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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC  
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 17 JULY, 2018

AT 9.30AM

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

THE COMMISSIONER: Ms Mitchelmore.

MS MITCHELMORE: Yes, we're continuing with the examination of Mr Farleigh.

THE COMMISSIONER: Mr Farleigh.

THE COMMISSIONER: Thanks, Ms Mitchelmore.

MS MITCHELMORE: Yes, thank you. Mr Farleigh, I was asking you some questions yesterday afternoon before we adjourned about the Gateway Determination that was made in relation to the site at 15 Homer Street, Earlwood. Do you recall that?---Yes.

10

And it was the case that a decision was made to get an independent consultant to conduct that study that was required?---Yes.

And Mr Olsson was the person who was engaged to carry out that study, is that right?---That's correct, yes.

20

Can I take you – or can I perhaps ask you how it was settled that Mr Olsson would be the person to be engaged?---At the time the council didn't have a list of preferred suppliers who we'd go and engage direct but I, from memory his name was on an Office of Local Government or Department of Local Government list of preferred suppliers and that allowed us to approach him directly without going out to multiple people to, to get quotes.

All right, thank you. It's the case that Mr Olsson provided a report in relation to the site?---Yes, he did.

30

Can I show you, Mr Farleigh, volume 9 of Exhibit 52, page 149. Can you see, probably coming up on the screen shortly, it's a report titled Urban Design Site Envelope Study, 15-23 Homer Street, Earlwood, dated 16 June, 2015. Do you see that?---Yes.

Do you recall seeing this report at or around the time Mr Olsson provided it?---Yes.

40

And can I take you to page 151 and you'll see that Mr Olsson refers to his brief to provide advice regarding the building height controls and also says they will, "Assess appropriate massing for the site in view of its role as a Gateway to the Canterbury Council area, its relationship to the Cooks River precinct massing, the precinct's role as a local hub and other relevant urban factors." And you'll see towards the bottom of the page there's a reference to the document providing this Development Impact Study and advises that a 17-metre height limit would be excessive for the study height and recommended alternative height limits. Do you see that?---Yes, yep.

And you will see that he, in the bullet points, identified a number of reasons for why he considered the 17-metre height limit across the site to be inappropriate. Do you see those bullet points?---Yes.

And when you reviewed the report, did you agree with the views that Mr Olsson expressed as to the height, appropriateness of a 17-metre height limit and his reasons for considering it inappropriate?---Yes, I did.

Can I take you to page 158 of Mr Olsson's report. You'll see that he there, in the middle column, identified a number of urban design principles that have been applied and they proceed in bullet points down the bottom of the, down the middle column and then over on to the right-hand column. Do you see those?---Yes.

10

Are you able to tell me whether those design principles were appropriately considered in the context of this particular urban design study in your view?---Generally I would agree with that, yes.

Are there any that you consider should have been considered in addition or not considered?---I can't think of whether I would have made additional ones into that but generally they appear to be sound urban design principles that would be followed.

20

And at page 168 you'll see that Mr Olsson set out what they were recommending for levels for Homer Street, for the Homer Street frontage, and you'll see in this penultimate paragraph on that page of text the development steps down towards the Cooks River and it also steps in from the 25-33 Homer Street development which was the development next door, is that right, to the left?---Yes.

30

So helping to preserve the privacy and view lines of balconies and windows of that development, and the tallest component of their recommended envelope varied from 13.2 and 14.5 above natural ground level, giving an average height above ground level of 13.85 metres. Do you see that?---Yes.

And was that envelope, were the proportions of that envelope proportions with which you agreed when you reviewed the report?---They were fairly consistent with the ones that we had worked through with Lisa Ho's report, so yes.

Yes. And when you're referring to her report, that was the report that went to council?---That went to the City Development Committee, yes.

40

Yes. And then just over the page you'll see that the FSR calculation is at about point 5 on the page, which is 169, so the FSR was, on their calculations, 1.29:1. Do you see that?---Yes.

And again did you consider that to be an appropriate FSR for the style and scale of this building?---Given the constraints of that site we thought it was reasonable. It was higher than previous FSRs under earlier planning controls, but it wasn't as much as the proponents were seeking.

And when you just referred in your answer to constraints, what constraints are you there referring to?---It's on the edge of the river, it's at an intersection, there are the view lines and windows and balconies of the adjoining building to consider, and it's an irregular-shaped site. It sort of, it doesn't lend itself to a normal shape building.

10 Can I take you, Mr Farleigh, to page 174 of volume 9. You'll see that this is an email from Ms Ho to Mr Olsson of 8 July, 2015, where Ms Ho is providing an attachment which is titled Comments on Height Study. Do you see that?---Yes.

And indicating that in the second sentence, "We have reviewed the report and have made a few comments which I have tabled in the attachment. If you could make the changes, that would be great." Did you have any role in the preparation of or the content of the comments that Ms Ho sent back to Mr Olsson?---I don't recall specifically but it's likely that I did.

20 Yes. Can I show you the comments. They are in the table on pages 175 and 176. So that's page 175 and the comments are done by section of the report. Do you see that?---Yes.

And over the page, 176. Can you recall comments of that nature being submitted back to Mr Olsson?---I don't recall specifically the format that they went back in, but it's likely that I did, yes.

30 Okay. Can I just take you back to 175. You'll see that some of the matters in the commentary are correcting factual material. So for example, the fourth bullet point in the introduction row is, "Land ownership details need to be corrected." Do you see that?---Yes.

But other comments required more substantial amendments, for example, the immediately preceding bullet point, "Need to have strong reasons why the 17-metre height cannot be supported." Do you see that?---Yes.

40 And similarly the bullet point before that, "Need to emphasise why the requested information from the department cannot be supported through your analysis." Were those comments consistent in your view with the scope of comments from council officers that you considered to be permissible in relation to an independent consultant report?---Yes, because they didn't vary with the conclusions that had been found in his report, it was just that we wanted to make sure that they were put in a clear and strong manner.

Do you recall if Mr Stavis had any input in relation to these comments?  
---I don't recall but I don't think so.

Do you recall having discussions with Mr Stavis at or around the time of receipt of this draft report, which was around 18 June, 2015?---I don't recall.

Can I take you to your August statement, which might assist you, and paragraph 27. I think you might have your hard copy statements there, Mr Farleigh, otherwise we might be able to bring it up on the screen. It's up on the screen, Mr Farleigh, if that would assist you. You'll see that you refer in paragraphs 25 and 26 to having engaged Mr Olsson and the planning proposal not supporting, sorry, his review not supporting the proposal, and in paragraph 27 you say that you recall that, "Stavis, Ho, Dawson and I met about this matter, there was some vigorous debate." Do you see that?---Yes.

Are you able to recall meeting with Mr Stavis and Ms Ho and Ms Dawson about the matter following receipt of Mr Olsson's report?---I do recall that meeting, yes.

So was it a particular meeting that you can recall?---It was a meeting. It was just the four staff members and we were from memory talking about Russell's final report.

And you've described what occurred as vigorous - - -?---Yes.

You've described as vigorous debate. Are you able to recall what discussions occurred in the course of the meeting about the report of Mr Olsson?---Mr Stavis didn't appear to be interested in listening to the position that was being put forward by either Lisa Ho's report or Russell Olsson's report and was more interested in trying to tie everything back to that part of the building next door that was 17 metres and therefore that should be applied across the site for this site.

Did he express a view as to the reasoning of Mr Olsson's report?---Not that I recall.

Did he engage with the reasoning of the report at all?---I can't recall specifically, no.

Can you recall what matters you raised with Mr Stavis in relation to Mr Olsson's report?---The meeting was a general discussion. It was, would have largely been led by Gillian Dawson as the manager and Lisa and I would have provided comments during the course of that meeting but I don't recall specifically what I said, no.

You say in paragraph 27 that what was being pursued by the applicant was not suitable in its entirety. Do you see that?---Yes.

What do you mean by not suitable in its entirety?---It was being promoted as a 17 metre height limit across the site which we didn't agree with at all.

If you allow that sort of height across the site then it's likely that any subsequent DA will take full advantage of that.

Yes. Insofar as Mr Olsson's report didn't agree with what the council had resolved, what was your position in terms of how to address that issue?

---After we had received the report?

Yes.---It placed us in a difficult position. We - - -

10 And what – sorry.---We didn't really know how to deal with it. We had a Gateway Determination that required the preparation of an independent report. We had a report that didn't necessarily support what the terms of the planning proposal were. We didn't know whether we could go to public exhibition with it or not.

And do you recall discussing that issue with Mr Stavis in this meeting, was that something that was discussed?---I don't recall.

20 Is it the case that Mr Stavis was seeking to support what the resolution of council was?---Yes.

And in seeking to do that was he pointing to particular facts in relation to the development that would support that argument?---I don't recall specifically, no.

30 All right. Can I take you to page 181 of volume 9. You will see that this is a file note of a meeting attended by yourself, Mr Stavis, Ms Dawson and Ms Ho from the council and Mr Olsson on 8 September, 2015. Do you see that?---Yes.

Can you recall this meeting?---Yes.

Was this the only meeting that was held with Mr Olsson or were there other meetings to your recollection that you attended?---It's the only one that I recall that I was at.

40 And does the file note, if you'd like to review it, accord with your recollection of statements that Mr Stavis made in the course of the meeting, looking at bullet points 2, 3 and 4?---Yes, it does.

And so there was a request by Mr Stavis for the modelling analysis so that he could use that information for future discussions and meetings with the proponent, is that right?---Yes.

And he agreed to the smaller scale envelope and separation proposed for the existing rug shop at 21-23, is that right?---Yes.

And Mr Olsson had explained in response why that was necessary to protect the views of the building next door, is that right, which was an apartment block?---Yes.

And Mr Stavis made a request or a suggestion as to whether a greater height could be provided along Homer Street, is that right?---Yes.

10 And Mr Olsson indicted, while it was desirable to place the bulk of the building in that location, he was of the opinion that any added height could be provided on the condition that it didn't accommodate an entire storey or level, is that right?---Yes.

And were the views that Mr Olsson expressed in response to issues raised by Mr Stavis views with which you agreed at the time?---Yes.

Do you recall at some point, Mr Stavis making a decision to give the applicant an opportunity to have the proposal peer reviewed by a reputable urban design firm?---No, I don't recall.

20 Do you recall that the owner of the site engaged JBA?---I'm aware of that happening, yes.

Can you recall if Mr Stavis had any discussions with you about that proposal before he communicated it to the applicant?---No, I don't

You don't recall it?---I don't recall.

30 Is it possible that it occurred, those discussions?---It's possible but I, I don't specifically recall either way.

Can I take you to page 196 of volume 9. You can see this is an email on which you're not copied from Mr Stavis to m.j.@aleksandardesigngroup.com.au, dated 23 December, 2015 saying, "Aleks, see my general comments attached." Are you aware whether Aleks was the architect for this site, or designer?---I believe he's the Aleks in Aleksandar, yes.

And they were an architectural firm, is that right?---Yes.

40 And over the page from 197 and following, you'll see that – it may be, Mr Farleigh, it would be useful for you to perhaps look at the hard copy because there's a fair bit of handwriting on this document – that there are annotations to this draft report, for example, on page 204. Do you recognise that handwriting?---Yes. It looks like Mr Stavis'.

And over the page on page 205?---Yes, same.

206?---Same.

208?---Same.

209?---Same.

210?---Same.

211?---Same.

10 212?---Same.

And then 213?---Same.

14?---Yes

215?---Yes.

And 216?---Yes.

20 And then 218?---Yes.

Have you seen this email and its attachment before?---At the time I hadn't seen it, no.

You've seen it since. Is that right?---As part of this process, yes.

In terms of preparing to give evidence?---Yes.

30 Can I take you to paragraph – sorry, have you had an opportunity to review the comments that Mr Stavis made on this report, on this draft of the report?---Not in detail, no.

Can I take you to paragraph 30 of your statement. You say in the fourth sentence where you've recognised his handwriting and you say it is not appropriate to do that. Do you see that?---Yes.

Are you saying it's not appropriate to annotate the report?---Not in a situation where you're looking at a report that's been provided by a proponent to - - -

40

Why – I'm sorry.--- - - - to promote, to promote their case.

Why is that?---You're in effect negotiating with them and helping them and that's not really our role. Our role is to assess what's been put in front of us. We can be critical of a report in our own reporting of that but not to, to feed that back to the proponent to, to assist them with what they're doing.

Are you able to indicate what it was about Mr Stavis's comments that you considered to be going beyond the role that you considered to be appropriate for a council officer assessing a report that's been provided by a proponent?---I thought the worst part of all that was that he had given them Russell Olsson's report and requested them to address issues that had been raised by Russell in his work.

10 And why did you consider that to be the worst aspect?---That report hadn't been made public. It hadn't been considered by council at all. It was a report that we had commissioned to try and satisfy the terms of the Gateway Determination.

And you considered the provision of that to the proponent's expert to be problematic did you?---I didn't think it was appropriate, no.

Did you raise that with Mr Stavis?---No. I wasn't aware that it had happened at the time I recall.

20 Can I just take you to page 197. You will see that this is just the title page and there's a comment from Mr Stavis to Alex. Do you see that there which says inter alia, "This should not be misconstrued as approval/support of the proposal." Do you see that?---Yes.

Do you consider that that statement makes any difference to your view as to the appropriateness or otherwise of Mr Stavis's comments on the report? ---Not really, no.

