think so, yes.

I see. All right. Just pardon me a moment. Just in relation to that issue, Mr Farleigh, can I take you to page 285 of volume 12 and you will see that there's an email from Mr Foster to Ms Ho, yourself and Mr Annand, copied to Ms Dawson and Mr Stavits of 24 June which indicated that he'd been

through both sites now with Warren. So that's a review Mr Foster conducted with you. Is that right?---Yes.

And generally both okay but one of the issues that was raised on Punchbowl Road were the side setbacks. So was that an issue that was flowing from the Apartment Design Guide's introduction?---Yes, it is.

10 And can I take you to page 287. You will see at about point 7 on the page there's an email from Mr Annand responding to Mr Foster's email which is 24 June at 12.46pm which says, "Tom, okay." And then seeking to clarify what the setbacks were. Is that right?---Yes.

For Punchbowl Road and Mr Foster in the email above at 2.06pm was seeking to clarify that. Is that right?---I think so, yes.

Do you recall having a discussion with Mr Foster before he sent that email at 2.06pm?---Not, not specifically, no.

20 Is it likely that you would have had a discussion before he referred it to Mr Annand?---It's likely we would have, yes.

Yes. Can I ask you – sorry, just pardon me a moment. Can I take you to page 189, sorry, 289. You will see at the bottom of the page there's an email from Mr Annand sent on 26 June at 7.48am addressed Spiro/Warren, a heads up?---Yes.

Do you see that?---Yes.

30 Do you recall seeing that email at or around this time in relation to the impact of the Design Guide setbacks?---Yes.

You will see above that the next email is from Mr Stavis to Mr Annand on 26 June at 8.32 saying, "Peter, please come and see me on Monday. We've already let the cat out of the bag to the applicant when we received your draft report. We need to get as close as possible to that FSR." Do you recall being copied in on that email?---I do remember reading it, yes.

40 Yes. Can you tell the Commission what you understood Mr Stavis to mean when he said, "We've already let the cat out of the bag to the applicant"? ---I'm assuming that he had told the applicants what the outcomes of Peter's work were going to be or what they were likely to be.

Were you involved in any discussions that Mr Stavis had with the applicant?---No.

So you're just giving an assumption that you're making on the basis of what's in the document. Is that right?---That's right, yes.

All right. Can I take you now, Mr Farleigh, to volume 13 of Exhibit 52 and I think volume 12 can be returned. I want to take you to page 19 of that volume. It should be coming up on the screen. And you will see it's an email, the top of the page is an email from Ms Dawson, your manager, to you sent on 18 August at 10.13am. Do you see that?---Yes.

10 And it's forwarding a series of emails over a number of pages which obviously working in reverse chronological order over pages 19, 20 and 21. Can I take you to the bottom of page 20. You will see that right at the bottom of the page there's an email from Ms Dawson to Mr Stavis asking him to confirm what exactly we're being asked to consider for this site as we want to contact Peter Annand for a quote. Do you see that?---Yes.

And Mr Stavis's response was pick up some of the "lost FSR by increasing the height on the corner of Punchbowl and Canterbury Roads from 21 to 25 metres therefore bringing to be more in line with council resolution in terms of FSR." Do you see that?---Yes.

20 Can you tell the Commission what you understand or understood at the time that you saw this email in relation to picking up some of the lost FSR, what that meant?---I can only assume it's in relation to once there was a realisation that the site was constrained, particularly in relation to ADG setbacks and probably RMS road widening, the only way to get the lost FSR would be to increase the height to allow a greater level of development but still achieve the floor space that people thought they were going to achieve.

30 I see. And Ms Dawson raised the issue, this is at the bottom of page 19 going over the page, that she noted that we can't see this site in isolation from its setting or want any study review to address that issue as well. Do you see that?---Yes.

Do you recall discussing this issue with Ms Dawson at the time?---Not specifically, no.

Is the view that she expresses in that email of 18 August at 10.08am an opinion with which you agreed at the time?---Yes.

40 And in fact Mr Stavis also agreed if you look at the email about halfway down the page from him 18 August 10.11am, "I concur." Do you see that?---Yes.

It's the case, or if I can take you to page 23, Mr Farleigh, that you got in contact with Mr Annand. Do you see that?---Yes.