30 Why not?---I just don't think that we should be providing that level of commentary back to a proponent in that sort of detail.

And what difference, if any, do you consider there to be between the comments Mr Stavis made on this version of the JBA report and the comments that Ms Ho provided to Mr Olsson in relation to his report, his draft report?---It's feedback on a report that's been written for us. In most cases it offers corrections, clarifying facts, making sure that things are said strongly enough or if they're, if they're relevant or not and it's to help the council make a decision on that as opposed to trying to help a proponent achieve their outcomes or broker a solution to them.

40 All right. Can I take you then, Mr Farleigh, to volume 10 of Exhibit 52 and volume 9 can be returned. I want to take you, Mr Farleigh, to page 37. Sorry, 36. You will see that this is a cover sheet in relation to this planning proposal and it's marked out to Lisa Ho. Do you see that?---Yes.

And over the page you'll see the JBA report of 18 March, 2016. Do you see that?---Yes.

So this is coming in through the ordinary council processes. Is that right?---  
It appears to have come over the counter at customer service, yes.

And hence the stamp on page 37. Is that right?---Yes.

Okay. Can you recall reviewing the JBA report at or around this time?  
---Yes, we would have seen it then.

10 So when you say we would have seen it, who are you referring to there?  
---Lisa Ho and myself.

Can you recall what your view was of the report in terms of its justification  
of the planning proposal height?---From memory I asked Lisa to have a look  
at it and she provided some notes about what the JBA report was saying.

Did she do that in the form of a memo?---Yes.

20 Could I take you to page 77 of volume 10. You'll see this is a file note  
prepared by Ms Ho of 19 April, 2016.---Yes.

Is this the document that you're thinking of insofar as you requested her to  
provide notes and saw something of that nature?---Yes.

And can you recall reviewing the file note at or around 19 April, 2016?  
---Yes.

And can you recall what your view was of the views that Ms Ho expressed  
in her file note?---I agreed with her commentary.

30 Now, it's the case by this time Ms Dawson had left the employment of the  
council. Is that right?---I think so, yes.

Yes. And it was before Mr Noble started, I think he started on 9 May.  
---Yes.

Now, if I can just take you back to page 74, this is the same coversheet but  
you'll see that it's annotated. Do you see in the top right-hand corner?  
---Yes.

40 And it appears to be a note of Mr Stavis. Do you see that?---Yes.

And it's noted that he met with Mr Olsson and gave him the updated report  
and asked him to review and prepare a follow-up response. Do you see  
that?---Yes.

So did you attend any meetings with Mr Olsson on or around this time  
following receipt of the JBA report?---No, I don't recall that.

Do you recall Ms Ho informing you of a meeting at or around that time with Mr Olsson and her having attended it?---She, as far as I'm aware, she didn't attend it, but she may have been aware that Russell was coming in to talk to Mr Stavis.

I see. Now, you'll recall that Mr Olsson provided a revised report - - ?  
---Yes.

- - - which incorporated comments on the JBA report.---Yes.

10

Can I take you to page 82 of volume 10. This is an email from Mr Olsson to Mr Stavis of 9 May, 2016, addressed, as I say, to Mr Stavis, saying he'd amended the report and the draft was attached for your review. And you'll see that the report starts on page 83. Do you see that?---Yes.

20

And if I can take you to page 108, you'll see that there is some commentary on the JBA report in the two columns of text, and in particular the view expressed by Mr Olsson in the last paragraph in the right-hand column, that it was their view that the JBA report focussed on the additional three metres to the exclusion of the important planning and urban design principle of stepping down heights towards the river, which was evident in the adjoining development at 25-33 Homer Street where the height stepped down.---Yes.

And noted that the approved DA at 2-10 Homer Street was three storeys. Was 2-10 across the road?---Yes, it was.

30

Yes. And in contrast the proposal in the JBA report was four and a half storeys on the corner and the riverbank with a setback to the top floor but counting floors from the western end of the site the top floor was effectively six storeys and that was excessive in the context of the riverfront in the view of Mr Olsson. Do you see that?---Yes.

And was that a view with which you agreed?---Yes.

And you'll see over the page that there was reference to the original planning proposal being for 17 metres and that the latest heights in the JBA report exceeded the original planning proposal heights. Do you see that?  
---Yes.

40

Is that something that you recall of the JBA study?---Yes.

And did you agree with the views that Mr Olsson expressed in relation to that aspect of the JBA report?---Yes.

Now, Mr Noble started with the council on 9 May. Can I take you to page 113 of volume 10. You'll see it's an email from Mr Noble to you of 11 May, 2016, in relation to 15-23 Homer Street, Earlwood. Do you see that?  
---Yes.

Do you recall receiving this email from Mr Noble?---Yes.

And you'll see in the second paragraph that it gives you some instructions to progress the planning proposal to exhibition stage using the JBA report - - -?  
---Yes.

- - - to satisfy condition 1, third dot point of the Gateway Determination.  
Do you see that?---Yes.

10

And also asks you to tell Mr Noble of the exhibition dates and how we were tracking on addressing the other conditions. Do you see that?---Yes.

Now, in paragraph 3 Mr Noble indicated that he understood the draft Olsson report does not support the proposed 17-metre height, "And we will note that advice." Can you recall what you understood by him saying, "We will note that advice?"---Well, we were in possession of the JBA report which supported the 17-metre height limit and that as council had resolved to do that, that was what was going to be exhibited with the planning proposal.

20

I see. And what did you understand would be done with the Olsson report?  
---It wasn't going to be exhibited.

You'll see that in the next sentence Mr Noble says, "Given that council has already been provided with advice to that effect previously and resolved to proceed with 17-metre height the council's direction is clear on this matter."  
Do you see that?---Yes.

30

Did you consider the council's direction to be clear on the matter?  
---Council's direction in terms of resolving to increase the height to 17 metres, yes, that was clear.

Yes. Do you know whether at any stage they were provided with the Olsson report, the council that is?---Up to that point in time, no.

I see. Can you recall discussing the exhibition of the JBA report and not the Olsson report with Mr Noble?---We had some words about it, yes.

40

Can you recall what was said or words to the effect of what was said?  
---I approached him and indicated that I wasn't overly happy with that approach because we had engaged Russell to give us an independent report. His response was that we will proceed to exhibit using the JBR report.

And can you recall if the words that you had were before or after you received this email on 11 May?---It would have been after.

THE COMMISSIONER: Mr Farleigh, earlier you said that at one stage you in a sense or council staff were placed in a bit of a dilemma in that you had

the Gateway Determination that required the independent report and Mr Olsson's report didn't support the council resolution.---Yes.

And you didn't quite know at that stage what to do or how to progress it.  
---Yes.

Did you ever receive advice or resolve that dilemma?---No.

10 Or did these, or the developments with the JBA report, did that just overtake everything?---That essentially overtook everything. We did have some discussions with an officer from the Department of Planning in fairly general terms, but we didn't get any conclusive advice one way or the other what to do with that, so in effect it was sitting there for quite some time.

MS MITCHELMORE: And just in relation to the discussions with the department, were they discussions that Ms Dawson had with Helen Wilkins to your recollection?---I think - - -

20 Or Ms Ho perhaps?---Certainly Lisa Ho I had discussions with, Helen Wilkins, yes.

Yes. So, if I can take you to volume 9, page 177. We'll just have it brought up on the screen. You'll see this is a folder prepared by Ms Ho of 14 July, 2015, which records a discussion with Ms Wilkins. Do you see that, Mr Farleigh?---Yes.

30 And is that consistent with your recollection of the discussions that were held with the department about which you've just given us some evidence?  
---Yes, it does.

Yes. Insofar as Mr Noble indicated that you should proceed to exhibition with the JBA report, did you subsequently take the matter up with Mr Stavis?---No.

Why not?---I was assuming that the, that the instruction to exhibit with the JBA report had come from Mr Stavis in the first place.

40 I just wanted to ask you, Mr Farleigh, about a couple of other developments. So, I'm going to leave Homer Street for now, save to ask you just one question. In the transcript yesterday, this is at 2464, line 22, I asked you, "Where there ever occasions where Mr Stavis challenged you about your views about particular planning proposals?" and you said, "Yes," and I asked, "Was that in relation to particular planning proposals?" and you said, "Primarily in relation to the one at Homer Street, Earlwood." Do you recall that evidence?---Yes.

Are you able to indicate exactly what part of the process or at what stage in this process in relation to Homer Street, Mr Stavis challenged your views

about that planning proposal?---I think primarily it would have been that meeting that Gillian Dawson, Lisa Ho and I attended with Mr Stavis.

That was subsequent to receiving Mr Olsson's report in mid-June of 2015, is that right?---Yes.

10 All right. I wanted to ask you a couple of questions, Mr Farleigh, about developments at 538 Canterbury Road and 570-80 Canterbury Road in Campsie and I wanted to take you to volume 15 of Exhibit 69 and page 3 of that volume. There are the business papers, Mr Farleigh, for a City Development Committee meeting of 14 May, 2015 and you'll see item 3 related to a planning proposal for 538-546 and 570-572, 576-80 Canterbury Road and 2 Chelmsford Avenue. Do you see that?---Yes.

Do you recall that here was a planning proposal in relation to those sites? ---Yes.

20 And was it to increase the building heights on those sites to 25 metres? ---Yes, it was.

And that was supported in relation to 538-546 and 570-80 but not for 2 Chelmsford, is that right? Just looking at the last bullet point under the summary.---Yes.

Were you involved, Mr Farleigh, in the preparation of this planning proposal?---Yes, I was.

30 Can you recall that submissions were received in response to exhibition, or submissions had been received in response to exhibition of the Residential Development Strategy about these particular sites?---I think so, yes.

And there's a reference looking at page 3 in the second bullet point to the adjoining site at 548 Canterbury Road.---Yes.

And that it was the subject of a separate planning proposal to increase the maximum building height to 25 metres. Do you see that?---Yes.

40 And 548 had in fact been a part of the RDS originally. Is that right?---That's correct.

And consistent with your evidence yesterday it had come out of the planning proposal because of the concerns that were raised by RMS. Is that right?---Yes.

So it didn't proceed with the, as part of the Residential Development Strategy planning proposal, it had to proceed by way of a separate planning proposal. Is that right?---That's correct.

And there's a reference in the third bullet point which I think is again referring to 548 as saying, "This matter is now in abeyance pending the results of the traffic study required by Roads and Maritime Services in order to progress a number of sites on Canterbury Road." So that again is reflecting your evidence yesterday that it was effectively parked while further studies were being done for RMS. Is that right?---That's right.

10 Can I just take you to page 10 and you will see in the last paragraph on this page that, or the second-last paragraph that there was a strategic assessment of the proposal which indicated it was broadly consistent with a number of key policies and in the paragraph under the bullet points that the building heights of 21 to 25 were generally supported in the case of this block given the nature of the adjoining development the subject site's bookend. So that was Harrison's being 548. Is that right?---Yes.

And the industrial nature of the land that the majority of the sites bordered which lessened the potential impacts or negative impacts on adjoining users. Is that right?---Yes.

20 You will see at page 13 that the council resolved to, that a planning proposal be prepared in relation to increasing the maximum permissible building height to 25 metres on the land at 538-546 and 570-80. Do you see that? ---Yes.

And do you recall that resolution being made?---Yes.

And if I can take you to page 16. It's the case isn't it that a planning proposal was prepared for 538-546 and 570 to, it says 589 but I think it should be 580 - - -?---Yes.

30 - - - Canterbury Road, Campsie and Belmore. Do you see that?---Yes.

And did you have some involvement in at least reviewing the planning proposal before it was submitted?---Yes. It was prepared by Tom Foster. I would have had some role in reviewing it.

And you will see at page 58 that there was a response from, there's a series of emails here but you'll see that the bottom email is an email from a Louise Starkey from the Department of Planning to Tom, which is from what  
40 you've said Mr Foster, on 14 December, 2015. Do you see that?---Yes.

And this outlining the department's preliminary assessment of that planning proposal. Is that right?---Yes.

And there was a number of requests for clarification and information from the department. Is that right?---Yes.

Including additional sites-specific justification for the proposal. That's point 3. Do you see that?---Yes.

A copy of any urban design study undertaken to inform the proposal, point 4.---Yes.

Point 5, a copy of any urban design study undertaken for the adjacent site which was 548. Do you see that?---Yes.

10 And then in point 6, details of approved development applications for the subject sites including any pending development applications with council for assessment and currently awaiting determination. Do you see that?---Yes.

Now, you forwarded that on to Mr Gouvatsos, looking at the email at the top of the page, on the same day, copied to Ms Dawson. Do you see that?---Yes.

20 Can you recall why you forwarded that on to him?---There were development applications in for eight-storey buildings on those sites and in the context that there was council had resolved to do a planning proposal which had not received a Gateway Determination and was therefore not certain to proceed, that it would be wise for council not to actually determine the DAs for the additional levels on those two sites.

30 And why did you consider that to be the appropriate course, namely to hold off on the DAs while the planning proposal was making its way through?---Well, the DAs were relying on significant clause 4.6 variations to vary the height limit. If you were going through the planning proposal process to change the height limits it would be prudent to wait until that process had been completed, and as I said, there was no guarantee that that process would have resulted in an increase to those heights, as it had not received a Gateway Determination.

I see. And why did you consider that clause 4.6 wasn't a mechanism that could go forward while a planning proposal was in force?---The variations were significant in terms of the marginal increase. I think in some cases it might have been 30, 40 per cent increase to the standard.

40 Clause 4.6 of the LEP was the domain of Mr Gouvatsos. Is that right?---It was the domain of council.

Yes.---And it was a mechanism used to vary development standards, yes.

Yes. But in the context of development applications being submitted, justification would be required if a proponent was seeking to vary development controls?---There are certain matters that need to be addressed that are specified, yes.

And those matters are specified in clause 4.6. Is that right?---Yes.

But consideration of clause 4.6 does not involve the department at all. Is that right?---Not the actual decision, no, I don't think so.

As compared to planning proposals - - -?---Correct.

- - - which have departmental input. Is that right?---Yes.

10

Is the DA process in proceeding by 4.6 faster than a planning proposal?  
---It would be, yes.

Is it the case that it was a preferred mechanism for proponents, as opposed to a planning proposal?---Looking at that time issue, yes, it might have been.

But you didn't have a view about that one way or the other at this time?  
---Well, I didn't hold a specific view. It was that that was the mechanism that was being used or attempted to use to gain approvals, yes.

20

So just looking at the email consistent with your evidence you said, "In light of this request," which is the request from the Department of Planning, "It may be prudent to defer further consideration of any relevant applications pending the submission of this material to the department and their consideration thereof in relation to any Gateway Determination." Is that right?---Yes.

30

If they had made a Gateway Determination would that have impacted on your view as to whether or not the DAs could proceed?---It's likely it would have had some bearing because it would have given an indication that the department was at least satisfied that those proposals could go to public exhibition, but I don't think the Gateway is necessarily intended to indicate a level of support that they will actually complete the changes, it's more to allow it to go to public exhibition.

Yes. Obviously it has to go to public exhibition and then comments et cetera are fed back into council.---Public submissions goes back to council then goes back to the Department of Planning, yes.

40

It may be also that council is delegated with the authority to make the planning proposal ultimately by the department. Is that right?---Yes.

That can happen?---That can happen.

On other occasions it may have to go back to the department.---Yes, that's right.

All right. Can I take you over to page 60. You'll see this is an email from Mr Stavis on 5 February, 2016 to you, Mr Foster and Mr Gouvatsos. Do you see that?---Yes.

Do you recall receiving this email?---I recall reading it, yes.

I see. And he's detailing a conversation he had with Mr Martin Cooper who was an acting director from the Department of Planning.---Yes.

10 And you'll see that in the second-last paragraph Mr Stavis says, "I asked him," being Mr Cooper, "Whether he had any objections if we were to progress with the DAs, to which he replied, 'That's a matter for council.' Based on my discussion above I am comfortable to continue with our DA assessment so long as we respond to the issues raised by the department below in our assessment reports." Do you see that?---Yes.

Is that a view with which you agreed at the time?---No, not really.

20 Why not?---When Mr Cooper says, "That's a matter for council," he's indicating that council needs to come to its own position on that. They wouldn't provide advice that it's okay to do it either way or one way or the other. So, whether council should have sought further advice on that, I don't know. It was just my view that, that if you are looking to do planning proposals to change development standards to a significant level that that should run its course otherwise you approve applications before that's done, it's, it sets precedence.

30 Now, in relation to 538 Canterbury Road, there had been a DA lodged which sought to add two levels to the building. If I can take you to volume 17, page 1, you'll see, Mr Farleigh, that that's the DA lodged in June of 2015, and at page 14 you'll see that it sought to – just in the executive summary on page 14 – that what they were seeking was additional basement level and two additional residential levels on the top of what had been approved which was a six-storey mixed-use development. Do you see that? ---Yes.

And can I take you to page 103 of this volume. In about July of 2015, you prepared a memo to Mr Sean, is it Flahive or Flahive, I'm not sure.---Close. I'm not too sure either. I think the first one.

40

Mr Flahive. Dealing with 538-546 Canterbury Road. Do you recall preparing this memo?---Yes.

Do you recall how you came to prepare it or why you prepared it?---There was a relatively informal referral process where some applications would come through to me to have a look at, particularly in relation to when we had new LEP controls with the comprehensive LEP or in some cases, sites

on Canterbury Road because we had been involved in doing the Canterbury Road Master Plan.

And just looking at the memo, in the first bullet point you refer to the fact that there was a resolution to prepare a planning proposal but that was yet to be submitted to the department for Gateway. Do you see that?---Yes.

So, this is before the planning proposal that I just took you to was submitted to the department, is that right?---That's correct, yes.

10

And the point you make in the second bullet point was that there was no surety that it would receive a Gateway Determination or if it did, the terms of any such determination. So, at this stage, July 2015, we were well in advance of any certainty flowing from the planning proposal, is that right? ---Yes.

20

And bullet point 3, you refer to the fact that, "Additional yield on this site will also impact on the current RMS study and until the results," which should be, "of this are known and implications assessed, it would not be appropriate to approve this application." Can you recall if the RMS study included the additional heights that formed part of the planning proposal that had been approved with respect of 538 and 570 Canterbury Road? ---No. From my recollection it didn't. The study had been commenced, it was looking primarily at the sites that had been identified the RDS planning proposal. These two sites plus other were additional to that so therefore they would have had additional impacts on traffic related matters.

And that's what prompted you to write the third bullet point, is that right? ---Yes.

30

And then you say, "Despite what might be contended in the statement, the use of clause 4.6 in the LEP to consider variations at that magnitude proposed is not appropriate. Again, at this point in time, there is no surety the statutory height controls will change," and that's consistent with your evidence earlier that you didn't consider clause 4.6 to be appropriate given the magnitude of what was being sought in terms of the variation of the control for height?---Yes. That's right.

40

And then you make a point in the fourth bullet point about the applicant appeared to need reminding under the terms of the statutory definition of height it included all components including lift overruns. So it was the case in relation to this application that they may have been exceeding the height in terms of the lift overrun?---That was happening quite generally, yes.

But that would commonly happen would it in relation to DAs and - - -?---It was happening, yes, yeah.

All right. Can I just ask you then, you made some comments from a design perspective on the DA. You say in the third bullet point the outcome is poor in terms of design quality. Can you recall what aspects of the DA prompted you to make that comment?---Not specifically but obviously at the time I just formed a view that it was not a particularly well-designed building.

Now, can you recall, Mr Farleigh, that you expressed a similar view or a view on similar issues in relation to 548 Canterbury Road? So that was the Harrison's site.---Yes.

10

So again there was a DA in respect of that site to add two additional levels to an approved six-storey mixed use development. Do you recall that? ---Yes.

And as we discussed it had been included as part of the RDS but taken out because of the RMS issues. Is that right?---Yes.

Can I take you to volume 19, page 76. You will see this is an email that you wrote – sorry, it's a memo that you wrote to Ms Mine Kocak on 9 February, 2015. So is it the case that again, consistent with that informal referral process, Ms Kocak provided this DA to you for you to review?---Yes.

20

And you've indicated in the first sentence what the subject of the DA was and then you say, "Clause 4.6 should not be used to consider variations of the magnitude proposed, some 38 per cent in this case."---Yes.

And you then refer to the resolution to increase the maximum building height on this site to 25 metres. Do you see that?---Yes.

30 And that was part of the resolution concerning the RDS?---Yes.

And you make the point to Ms Kocak that this site was caught up in the RMS matter which was the concerns had been expressed by RMS in the context of the RDS which had led to this property among others being carved out from the RDS planning proposal. Is that right?---Yes.

And is subject to separate investigation regarding the cumulative impacts on traffic as a result of increased levels of development along Canterbury Road. You then indicate that if RMS sign off on these investigations any subsequent planning proposal will require a new resolution of council before proceeding to Gateway. Do you see that?---Yes.

40

And why was that the case, why would there need to be a subsequent planning proposal?---As I was talking yesterday, a number of sites that were in the RDS planning proposal were effectively parked or deferred. The sites that were still in that planning proposal proceeded to finalisation. Once that was gazetted then the sites such as Harrison's were not subject or were not

part of any planning proposal so it would require a fresh resolution to prepare.

And the conclusion you draw in the memo was that any changes to the statutory height limits cannot be considered as either imminent or certain. Is that right?---Yes.

And that's the view that you held at the time that you prepared this memo?  
---Yes.

10

And you then make a point the height of the proposed development even exceeds the foreshadowed 25 metre height by up to a further 3.8 metres and again you're making a point about lift overruns here might have been happening on Canterbury Road a fair bit perhaps.---It was, yes.

20

You've then said in the last sentence, "For these reasons any form of merit assessment of what is being actually proposed has not been carried out as it is considered premature to any proposed amendments to planning controls." By that did you, were you talking about an assessment of merit similar to that which you've put in your memo to Mr Flahive. Is that right? You would actually review the proposal on a merit basis as well?---It was, it was an informal referral process and I provide commentary in relation to planning controls, some designs aspects of it. Just point the DA office in the direction of something that might be of assistance to them in doing it. It wasn't a formal or technical referral as what might happen with say engineering requirements or that sort of thing.

30

But in this case, as at 9 February, you considered it was premature to even look at the merit of the application, is that right?---Yes.

Commissioner, I have no further questions for Mr Farleigh.

THE COMMISSIONER: Thank you, Ms Mitchelmore. Mr Andronos?

MR ANDRONOS: No, questions, Commissioner,

MS MITCHELMORE: I'm sorry, before - - -

40

THE COMMISSIONER: Oh, I'm sorry.

MS MITCHELMORE: Sorry, there was one matter I needed to deal with. I apologise. Before any further questions are asked, Mr Farleigh, can I show you a document, and just ignoring the handwriting at the top of the page, you'll see that it's titled City Planning, dated May 2016. Do you see that in the top left hand corner of the document?---Yes.

And it appears to be an organisational structure for the City Planning Division of council as at that time, is that right?---Yes.

And is that consistent, looking at the structure, with your recollection of the structure of City Planning at or around the time of May 2016?---Yes.

And you sat, Mr Farleigh, within the stream at the far right of the diagram in the land use and environment planning area, is that right?---Yes.

10 Your name appears about halfway down towards the bottom of the, going from top to bottom of the page, "Urban Planning Team leader," and your name is there, is that right?---Yes.

Yes. Commissioner, I tender that document.

THE COMMISSIONER: All right. The organisational chart entitled City Planning, May 2016 will be Exhibit 144.

**#EXH-144 - ORGANISATIONAL CHART TITLED CITY  
PLANNING MAY 2016**

20

MS MITCHELMORE: Yes, thank you, Commissioner. I apologise for that.

THE COMMISSIONER: That's all right. Any questions?

MR ANDRONOS: Still no questions, Commissioner.

30 THE COMMISSIONER: Mr O'Gorman-Hughes?

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

THE COMMISSIONER: Mr Drewett?

MR DREWETT: I've got no questions.

THE COMMISSIONER: Mr Pararajasingham?

40 MR PARARAJASINGHAM: Very briefly, Commissioner. Mr Farleigh, you can hear me all right?---Yes.

I appear for Mr Stavis. I just have a few questions for you. Could the diagram that was just tendered be placed on the screen, please. Mr Fairleigh, just going to the, I'll call it the third grouping. You appear there as the Urban Planning Team leader, you see that?---Yes.

And it's the case that you reported to the manager of land use and environmental planning?---Yes.

Now, at the time that Mr Stavis started, do you recall who that was?---Oh, the manager was Gillian Dawson.

And then after that it was Mitchell Noble?---Mitchell Noble.

And just staying with this diagram, it's the case that the manager then reported to the director?---Yes.

10 The Urban Planning Team, is it the case that the principal function of that team was to assess planning proposals?---It was one of the key functions, yes.

What were the other keys functions?---It'd be doing Development Control Plan work, general policy research. We also had responsibility for planning certificates.

20 And it was the case that in the main development applications were handled by what is the second grouping or the middle grouping, the Development Assessment Group, is that correct?---That's correct.

And is it the case that prior to Mr Stavis commencing in about March of 2015, there was a practice where development applications would be referred to the Urban Planning Team for comment?---Not in all cases but some cases, yes.

30 And is it the case that shortly after Mr Stavis commenced in the role as director, that practice was brought to an end?---I don't have a specific recollection of that, no.

Do you recall whether Mr Stavis expressed any view on that particular practice?---No, I don't.

And just before I move away from this document, is it the case that this structure is typical of structures at other councils, this organisational structure?---I imagine it's similar, yes.

40 I mean you've worked at at least, well, you're currently working at Canterbury-Bankstown Council?---Yes.

Is it a similar structure there as set out in this document?---Yes.

You worked at Randwick Council?---Yes.

Similar structure there as set out in this document?---In terms of separating development assessment and strategic planning, yes.

And would that also be the case with your experience at I think it was Hurstville Council?---In a much smaller grouping, but yes.

Okay. Thank you. That can be taken down. Sir, in your statement of 1 November, 2017 at paragraphs 5 and 6 you just set out a bit of your background. It's the case that you have a Bachelor of Town Planning from the University of New South Wales. Correct?---Yes.

10 And is it the case that you have no further or additional academic qualifications?---That's correct.

And in paragraph 6 you set out your experience. At Hurstville Council you were a town planner.---Yes.

And then at Randwick Council what was your role?---The position was senior strategic planner.

20 Now, it's the case that when you were at Randwick Council you actually worked alongside Mr Stavis, didn't you?---That's correct, yes.

And which group was Mr Stavis part of?---Development Assessment Team.

So that was a separate group to the group you were in?---Yes.

And for how many years did you work alongside each other?---I don't recall exactly in terms of the timing of my arrival, his arrival, his departure and my departure.