Which was communicating the new instructions about modelling the implications of a 25 metre building on the site. Do you see that?---Yes.

Do you recall preparing this email to Mr Annand?---Yes.

Were you the primary contact on the matter at this stage or was Mr Foster still dealing with it?---It still would have been Tom Foster, yes.

I see. So why was it that you came to write the email?---I was asked to, from memory to get a fee proposal from Peter to look at that work.

And he provided a quote and Mr Stavis gave you the go-ahead to proceed to engage him. Do you recall that?---That's correct, yes.

10

Do you know if Mr Stavis was liaising directly with Mr Annand at or around this time? So this is August of 2015?---I don't recall.

Can I take you to page 28. You'll see this is a series of emails on 26 August, 2018, the bottom one starting at 11.32am and the last one was sent by Mr Stavis at 5.18pm. Do you see that series of emails?---Yes.

Have you seen that email chain before?---At the time I wouldn't have seen it, no.

20

All right. You may have seen it subsequently. Is that right?---Yes.

Was it placed on the file, to your recollection or knowledge?---Not to my knowledge, no.

It's the case, Mr Farleigh, that Mr Annand prepared a further report in August or September of 2015.---Yes.

30 And if I can take you to page 32 of this volume you'll see – I'm sorry, if I can go back one page to page 31, you can see the title page?---Yes.

And there's a page 32, you'll see that it's described as a supplementary report, and what Mr Annand was being requested to do was in the text box at the bottom of that page. Do you see that? So the bottom of the text? ---Yes.

40

Can I take you to page 34, which is titled Issues and Constraints. And looking at about point 5 on the page, there's a statement, "These have been," sorry you'll see under the bullet points that the site was proposed for medium-density residential apartments or mixed-use in the master plan, but that the zoning amendments hadn't caught up with strategic planning endeavours which had led to an uncoordinated number of planning proposals along Canterbury Road. Do you see that?---Yes.

And there was reference to these being for varying heights and FSRs, but in the absence of a statutory strategic framework, all proposals are using precedents as major justification for height variations. Do you see that? ---Yes.

Is that a sentiment with which you agreed?---Yes.

And the next statement Mr Annand's report says, "It would generally however be acceptable to establish a building height of six storeys along Canterbury Road with occasional additional towers to eight storeys to emphasise corners, vistas et cetera." Is that a statement that you agreed with at this time?---No.

- 10 Why not?---My view was that eight-storey buildings along Canterbury Road were too high, particularly when you took into account the actual width of the road reservation, it's only a four-lane road so it would have, too much development at that sort of height ends up creating a canyon in my view.

And is that even the case with what was described as just only occasional additional towers to eight storeys?---To some extent, yes. I just, I think eight storeys is, is too much in that sort of setting. It's not in a centre, it's not necessarily close to transport, it's certainly not close to trains or retail or commercial.

20

And can I take you then to page 36 which refers to building height. Do you see that 2.2.1?---Ah hmm. Yes.

And there's a reference again to the master plan and things not having caught up. You'll see that there's a statement, "Recent events have seen some six to eight-storey approvals and recommendations along Canterbury Road and this seems acceptable with appropriate justification." Can you recall whether that was in fact the case, that recent events had seen around this time some six to eight-storey approvals along Canterbury Road?

30

---That's correct, yes.

Were they anywhere near this site at 998 Punchbowl Road to your recollection or knowledge?---No, they were closer to, to Belmore/Campsie area.

And there's a further statement that, "This height was acceptable on Punchbowl Road only because it marks a major intersection and entry into Canterbury LGA." Did you agree with that rationale?---Not necessarily, no.

40

Why not?---There's, there's nothing there. It's not, in my view it's not an entry that needs to be marked by high buildings coming into Canterbury LGA.

What about its characterisation as a major intersection, marking a major intersection?---It is a major intersection and in that area generally there are fairly significant traffic concerns, but I didn't see that that was on its own a reason to justify an eight-storey building.

Can I take you to page 41. You'll see this is the option that Mr Annand preferred in relation to other development potential of the site. And you'll see that it only partially complied with SEPP 65 setbacks. Do you see that?
---Yes.

Do you recall having a view at this time about the appropriateness of this option for this site?---Not specifically, no.