30 But are we talking a couple of years?---Maybe a couple of year.

And did you have any dealings with one another while you were at Randwick Council?---Not in a direct working relationship that I recall but it was more that we worked in the same office and we talked, with others.

Is there any reason why this isn't mentioned in either of your statements? ---No, it didn't arise.

40 You didn't think it was a relevant thing to raise in the course of the preparation of your statement?---In terms of the questions that I was being asked at the interviews, no.

But it's certainly not something that you withheld?---No.

I take it, just coming back to your experience, it is also the case, and I'm not having a go here, that you have never risen above the level of team leader. Is that the case?---That's correct.

Prior to Mr Stavis commencing in about March 2015, can I ask, what was known amongst the staff as to the circumstances in which he was appointed as director?---There had been some discussions about where we were made aware that he was to be appointed and then there was the issues about the offer being revoked.

And do you recall what the response was amongst staff to that?---Not specifically, no. It was, we were sitting in a room being informed what was going on. It was obviously a difficult time.

10

THE COMMISSIONER: Who was informing you?---There were a couple of meetings where the team leaders and managers got called up to the general manager and there was some discussion about what had been happening, but I don't recall any specific aspects of it.

MR PARARAJASINGHAM: In terms of the decision to ultimately appoint him, was there any disquiet amongst council staff about the fact of his appointment?---Not that I can recall specifically. I mean it was unusual.

20

Why do you say that?---Well, as far as we were aware, Mr Stavis had not had any management experience in local government.

And certainly you were aware of that from your dealings with him at Randwick Council, weren't you?---That had been 20 years previously, close to it.

Sure. But is the answer yes?---In terms of local government I believe that to be the case, yes.

30

And it was understood that he had never held a director role previously? ---Yes.

Was it also understood that perhaps a year or so earlier he had applied for a role within one of the, as a staff member?---Yes.

And that he didn't get that job?---Yes.

Was that something that was discussed at around the time that a decision was made to appoint him as director?

40

THE COMMISSIONER: Sorry, can I just clarify what, discussed amongst the staff informally?

MR PARARAJASINGHAM: Yes.---There was probably some, yes, informal discussion about, about that situation. I don't recall the specific nature of it.

Is it likely that there would have been some perhaps, I'll choose my words here, was there a feeling of bemusement that having applied and not gotten the job as a staff member he was now appointed as director?---Well, personally I thought it was an interesting situation, yes.

Okay. Are you using interesting as a euphemism?---Probably, yes.

10 Okay. So can you tell me what you actually mean?---Well, I would wonder why someone who had applied for a job at one level was unsuccessful in getting that job, then within approximately 18 months applied for the director's job, which was two or more levels above that, and then was successful.

Was there a feeling of resentment?---No.

Are you sure of that?---Yes.

20 That would be a reasonable response though, wouldn't it, in the circumstances?---No, I certainly did not resent it, no.

I have nothing further. Thank you.

THE COMMISSIONER: Have you still got Exhibit 144 in front of you? Sorry, the organisational charts, sorry, Mr Farleigh.---Yes.

When Mr Stavis applied for this position it wasn't within the group that you worked in, was it within development assessment?---That's correct, yes.

30 And do you know which position he applied for?---I believe it was the team leader of development assessment operations.

Which has got Andrew Hargreaves' name.---Yes.

All right. Thank you. Mr Moses.

40 MR MOSES: Yes, thank you, Commissioner. Commissioner, could volume 9, page 208 be shown to the witness. It is the draft JBA report in respect of Olsson Street, Earlwood. Homer Street, Earlwood. Thank you. So Counsel Assisting asked you a question in relation to the appropriateness or otherwise of a draft of the Olsson report being made available to the proponent of the development application. Do you recall Counsel Assisting asking you a question about that?---Yes.

And you answered in response that there was a concern about that because the proponent shouldn't be provided with that report because it hadn't been made publicly available. Do you recall giving an answer to that effect? ---Yes.

If you go to page 208 of the draft JBA report, there seems to be a handwritten notation there from Mr Stavis at section 3.1 to say, “Look at Olsson’s report and comment on key points,” et cetera. Do you see that?  
---Yes.

Do you know how it came to be that the draft Olsson report was provided to the JBA consultancy group?---Oh, I don't know specifically, no.

10 And in your experience working for this council and other councils, is it your understanding that you weren’t aware that draft reports that council had asked be provided were given to the proponent of a development application?---Certainly not.

And the reason for that is because that is still a working document which has been provided to council for its views?---Yes, it’s not our role to provide ammunition for an applicant to try to refute or otherwise an independent report that council’s commissioned.

20 Before that independent report is actually finalised?---Yes.

And this was something that you learnt later about when you looked at this document, correct?---Yes.

And if I can just ask you to look then at – Commissioner, if the witness could be then shown volume 10 at page 59, which is the final JBA report. That then appears to deal with the issue raised by Mr Stavis by reference to the draft Olsson report at page 59, section 3.1, that is, a comparison shows that they then elaborate upon those issues of concern that were raised in the  
30 draft Olsson report, concerning visual impact. So, if you look to section 3.1 and there are seven views that are referred to there. They are matters that appear to have been placed into this report post the notation by Mr Stavis.  
---Yes.

And the concern that you had about this was that, again if I can reinforce what I understand to be your evidence, that this is not appropriate or good practice because it then provides the proponents of a development application in effect with inside information – these are my words, not yours, as to whether you adopt them or not – inside information concerning  
40 the thinking of the independent expert retained by the council?---Yes, I wouldn’t disagree with that.

Thank you. Can I then move to ask you some questions about a document that Counsel Assisting showed you, which is at volume 9 of the brief at page 177. This is a file note that my learned friend took you to in relation to a discussion with Ms Wilkins that Mr Ho had, Lisa Ho.---Yes.

It's clear from this that council had received a report from Olsson & Associates that did not support the height limit that was being proposed on the site, correct?---Yes.

Are you aware as to whether the Department of Planning was subsequently informed that JBA consulting for the proponents had provided a report that disagreed with the conclusions of the report by Olsson and associates?

10 ---They would have been provided a copy of the JBA report as part of the package of exhibition material when the planning proposal was placed on public exhibition.

And did anybody from the department contact the council, to your knowledge, to say, "Well, what's going on here? Yom previously told us that the expert retained by council could not support the height limit. Now you've got a report that seems to support the height limit. Is that your report or the report of the proponent?" Did anybody question you from the department about that?---I can't recall anything at the time, no.

20 No. Okay.---There was, I'm not sure whether it was specifically in relation to this planning proposal but there had been comments from the department in situations where they effectively used to reserve the right to make a submission to the planning proposal if they saw something that they didn't agree with during that exhibition process and that would in effect become their own unresolved agency objection and then they would be more likely to take control over the finalisation of it.

Because they could revoke the delegation and take it over themselves?  
---Yes.

30 And the problem here was that to your knowledge they weren't made aware that the JBA report was actually not council's independent report but the proponent's report?---I don't specifically recall either way on that one but that's likely.

Thank you. And is this your position, you were of the view that if the JBA report was to be disclosed as part of the public exhibition then the Olsson report should have also been disclosed so that the public could make a fair assessment of what was being proposed?---That would have been preferable from my point of view, yes.

40 Because in effect what occurred here was the suppression of the Olsson report?---Yes.

Now, can I just ask you something more generally if I can in relation to the Department of Planning. There seems to have been a number of alarm bells being raised with the Department of Planning by Lisa Ho about the Homer Street property and the Department of Planning doesn't appear to have done anything other than noted what had been going on. Is there a concern with

council officials being able to disclose matters to the Department of Planning for fear of breaching confidentiality arrangements that they have with their employer being the local council?---Sorry, can you put that again, please.

10 Because what we're trying to look at here in terms of the future and what the ICAC is looking at is down the track what recommendations can be made to improve things to ensure that in effect these types of activities are minimised or don't occur in the future. What I want to understand from you is in relation to issues being raised with the Department of Planning, is there a concern in respect of current arrangements that you cannot as a council employee tell the Department of Planning all matters of concern because there may be issues of confidentiality with your employer?---Yes, there would part of that, yes.

20 And for instance in relation to the issue involving as it were the taking away of two options for instance that were to go before council, if that was a matter of concern that you needed to raise with the Department of Planning to seek their advice that may have been a difficulty because that was an internal council deliberation?---Yes, it could have been, yes.

Now, Exhibit 144 which is the organisation structure, I think the handwriting you can assume is the handwriting of Mr Stavis I think, organisation structure when he started. He in fact started in March, 2015 or thereabouts?---Thereabouts, yes.

Was this the structure that applied back in March, 2015?---As far as I can tell, yes.

30 But with different personnel?---In some positions, yes.

For instance, Mr Noble didn't commence until May, 2016 or thereabouts? ---Yes, that's right.

Thank you. I have no further questions of the witness. Thank you, Commissioner.

THE COMMISSIONER: Thanks, Mr Moses. Ms Mitchelmore?

40 MS MITCHELMORE: The only thing I wanted to deal with was a correction that I understand, Mr Farleigh, you wanted to make to your August statement that I didn't raise with you yesterday and I apologise. Can I take you to paragraph 20 of your August statement and you'll see that it says, "On 15 January, 2017, council sent a planning proposal to the Department of Planning." Should that be 15 January, 2015?---I think it was 13 January as well.

13 January, 2015?---'15.

All right. Thank you, yes, we'll make that correction. Commissioner, I have no further questions. Could Mr Farleigh be excused?

THE COMMISSIONER: Yes. Thank you for coming to give evidence. You're excused.---Thank you.

**THE WITNESS EXCUSED**

**[11.00am]**

10

THE COMMISSIONER: Mr Hargreaves now?

MS MITCHELMORE: Yes, Mr Hargreaves. Yes.

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

MR HARGREAVES: Oath is fine, thank you.

MR MOSES: Yes, Commissioner. The terms of section 38 have been explained to the witness and he would like the benefit of such a direction.

THE COMMISSIONER: Thank, Mr Moses. Section 38 has been explained to you?---It has.

10 I emphasise to every witness, there is a very important exception to the protection that a section 38 order gives you. That is, if you were to give false or misleading evidence to this public inquiry, you may be prosecuted for an offence under the ICAC Act. It's similar to a form of perjury. It's a very serious offence. It brings with it a maximum penalty of a term of imprisonment.

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  
20 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.

**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  
30 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: Thanks, Ms Mitchelmore.

40 MS MITCHELMORE: Yes, thank you. Your name is Andrew Carson Hargreaves, is that right?---It is.

And you are presently in the position of team leader, development assessment operations with Canterbury-Bankstown Council?---It's now team leader, development services bit it's the same role, yes.

And you were previously employed by Canterbury City Council, is that right?---I was.

Before the amalgamation on 12 May, 2016?---Correct.

And you commenced with the council on 3 September, 2003, is that right?  
---I did.

And you've held various roles in the council between that time and the amalgamation, is that right?---I have.

10 You made a statement to investigators in relation to this matter on 2 March, 2017. Do you recall that?---Yes.

And you also participated, Mr Hargreaves, in a record of interview on 22 May, 2016, do you – I'm sorry, 22 May, 2018, I'm sorry. Is that right?  
---Yes.

Can I provide you with a folder that contains both your statement and the record of interview?---Thank you.

20 And please refer to it if you need to in the course of your evidence. I wanted to ask you, Mr Hargreaves, about a number of sites in what was the local government area of Canterbury City Council and development applications made in the period 2014 to 2016. In that period, what position or positions did you hold at the council?---I was team leader of the development assessment operations for that period of time. I was also, for part of that time, acting team leader (planning) in August, 2016, '15. The team leader of planning resigned and for part of that time, I was acting in the role.

30 And so your manager, the person you reported to was Mr George Gouvatsos, is that right?---Correct.

And he in turn reported to the director of city planning.---He did.

And in 2014, the position of director was held by Mr Occhiuzzi, is that right?---Occhiuzzi, yes.

Mr Occhiuzzi, yes. And then from 2015, about February or March, it was held by Mr Spiro Stavis, is that correct?---Correct.

40 Mr Hargreaves, I wanted to start by asking you some questions about a site at 51 Penshurst Road, Roselands, and can I take you to volume 7 of Exhibit 52, page 1. Recall, Mr Hargreaves, that there was – you can see the date stamp, 13 February, 2015. A development application that was submitted for 12 townhouses, looking at page 2. Demolition of the existing construction and 12 townhouses with one level of basement car parking. Do you see that?---Yes.

Do you recall that development application being made?---No.

Did you have any involvement in its assessment at first when it was - - -?  
---No direct involvement. The planning team leader at the time was still employed by council. His team were assessing the application. There was a referral to my development engineer for comments on stormwater disposal and on landscaping advice, but it wasn't being assessed by the operation team other than for technical input.

10 And as a development application, I'm just trying to understand why it wasn't being assessed by the assessments team.---It was. It wasn't being assessed by the operational team.

I see. All right, yes, thank you.

20 THE COMMISSIONER: Sorry, the operational team is - - -?---It, it, the organisational structure, which you've had a look at, the operational team contained myself, admin officers and technical officers, so it provided support in either an administrative or a technical function to those assessing development applications.

And I'm looking in the box with engineers, landscape architects - - -?  
---Correct, and the heritage adviser.

Heritage adviser.

30 MS MITCHELMORE: And the team leader at planning, which is the position that you said you acted in for a time during this period, underneath, that is the, perhaps, if I could say the substantive assessment of a development application, for example, as it gets planning controls.---  
Correct.

And decisions are made as to whether to recommend the approval of those, taking into account considerations such as those in section 79C of the EP and A Act, is that right?---That's correct, yes.

40 So if I can take you to page 15 of this volume you'll see that there's an email at the bottom of - there's two emails. The bottom email is from a [REDACTED] to Mr Stavis, and you'll see that it's signed Councillor Michael Hawatt. Do you see that?---Yes.

And Mr Hawatt was a councillor during this period, up to the point of amalgamation.---He was.

And you'll see that he's raising a query with Mr Stavis about the property - and you can see the subject in the top email - of 51 Peshurst Road, Roselands. Do you see that?---Yes.

And it was forwarded by Mr Stavis to Mr Gouvatsos with a question, “Story, please?” And over the page you'll see, page 16, Mr Gouvatsos sent on that inquiry to you. And Jade, is that Ms Jade Sheaperd?---It is.

And Paul - - -?---Richardson.

Paul Richardson, who was an engineer at the time, is that right?---It was.

10 And the question is, “Can you please provide a response?” So it'd be a response to the inquiry from Councillor Hawatt, is that right?---Yes.

And it wasn't unusual in this period, 2014-16 to receive queries from councillors in relation to particular DAs?---No.

And those queries were fed through to the relevant officers by the director and then the manager, through to the team leader and then down the line, is that right?---Correct. That's how.

20 And the response was prepared and then fed back up the line, is that right? ---Correct.

Can I take you to page 21. You will see this is a letter from Gus Fares who was the architect for the applicant. It's dated 22 May, 2015. It's addressed to Ms Sheaperd so is it the case Ms Sheaperd was doing the assessment of the DA. Is that right?---Yes.

She was in the planning team at the time?---Yes.

30 And you will see that under the heading Storm Water that they had storm water engineers amend plans in relation to that and indicated they'd accept a deferred commencement approval subject to acquisition of a water drainage easement from the downstream properties. Do you see that?---I do.

Do you recall that as it was approved by council there was a deferred commencement consent?---Yes.

And the purpose of that was to enable the applicant to obtain easements from downstream properties. Is that right?---Yes.

40 To satisfy the condition that this property was to be drained, a simple drainage - - -?---Via gravity, yes.

Via gravity. Yes, that's right. I'm sorry. I'd forgotten the term. Thank you. Yes. So all of that had to happen before the development consent would in fact commence and allow the applicant to construct the development?---Correct.

And on that page the architect is indicating that they would accept a deferred commencement on that basis?---Yes.

Can I take you just to page 43. You will see, just this is the resolution that was made of the council at the City Development Committee on 11 June, 2015. Do you see that there in front of you?---I do.

10 It's just being brought up on the screen. And condition A was the stipulation that the consent wasn't to operate until the applicant satisfied the council within 12 months that satisfactory written documentation be provided to indicate the relevant easements had been acquired.---That's correct.

In relation to that, just looking at that same page you will see above that there's a declaration of interest from Councillor Hawatt. Do you see that? ---I do.

20 A less than significant nonpecuniary interest. Was that something you were aware of at or around the time that this application was being considered? ---No.

Was it something you were aware of at or around the time that the subsequent modification application as being considered?---I don't recall that I knew. I suspect I would have reviewed it when I considered the report but no, I don't think I actively knew that Councillor Hawatt had declared an interest.

30 So when you say you would have reviewed it, do you mean the council resolution?---The resolution, yes.

All right. Are planning staff generally informed if a councillor has declared an interest in relation to a development application?---No.

In your experience does the declaration on the part of a councillor of an interest if council officers are aware of it have any impact on their assessment?---No.

40 Do you recall that there was a subsequent approach from the owner of this site in relation to experiencing difficulties in terms of acquiring an easement?---I became subsequently aware of it when they lodged an application to modify that consent to allow for a, what's referred to as a pump-out system but not between the application having been determined and an application then being lodged to seek modification.

All right. Just pardon me a moment. Can I take you, Mr Hargreaves, to page 81 and that is the, you will see that's the development, sorry, the application to modify development consent which was lodged according to the date stamp of council on 28 August, 2015. Do you see that?---It is, yes.

Can I just take you back in time, so that's 28 August, to page 67. This is an email, sorry, a memo or an application referral dated 30 July, 2015 from you to Mr Richardson which refers to the DA and the deferral having required submission of suitable storm water plans and that you had emailed plans to Mr Richardson but you didn't have them in a hard copy. Do you see that?  
---Yes.

10 And you asked him to review the amended plans and advise on their suitability by completing this task in Pathway. Was Pathway some internal council processing system?---Processing, yes, yes.

“And if plans are satisfactory, please provide any new conditions that should apply to the consent but if they're unsatisfactory, inform the applicant as to the outstanding matters.” That's dated 30 July, which appears to pre-date - - -?---The lodgement of the application for modification.

20 - - - the lodgement of the application. Does that assist with your recollection as to whether you might have had some involvement with the site in advance?---I'm afraid it doesn't.

Right.---I'm sorry.

No, that's okay.---I'm happy to rely on this evidence.

Yes, all right.---But I'm afraid it doesn't, I'm sorry.

30 Okay. All right. Can I take you to page 71, or perhaps 72. You'll see there's a query from Councillor Hawatt at the bottom again regarding this site and the stormwater pump-out connection, asking Mr Stavis if he could see how to help. And you'll see over the page the date right at the bottom of page 71, a response from Mr Stavis is 4 August, 2015.---Ah hmm.

40 And his response over the page on 72 was giving advice about the fact that stormwater plans had been received and had been referred to the engineer to review and advise as to whether they addressed the terms of the consent, the deferred commencement consent, and had been asked to prioritise, the engineer had been asked to prioritise the assessment. Do you see that?  
---Yes.

And over the page on 71, back to 71 you'll see there's an email from Mr Richardson to Mr Stavis just giving an answer in short that the submitted plans didn't satisfy the deferred commencement condition.---Yes.

And Mr Stavis had replied to Mr Richardson to prepare a response for him to send to councillor, which is presumably Councillor Hawatt.---Hawatt.

And Mr Gouvatsos has sent it on to you, that correspondence on to you on 5 August shortly before 11.00am. Do you see that?---P.M., yes.

I'm sorry, P.M. Yes, I apologise. Do you have any recollection of seeing those emails around this time?---I'm afraid I don't, I'm sorry.

Noting then the – actually can I then take you to page 75. You'll see this is a draft letter, and over the page you'll see it's for your signature. Do you see that?---Ah hmm.

10

And it's dated 6 August. This is a draft letter prepared for your signature to Mr El Badar who was the owner of the site. Do you recall that, that he was the owner?---Well, I have seen evidence that he is the owner.

All right.---I don't recall him being the owner, but I will rely on this document.

20

And do you recall drafting this letter or can you recall if it was drafted for you?---No, I don't. I would have written it or drafted it and then sought a review from at the time the director.

And do you recognise the handwritten amendments?---I do.

Whose handwriting is that?---Spiro Stavis'.

And is that the case on the writing on page 75 and then 76?---It is.

30

Okay. Page 79, if I can show you that, that's the letter that was sent.---Ah hmm.

Is that your signature on page 80?---Those are my initials, yes.

So is this the file copy, as it were?---Yes.

So you initialled that and you signed the one that goes out?---The original, yes.

40

And you'll see that one of the issues that you raised in your draft was that no easement had been obtained.---Ah hmm.

Looking at the letter, there's reference to a letter of 28 July advising that Mr El Badar has been unable to obtain an easement from a downstream property, and that there was correspondence between him and the owner about an easement but no such correspondence was provided with the letter. Do you see that?---Sure.

And that given no evidence had been provided which showed bona fide attempts to obtain an easement, the submitted revision, the pumped system

plans, couldn't be considered as they didn't satisfy the deferred commencement.---Correct.

So it was the case that the system, the drainage system that was being proposed was entirely different to the system that had been the subject of the deferred development consent, is that right?---Yes.

So it involved a pump-out system as opposed to drainage by gravity?---Yes.

10 Did you understand that, as amended, the letter indicated that if evidence was provided that showed bona fide attempts had been made to obtain an easement, then the submitted revised plans might be considered?---Yes.

And that would ordinarily occur by way of a section 96 application?---Yes.

And I've already taken you to the application, which is at page 81. And you'll see the nature of the modification is at the bottom of the page for a pump-out system for the stormwater. Do you see that?---(No Audible Reply)

20

And is it the case that you held a delegation from the council to approve that modification application?---I did.

And the assessment of the application was allocated to Ms Felicity Eberhart. Do you recall that?---I became aware of it, yes.

So she was in the planning team?---She was.

30 That's right. But because this involved engineering issues, your team had some involvement in it, is that right?---Yes.

Specifically the engineers.---Yes.

And that was Mr Richardson?---Yes.

And is it Mr Millad Rouhana?---Subsequently, yes.

40 Subsequently, yes. And can you recall what your level of involvement was in relation to the assessment of the modification?---Minimal. The application was lodged. It was allocated by my predecessor as planning team leader to Felicity to assess. Felicity referred it to my team, being Paul Richardson, for comment. I understand there was then further discussion with Millad Rouhana. Felicity finalised her assessment. By that stage I was acting as the planning team leader. Felicity referred her report to me to determine.

So if I can just take you, then, to page 219 of volume 7. You'll see this is the delegated report in relation to the – if you look over the page, they've

identified on 220 the property and the nature of the modification. And going back to page 219, is it the case that you signed that as delegate?  
---Yes.

And in signing it you agreed with the conclusion expressed on page 226 of the report, which was that the modification was substantially the same development that was originally considered and approved and had been reviewed by the development engineer, and the alternative method of stormwater disposal was considered acceptable, having regard to section  
10 79C and 96 of the EP and A act. Is that right?---Yes.

So it was recommended and you accepted Ms Eberhart's recommendation.  
---I did.

Do you recall at all that in December 2015, before Ms Eberhart submitted her report to you as delegate, that the determination of the modification application became urgent?---I understand there had been inquiries made for it to be dealt with as to why it was taking so long. I don't know that it was necessarily urgent but there had been inquiries as to "Why is this taking as  
20 long as it is?"

And by whom had those inquiries been made? Can you recall?---Well, by Spiro as the director on behalf of Councillor Hawatt.

I wanted now, Mr Hargreaves, to ask you some questions about a different property, which is 23 Willeroo Street, Lakemba, and volume 7 can be returned and if Mr Hargreaves can be given volume 6 of Exhibit 52. And just looking at page 1, Mr Hargreaves. You'll see there's a DA on the left on  
30 16 March, 2015 for demolition. Looking at page 2, "Demolition of existing structures and construction of a," looks like "five unit multi-dwelling housing development over a basement level".---Yes.

Now, looking at your statement at paragraph 21, you indicated that your involvement in relation to the application commenced when the council received a class one appeal in the Land and Environment Court?---Yes.

For the deemed refusal of the development application. Is that right?---Yes.

And if I can just take you to page 23, you'll see that that is the letter from  
40 Conomos Legal to the general manager, enclosing a class 1 appeal in the proceedings. Do you see that?---Yes.

So, that's August, 2015. Is it the case that this the point or time at which you were acting team leader for planning, is that right?---It was around that time.

Around this time?---Yes.

And your involvement in relation to this class 1, was that by reason of your holding the position at that time, as team leader of planning?---There were two reasons. Principally what you have just said and a general absence of suitably experienced staff.

All right. And the DA or the application was deemed refused because 40 days had passed between its lodgement and the point in time at which the class 1 was lodged?---Correct.

10 Now, if I can take you to page 27. Again, you initialled this as a file copy, al letter to Pikes and Verekers Lawyers on 1 September, 2015, instructing them to representative resent the council in relation to this appeal. Is that right?---It is.

And were they lawyers that were retained by the council at for the purposes of proceedings such as this?---They were.

20 And you say in the third paragraph, “We also request that you seek to engage a planning consultant to prepare the statement of facts and contentions and defend the appeal on our behalf.” Do you see that?---I do.

Why was that request made for a planning consultant?---Again, I had very few staff at the time and I don't think I had any full-time senior planners with court experience. So, I would have asked for an external consultant to prepare, to act for us with a, a junior planner observing.

30 All right. Can I take you threat, promise page 28. You will see that there is an email from Mr Peter Jackson. Looking at this signature panel, he was a partner at Pikes and Verekers. Do you see that?---I do.

And was Mr Jackson someone that you dealt with in relation to this class 1 appeal?---He is.

Are you able to indicate who else you dealt with from Pikes and Verekers in relation to this appeal?---Principally Peter Jackson. Alistair Knox may have been involved at some point but principally Peter Jackson.

Principally Mr Jackson?---Yes.

40 And you'll see that he's advising of an appearance before the registrar on that day, 15 September, with the matter being listed for a section 34 conciliation conference. Do you see that?---I do.

And that was listed for 4 November, 2015 and there's reference also in the fourth paragraph to the fact that a statement of facts and contentions had been filed on behalf of the council, it had been sealed. Do you see that?---I do.

And it was attached for your records. That's the document at page 29, is that right?---It is.

And that raised a number of issues in opposition to the approval of the application, including if you look for example at page 32. This is under the heading, "Contentions." The first of the issues was, "Unacceptable bulk." Do you see that?---I do.

10 That the proposed building footprints and building setbacks were unacceptable, resulting in undesirable impacts on streetscape and neighbouring properties. Do you see that?---I do.