10 Do you recall reviewing it at the time?---I, I don't recall when we were actually provided with this particular document to look at.

And then the conclusion, Mr Farleigh, if I can take you to page 44, has the conclusion for building height generally six storeys with the possibility of a tower, and FSR is now a maximum of 2.1 could be permitted, based on the provision of a well-landscaped communal open space in the northeast corner and the maximum FSR, looking at the last sentence, "Maximum FSR that can be supported in this context with a general and useable communal open space at ground level is 2:1." Do you see that?---Yes.

20 Do you recall having a view at this time about the conclusions that Mr Annand reached in the report?---No, I don't recall.

Do you recall whether you saw this report around early September 2015?
---No, I don't.

I might just take you back just to refresh your memory, Mr Farleigh, to page 30, which is a covering email for this report which was sent to you and to Mr Stavis on 4 September.---Yes.

30 Does that assist your recollection as to whether you saw it at or about the time?---Yes, it does.

Yes. All right. Can I take you just to – just pardon me a moment. All right. Are you aware that Ms Dawson around this time raised concerns with Mr Stavis about the report?---I think so, yes.

40 Can I take you to page 60. You'll see this is an email from Ms Dawson to Mr Stavis about point 5 on the page sent 4 September, 10.57, where she indicated that she had serious concerns regarding the preferred option. Do you see that?---Yes.

And looking at what she says in that email, do you recall having discussions with Ms Dawson at or around this time about the content of Mr Annand's report?---It's likely that we talked about it, yes.

Yes. Did you share the concerns that Ms Dawson sets out in that email?
---Yes.

And you'll see that Mr Stavis in his response disagreed in part but not entirely. Do you see that?---Yes.

Do you recall having any direct discussions with Mr Stavis at or around this time about Mr Annand's report?---No.

Did you discuss the draft report with Mr Annand directly?---No.

10 Can I take you to page 71. You'll see that this is an email from a Ms Avval of Annand Associates to Mr Stavis again, and to you. Do you see that?
---Yes.

And it's copied to Ms Rahme, Ms Dawson and to Peter Annand on 9 September, 2015 at 11.18, which attached the final draft of the planning proposal. Do you see that?---Yes.

20 And can I take you then to page 91, which is an email that was sent just over an hour later by Ms Avval to the same persons. You'll see the former email directly underneath, do you see that?---Yes.

And it indicated, "Please disregard the previous emails that were sent by mistake." Do you see that?---Yes.

Do you recall receiving that email indicating that it had been sent by mistake and you were to disregard it?---Yes.

30 Can I take you to page 90. You'll see there that it's an email from Mr Stavis to Mr Annand of 9 September at 12.08pm saying inter alia, "I noticed Lili sent a draft to Warren and Gill as well contrary to what we agreed. I wanted to review first. Can you ask her to send an email saying it was sent in error and disregard?" Do you see that?---Yes.

Were you aware that such discussions were occurring offline between Mr Stavis and Mr Annand?---Well, that made it very clear that it was. Yes, I was aware that, that Peter had met with Spiro without Tom or myself.

40 Were you aware that at the time that Ms Avval sent the email telling you to disregard the previous emails, it was sent by mistake, that that was done on the direction of Mr Stavis?---At the time, no.

You came to know the subsequently, is that right?---Yes.

On your review of this email, is that right?---Yes.

Can I just ask you about the email underneath. You'll see that that's sent on 9 September at 11.55, which again appears to be an email between Mr Annand and Mr Stavis. Do you see that?---Yes.

Do you recall receiving or seeing this email at or around the time that it was sent?---No.

And you'll see it relates to the content of Mr Annand's report?---Yes.

And he's suggesting a revision with further justification. Do you see that?
---Yes.

10 And were you aware that discussions as to this level of detail were occurring at the time between Mr Stavis and Mr Annand?---Not to that level of detail, no.

All right. Can I take you to page 94 and you'll that this, this is an email sent to Mr Stavis, copied to Ms Dawson. Do you see that on 14 September at 11.05?---Yes.

20 And you're not copied on the email. Do you recall seeing a draft, a further draft of Mr Annand's report at or around 14 September, 2015?---I don't recall, no.