And at page 34, point 3 under the heading, "Private open space," the council's contention was that the development was unacceptable having regard to the adequacy of private open space provided to individual dwellings. Do you see that?---I see that.

20 And is it the case that you reviewed the draft statement of facts and contentions that Mr McNamara prepared before it was filed?---I don't recall reviewing it. I did not sign the statement, Mr McNamara did. I may have but I'm afraid I do not recall specifically reviewing it.

All right.---It is our general practice that I would or that the instructing officer would but I do not recall doing it here.

You don't have a specific recollection?---No.

30 All right. But it would be consistent with general practice that you would have done so before it was filed?---Yes.

Yes. Commissioner, is that a convenient time?

THE COMMISSIONER: Yes. All right, we'll break for morning tea and resume at ten to 12.00.

#### **SHORT ADJOURNMENT**

**[11.31am]**

40 MS MITCHELMORE: Yes. Thank you, Commissioner. Mr Hargreaves, can I take you to page 52 of volume 6 of Exhibit 52 which you should still have there.---Ah hmm.

You will see that's a letter dated 4 November, 2015 from Mr Jackson, looking at page 53, to the general manager on 4 November, 2015 and this is in effect a reporting letter on the conciliation conference that occurred that day.---It is.

And it's the case that you attended the section 34 conference that day?---I did.

And according to the letter, looking at the bottom paragraph on page 52, some amended plans were presented in the course of the conciliation conference. Do you recall that?---Not specifically but we did receive amended plans, yes.

10 Yes. And you will see that Mr Jackson expressed the view that they made alterations to the car park and incorporated winter gardens but we informed the applicant's representatives that the without prejudice amended drawings go little or no way to resolving council's concerns.---I see that.

And over the page is it the case that in the course of the conference you and Mr McNamara sought to identify council's concerns with the applicant?  
---Mr McNamara did, yes.

20 All right. And you can't recall contributing to that discussion in the course of the conference?---I may well have. I was the instructing officer.

Yes.---Mr McNamara would have voiced our contentions to the conference. I expect that I would have contributed in some form.

But is it the case that he was the primary spectre - - -?---Yes.

- - - as it were for the council - - -?---Correct.

30 - - - given his role as the planning consultant for the council?---He was our planning expert. He just happened to be a consultant, yes.

And you will see that directions were made by the court that further amended plans were to be prepared and supplied to the council. Is that right?---It was.

And council was to respond and the matter was then to just be adjourned to 27 November and it's the case, Mr Hargreaves, that a number of sets of drawings were subsequently provided to the council?---That's correct.

40 By the proponent?---Yes.

Can I take you to page 54. You will see this is an email from Mr Tom Bush who was a lawyer at Pikes & Verekers forwarding to you and it looks like, looking at the to line of the email the commencement of an address starting DMP. Do you see that?---Yes.

Was that Mr McNamara?---It was.

The further amended plans, so without prejudice amended plans in accordance with the directions of the court made on 4 November.---Yes.

And do you recall Mr McNamara reviewing these plans?---Well, he was sent the plans to review so yes, he did.

And do you recall reviewing the plans?---Not in great detail, no.

10 Is it the case that a response was prepared to the amended plans on behalf of the council?---I imagine that would be the case, yes.

Can I take you to page 67. You will see there's a document titled Without Prejudice Response to Amended Plans. Do you see that?---I do.

And if I could take you to page 68, and just ignoring the red comments for the moment, do you recall that the comments of council on the amended plans was put in blue on this document, do you have a recollection of that? ---Well, no, but I have taken that to be Mr McNamara's comments.

20 Do you recall reviewing Mr McNamara's comments before this was submitted to the or provided to the applicant?---No, I don't.

Is it likely that you would have?---I suspect so, yes.

Now, on 7 November further plans were provided. Can I take you to page 65. You'll see that this is an email again from Mr Bush to yourself and it appears again, Mr McNamara on 7 December attaching further amended plans.---Ah hmm.

30 Do you see that?---Yes.

And you'll see that it forwards an email from Conomos Legal of the same date, attaching the further amended plans addressing council's comments. Do you see that?---Yes.

And if you look at the document that I have just taken you to at 67 you'll see that there are comments in red. Are they the comments of the applicant in response to council's comments?---Well, probably not the applicant but certainly his designer.

40 All right. And page 88 of this volume, you'll see there's an email from yourself to Mr McNamara.---Yes.

In which 7 December, sent at just after midday, which indicated that you'd had a quick look at the plans and you'd offered a number of thoughts, in particular regarding no amended landscape or stormwater plans and issue, you thought the waste presentation appeared okay although you needed to refer those comments, sorry, refer the changes on to Waste Services?---Yes.

And there was an issue with the deep soil planting strip which didn't require, didn't accord with the requirements. Is that right?---Yes.

And you've indicated separately to Tom, who was the Pikes & Verekers lawyer, that you thought he should let the court know that the plans came in late, but perhaps more importantly they were incomplete because they didn't deal with the engineering and landscape plans. Is that right?---Yes.

10 Just pardon me a moment. Mr Hargreaves, can I show you a couple of additional emails. You'll see that the first of them, it's got page 16 down the bottom?---Ah hmm.

At the bottom of the page you'll see there's an email from Mr McNamara and over the page, I'll take you to page 17, you'll see that there's your email of 7 December at the bottom that I just took you to.---I see that.

20 And starting at the bottom of page 16, using the pagination in the document, there is a response from Mr McNamara indicating he would undertake a comprehensive review but he believed they were shifting the deck chairs on the Titanic and not making any substantive modifications to the proposal. Do you see that?---I do.

And in the last paragraph on page 17 of this email he indicated his recommendation would be to provide no further guidance to the applicant, to respond simply that their amended plans were unsatisfactory and to proceed to defended appeal. Do you see that?---I do.

30 And in your email back to him of 10 December at 10.02am, you've stated that you tended to agree. Do you see that?---I do.

And that they'd made little by way of amendments and you asked him to provide his comments, "But if we can't agree we advise the court as such and proceed to hearing." So as at 10 December is it the case your view was, subject to detailed comments from Mr McNamara, it may be the case that they'd been given enough changes and the matter should proceed to a defended hearing. Is that right?---Correct.

40 And you'll see the last document, page 19, looking at the pagination in the bottom right-hand corner. Do you see that?---I do.

You'll see there's an email from a Ms Lopes on behalf of Mr Jackson? ---Yes.

Sent to you and to Mr McNamara, thanking you for your email transition, sorry, your email transmission and saying that he agreed wholeheartedly that council ought not assist the applicant in designing a proposal that might get over the line. "It is solely a matter for the applicant." And he agreed

upon receipt of Mr McNamara's detailed commentary he'd let the applicant's solicitor know council's position, and that when the matter was back on in court on 23 December, unless there was further substantial amendable change, that the 34 process should be terminated and the matter proceed for a defended hearing. Can I ask you about the sentence, "I agree wholeheartedly that council ought not assist the applicant in designing a proposal that might get over the line. It is solely a matter for the applicant." Is that a view with which you agreed?---Yes.

- 10 Is that a view that you held with respect of class 1 matters or to the assessment of development applications more generally?---Generally. Well, both but, yes, generally.

Generally. And in your experience was that view shared by other planners at councils in which you worked?---I would say so, yes.

It was a generally held view?---Yes.

Commissioner, can I tender that bundle of email correspondence?

20

THE COMMISSIONER: The bundle of email correspondence dated, 7 December to 10 December, 2015 will be Exhibit 145.

**#EXH-145 – EMAIL CHAIN BETWEEN DANIEL MCNAMARA, ANDREW HARGREAVES, PETER JACKSON, MARIA LOPES & TOM BUSH DATED 7 DECEMBER 2015 TO 10 DECEMBER 2015**

- 30 MS MITCHELMORE: Now, it's the case, if I take you to page 90, Mr Hargreaves, that the council ultimately responded to the applicant's solicitors in relation to the amended plans. Do you see that?---Yes.

I'm sorry, page 90 of volume 6. And you'll see that in the second paragraph he put the position that the amendments didn't go far enough to address the council's concerns, and unless there was further significant change there may be little utility in continuing the section 34 conciliation process. Do you see that?---I do.

- 40 And that was consistent with the view that you had expressed in your email of 10 December, that subject to Mr McNamara's comments that might be the likely course that the council would adopt?---Correct.

Is it the case, Mr Hargreaves that, following the sending of this correspondence and the matter being before the court on 23 December, that early in the new year you and Mr Stavis met with the owner of this site? ---We did.

And if I can take you to page 101, you prepared a file note of that meeting, is that right?---I have.

And it indicated that the meeting occurred on 5 January, 2016, is that right?  
---Yes.

And you met with Khaled from Hamec PL and the owners. So, was Khaled the designer?---The designer.

10 For the owners. To discuss amending the plans. And is it the case that in the file note you set out what you considered to be the key aspects of the discussions that day?---Yes.

Both in terms of what you and Mr Stavis advised on behalf of the council?  
---Yes.

And the response made on behalf of the applicant?---Yes.

20 And you indicate at the end that while no agreement was met, the amendments suggested at this WP, without prejudice meeting, approach a more appropriate design response?---Yes.

So, it was the case that following this meeting further plans would be prepared, is that right?---Correct.

And if they were consistent with the discussions on this day they might, in your words, approach a more appropriate design response for the site?  
---Correct.

30 Can I take you to page 104. It's the case, Mr Hargreaves, that further amended plans were provided on or about 12 January, is that right?---Yes.

According to the email. You don't have a clear recollection of that occurring?---No, I'm afraid I don't. No.

But is it the case that you recall reviewing the plans against your discussions on 5 January?---Yes.

40 And is it the case that Mr McNamara also reviewed the plans against - - -?  
---Yes.

Was that against your file note of the meeting of 5 January?---I don't recall giving Mr McNamara my file note.

Was he at the conference on 5 January?---No, no.

All right.---It was a without prejudice meeting.

Yes.---It was only Spiro Stavis and myself from council.

All right. If I can just take you to page 119. It's possible that you provided your file note to Mr McNamara?---I may.

Yes. If I can just take you to page 119, you'll see there's an email, second half of the page, from Mr McNamara to Peter, which is Peter Jackson.  
---I would take that as being correct.

10 Yes. And you'll see that he in his first sentence refers to having reviewed the minutes of council's meeting with the applicant of 5 January and plans received from the office of Pikes & Verekers on the 12<sup>th</sup> and provided feedback on the acceptability of the amended architectural drawings. Do you see that?---I do.

And he indicated there were still some concerns that were remaining - - -?  
---Yes.

20 - - - which he indicated in the bullet points at the bottom of page 119, over to page 120.---Ah hmm.

And he recommended at the conclusion of that email on page 120, "That we," being the council, "Proceed to defended hearing." Do you see that?  
---Yes.

And your response to that is at the top of the page on page 119.---Yes.

30 And is it the case that you agreed with the recommendation of Mr McNamara that you proceed to a defended hearing?---It is.

And was that for the reasons that you set out in the second paragraph of the email?---Yes.

Is it the case, Mr Hargreaves, that insofar as you expressed your agreement that we proceed to a hearing, that you were authorised to give instructions to Pikes & Verekers about that matter - - -?---Yes.

40 - - - proceeding to hearing? And the termination of the conciliation conference?---Yes.

Did you need to confirm those instructions with any more senior officers before you took that action?---No.

And do you recall that your instructions about proceeding to a defended hearing and terminating the conference were communicated to the solicitors for the applicant?---Sorry, can you rephrase that, please?

Perhaps I'll just show you a document, Mr Hargreaves. Can I show you page 122. You'll see that that's a response from, sorry, an email from Mr Jackson to the solicitors for the applicant?---Yes.

And you'll see at the bottom of the page that the last comment of Mr Jackson was that, "Council is of the opinion that the without prejudice amended drawings are unacceptable and accordingly we will be seeking to terminate the section 34 process and have the matter listed for a defended hearing." Do you see that?---Yes.

10

And that was consistent with your email of - - -?---12<sup>th</sup>, yes.

Of 12 January. Is that right?---Yes.

Yes. So that accorded with the instructions that you've given to Mr Jackson.---Yes.

Now, can I take you to page 125. You'll see there's an email at the top of the page from Mr Stavis to Mr Gouvatsos copied to you of 20 January, 2016. So this is the day after Mr Jackson sent the email to the applicant's solicitors.---Yes.

20

And is it the case that Mr Stavis was on leave at this time?---I understand he was. I don't know the dates but I understand in January he was on leave.

Right. And was Mr Gouvatsos acting in his position?---I'm not sure.

Acting in the position of director? Don't know?---I'm not sure.

All right. And you can see that there's a query from Mr Stavis as to, "What's the story?"---Ah hmm.

30

"Andrew," that's you - - -?---Ah hmm.

- - - "And I met with them on a without prejudice basis and we had agreed to a position and to give them time to submit amended plans. Please find out what's going on and fix the issue."---Yes.

Do you recall having any direct discussions with Mr Stavis following his sending of that email on 20 January, around, on that day or shortly thereafter?---I suspect I did. I don't recall. I had spoken to him previously and I spoke to him subsequently, but I don't remember speaking to him directly following this email.

40

All right. When you say you'd spoken to him previously, was he aware of the instructions you've given to Pikes & Verekers to terminate the conference?---Possibly not.

And that may have prompted his email - - -?---I suspect so.

- - - at the top of page 125. Is that possible?---I suspect that would be the case.

And can I take you to page 131. You will see this is on the same day, a little bit later in the day. Looking at about point 4 on the page there's an email from Mr Stavis sent on 20 January at 5.14pm. Do you see that?---Yes.

10 It was to George, see below, and you will see what's below is the email from Mr Jackson to the applicant's lawyers. Do you see that?---Yes.

Which has been forwarded to Mr Stavis from Mr El Badar. Do you see that?---Yes.

And Mr Stavis is asking whether they'd submitted amended drawings after the meeting. Is that the meeting of 5 January?---Of 5 January.

20 And if so he wanted to personally review before terminating the section 34 and instruct the solicitors accordingly. Do you see that?---I do.

And is the case that instructions from Mr Stavis would override instructions you had given to the solicitors in relation to this matter?---Yes.

30 If you can look at the email at the top of the page, Mr Hargreaves, you will see that there is an email from Mr Gouvatsos to Mr Stavis copied to you of 21 January which says, "Please see Andrew's response about this matter." And there are then three paragraphs. Is it the case that you provided material or spoke with Mr Gouvatsos in relation to what had occurred so that he could communicate it to Mr Stavis?---I suspect so, yes.

You don't have a clear recollection of doing so?---No, I don't but that would be the normal course of events.

And at the bottom of the first of those paragraphs it was identified that given this was the third set of plans they'd lodged it was agreed that we the council could not enter into a 34 agreement and to proceed to a hearing. Do you see that? It's at the end of the first full paragraph of text.---Yes.

40 And was Mr Gouvatsos, did he have a lot of involvement in these appeal proceedings or the section 34 conference?---No. Habitually what would happen would be if an appeal was lodged I would liaise with Mr Gouvatsos regarding a solicitor to act for us whether or not we needed external assistance and who the internal officer would be to handle it. George Gouvatsos may not become involved until at the tail end unless we needed his involvement.

So you would run the matter as you saw fit?---Yes.

Involvement from him as required from time to time?---Yes.

And can I take you to page 133. You will see that Mr Stavis has responded to Mr Gouvatsos's email the following day. He's responded on 22 January. Do you see that?---Yes.

10 Email at the top of the page expressing a view about whether Mr McNamara should have been giving advice on this issue and saying "I still want to review before the 34 is terminated". That's a reference to the conciliation conference.---It is.

And again reiterating to please instruct the lawyers.---Yes.

And at 1.36 you then sent an email to Mr Stavis on 22 January. Can I just show you that email at the top of the page. It's dated 22 January at 2.23. I'm on page 136. And you are then outlining in perhaps some more detail are you the course of events since the meeting with Mr Stavis. Is that right?---Yes.

20

And you indicate your view in the seconde-last paragraph that having not engaged with council as part of the DA process the applicant has now following their appeal made three sets of without prejudice plans which still do not satisfy our contentions. A hearing would seem the most timely way to resolve this matter. Do you see that?---I do.

And that was the view that you held at that time?---I do.

30 But you asked Mr Stavis if he would prefer that you hold off on proceeding to a hearing to allow him to review the without prejudice plans and it's the case, if I can take you to page 129, that he responded to you, at the top of the page, that same day, "Yes, please. That's the instructions I left for George."---Yes.

That's referring to his earlier emails to Mr Gouvatsos to instruct the lawyers not to terminate the section 34 conference?---Correct.

40 And at page 143, he sent a further response saying, "I want to avoid a prolonged costly hearing if possible." Do you see that?---I do.

So, do you recall seeing that at or around the time?---I don't recall the email but I do recall speaking to Mr Stavis and he indicated that he did not wish to proceed to a hearing based on cost.

So, he raised that with you in a conversation separate to this email, is that right?---Yes.

And that was at or about 22 January?---I suspect it may have even been before.

All right. Can you recall how many conversations or the degree to which you were speaking to Mr Stavis around this time about this issue?---I'm afraid I can't. I saw Mr Stavis on a daily basis so it may have been that might have spoken to him every day. I, I'm afraid I don't have a clear recollection of every particular conversation, I'm sorry.

10 But if he was on leave at this time, if you make that assumption - - -?---I would have been unable to have spoken to him. It only would have been via email.

Now, can I take you to page 128. This is working backwards in the volume but I think chronologically forwards. You'll see that that's a letter, again initialled by you of 22 January, to Mr Jackson of Pikes and Verekers?  
---Yes.

20 In which you instructed that the council intended to continue with the conciliation process. Do you see that?---I do.

And that you informed the court and Mr Conomos, the applicant's solicitor, of your desire to continue to accept without prejudice plans. Do you see that?---I do.

With a view to resolving the council's contentions and apologising for any confusion - - -?---I do.

30 - - - about the instructions. Now, did you have any views at this time regarding Mr Stavis' approach of continuing the conciliation conference?  
---I understand or understood his desire not to proceed to a hearing based on cost. Having received several set of without prejudice plans, which were not making significant headway towards resolving our concerns, I did not see much utility in continuing with that and I would have agreed with my earlier email that the best way now is to proceed to a hearing. The conciliation process is to allow for amendments to be made and conciliated. However, that takes, both parties need to be willing to do so. And having several sets of with prejudice plans, that did not make significant changes, I agreed with my expert, Mr McNamara, that he ought to proceed to a  
40 hearing.

Was it the case that Mr Stavis frequently involved himself in development applications or consequential appeal proceedings in this level of detail?---At the time we did not have a large number of appeals but he could become heavily involved in the assessment of an application. Not drawing a large distinction between a development application and an appeal, it was a matter before us and he could become heavily involved. Most appeals happily entered into a section 34 conference and may have required the

resolution of council which would mean that Mr Stavis would need to have agreed with our position to enter into a 34 conference in order to get council resolution to do so.

In your experience, would you describe the level his involvement in development applications, leaving aside class 1 appeals, as unusual?---Yes. being involved in an application is not unusual for a director. Directors are there to give direction. I did think he was heavily involved though.

- 10 And what about his involvement in this particular appeal? Did you have a view as to whether that struck you as unusual?---It struck me as unusual that he was giving several opportunities to the applicant to come back to us with, on, to come back to council with without prejudice plans, I understand giving someone one opportunity to do so. I wasn't quite following his repeated opportunity to not proceed to a hearing.

- In your experience, how many opportunities generally might be given to an applicant in the context of a section 34 conference?---At the time the court didn't give us direction as to how many opportunities an applicant ought to  
20 be given. Since then the court has given us direction and it's generally one, maybe two.

Yes.---In this instance the court didn't say to us we could have one bite at the cherry and that's it, they simply said conciliate.

Yes.---And obviously the cost of a hearing, nobody wishes to go down that path, however I didn't see an alternative to that.

- In your experience of – was this the first class 1 appeal that you'd  
30 conducted?---No.

So in your experience of conducting class 1 appeals on a section 34 conciliation conference, in your experience how many opportunities would be given to an applicant to provide without prejudice plans?---At the conference they would have to indicate that they wished to engage with us and then I would suggest one set of without prejudice plans. If the matter was very, very complex, then perhaps a second, particularly if there was a lot of technical issues that needed to be resolved.

- 40 Was this matter in your view complex of the nature that you've indicated? ---Not with regards to a development matter. There was some complexity with the site with the view that it was isolated, however with regards to where the building was on the site, I did not consider that to be overly complex.

THE COMMISSIONER: Can I just ask, Counsel Assisting asked you about Mr Stavis' involvement in the development application and you answered

that a director's there to direct, but you thought it was unusual that he was heavily involved.---Yes.

10 When you used the word heavily, what type of activity were you thinking of?---If the matter was a very, very large application or a very, very complex application, one that had significant ramifications for its environment, then I would expect that the director may become involved in it. This application did not meet those criteria. It was a relatively small DA that ordinarily a director would not be overly mindful of, apart from the fact that it was the subject of an appeal and that he would have to be aware of that from a, from a, from a, from a legal perspective, but as far as the assessment of those plans, I didn't think it was be something that the director would need to be heavily involved in.

You were just asked about your experience with class 1 appeals. Around this time did you have much experience with them actually progressing to a defended hearing?---No. Most of the appeals that we have had and have continued to have, many of them have been dealt with - - -

20 Resolved at a - - -?--- - - - at a conciliation process. Not all.

And if it doesn't resolve, I take it to progress to a defended hearing there's got to be directions and timetables for filing of evidence. Is that the next step?---Yes. I would, if I were the instructing officer I would instruct the solicitor that we have considered amended plans, we do not agree with them, please terminate and proceed to a hearing and the matter would be brought before the Registrar.

30 All right. And generally the time lag between an unsuccessful section 34 conciliation and then an actual defended hearing and judgement, can you give us an indication of how long that would generally take?---At the moment it's about six months.

Do you remember back around 2015?---I suspect it may have been slightly less. The 34 was in November, the appeal I think came in in August, so three months.

All right. Okay. Thanks.

40 MS MITCHELMORE: Mr Hargreaves, can I take you to page 186 of volume 6. You'll see that this is an email that is responding to an email from Mr El Badar to Mr Stavis, if you look at page 187, which was sent on 28 January.---Ah hmm.

And it was sent to him raising issues and asserting that the plans reflected what was agreed at the meeting on 5 January. Do you see that?---I do.

And Mr Stavis replied initially on an interim basis at the bottom of page 186 but then more fulsomely at the top of page 186, and you were blind-copied on that email, do you see that?---I was.

It's dated 29 January at 12.30.---Yes.

And it's addressed to Mr Abdullah Osman, Mr Talal, sorry, Mr El Badar and Khaled, who was Mr El Badar's designer, is that right?---Yes.

10 And in the email Mr Stavis expressed disappointment with the revisions that had been submitted. Do you recall him separately expressing any response to you?---No, I don't, but I'm not surprised.

And he sets out what issues were raised at the meeting, and in his view – expressed in the first paragraph under the addressing – that in his view no real effort had been made to address the issues that were raised at the meeting.---I see that.

20 And you'll see at the bottom of the page, bottom of the email, “Notwithstanding the above, I have attached a sketch plan which provides some suggestions on how you can amend to satisfy our issues.” Do you see that?---I do.

And if I can take you over to page 188, are these the sketch plans or a sketch plan to which Mr Stavis was referring in his email?---I would imagine that to be the case, yes.

30 Yes. Do you recall seeing these at the time, at the end of January?---No, I don't, but I will rely on the email that I did.

Yes. And do you recall having a view at that time about Mr Stavis making such suggestions?---I thought it was unusual for a director to give that amount of design response or for council to give that amount of design response to an applicant. Mr Stavis thought differently and proceeded to do so.

40 And on what basis do you consider it to be unusual? What's the usual course?---Well, it would not be the course for council to either say, “Please do this in order to resolve our contentions in a direct way” or to make amendments to their plans that would have the same effect.

Is there anything wrong with doing it?---I think it begins to blur the line between council as the consent authority or the recommender to the consent authority, in this case the court, and becoming a quasi-consultant designer for the applicant. Councils are to give guidance, but that guidance is tempered by the fact that we have to be able to make a clean decision between what is proposed, how it is assessed and how it is determined, and that line should be fairly clear and clean.

Can I take you to page 196. You'll see again another email from Mr Stavis which is blind-copied to you, dated 29 January at 4.19pm, and you'll see that it's responding to an email from Mr El Badar to Mr Stavis, where he set out what his recollection was of the meeting on 5 January. And at the top of the page in Mr Stavis's email he indicated he disagreed with Mr El Badar's recollection and that the issues were clearly outlined in his previous email, and "Please advise if you are intending to prepare amended plans, otherwise we will instruct our solicitor to go to hearing." Do you see that?---I do.

10

And is it the case that further plans were provided, do you recall?---Well, yes.

Can I just take you, Mr Hargreaves, to page 199, and you'll see that it's an email from you to Ms Walsh of Pikes & Verekers, outlining what your previous instructions have been and indicating that the applicant was yet to provide you with a satisfactory design "though they are close to providing us with a design we can support". See that?---Yes.

20 Is it the case that between 29 January when Mr Stavis sent that email to Mr El Badar and this date 3 February that the applicant had indicated that they would be providing amended plans?---I would suspect that to be the case.

And if I can take you to page 206 you will see that Mr Stavis forwards to you on 10 February an email from Mr El Badar of 2 February which attached some draft final, draft plan amendments. Do you see that?---Yes.

30 And is it the case that it was communicated to the applicant that those amended designs were predominantly satisfactory?---I would imagine that that was the case as we entered into a 34 agreement ultimately. How that happened I'm afraid I don't recall.

All right. Can I just show you a file note, Mr Hargreaves, at page 210. You will see there's a memo to file which - - -?---Yes.

- - - was prepared by you. Is that right?---Yes.

40 And indicates that you and Mr Stavis met with Mr El Badar on 10 February to discuss the plans that he'd lodged on the 2<sup>nd</sup>.---Yes.

And you've indicated what the amendments showed and that the amended design was satisfactory but there was some issue with heavy masonry supports - - -?---Yes.

- - - for the northern pergola and that subject to a complete set of plans being provided – I'm sorry, that Mr El Badar would provide a complete set of plans to your solicitors for you to renotify and report to the City Development Committee?---Yes.

So it would be the case that the development application with the benefit of those amended plans would be submitted to the City Development Committee of council?---Yes.

With a recommendation that it be approved?---That we enter into a 34 agreement, yes.

10 I'm sorry. You enter into a 34 agreement. That required a resolution of council?---It did. There were variations beyond my delegation that I could enter into a 34 agreement so we needed to get the resolution of the, of council as the appropriate delegator.