Right. Do you recall, Mr Farleigh, seeing on or around 20 October, 2015, amendments to the planning proposal submitted by DDC Urban Planning in respect of the site?---Not specifically, no. They may have provided some documentation to justify what they wanted for that site but it was council's planning proposal.

30 And can I just ask you to explain that what you mean by saying it was council's planning proposal?---Well, council were the ones that had prepared the planning proposal in the first place and sent it to the Department of Planning for a Gateway. We, as a rule did not send a proponent's document to the Department of Planning as a planning proposal. It was our, it was our work. We were the ones that did the work and produced the document in the template, all that sort of thing.

40 Can I take you to page 126 of volume 13, and you'll see it's in the same volume. So, you'll see that that's an email from Mr Craig McGaffin to Mr Stavis, copied to Mr Tim Stewart and Mr Matt Daniel on 20 October. Do you recall – and you'll see that it attaches, at page 127, a letter dated 16 October in relation to the planning proposal. Do you recall seeing this correspondence at or around 20 October, 2015?---I don't specifically recall it, no.

All right. You'll see that, looking at the letter starting on page 127, that it refers to a result of recent meetings with Canterbury City Council staff and further design development, that they wished to request a number of amendments to the planning proposal that was scheduled to be considered by council at its December meeting. Do you see that?---Yes.

Insofar as it refers to recent meetings with Canterbury Council, were they meetings which, to your recollection, you participated in?---No, I didn't.

And if I can take you to page 129, you'll see that again there's a reference at the top of the page in the second paragraph to further numerous meetings with council officers?---Yes.

And again, just to confirm, they're meetings which, to your recollection, you didn't attend?---That's correct, yes.

10

There is a request being made that the proposal be amended to allow on the site a maximum building height of 25 metres. Do you see that?---Yes.

And a maximum permissible floor space ratio of 2.7:1. Do you see that?---Yes.

Do you recall – notwithstanding that you didn't see the correspondence at or around 20 October, 2015 – being informed that the proponent was requesting further increases in height and floor space ratio?---Yes.

20

Can you recall who told you that?---It either would have come from Mr Stavis or Tom Foster.

All right. Can you recall what your view was in relation to that request?---I didn't agree with it.

Why not?---The, the building heights and in particular the floor space ratio just kept increasing from one aspect to the next and I'm assuming it was upon realisation of the constraints of the site in relation to the ADG setback requirements and the RMS road widening which hadn't been properly considered previously.

30

Can I take you to page 149. You'll see this is an email from Mr Stavis to Mr Demian, who was the owner of the site. It's dated 23 October, 2015 and you'll see it's copied to the, actually blind-copied to the general manager. Do you recall seeing this email at or around the times, noting that you're not copied into it?---No.

40

Do you have any recollection of being involved in the preparation of a response to the further requests?---No.

You'll see that there is a reference in the – there's a sentence stating, "I note that the revised proposal submitted last week had an FSR in excess of 2.2:1, i.e. 3.2:1." Do you have a recollection of Statewide, on behalf of Mr Demian, ever requesting an FSR of 3.2:1?---No, I don't.

Can I take you now then to page 154 of volume 13, and you'll see that this is an email from Mr Stavis to Mr Annand of 22 October, 2015 which attaches

a further proposal. If I can take you over the page, you'll see there's a further letter, at page 155, a letter from DDC Urban Planning, which it dated this time, 26 October, 2015. Do you see that?---Yes.

And if I can take you to page 157, you'll see that this letter requested a maximum building height of 25 metres and a maximum permissible floor space ratio of 2.8:1. Do you see that?---Yes.

10 There's been a slight increase in this letter from 2.7 to 2.8. Do you see that?---Yes.

Do you have a recollection of coming to know towards the end of October that the FSR sought was 2.8:1?---Yes.

And if I can take you back to page 154, you'll see that Mr Stavis points out that the FSR has increased to 2.8:1 and a preliminary review seems to show that it doesn't comply with the setbacks and open-space provisions under the DCP and ADG. Do you see that?---Yes.

20 Were you involved in any preliminary review of this letter from DDC at 26 October?---I don't recall at the time.

No. Are you able to indicate who might have been involved in the preliminary review?---If it had been done by a council officer, it may well have been Tom Foster, but my recollection is that we weren't involved in that process very much at all by this time.

30 So the reference to a preliminary review may be a review conducted by Mr Stavis himself, is that right?---That's possible, yes.

Can I take you to page 183. You'll see this is an email from Mr Annand to Mr Stavis at 9 November, 2015. And you'll see that it – if I can take you over the page – attaches a document titled Planning Proposal Review for 998 Punchbowl Road, Punchbowl. Do you see that?---Yes.

40 And just going back to the email, there was a request from Mr Annand for Mr Stavis to ring him so that they could discuss it as soon as Mr Stavis had read it. And final answer was 2:1 at 18 metres with a 25-metre tower. Do you see that?---Yes.

Do you recall seeing, looking at page 184, a planning proposal review, a further planning proposal review from Mr Annand at or around 9 November, 2015?---Not specifically, no.

Can I take you, then, just to page 187. Actually, I'm sorry. Can I take you back to 185. You'll see that the contention, towards the bottom of the page, was that a proposal that general height of eight levels isn't overdevelopment. Do you see that?---Yes.

Is that a contention with which you agree?---Yes.

And that the proposed FSR of 2.8:1 was unachievable because the RMS setbacks weren't deducted from the Canterbury Road frontage. Do you see that?---Yes.

And again, is that a contention with which you agree?---Yes.

10 And over the page, 186, there's a statement that the building footprint was significantly overstated at 840 metres square. Do you see that?---Yes.

And again, is that a contention with which you agree?---Yes.

And so 187, about point 5 on the page, there's a statement an overall FSR in the order of 2:1 was put forward. Do you see that?---Yes.

20 Just above the table setting out the levels in the GFA. Is that proposed level of FSR one with which you agree is appropriate for the site?---No. I still think it's, it's too high and it's reliant on an eight-storey building in order to achieve it.

Can I take you, Mr Farleigh, to page 199. Can I just ask whether that's a document that you've seen before?---I don't recall it.

Are you able to identify any of the handwriting that appears on the document?---No. I don't recognise it.

30 Insofar as Mr Annand was tasked with reviewing this further proposal, were you involved in briefing him in this regard, as you had been in relation to at least the previous proposal that was put forward?---No, I hadn't.

Can I take you to volume 14 of Exhibit 52 at page 4. And you'll see halfway down the page is an email from Mr Annand to Mr Stavis at 23 November, 2015, which attaches his considered opinion for the Punchbowl Road site, where he said he could "readily support 2.5:1 at six to eight storeys, but eight storeys at 2.8:1 would give rise to precedent problems, but that is council call". Do you see that?---Yes.

40 So this was in relation to the proposal that DDC had submitted at the end of October. Do you recall me showing you that document?---Yes.

And you'll see Mr Stavis's email of 4 January was requesting an update, and last we met you were going to prepare an updated report supporting 2.8:1 and six to eight storeys as per the sketch that he had provided. So, again, is it the case that you were not involved in these dealings with Mr Annand in early January of 2016?---That's correct.

Do you recall seeing in early January a further report from Mr Annand in relation to this site?---There was another report that came through, which would have come to me at some point in time, yes.

Can I take you to page 9 of this volume, volume 14. You'll see that this was an email from Ms Avval to Mr Stavis, copied to Mr Annand at 7 January, which attached a – looking at page 10 – a document titled Urban Design Review of Planning Proposal. This one is dated December 2015. Do you see that?---Yes.

10

And do you recall seeing this document at or around the time it was provided by Mr Annand?---It would have come to us, yes.

Yes. And can I take you to page 21. And you'll see about halfway down the page that “it would generally be acceptable to assume a building height of six storeys with occasional additional towers to eight storeys”. Do you see that statement there?---Yes.

20

And then a conclusion that “an eight-storey building on the corner with appropriate SEPP 65 setbacks would seem acceptable”. Is that a view with which you agreed at the time?---Generally not, no.

And you'll see at the bottom of the page, “An eight-storey tower could be permitted on this site to emphasise this significant corner, the gateway to Canterbury LGA.” Is that a statement with which you agreed?---Generally not.

30

And then at page 23 you'll see the content at Building Height is similar to the earlier version of the report that we went through a little while earlier. Do you recall?---Yes.