20 Yes. Thank you. All right. Mr Hargreaves, I now wanted to ask you some questions about development applications for two sites, two related sites, 212-218 Canterbury Road and 220-222 Canterbury Road and 4 Close Street. So do you recall development applications being lodged with respect to those sites?---Not being lodged, no, but I did become aware of both applications.

And is it the case that the assessment of those development applications were initially allocated to Mr Flahive?---Sean Flahive, yes.

Flahive. Right. And the files were subsequently handed over to you?---I would not use those words to describe the process.

30 How would you describe it?---Sean Flahive carried out an initial assessment. He requested amended plans. Sean unfortunately resigned from council. Amended plans were lodged and I was the next person in the chain that the plans had to go to. So yes, they then came to me.

All right. And can you recall – you said that they came to you. Did they come to you from someone or did you - - -?---Oh yes, sorry. Mr Flahive requested amended plans from the applicant for both DAs. I think from memory he prepared one piece of correspondence that related to both applications. In response the applicant provided two sets of amended plans, one for each DA. Those amended plans were then forwarded to me.

40 All right. But by whom?---The applicant lodged them with council and then council's records officers would have noted that Sean had resigned and forwarded them to myself.

And at that time were you still in the planning team?---I think I had just taken over. I think the, my predecessor, Stephen Pratt, had just resigned.

And is it the case that at the time that Mr Flahive was dealing with it, there were some external consultants involved?

---I became aware of external consultants after his resignation. I wasn't aware of that at the time. There was no need for me to have known that, but following the lodgement of amended plans it came to my attention.

Upon your review of the file, was there any reason associated with the DAs as to why an external consultant might need to be involved?---I suspect it came down to a shortage of staff.

10 And is it the case that the consultant involved was a Mr Black from Planning Ingenuity?---I wasn't aware of who was dealing with it. I understood that Planning Ingenuity was. I don't know that Mr Black was specifically pointed out to me but I was advised that Planning Ingenuity had carriage of the matter.

And the applicant for the DAs was Chanine Design. Do you recall that?  
---Yes.

And the personal contact was Mr Ziad Chanine?---Yes.

20 In 2015-16 did you know Mr Chanine?---I know that he was a developer who lodged DAs with council. I did not know him.

Yes, I'm sorry, I should be clear. I was there referring to Mr Ziad Chanine. There were two Chanines.---There's two Chanine brothers, yes. I know of both of them, but I do not know them.

His brother, Mr Ziad Chanine's brother was Mr Marwan Chanine.---Yes.

30 You recall that name?---Yes.

And from what you've said in your evidence you did not know them, you had no personal relationship with them at that time.---Oh, no. Or at any time.

Had you dealt with them in relation to other development applications in the Canterbury local government area before these DAs?---Yes.

40 Yes.---Or rather I was aware that they had lodged DAs in the Canterbury area prior to that.

Did Mr Stavis indicate to you at the time you were working on these DAs as to whether he had any particular relationship with Chanine Design or, and/or Mr Ziad Chanine?---Only that they were frequent applicants and that he would be aware of them as people that lodged large DAs with council.

Apart from that, did you know whether he had any particular relationship with Chanine Design or Ziad Chanine?---No.

Did you know at that time whether the Chanines, Ziad and Marwan Chanine had any particular relationship with any councillors on council?---Only in the same extent that Mr Stavis would have. They lodged large DAs with council. I suspect they would have recognised the name.

And did you know at that time whether the Chanines had any particular relationship with Mr Montague, the general manager?---No.

10 Can I take you, Mr Hargreaves, to volume 26, which is in Exhibit 69, and to page 107. You referred in your evidence to – actually I might take you back to page 106 – to amended plans being submitted.---Yes.

You'll see that there are, these are coversheets 106 and 107, additional plans for DAs 168 and 169/2015.---I see that.

And is it the case that it was the amended plans that came to you for you to have carriage of that, the DAs following Mr Flahive's resignation?  
---Correct.

20 And you'll see on page 106 and 107 that your name appears in brackets - - - ?---Ah hmm, yes.

- - - next to Mr Flahive's, so it's the case that although the applicants had addressed them to Mr Flahive, as he was no longer at the council they were allocated to you?---Yes.

30 And insofar as you referred to Mr Flahive having sent a letter. Can I take you to page 99 of this volume. You'll see that's a letter of 9 September, 2015 from Mr – looking at page 105 – from a Mr Yammine of CD Architects, Chanine Design Architects. Do you see that?---Yes.

And that, on the first page at 99, refers to correspondence dated August, 2015, regarding the proposed development and issues raised by council. Do you see that?---Yes.

40 And so the correspondence and associated documents were responding to the issues that Mr Flahive had raised with the applicants in relation to the DAs as originally submitted. Is that right?---I would take that to be correct, yes.

Yes. Now, the letter attached a number of documents including a clause 4.6 variation report for 218-222. You can see that at page 81. You'll see that's a clause 4.6 variation. You'll see it's got the same date stamp as the other documents coming in and there was a similar report for 220-222 and 4 Close Street at page 121 and these clause 4.6 reports, these two reports related to exceptions being sought to the development controls in relation to height. Do you recall there being, in relation to these DAs, a need to vary

development controls with respect first to height?---I seem to recall that one of them was over the height. Obviously both were.

Yes. Was there also a need to vary the development standards with relation to floor space ratio?---I understood that to be the case, yes.

Yes. Do you have any recollection of reviewing these reports upon your receipt of the file?---Not in great detail, no. I would have reviewed them. I don't think perused them.

10

Yes. And do you remember having a view at this time, about the merits of the 4.6 submissions about height, seeking a variation of that development control?---My review of them was that I did not think they were well founded. I may have changed my view if I carried out a detailed assessment of them, but having reviewed the documents as lodged I did not think they were well founded.

20

Can I take you to page 117. You'll see that's a letter from you to Mr Black of Planning Ingenuity of 23 September, which attached the letter from the architects and the further reports?---Yes.

And you asked for a completed report by 16 October, 2015. Do you see that in the penultimate paragraph on 117?---I do.

And that was on the basis that the DAs were expected to be considered by the Independent Hearing and Assessment Panel at a meeting on 2 November. Is that right?---I see that.

30

And so, it was the case that the report needed to be completed by 16 in order to facilitate the processes required to get the matter before IHAP, is that right?---Correct.

Would you have nominated that IHAP meeting date?---No.

40

Who would have nominated that date for you to insert in the letter?---I would have sought instructions from Spiro Stavis in the first instance to ascertain what instructions he wanted with the, with the applications as I wasn't aware of any background, I wasn't sure what the next step was so I sought instructions from him with a plan that Planning Ingenuity had been appointed and that they, and that the direction was that they were to be considered by council by the end of the year.

All right. And if I can then, well, if I can ask you this question. When you wrote to Mr Black on 23 September, did you know if he'd assessed the DAs as they were originally submitted?---I can only assume that I know that. I do not know that I know that. I say that because, I'm sorry, I say that because I've said in my letter Planning Ingenuity is currently assessing two DAs. I would not have known, prior to receiving the amended plans in

September, that they had carriage of the matters. I sought instructions when I received the amended plans to be advised that Planning Ingenuity were assessing it.

And at this time, 23 September, were you aware of what the views were of Planning Ingenuity as to the development assessments?---No. I imagined that it would have been fairly preliminary, given that Sean had requested amended, Mr Flahive had requested amended plans and they had just been lodged.

10

Can I take you to page 150 of this volume. I can take you back to page 151, just going through chronologically. You'll see there's an email from Mr Stavis saying that you were missing clause 4.6 variations for FSR. Do you see that?---Yes.

Was it the case that with the documents that were provided back in early September, the FSR reports were given with respect to height but they also needed to have reports for the floor space ratio?---I imagine so.

20

And you'll see over the page that there was some confusion as to whether or not those reports had been provided in the emails between Mr Ziad Chanine, which caused Mr Stavis to send an email on to Mr Black of Planning Ingenuity. Do you see that?---Yes.

And the request from Mr Black was that "as a minimum can you please ask the applicant to provide greater justification within the FSR clause 4.6 variation" and there's a reference to "425 LEC case and planning grounds justification". And there's a reference at the beginning of that sentence, "Further to our discussions." Do you see that?---I do.

30

Do you recall any discussions held in which you participated with Mr Black and Mr Stavis about the absence of clause 4.6 justification for FSR around this time?---No.

Now can I take you to page 161. You'll see that clause 4.6 variation reports were provided dealing with FSR. You'll see the first one is the page 161 and that related to 220-222 and 4 Close Street, and then at page 180 you'll see the report for 212-218 Canterbury Road. And just going back to the first of those you'll see that the clause 4.6, what was sought. If you look at page 170 there was a reference there to the permissible floor space ratio at the top of page 170. Do you see that?---Yes.

40

So it had a split maximum permissible FSR. And then you'll see that the proposal incorporated a total – so the result of permissible FSR was a gross floor area of 4,578.3 metres squared, while the proposal incorporated a GFA of 7,066 metres squared, which was 4.3:1 FSR. So they needed the 4.6 clause to vary the development standard, is that right?---Correct.

And similarly for 212-218, looking at page 187. Again, the permissible FSR is set out in the paragraph underneath 4.4.---Which appears to be a carbon copy of the previous one.

Yes. Yes. It may not be entirely correct.---Yes.

10 Yes. In fact, if I can take you to page 189. If you look under the heading 4.6 variation, the maximum permissible GFA was 3,734.95 metres squared. The proposal incorporated a total GFA of 7,672 metres squared, which was 6:1 FSR and exceeded the FSR standard. So it was, in effect, perhaps almost double the permissible FSR.---Double, yes.

Do you recall reviewing these reports when they were submitted around 18 October, 2015?---No.

20 Is it likely that you would have reviewed them at that time?---Possibly. Ultimately that was a role for Planning Ingenuity to do, that they had been tasked with assessing it. I may have reviewed it for my own information. I don't think I would have, well, I would not have carried out an assessment. I may very well have read them to get an understanding.

Do you recall forming any view at the time around October/November of 2015 as to the merits of what was being sought pursuant to clause 4.6 in relation to FSR?---I did not support the variations. I thought they were excessive or rather I thought they were not well founded. I wasn't overly supportive of either application for a number of reasons. FSR was but one of them.

30 What were the other reasons?---Non-compliance with the height and also non-compliance with setback requirements. One of the applicable policies was a document referred to as the ADG or the Apartment Design Guide which set setbacks from boundaries and the applications, both applications seemed to seek significant variations from the setbacks.

Now, can I take you to page 200 of this volume and you will see that there's an email at the top of the page from Mr Stavis to Mr Marwan Chanine which is copied to you. Do you see that?---Yes.

40 And it was in response to an email from Marwan Chanine on the same day where Mr Marwan Chanine had indicated with regard to the issue of DCP non-compliance with the Canterbury Road secondary setback that was justified by Chanine Design Architects with the additional information previously lodged and Mr Stavis's response was to raise an issue as to the front setback.---Yes.

Which was the non-compliance wasn't adequately justified and there was an agreement that he would provide, he, Mr Chanine would provide independent urban design advice in that regard and said, "I'm not trying to

be difficult. Marwan and I would not ask if I didn't need, I need the ammunition. Please do so asap." Do you recall seeing this email at or around this time?---No, I don't. I have seen it since.

Do you recall reading Mr Stavis's reference to needing ammunition?---Yes, I do.

10 Can you recall what you understood him to mean by that?---Well, my understanding is that he meant that the request to vary the controls were, for want of a better word, weak and that he needed his argument to be justified or fortified to support the variations.

And that's an understanding that you have now. Is that right?---Yes.

20 Or was it understanding you had at the time?---I don't recall getting the email at the time. I have since seen the email and that is what I understood it to be. I think having my own understanding of the two applications, if I was to request amended plans I think I probably would have also would have said please provide increased justification or rather please provide a better planning response.

Can I take you to page 268. You will see, Mr Hargreaves, it's an email from you to Mr Black, copied to Mr Gouvatsos and Mr Stavis, in which you refer to the two DAs that were being assessed by Planning Ingenuity.---Yes.

Which are the two DAs in question and you'll see in the last paragraph that – well you sought confirmation that the reports could be available this time for the IHAP meeting on 23 November, 2015. Do you see that?---Yes.

30 So, the timing had moved a little on when it would go to IHAP, is that right?---Yes.

40 And you say in the last paragraph, "In order to assist in your discussion, particularly regarding SEPP 65 setback compliance, that the impact these two DAs may have on the adjoining site at 15 Close Street, being the subject of a draft LEP to rezone that site from RE1 to R4. Attached is a copy of our advice to neighbours advising them of this rezoning." Can you recall why you considered the provision of that document would be of assistance to Mr Black?---The Apartment Design Guide talks about having a setback between a residential flat building, what was proposed here, and something next door. Something next door at that point was public open space. It didn't have significant development potential. So, the setbacks may not have been as important. Council's in the process of rezoning that land from open space to residential and high density residential. Had that rezoning gone through, I understand it has since, then the need for setback is significantly more important because there is likely to be development on that adjoining site where setbacks would be necessary.

That's 15 Close Street in this case?---Yes.

And do you know who owned 15 Close Street?---Council does, or did. I don't know if we still do.

All right. Commissioner, is that a convenient time?

THE COMMISSIONER: Yes. We adjourn until 2 o'clock.

10

**LUNCHEON ADJOURNMENT**

**[1.02pm]**