40

Which refers to the six to eight-storey approvals along Canterbury Road. Do you see that? And then under the heading Density you'll see that in the second paragraph the proponent sought 2.8:1 in his planning proposal, which is possible within the required setbacks and building height, and particularly with a reasonable and usable communal open space he's provided as a roof garden on top of the building. Is that a statement with which you agreed when you reviewed this report?---Technically it's possible but the numbers I don't agree with. I think again it's an overdevelopment of what is a small site.

And can I take you then to the conclusions on page 31. You'll see that a review of the relevant council documents plus documents provided by the proponent including, it's only the planning proposal there that's stipulated, suggested that there was potential to alter development controls for this subject site in the following manner. And the first bullet point is to increase building height to generally 25 metres maximum, secondly to rezone the site from R3 to R4 and then consideration was required as to the relevance of

the 45 degree height planes from residential boundaries, given that other similar sites around the park will be redeveloped, and that those increases were dependent on a number of things, including the provision of the proposed street widening. Do you see that?

---Yes.

The abovementioned improved provision and location of onsite communal open space as a roof garden. Do you see that?---Yes.

10 And general compliance with Apartment Design Guidelines. Do you see that?---Yes.

And is it the case, Mr Farleigh, that you had a view about the conclusions that Mr Annand reached at this time?---Yes.

Can you recall what your view was?---I wouldn't have agreed with them.

20 Can I take you to paragraph 41 and 42 of your November statement. I think you've got it in hard copy, Mr Farleigh, you might need to look at it, if you can locate it. No, we've got it up on the screen. So you'll see that you're referring to Mr Annand's report. You say, "There were other qualifying conclusions in the report which may have impacted a final design for this site, but these were never tested as they went beyond the brief of his engagement." Do you see that?---Yes.

And then you say, "In my view development of the site at 2.2:1 represented an overdevelopment of the site and a poor planning and design outcome. An FSR of 2.8:1 and height of 25 metres represented a worse outcome." Do you see that?---Yes.

30

Can I just ask you what you mean by there were other qualifying conclusions in the report which may have impacted a final design for the site?---In, in looking at Peter's work, it's, it's almost like he'd hedging his bets. Yes, you could technically get a building of that height and that FSR but there were other qualifying aspects in there about compliance with ADG, RMS setbacks and that sort of thing. When you take all of those factors into account it could have a further impact on that site, meaning that those numbers in terms of height and FSR may not have been achievable.

40 So can I just ask you what you mean by he was hedging his bets. Can you just develop that for me?---Well, I think it's, I think what he was saying is that he can, he could demonstrate physically how you could accommodate that amount of floor space and that height in a building on that site, but there may have been other mitigating factors that meant you couldn't necessarily achieve those numbers, and they primarily could have been in relation to ADG setbacks.

You say in paragraph 42 that you consider 2.2:1 to be a poor planning and design outcome and 2.8:1 and 25 metres would be worse.---Yes.

Can you just elaborate upon what you mean by a poor planning and design outcome?---Again I think the FSR numbers that are being talked about are excessive for that sort of site. We had done some modelling with a consultant in relation to residential development controls some years earlier and his work had suggested that where you're looking at a building height of around five storeys, an appropriate FSR was in the order of 1.6, 1.8:1, to go to 2.2:1 is a significant uplift on that.

And then again to 2.8:1.---Even further, yes.

Yes. All right. Just pardon me a moment. Can I ask you, Mr Farleigh, to go to page 148 of volume 14. You will see this is an email from Mr Stavis to you sent on Saturday, 30 January at 2.06pm. Do you see that?---Yes.

And Mr Stavis is asking you to program the 998 Punchbowl Road planning proposal to go to the March council meeting and you will see Mr Stavis says, "Very important we meet this deadline. We can discuss when we next meet. Just wanted to send you this reminder while it's fresh on my mind." Did you know at the time why it was very important to meet that March deadline?---No.

There's a reference in the following sentence to discussing it when you next met with Mr Stavis. Do you recall any discussion with him about him about the deadline?---Not specifically, no.

Can I take you to page 152. You will see that this is an email from Mr Foster, looking at the second email towards the bottom of the page, from Mr Foster to Mr Stavis on 29 February which just says, "Your approval requested for report. Amendment to planning proposal at 998 Punchbowl Road." And you will see in the next, the email at the top of the page of the same day Mr Stavis is asking that a hard copy be printed for his review. Do you see that?---Yes.

Can you recall reviewing the council officer report that Mr Foster prepared for 998 Punchbowl Road?---No, I didn't review it. I was on leave at the time.

I see. In 2016?---Yes. So I, Tom and I would have talked about the report prior to me going on leave and how we would approach it but in terms of reviewing a draft report I didn't at that time. It would have been done by Allan Shooter who would have been acting in my position.

While you were on leave. Is that right?---Yes.

Can you just pardon me a moment. If I can just take you to the text of the report, Mr Farleigh, which starts on page 153 and specifically can I take you to page 166. You will see that Mr Foster in his original draft had included two options.---Yes.

Sorry, page 166. In relation to the planning proposal. Was that something that you discussed with Mr Foster before you went on leave, can you recall?---Yes, I think we did.

10 I see. And what was your view of the inclusion of two options?---We felt it was the only way that we could put a report up to council on that particular matter because neither of us agreed with the proposition to give it an FSR of 2.8:1 or a height of 25 metres. So Tom prepared the report giving council the two options in order probably partly to ease his conscience about it.

And you consider that that as an appropriate way to proceed?---It's not something that traditionally had been done but in terms of the numbers that we were being asked to prepare a report to recommend we didn't agree with those numbers quite strongly and felt that that was the only way that we
20 could put that report up.

Just looking at the two options that were advanced. Option 1 was to amend the current proposal by retaining proposed height and reducing the FSR. Do you see that?---Yes.

So that was actually bringing the FSR back from what council had actually approved which was I think it might have been 2.2:1 - - -?---Yes.

- - - back down to 1.5:1. Is that right?---Yes.
30

And option 2 was to amend the current proposal by increasing the height 25 and increasing FSR to match. So that was what the proponent was or had sought in the request of late October. Is that right?---That's correct.

And with which of those options did you agree, do you recall?---Oh, option 1.

Why?---It aligns with previous officer recommendations for that site.

40 And you'll recall that that option was removed from the report as it was ultimately submitted to council. Do you have a recollection of that happening?---No. Again, I was on leave at that time. So - - -

Did you subsequently come to learn that option 1 had been removed and only option 2 proceeded?---Yes, yes.

And from whom did you come to know that?---Tom Foster.

All right. Can I just ask you, Mr Farleigh, to go to paragraph 35 of your statement. It's at the bottom of page 7 but going over to page 8, and actually it's the statement at the top of page 8 that I'm interested in. You say, "Note that I was on leave for the period 26 February to 25 March, 2015." Do you need to make a correction to that in light of your evidence? ---In, sorry, the context of?

10 I'm sorry. Well, this report to the City Development Committee's dated 10 March, 2016.---Yes.

I'm just trying to clarify whether you were away on those dates in 2015 or 2016?---2016, sorry.

All right. So, paragraph 35 of your statement should be you were on leave for the period 26 February to 25 March, 2016?---Yes.

Is that right?---(No Audible Reply).

20 And can I take you to paragraph 48 of your report, sorry, of your statement, on page 11 and, again, so this is referring to the 10 March draft of this report for this March council meeting and you say there that the report was, "Largely prepared by Tom Foster with my assistance as his direct supervisor and then further reviewed by Dawson." As I understand your evidence, you didn't directly review the report, is that right?---That's correct. We would have talked about the direction it was going before I went and then it would have been reviewed by Allan Shooter while I was away.

30 All right. So, it's the case that you were away when the proposal was ultimately submitted to council, is that right?---When the report was finalised for the business paper, yes.

Yes. All right. And it's the case that you were aware from discussions with Mr Foster that he kept this draft of his report in a drawer of his, is that right?---Yes.

When did he tell you that?---I don't remember specifically.

40 Do you recall having a view as to the appropriateness of him keeping it in a drawer as opposed to putting it on the file?---I didn't have a, a view at the time, no.

I want to now ask you some questions, Mr Farleigh, about the site at 50 Homer Street in Earlwood. Do you recall that there was a planning proposal submitted for that site?---Yes.

In about May of 2014?---That sounds about right.

Can I take you to volume 9 of exhibit 52 and the other volumes can be returned. To page 1 of volume 9, you'll see that's a rezoning application and at page 4 is the planning proposal in relation to the site. And do you recall seeing this planning proposal at or around the time it was lodged, Mr Farleigh?---Yes.

And do you recall that, looking at page 8, that what was sought was an increase in the maximum height of the building? Do you recall that?---Yes.

10 If you look over the page, the proposed height control that they sought was 18 metres if you look at figure 4. Can you see that?---Yes.

And there was also some amendments to the requirements in the DCP as to how much of the ground floor level needed to be commercial premises. Do you recall that?---Yes.

It's the case that Ms Lisa Ho was the planning officer with primary carriage of the proposal, is that right?---That's correct.

20 And do you recall attending at least one meeting with the applicant's planners in relation to the proposal?---That's correct, yes.

And was that in late August of 2014, to your recollection?---Yes.

And that was before the proposal was submitted to the City Development Committee?---Yes, that's correct.

30 Can I take you to page 35. You'll see that these are a series of emails between you and Mr Montague of 27 August, 2008 and 28 August. Do you see that?---Yes.

And Mr Montague is referring to a meeting being arranged and the inclusion of Mr Assad Faker, who he understood was the property owner and applicant, in the meeting is requested. Do you see that?---Yes.

And you indicated the next morning that you'd left a message with the people you were meeting to that effect. Do you see that?---Yes.

40 So do you recall having any further discussions with Mr Montague in relation to this site at that time?---No.

It was just those emails that you received?---Just, that was all, yes.

Now, this proposal was taken to the City Development Committee, is that right?---Yes.

And you'll see at page 38 of volume 9 there's a report prepared by, is it Ms Ho for the committee?---Yes.

And did you review that report before it was submitted?---Yes.

Do you agree with the recommendations expressed in it?---Yes.

And it's the case, isn't it, that the resolution of the City Development Committee was in different terms to what was recommended, is that right?

---That's correct.

10 And if I can take you to page 50, you'll see the resolution of the CDC, which was to prepare a planning proposal which amended the maximum building height to be set at the same height as the building next door, which was 17 metres. Do you see that?---Yes.

And it was the case that a much lower level, a maximum building height of 14 metres, was recommended for a part of the site by Ms Ho, is that right?

---That's correct.

20 And that was a recommendation with which you agreed, is that right?---Yes.

As opposed to what was ultimately agreed by the council.---That's correct.

Can you recall or were you at the meeting of the City Development Committee in November 2014?---No.

Do you recall being told of the resolution?---Not specifically but I would have found out probably the next day.

30 And it's the case that following the resolution, a planning proposal consistent with the resolution needed to be prepared?---That's correct.

And that was prepared by Ms Ho, is that right?---Yes.

And do you recall reviewing that before it was submitted?---Not specifically, but I would have.

As part of your practice, is that right?---Yes.

40 And it's the case that a Gateway Determination was made in relation to this proposal?---Yes, that's correct.

Can I take you to page 107. Is that the Gateway Determination in relation to the site?---Yes.

And do you recall seeing that at or around March of 2015?---Yes.

And one of the things that was required as a condition, looking at point 1, I don't have anything on my screen, Mr Farleigh. Do you?---Nor do I.

Have you got it now?---Now I do. Yes.

You'll see at point 1, the third bullet point, "required further justification to support the building height of 17 metres".---Yes.

10 And specifically an additional statement that accurately represented and addressed the impact of future development on the character of the local area was to be made available with the planning proposal during the exhibition period, is that right?---Yes.

And do you recall any discussions about who should prepare that study?
---Yes.

With whom did you have those discussions?---It would have been Ms Gill Dawson and with Lisa Ho.

20 And can you recall the content of those discussions?---Our view would have been that we would, should have engaged an independent external consultant to do that work for us.

And is that consistent with the approach that you'd taken in relation to 998 Punchbowl Road?---Yes.

Commissioner, is that a convenient time?

THE COMMISSIONER: Yes. Your evidence hasn't finished. Can you come back tomorrow morning at 9.30?---Yes.

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

THE WITNESS STOOD DOWN **[4.31pm]**

AT 4.31PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.31pm]

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